Public Comment on SEC/CFTC Joint Interpretive Release — Application of Federal Securities Laws to Crypto Assets

Submitted by: Empty Set LLC (Nevada Series LLC) **Contact:** Brice Love, Co-Founder **Email:** brice@emptysetllc.com **Date:** March 20, 2026 **Re:** Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Release Nos. 33-11412 and 34-105020, File No. S7-2026-09 **Submitted via:** Email to rule-comments@sec.gov

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Executive Summary

Empty Set LLC respectfully submits this comment in response to the Commission's joint interpretive release with the Commodity Futures Trading Commission establishing a five-category taxonomy for crypto assets. We commend the release as the most significant advance in crypto asset regulatory clarity since the Commission's Framework for "Investment Contract" Analysis of Digital Assets. The taxonomy — digital commodities, digital collectibles, digital tools, stablecoins, and digital securities — provides the definitional precision that market participants have sought for years.

We write to raise a question that the release does not address: what happens when the entity transacting in crypto assets is not a human being but an autonomous AI agent?

This is not a hypothetical. As of early 2026, multiple commercial platforms enable AI agents to transact autonomously using payment stablecoins. Coinbase's x402 protocol embeds stablecoin payments directly into HTTP requests, enabling an AI agent to encounter a paywall, pay in USDC, and continue its task without human intervention. Circle and Stripe are building payment infrastructure specifically designed for AI agent settlement. The IAB Tech Lab's Agentic Roadmap for digital advertising envisions AI agents autonomously executing buy-side and sell-side ad transactions — a model that is rapidly extending beyond advertising into general commerce.

The Commission's five-category taxonomy will determine which of these AI agent transactions are subject to federal securities laws and which are not. Yet the taxonomy was developed without reference to non-human transactors. Each category's analysis under the Howey investment contract framework assumes that a "person" is making investment decisions, providing consideration, and expecting profits from the efforts of others. When the transactor is an AI agent operating under delegated authority from a human principal — selecting assets, executing transactions, and managing positions at machine speed with minimal human oversight — the existing framework's assumptions require reexamination.

Empty Set LLC holds forty-three patents covering AI agent credentialing, insurance modeling, governance simulation, and autonomous entity operations. We are developing the behavioral safety credentialing infrastructure that will enable AI agents to operate as accountable, insurable participants in digital asset markets. Our perspective addresses the intersection of the Commission's crypto asset taxonomy and the emerging reality of AI-mediated digital asset commerce.

I. AI Agents as Crypto Asset Transactors: The Convergence

The release's five-category taxonomy will govern markets where AI agents are becoming significant participants. Each category presents distinct issues when the transactor is an autonomous system

rather than a human investor.

A. Stablecoins — The AI Agent Settlement Layer

The release classifies payment stablecoins as a distinct category not subject to federal securities laws when they function as a medium of exchange pegged to a reference asset. This classification is correct for human-to-human commerce. It is also the classification most immediately consequential for AI agent commerce.

AI agents require a settlement layer that is instantaneous, programmable, and available continuously. Traditional bank rails — with batch processing, business-hour limitations, and human-mediated authorization — cannot serve this function. Payment stablecoins can. Industry estimates project that AI agent-mediated commerce will generate trillions in transaction volume within the next five years, with stablecoins displacing a significant share of traditional card-based settlement for machine-to-machine transactions.

The Commission should consider whether the stablecoin classification analysis changes when the transactor is an AI agent rather than a human consumer. Specifically:

- When an AI agent acquires stablecoins not as a medium of exchange for an immediate purchase but as a reserve to fund future autonomous transactions, does the "medium of exchange" characterization still apply?
- When an AI agent programmatically selects among competing stablecoins based on yield optimization, reserve composition, or liquidity characteristics, does this selection behavior introduce investment characteristics into what the release treats as a non-security instrument?
- When an AI agent's stablecoin transactions are executed under delegated authority from a human principal who has specified general objectives (e.g., "maintain a $10,000 operating balance in the most capital-efficient stablecoin") rather than specific transaction instructions, who bears responsibility for ensuring compliance with the applicable regulatory framework?

B. Digital Commodities — Autonomous Portfolio Construction

The release classifies digital commodities as crypto assets that are not subject to federal securities laws when they do not constitute investment contracts. The release's analysis under Howey emphasizes the purchaser's expectation of profit from the efforts of others.

AI agents that autonomously acquire, hold, and trade digital commodities — based on algorithmic strategies, market signals, or portfolio optimization objectives — create a novel Howey question. The AI agent does not have "expectations" in the human sense. It executes a programmed or learned strategy. The human principal who deployed the agent may have an expectation of profit, but that expectation is mediated through the agent's autonomous decision-making rather than through a direct investment decision.

