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Blockchain Law

The oncoming tokenization of securities

By Robert A. Schwinger, *New York Law Journal* — March 31, 2026

Tokenization of assets may represent one of the most economically transformational applications for blockchain technology. By having an asset represented by a pool of tokens that stand for small fractional interests in the underlying asset, tracked via blockchain technology on a distributed ledger, interests in the asset can be easily sold, traded, transferred, combined and separated. Bringing such assets "onchain," as it is often called, can open up new ownership structures, new forms of transactions and new forms of financing for the asset.

What happens when tokenization comes to the highly regulated area of securities, to bring those assets "onchain"? Regulators are now beginning to explore the practical ramifications of this transformation.

The promise of tokenization

The coming wave of tokenization was explored at length a few years ago in a March 2023 Citi GPS Report entitled "Money, Tokens, and Games." As explained in this report:

> "Tokenization refers to the creation of tokens, which are pieces of code on a blockchain, to record information about underlying assets and liabilities including their attributes or characteristics, status, transaction history, and ownership."

Such tokenization can be applied to "real-world assets," such as real estate, and also to financial assets, such as securities.

The Citi GPS Report cited numerous potential benefits from tokenizing financial assets. These benefits included (1) improving liquidity from allowing fractionalization that makes trading easier and allows investors to avoid or lower investment minimums, (2) providing operational efficiencies in distribution that can lower costs and bypass "rent-seeking intermediaries," and (3) improving access by helping individuals access assets that heretofore were available only to institutional clients or other niche groups of investors, among various others.

Similarly, a recent Wall Street Journal article identified a number of reasons why investors might be interested in tokenized stocks. Among these is that tokenizing stocks:

> "allows them to be traded 24/7, a feature already familiar to crypto investors but previously impossible in traditional markets. Tokenization also makes expensive blue-chip stocks accessible through fractional ownership, allowing anyone to buy a small digital slice of a company for just a few dollars." Vicky Ge Huang, "Tokenized Stocks Are Coming to a Market Near You: Five Things to Know," Wall St. J., Mar. 9, 2026.

Additionally, the article noted, "Wall Street executives believe that blockchain could accelerate the process of settling stock transactions and reduce intermediary costs," and that "tokenized assets could potentially help markets function smoothly under pressure."

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Embracing tokenization as part of a new fintech era

Since the very start of the current administration, there have been ongoing efforts on multiple fronts to develop new regulatory premises, agendas and structures for a world of crypto and other blockchain-based systems, and of fintech more generally.

In various financial regulatory areas, including banking, securities and commodities, the current administration seeks to focus on cultivating the benefits that it anticipates such systems could bring, rather than focusing primarily (as the prior administration was accused of doing) on enforcement activity against what that administration saw as the ills and injuries such systems threatened to unleash.

The new administration began setting various changes in motion, see generally R. Schwinger, "New Administration's Crypto Whirlwind Marks Significant Shifts for Digital Assets," N.Y.L.J. (Mar. 24, 2025), and among these was focusing attention on the possibilities for tokenizing securities. SEC Commissioner Hester Peirce, for example, issued a statement on July 9, 2025, stating:

> "Blockchain technology has unlocked novel models for distributing and trading securities in a 'tokenized' format. Tokenization may facilitate capital formation and enhance investors' ability to use their assets as collateral. Enchanted by these possibilities, new entrants and many traditional firms are embracing onchain products." Comm'r Hester Peirce, Enchanting, but Not Magical: A Statement on the Tokenization of Securities (July 9, 2025).

At the same time, though, Commissioner Peirce cautioned:

> "As powerful as blockchain technology is, it does not have magical abilities to transform the nature of the underlying asset. Tokenized securities are still securities. Accordingly, market participants must consider—and adhere to—the federal securities laws when transacting in these instruments."

Commissioner Peirce thus invited "[m]arket participants, as they structure their tokenization product offerings, [to] consider meeting with the Commission and its staff," noting that they "stand ready to work with market participants to craft appropriate exemptions and modernize rules" when "unique aspects of a technology warrant changes to existing rules or where regulatory requirements are outdated or unnecessary."

