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CLIENT ALERT

SEC Proposes First Offering Framework Tailored to Crypto Asset Investment Contracts

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The Securities and Exchange Commission has proposed Regulation Crypto Assets, the Commission's first offering framework specifically tailored to investment contracts involving non-security crypto assets.[1] Regulation Crypto Assets builds on the Commission's March 2026 interpretive release, which established a classification framework for crypto assets and clarified the circumstances under which a non-security crypto asset becomes, and subsequently ceases to be, subject to an investment contract.[2] Prior to the 2026 Interpretation, crypto asset transactions were addressed on an *ad hoc* basis through enforcement actions, no-action letters, and the analytical framework established in the July 2017 DAO Report, applying the test established in *SEC v. W.J. Howey* to determine whether a crypto asset was offered or sold as part of an investment contract and therefore subject to the

1 *See* Regulation Crypto Assets, 91 Fed. Reg. 54,510 (proposed Aug. 21, 2026) (to be codified at 17 C.F.R. pts. 200, 201, 228, 230, 232, 239).

2 *See* Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, 91 Fed. Reg. 13,714 (Mar. 23, 2026); *see also* SEC-CFTC Memorandum of Understanding (Mar. 11, 2026), available at https://www.sec.gov/files/mou-sec-cftc-2026.pdf.

federal securities laws.[3] During this period, the Commission brought enforcement actions, such as those against Munchee Inc. (2017), Kik Interactive (2019), and Ripple Labs (2020), while in 2019 the Staff published an analytical framework for investment contract analysis of digital assets, but it did not adopt any rules specifically tailored to crypto asset offerings.[4]

Regulation Crypto Assets (the "Proposal") includes two exemptions from registration under Section 5 of the Securities Act of 1933, as amended (the "Securities Act"), principles-based disclosure requirements, a non-exclusive safe harbor from the definition of "investment contract," and preemption of certain state registration and qualification requirements. The Commission states that the Proposal should reduce compliance burdens, support network development, and promote capital formation.

Key Takeaways

The Proposal shifts away from "ad hoc" regulation by enforcement and would, for the first time, create a standalone SEC offering framework for crypto asset projects where the crypto asset is subject to a covered investment contract issued under the framework.[5] Covered investment contracts would not be restricted securities and would not be subject to the resale limitations of Rule 144, but they would be "covered securities" for purposes of the state-law preemption provisions. Resales would remain subject to the antifraud provisions of the federal securities laws for any person acting as an underwriter or dealer.

The framework consists of four interlocking components:

- The **Startup Exemption** would provide early-stage crypto projects a four-year regulatory runway to raise up to $5 million and distribute tokens, which initially form part of an investment contract, through capital raises, airdrops, staking rewards, and other network-development activities, without financial statement requirements and without the resale limitations of Rule 144. Issuers would file a notice of reliance on new Form NOR, maintain principles-based disclosures on a public website, and file a transition report when reliance on the exemption ends. The exemption would be available only once per crypto asset.

- The **Fundraising Exemption** would permit larger capital raises of up to $20 million per year (Tier 1) or $75 million per year (Tier 2), modeled on Regulation A. Unlike the Startup Exemption, issuers must be U.S.

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3 Press Release, SEC Issues Investigative Report Concluding DAO Tokens, a Digital Asset, Were Securities (Jul. 25, 2017), available at https://www.sec.gov/newsroom/press-releases/2017-131; *SEC v. W.J. Howey Co*., 328 U.S. 293 (1946).

4 Press Release, Company Halts ICO After SEC Raises Registration Concerns (Dec. 11, 2017), available at https://www.sec.gov/newsroom/press-releases/2017-227; Press Release, SEC Obtains Final Judgment Against Kik Interactive For Unregistered Offering (Oct. 21, 2020), available at https://www.sec.gov/newsroom/press-releases/2020-262; Litigation Release No. 26369, Ripple Labs, Inc., Bradley Garlinghouse, and Christian A. Larsen (Aug. 7, 2025), available at https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26369; SEC, Framework for "Investment Contract" Analysis of Digital Assets (2019), available at https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets.

5 Regulation Crypto Assets, 91 Fed. Reg. at 54,513 ("In the years following the DAO Report, the Commission and its staff continued to address ICOs (and crypto assets in general) on an ad hoc basis."); id. at 54,520 ("This definition is intended to reflect a key principle: for purposes of Regulation Crypto Assets, the 'security' at issue is the covered investment contract (to which the subject crypto asset is subject) rather than the crypto asset itself").

entities, file an offering statement on new Form 1-CRYPTO subject to SEC staff review and qualification, and comply with ongoing annual, semiannual, and current reporting obligations. Tier 2 issuers must provide audited financial statements. Purchasers who are not accredited investors would be subject to an investment limitation of 10 percent of the greater of annual income or net worth.