The Commission should consider whether the release's commodity classification analysis adequately addresses scenarios where AI agents autonomously construct portfolios of digital commodities based on investment strategies specified by human principals. If the human specifies "maximize risk-adjusted returns using digital commodities" and the AI agent selects, times, and sizes positions autonomously, the functional economic substance may resemble a managed investment vehicle — even if no human is making individual investment decisions.

C. Digital Securities — Machine-Speed Trading and Market Integrity

The release's classification of digital securities — crypto assets that constitute investment contracts under Howey — carries the full weight of federal securities registration, disclosure, and antifraud requirements. AI agents that trade digital securities at machine speed raise market integrity questions that the release does not address:

- Can an AI agent satisfy the "accredited investor" or "qualified purchaser" standards that gate access to exempt offerings? These standards are defined in terms of human financial characteristics (income, net worth, investment knowledge). An AI agent operating under delegated authority from an accredited investor may or may not satisfy these requirements depending on how the Commission interprets agency in this context.
- When an AI agent places orders in digital securities at speeds that preclude meaningful human oversight, does the agent's principal bear liability for trading violations committed autonomously? The release's classification framework determines which assets trigger these obligations, but the compliance framework assumes a human trader.
- How should the Commission treat AI agents that autonomously identify and exploit arbitrage opportunities across digital securities markets? If the agent's strategy involves purchasing a digital security on one platform and simultaneously selling on another — at speeds no human could match — the market integrity implications differ from those of human-initiated trades.

D. Digital Collectibles and Digital Tools — AI Agent Procurement

The release classifies digital collectibles and digital tools as categories generally not subject to federal securities laws. AI agents will transact in both categories — acquiring digital tools (APIs, computational resources, data feeds) as operational inputs and potentially acquiring digital collectibles as part of autonomous procurement strategies.

The Commission should consider whether the release's classification analysis changes when AI agents acquire digital tools not for personal use but for commercial deployment. An AI agent that autonomously procures computational resources tokenized as digital tools, deploys them to generate revenue, and reinvests the proceeds in additional digital tools is engaged in a self-reinforcing commercial operation. Whether this constitutes an "investment contract" under Howey — with the AI agent's human principal as the investor and the agent as the "enterprise" — is a question the current taxonomy does not address.

II. The Authorization Problem: Who Is the "Person" in Howey?

The Howey test requires an "investment of money in a common enterprise with the expectation of profits to be derived from the efforts of others." Every element of this test assumes a human actor:

- **Investment of money** assumes a person who decides to invest and provides consideration. When an AI agent autonomously allocates funds to crypto assets under general instructions from a human principal, who has made the "investment" — the human who authorized the range of activity, or the agent who selected the specific transaction?
- **Common enterprise** assumes identifiable participants who pool resources or share profits. When AI agents from multiple human principals transact through the same protocol, liquidity

pool, or staking mechanism, does the aggregation of AI agent activity create a "common enterprise" that would not exist if each transaction were evaluated in isolation?

- **Expectation of profits** assumes a subjective mental state. AI agents do not have expectations. They execute optimization functions. The human principal may expect profits, but the agent's autonomous selection of specific assets, timing, and position sizes introduces a layer of machine-mediated decision-making that the current framework does not contemplate.
- **Efforts of others** assumes identifiable promoters, sponsors, or third parties whose labor generates returns. When an AI agent's returns are generated by the agent's own autonomous trading, staking, or liquidity provision strategies, the "efforts" producing profits may be the agent's own computational activity — not the efforts of a third-party promoter.

The Commission should use the forthcoming "Regulation Crypto Assets" rulemaking to address how the Howey framework applies when one or more elements of the investment contract analysis involve autonomous AI agents rather than human actors.

III. Behavioral Safety Credentialing for AI Agents in Digital Asset Markets

The intersection of AI agents and the Commission's crypto asset taxonomy creates a need for verifiable behavioral safety standards for AI systems that transact in digital asset markets. Empty Set LLC is developing this infrastructure.