A new SEC statement on tokenized securities

On Jan. 28, 2026, the SEC's Divisions of Corporation Finance, Investment Management, and Trading and Markets issued a "Statement on Tokenized Securities" (statement). These Divisions stated their purpose in issuing the Statement as "providing their views on the taxonomies associated with tokenized securities," in the service of "provid[ing] greater clarity on the application of the federal securities laws to crypto assets" (a term that the statement explained as being equivalent in meaning to the definition of "Digital Asset" in the GENIUS Act).

The statement also stated that it further sought "to assist market participants as they seek to comply with the federal securities laws and prepare to submit any necessary registrations, proposals, or requests for appropriate action to the Commission or its staff."

A taxonomy for tokenized securities

The statement at the outset defined tokenization as "the process of creating a digital representation of a tangible or intangible asset using DLT [distributed ledger technology]."

The statement divided tokenized securities into two categories:

> "(1) securities tokenized by or on behalf of the issuers of such securities; and (2) securities tokenized by third parties unaffiliated with the issuers of such securities."

The statement in turn identified two "models" or subcategories of third-party-sponsored tokenized securities:

> "Under the first model, the third party issues a crypto asset representing the underlying security, such as a tokenized security entitlement. The underlying security is held in custody, and the crypto asset evidences the holder's ownership interest (whether direct or indirect) in the underlying security being held in custody.
>
> Under the second model, the third party issues a crypto asset representing its own security that provides synthetic exposure to the underlying security, such as a tokenized linked security or a tokenized security-based swap."

Having identified these categories of tokenized securities, the statement then set forth explanatory detail for each of them.

Issuer-sponsored tokenized securities

Addressing the first category, issuer-sponsored tokenized securities, the Statement explained that "[a]n issuer may tokenize a security by issuing it in the format of a crypto asset." This is done, the Statement said, when an issuer or its agent:

> "integrates DLT into the systems that it uses to record owners of the security (the 'master securityholder file'), such that a transfer of the crypto asset on the crypto network results in a transfer of the security on the master securityholder file."

As the statement then further explained:

> "the only difference between a security issued in this manner and securities issued in traditional format is that instead of maintaining the master securityholder file through conventional, offchain database records [i.e., transactions or data processed and recorded outside of a crypto network], the issuer (or its agent) maintains the master securityholder file on one or more crypto networks, which functionally are onchain database records [i.e., transactions or data processed and recorded directly on a crypto network]."

To make this recordkeeping system work, "the issuer (or its agent) uses onchain database records alongside offchain database records and associates the onchain information (e.g., wallet address, quantity of security owned, and issue date) with relevant offchain information (e.g., security holder name and address)."

However, the statement pointed out, tokenization of a security is not a single all-encompassing binary choice. "A single class of securities could be issued in multiple formats, including tokenized format. Similarly, an issuer may permit security holders to hold a security in different formats and convert the security from one format to another." Whatever choice is made, though, a key point remains that "[t]he format in which a security is issued or the methods by which holders are recorded (e.g., *onchain vs. offchain*) does not affect application of the federal securities laws," whether under the Securities Act of 1933 or the Securities Exchange Act of 1934.

That being said, "the tokenized security could be of a different class of securities from those issued in traditional format. For example, an issuer could issue one class of common stock in traditional format and issue a separate class of common stock as a tokenized security." Nevertheless:

> "if the tokenized security is of substantially similar character as the security issued in traditional format and holders of the tokenized security enjoy substantially similar rights and privileges, the tokenized security may be considered of the same class as the security issued in traditional format for certain purposes under the federal securities laws."

The statement noted other possible variations for issuer-sponsored tokenized securities. For example, "an issuer (or its agent) may tokenize a security without a crypto network constituting, or being part of, the master securityholder file." Under this model, the statement explained:

> "the issuer issues the security offchain and issues a crypto asset to security holders. The crypto asset does not convey any rights, obligations, or benefits of the security, and the crypto asset and its onchain database records are not directly integrated into the master securityholder file for the security."

Rather, in this model, "the crypto asset may be used indirectly to effect transfers of the security on the master securityholder file."