- The **Investment Contract Safe Harbor** would provide a defined off-ramp from SEC oversight. If an issuer has completed or permanently ceased all essential managerial efforts that it promised under the investment contract and files a transition report on new Form TR certifying that those conditions are met, the investment contract would be deemed to have ceased to exist and the underlying crypto asset would no longer be subject to an investment contract for purposes of the federal securities laws. The safe harbor would be available to any issuer that meets its conditions, regardless of whether it relied on either of the two exemptions above.

- **State Preemption** would extend to securities offered under the Proposal, which would be "covered securities" for purposes of Section 18 of the Securities Act, preempting state registration and qualification requirements for both initial sales and secondary market transactions, so long as the issuer remains current with applicable disclosure and reporting obligations. State antifraud authority and notice filing and fee requirements preserved by Section 18(c) would continue to apply. This would represent a meaningful departure from Regulation D and Regulation Crowdfunding, neither of which preempts state law for secondary trading.

Scope and Cross-Cutting Provisions

The Proposal would apply only to "covered investment contracts," defined as investment contracts where: (1) a crypto asset is subject to the investment contract, (2) that crypto asset is not itself a security, and (3) no other asset is subject to the investment contract. Tokenized equity, debt instruments, and other traditional securities would fall outside of the framework. The Commission states that covered investment contracts are not "equity securities" as defined in Section 3(a)(11) of the Securities Exchange Act of 1934, as amended, and therefore would not be subject to the registration requirements of Section 12(g).

Several provisions apply across the Proposal. Both exemptions and the safe harbor are non-exclusive; an issuer may simultaneously rely on other available exemptions, including Regulation D and Regulation Crowdfunding, subject to compliance with the integration framework of Rule 152 under the Securities Act. Issuers would remain subject at all times to the antifraud and anti-manipulation provisions of the federal securities laws, including Section 17 of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Both exemptions would require principles-based disclosures covering the covered investment contract, the offering, the subject crypto asset, management and related persons, the associated crypto network or application, security and source code, token economics and allocations, governance, the crypto asset ecosystem, and risk factors (collectively, the "Required Disclosures"). The exemptions would be subject to bad-actor disqualification provisions modeled on Rule 262 of Regulation A.

The Startup Exemption

Proposed Rule 200 would create a one-time exemption from Securities Act registration for early-stage crypto asset projects, permitting issuers to raise up to $5 million and distribute tokens over a four-year period without registering the offering with the Commission (the "Startup Exemption").[6] The Startup Exemption is designed to give issuers a regulatory runway during which they can build their networks, distribute tokens to users, and work toward fulfilling the development commitments they made to investors. Securities issued under the Startup Exemption would not be restricted securities and would not be subject to the resale limitations of Rule 144, and general solicitation would be permitted.

To rely on the Startup Exemption, an issuer would be required to satisfy six conditions under proposed Rule 200(b):

(1) the offering must occur within a four-year window;
(2) the issuer may be an entity, individual, or group, provided each member of a group acknowledges responsibility and signs the required reports;
(3) the issuer and its affiliates must not have previously relied on the exemption for the same or a substantially similar crypto asset;
(4) total offering proceeds may not exceed $5 million;
(5) the issuer must satisfy the disclosure and filing requirements of Regulation Crypto Assets; and
(6) the issuer must comply with all additional requirements set forth in the general provisions.[7]

Before commencing any offering, the issuer would be required to file a notice of reliance on new Form NOR through EDGAR.[8] Form NOR would require basic information, including the issuer's name, the name of the crypto asset, and the website address where disclosures will be posted. The four-year exemption period would begin on the date of that filing.[9] Issuers would be required to post the Required Disclosures, free of charge, on a public website and to update that information to reflect any material changes throughout the exemption period. At the end of the four-year period, or earlier if the issuer has fulfilled its commitments, the issuer would file a transition report on Form TR through EDGAR stating that it is no longer relying on the Startup Exemption.[10]

Issuers should note that the exemption would apply only to transactions occurring after Form NOR has been filed and all of the conditions described above have been satisfied. Communications made before the filing of Form NOR may constitute "offers" under the Securities Act that fall outside the scope of the exemption, and issuers should calibrate pre-filing communications accordingly.