Behavioral safety credentialing for AI agents in crypto markets would address:

1. **Authorization verification.** A verifiable credential confirming that the AI agent has been authorized by a specific human principal through a recognized consent delegation protocol — and that the scope of the agent's authority (which asset categories, what transaction limits, which platforms) is defined and enforceable.
2. **Behavioral boundaries.** A verifiable attestation that the AI agent's trading behavior remains within defined operational parameters — position limits, concentration thresholds, loss tolerances, and market impact constraints — that the human principal has specified and that can be monitored in real time.
3. **Regulatory classification compliance.** A credential confirming that the AI agent's transaction selection logic incorporates the Commission's five-category taxonomy — ensuring that the agent does not inadvertently transact in digital securities through exempt channels, acquire investment contracts without satisfying applicable exemption conditions, or engage in activity that transforms a non-security asset into a security through the agent's autonomous behavior.
4. **Audit trail integrity.** A verifiable record of the AI agent's decision-making process for each transaction — sufficient to support regulatory examination, dispute resolution, and the attribution of liability between the human principal, the agent developer, and the platform.

This credentialing framework is consistent with the NIST AI Agent Standards Initiative's work on AI agent identity verification and authorization, and with the Treasury Financial Services AI Risk Management Framework's 230 control objectives for AI governance in financial services. It provides the Commission, market participants, and investors with a standardized mechanism for verifying that AI agents operating in digital asset markets are authorized, bounded, and accountable.

IV. Specific Recommendations

Empty Set LLC recommends that the Commission:

1. Address AI Agent Transactors in the Forthcoming "Regulation Crypto Assets" Rulemaking

Chairman Atkins' remarks at the DC Blockchain Summit outlined a regulatory framework that contemplates startup exemptions, principles-based disclosures, and safe harbors. The Commission should include in that rulemaking specific provisions addressing AI agents as transactors in digital asset markets — including how the Howey investment contract analysis applies when transaction decisions are made by autonomous systems under delegated human authority.

2. Clarify the Stablecoin Classification for AI Agent Use Cases

The release's stablecoin classification should be supplemented with guidance addressing AI agent stablecoin acquisition patterns — including reserve-building behavior, algorithmic stablecoin selection, and programmatic yield optimization — that may introduce investment characteristics into instruments the release treats as non-security payment media.

3. Develop AI Agent Authorization Standards for Digital Securities Markets

The Commission should develop or recognize standards for verifying that AI agents transacting in digital securities markets are operating under valid, scoped, and revocable authorization from identified human principals. These standards should be interoperable with the NIST AI Agent Standards Initiative's identity and authorization frameworks.

4. Recognize Behavioral Safety Credentialing as a Compliance Mechanism

The Commission should recognize third-party behavioral safety credentialing as a permissible mechanism for demonstrating that AI agents operating in digital asset markets comply with applicable regulatory requirements. Specifically, platforms that verify behavioral safety credentials before permitting AI agent transactions should receive favorable treatment in the Commission's examination and enforcement framework — analogous to the safe harbor treatment available to platforms that verify accredited investor status before permitting participation in exempt offerings.

5. Coordinate with the CFTC on AI Agent Classification

The joint nature of the interpretive release reflects the Commission's commitment to coordinated regulation. AI agents will transact across the full taxonomy — stablecoins, digital commodities, digital securities, digital tools, and digital collectibles — creating classification questions that span both agencies' jurisdictions. The Commission and the CFTC should jointly address how AI agent transactions are classified when the agent's autonomous behavior crosses category boundaries during a single operational sequence.

V. Cross-Reference: Empty Set LLC's Prior SEC Engagement

Empty Set LLC submitted a public comment on SEC Petition for Rulemaking 4-882 (mandatory AI governance and risk management disclosure, filed by Candace M. Arthur) on March 10, 2026. That comment addressed the Commission's role in requiring behavioral safety disclosure for AI systems deployed by public companies. This comment extends that analysis to the specific context of AI agents transacting in digital asset markets under the Commission's newly established five-category taxonomy.

The two comments are complementary: Petition 4-882 addresses the disclosure obligations of issuers who deploy AI systems; this comment addresses the regulatory framework for AI systems that autonomously participate in the markets those issuers access.

Closing

The Commission's five-category crypto asset taxonomy is a landmark achievement in regulatory clarity. It provides the definitional precision that the digital asset market has needed. We urge the Commission to build on this foundation by addressing the fastest-growing category of digital asset market participant: autonomous AI agents.

These agents are not a future concern. They are transacting today — in stablecoins, in digital commodities, and soon in digital securities. The Commission's taxonomy will determine which of those transactions trigger federal securities obligations. The Commission should ensure that its regulatory framework is prepared for a market in which a significant and growing share of transactions are initiated, executed, and settled by machines operating under delegated human authority rather than by humans acting directly.

Empty Set LLC is developing the credentialing infrastructure that will enable AI agents to operate as authorized, bounded, and accountable participants in digital asset markets. We welcome further engagement with the Commission and its staff on these matters.

Respectfully submitted,

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