Under this scenario, "the transfer of the crypto asset, which is a securities transaction, operates to notify the issuer (or its agent) to record the transfer of ownership of the security on the master securityholder file." Because in this scenario "the offchain database records constitute the master securityholder file," the issuer (or its agent) will need to "use the onchain database records to update the offchain database records to record the transfer of ownership of the security."

Third-party-sponsored tokenized securities

In the second broad category of tokenized securities discussed in the statement, "third parties unaffiliated with an issuer of a security could tokenize the unaffiliated issuer's security." There is more room for variation in this category. Depending on the model of third-party tokenization used:

- "the rights, obligations, and benefits associated with the crypto asset may or may not be materially different from those of the underlying security."
- "the crypto asset may or may not represent an ownership interest in or contractual obligation of the issuer of the underlying security and, as such, may or may not confer upon the holder of the crypto asset any rights as a holder of the underlying security."

- "holders of the crypto asset may be exposed to risks with respect to the third party, such as bankruptcy, to which a holder of the underlying security would not necessarily be exposed."

The recent Wall Street Journal article noted the differences presented by this variety of tokens:

> "Most of the tokens trading today are technically derivatives and not stocks, at least at the moment, and thus don't confer the holder all of the rights of ownership that shares provide—even if they track those shares' prices. In the future, though, tokens are expected to grant those rights, including dividend payouts and the ability to vote on shareholder proposals."

As noted above, the statement divides third-party-sponsored tokenized securities into two subcategories or models. In one, "the third party issues a crypto asset representing the underlying security, such as a tokenized security entitlement.

The underlying security is held in custody, and the crypto asset evidences the holder's ownership interest (whether direct or indirect) in the underlying security being held in custody." In the other, "the third party issues a crypto asset representing its own security that provides synthetic exposure to the underlying security, such as a tokenized linked security or a tokenized security-based swap."

Custodial tokenized securities

The first model of third-party-sponsored tokenized securities occurs when a third party may "tokenize[s] a security issued by another person by creating a security entitlement that is formatted as a crypto asset."

One way to accomplish this is by "integrating DLT into the systems that it uses to record entitlement holders, such that a transfer of the crypto asset results in a transfer of the security entitlement on the third party's records." Under this approach, "the crypto asset represents the holder's indirect interest in the underlying security via the security entitlement." The statement notes the important caution, however, that "[t]he format in which the security entitlement is issued does not affect application of the federal securities laws."

Under another third-party tokenization method, "a third party may tokenize a security entitlement without a crypto network constituting, or being part of, the systems that it uses to record entitlement holders." Under this approach, "the crypto asset may nonetheless be used to transfer the security entitlement on the third party's records similar to the issuer-sponsored model discussed above." The statement explains that, in this scenario, "[b]ecause the records are maintained offchain, the third party will use the onchain database records to update the offchain database records to record the transfer of the security entitlement."

Synthetic tokenized securities

The statement describes two forms under which a synthetic tokenized security could be issued.

Linked securities. The first form consists of issuing a so-called "linked security" that is formatted as a crypto asset. The term "linked security" refers to "a security issued by the third party itself that provides synthetic exposure to a referenced security, but it is not an obligation of the issuer of the referenced security and confers no rights or benefits from the issuer of the referenced security." Rather, "[t]he return on a linked security is linked to the value of the security it references or events relating to the referenced security."

Security-based swaps. The second form of synthetic tokenized security identified by the statement is when a third party "issu[es] a security-based swap formatted as a crypto asset." A "security-based swap" is a term defined in §3(a)(68) of the Exchange Act, 15 U.S.C. §78c(a)(68), which refers to a security that "generally provides synthetic exposure to, among other things, either a referenced security or certain referenced events relating to an issuer of a security."

Thus, while third parties may be the more common source of security-based swaps, the statement notes that "[d]epending upon the facts and circumstances, securities tokenized by or on behalf of the issuers of such securities also could result in a security-based swap."