The Startup Exemption would cover more than traditional capital-raising sales. The definition of "covered transaction" would also encompass airdrops, distributions related to staking and governance, gas fees intended to

6 Regulation Crypto Assets, 91 Fed. Reg. at 54,529.
7 Regulation Crypto Assets, 91 Fed. Reg. at 54,531-32.
8 Regulation Crypto Assets, 91 Fed. Reg. at 54,530.
9 Regulation Crypto Assets, 91 Fed. Reg. at 54,530.
10 Regulation Crypto Assets, 91 Fed. Reg. at 54,534.

enable network functionality, and fees for testing or other compensation. This express coverage of network-development distributions does not appear in the Fundraising Exemption (discussed below), which would be limited to public offers and sales of covered investment contracts. Issuers that anticipate both a larger capital raise and network-development distributions should consider how the two exemptions interact, because the Startup Exemption is available only once per crypto asset and is capped at $5 million even though both exemptions are non-exclusive.

The Fundraising Exemption

For issuers that need to raise larger amounts of capital, proposed Rules 300 through 307 would create a two-tier exemption from Securities Act registration modeled, in significant part, on Regulation A (the "Fundraising Exemption"). The Fundraising Exemption would permit offerings of covered investment contracts of up to $75 million in any 12-month period, with scaled requirements depending on whether the issuer elects Tier 1 or Tier 2.[11]

Tier	Maximum Aggregate Offering	Affiliate Selling Securityholder Cap	Measuring Period
Tier 1	$20 million	$6 million	12 months
Tier 2	$75 million	$22.5 million	12 months

Unlike the Startup Exemption, the Fundraising Exemption would be available only to entities organized in the United States where: (1) a majority of the issuer's executive officers or directors are U.S. citizens or residents, (2) more than 50 percent of the issuer's assets are located in the United States, and (3) the issuer's business is administered principally in the United States. Blank-check companies, registered investment companies, business development companies, and issuers subject to Exchange Act Section 12(j) orders within the preceding five years would be excluded.

Issuers would be required to file an offering statement on new Form 1-CRYPTO through EDGAR, which would include the Required Disclosures, a discussion of the issuer's financial condition, and financial statements. Tier 2 issuers would be required to provide financial statements audited in accordance with either U.S. GAAS or PCAOB standards; there is no financial statement audit or review requirement for Tier 1. No sales could occur until the offering statement has been qualified by the Commission's staff, a process that parallels Regulation A's review. Issuers could solicit non-binding indications of interest before qualification, consistent with Regulation A's "testing the waters" provisions. Securities must be offered at a fixed price; at-the-market offerings would be prohibited.

Issuers with qualified offering statements would be subject to ongoing reporting obligations, including annual, semiannual, and current reports on new Forms 1-KC, 1-SC, and 1-UC, as well as transition reports on Form TR. For both tiers, secondary sales by affiliates would be capped at 30 percent of the aggregate offering price during the issuer's first offering or any subsequent offering qualified within one year of the first offering. Purchasers who are not accredited investors would be subject to an investment limitation: the aggregate purchase price may not

11 Regulation Crypto Assets, 91 Fed. Reg. at 54,538.

exceed 10 percent of the greater of the purchaser's annual income or net worth (or, for non-natural persons, the greater of revenue or net assets for the most recently completed fiscal year). This limitation would apply to both Tier 1 and Tier 2, a departure from Regulation A, which imposes investment limitations only on Tier 2 offerings.

As with the Startup Exemption, covered investment contracts issued under the Fundraising Exemption would not be restricted securities and would not be subject to the resale limitations of Rule 144.

The Investment Contract Safe Harbor

Proposed Rule 400 would establish a defined off-ramp from the federal securities laws for crypto assets that were initially sold pursuant to an investment contract (the "Investment Contract Safe Harbor").[12] If its conditions are satisfied, a covered investment contract would be deemed to have ceased to exist, and the underlying crypto asset would be deemed no longer subject to that investment contract for purposes of the Securities Act and Exchange Act definitions of "security." The Commission would then take the position that the registration, reporting, and other requirements of the federal securities laws no longer apply to transactions in the crypto asset from that point onwards, although the antifraud provisions would continue to apply to prior offers and sales and the Commission could challenge the issuer's satisfaction of the safe harbor requirements.[13] The safe harbor would codify the principles set forth in the 2026 Interpretation regarding when a covered investment contract ceases to exist.

