

Davis Polk

Amendments to the Investment Advisers Act of 1940 as made by the Financial Innovation and Technology for the 21st Century Act (May 10, 2024)

DEFINITIONS

SEC. 202. [80b-2]

(a) When used in this title, unless the context otherwise requires, the following definitions shall apply:

...

(18) “Security” means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant or right to subscribe to or purchase any of the foregoing. The term ‘security’ does not include an investment contract asset (as such term is defined under section 2(a) of the Securities Act of 1933). The term does not include a digital commodity or permitted payment stablecoin.

...

(~~29~~31)¹ The terms “commodity pool”, “commodity pool operator”, “commodity trading advisor”, “major swap participant”, “swap”, “swap dealer”, and “swap execution facility” have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(32) Digital asset-related terms.—The terms ‘digital commodity’ and ‘permitted payment stablecoin’ have the meaning given those terms, respectively, under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

¹ Effective July 21, 2011, sections 402(a) and 770 of Public Law 111-203 provides for amendments to insert new paragraphs (29)-(30) and a second paragraph (29), respectively (shown above). The second paragraph (29) that precedes subsection (b) probably should be redesignated as paragraph (31).