However, it is important to appreciate the differences between a security-based swap and the underlying security itself. As the statement explains:

> "A security-based swap typically does not convey to the holder any equity, voting, information, or other rights with respect to the referenced security. The third party may not offer or sell the crypto asset representing the security-based swap to persons who are not eligible contract participants unless a Securities Act registration

> statement is in effect as to the crypto asset, and the transactions in the crypto asset are effected on a national securities exchange."

In other respects, however, the "crypto asset representing the security-based swap" is similar to the crypto assets that are used in issuer-sponsored tokenized securities.

To be a "security-based swap" under the Exchange Act, as explained in the statement, an instrument must be:

> "based on: (1) an index that is a narrow-based security index, including any interest therein or on the value thereof; (2) a single security or loan, including any interest therein or on the value thereof; or (3) 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, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer."

Thus, "[i]f a financial instrument formatted as a crypto asset is a swap and it satisfies one of the three prongs of the definition of 'security-based swap,' then the crypto asset may represent a security-based swap."

The statement observes that "[s]ecurity-based swaps and linked securities are economically similar," but that "certain additional or different provisions apply to the regulation of security-based swaps under the federal securities laws, including with respect to transactions with persons who are not eligible contract participants."

Specifically, "[t]he assessment of whether a financial instrument is a security-based swap or a linked security depends, in part, on the exclusions from the definition of 'swap'" (under §1a(47) of the Commodity Exchange Act, 7 U.S.C. §1a(47)). To the extent a financial instrument falls into one of these exclusions, "it is not a swap and, therefore, is not a security-based swap."

However, the statement notes that in analyzing such issues, as in many other contexts involving securities, "the economic reality of the instrument rather than the name given to the instrument" is what determines the outcome (citing *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967)).

Further regulatory support for tokenized securities

Other federal financial regulatory bodies likewise have begun to address the anticipated increase in tokenized securities, and consider how they might impact other parts of the financial system. On March 5, 2026, the Board of Governors of the Federal Reserve System (Fed) (joined by the Federal Deposit Insurance Corp. (FDIC) and Office of the Comptroller of the Currency (OCC)) issued a set of "Capital Treatment of Tokenized Securities Frequently Asked Questions" (FAQs) to address certain issues relating to those tokenized securities which "confer legal rights identical to those of the non-tokenized form of the security," which tokens the FAQs referred to as "eligible" tokenized securities.

The FAQs are intended to address tokenized securities in the context of what is commonly referred to as the "capital rule" for banking organizations — the rules implemented under Dodd-Frank and other banking-related statutes that require banks to hold a minimum level of capital relative to their assets to ensure solvency. *See* generally U.S. Library of Congress, Congressional Research Service, Bank Capital Requirements: A Primer and Policy Issues, by A.P. Scott & M. Lamonte, Rpt. No. R47447 (Wash., D.C.: Office of Congressional Information and Publishing, Mar. 9, 2023).

The FAQs state bluntly that "[t]he capital rule for banking organizations" implemented by the [OCC, Fed and FDIC] is technology neutral." Thus, "[t]he technologies used to issue and transact in a security do not generally impact its capital treatment."

> "Accordingly, an eligible tokenized security should be treated in the same manner as the non-tokenized form of the security would be treated under the capital rule. Similarly, a derivative that references an eligible tokenized security should be treated for capital purposes as a derivative that references the non-tokenized form of the security."

Likewise, "[t]he technologies used to confer legal rights to a security do not impact its ability to meet the definition of 'financial collateral' in the capital rule." Moreover, "the capital rule does not provide a different treatment based on the use of permissioned or permissionless blockchains."

Conclusion

The development of cryptocurrency represented an experiment where blockchain technology was used to bring a new class of asset into being. Tokenized securities show something different, but possibly as valuable, if not more—blockchain technology being used in support of an existing asset class, to make it more flexible and adaptable to a greater variety of circumstances, and thus ultimately more economically useful.

In this effort, the law and economic and financial regulation must continue to adapt and develop to keep pace with these changes. While there surely will be much more learning to be had and adjustments and adaptations to be made as experience in this area deepens, the statement and other steps show that our legal system is at least attempting to meet proactively the challenges posed by the oncoming tokenization of securities. Hopefully they will prove up to the task, so that the benefits of this next technological transition can be realized as fully as possible.

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