The Investment Contract Safe Harbor would be available to any issuer that meets its conditions, regardless of whether it relied on the Startup Exemption, the Fundraising Exemption, or any other offering pathway. To qualify, an issuer would be required to satisfy two conditions:

(1) the issuer must have completed or otherwise permanently ceased all essential managerial efforts that it represented or promised it would engage in under the covered investment contract, and must not be making, or intend to make, any new representations or promises to engage in essential managerial efforts with respect to the crypto asset;[14] and
(2) the issuer must file a transition report on Form TR with the Commission through EDGAR, including a description of the covered investment contract and the crypto asset and an analysis supporting its certification that the conditions have been met.[15]

The Investment Contract Safe Harbor is non-exclusive. An issuer that does not satisfy the Investment Contract Safe Harbor's conditions may still take the position that its crypto asset is not subject to an investment contract under *Howey* based on the framework set forth in the 2026 Interpretation. At the same time, the Commission would not

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12 Regulation Crypto Assets, 91 Fed. Reg. at 54,554.

13 Regulation Crypto Assets, 91 Fed. Reg. at 54,554 ("if issuers have satisfied the investment contract safe harbor, the Commission would take the position in its administration of the Federal securities laws that the reporting, registration, and other requirements of the Federal securities laws no longer apply from the point in time at which the issuer satisfied the safe harbor and thereafter. As with any safe harbor, however, the investment contract safe harbor would apply only to the extent that an issuer satisfies its conditions, and the Commission would not be precluded from challenging whether an issuer did, in fact, satisfy those conditions.").

14 Regulation Crypto Assets, 91 Fed. Reg. at 54,554.

15 *Id*.

be precluded from challenging whether an issuer has in fact satisfied the safe harbor's conditions, including where the issuer's Form TR filing misrepresents its satisfaction of those conditions.

Preemption of State Securities Laws

Proposed Rule 500 would define "qualified purchaser" under Section 18(b)(3) of the Securities Act to preempt state registration and qualification requirements for covered investment contracts in two respects.[16] Practitioners should note that, while consistent with the definition of "qualified purchaser" in Regulation A and Regulation Crowdfunding, this definition differs from the Investment Company Act definition of "qualified purchaser," creating potential for confusion in practice.[17] First, initial offers and sales of covered investment contracts made pursuant to either the Startup Exemption or the Fundraising Exemption would be "covered securities" not subject to state registration or qualification. Second, secondary-market transactions by any person other than an issuer, underwriter, or dealer would also be preempted, provided that the issuer initially sold the covered investment contracts pursuant to a Regulation Crypto Assets exemption (or another federal exemption, so long as the issuer has also satisfied a Regulation Crypto Assets exemption for the same covered investment contract) and remains current with the applicable disclosure, filing, and reporting obligations.[18]

This preemption would be significant. Existing exempt offering frameworks such as Regulation D and Regulation Crowdfunding do not preempt state law for secondary trading, and market participants have noted that compliance with state-by-state requirements is particularly ill-suited to the cross-border nature of crypto asset markets.[19] By extending "covered security" status to both initial sales and secondary-market resales, the Commission said that the Proposal should help to facilitate the development of liquid secondary markets for covered investment contracts without requiring participants to navigate a patchwork of state registration requirements.

Comment Process and Next Steps

The Proposal was published in the Federal Register on August 21, 2026. Comments are due on or before October 20, 2026, and may be submitted through the SEC's internet comment form, by email to rule-comments@sec.gov, or by paper mail to the Commission's Secretary; submissions should use only one method and reference "Regulation Crypto Assets," File No. S7-2026-27 (Release Nos. 33-11434 and 34-106150; RIN 3235-AN38). The Commission invites comment on all aspects of the Proposal, including related matters and suggested changes, and asks commenters to explain their reasoning and provide supporting documentation or data, with particular attention to the costs, burdens, and benefits of possible regulatory approaches.

The Proposal is one component of a broader SEC initiative, "Project Crypto," launched in July 2025 by Chairman Atkins to modernize the federal securities regulatory framework for crypto assets. The Proposal does not address

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16 Regulation Crypto Assets, 91 Fed. Reg. at 54,557.

17 *Compare* 17 C.F.R. § 230.256 (Regulation A); 17 C.F.R. § 227.504 (Regulation Crowdfunding); *with* 15 U.S.C. § 80a-2(a)(51) (Investment Company Act).

18 Regulation Crypto Assets, 91 Fed. Reg. at 54,557.

19 Regulation Crypto Assets, 91 Fed. Reg. at 54,556.

registered offerings of crypto asset securities, amendments to broker-dealer or investment adviser rules, or the full scope of secondary-market trading issues. The Commission has indicated that those topics may be addressed in future rulemakings.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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