



October 20, 2026

VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Release Nos. 33-11434; 34-106150, File No. S7-2026-27: Regulation Crypto Assets

Dear Ms. Countryman:

Solana Policy Institute¹ respectfully submits this letter in response to the request by the U.S. Securities and Exchange Commission (the “Commission”) for comments on the proposed rule published in Release Nos. 33-11434; 34-106150, File No. S7-2026-27, *Regulation Crypto Assets* (“Regulation Crypto Assets”).²

I. Introduction

The Commission’s proposal of Regulation Crypto Assets is a significant step toward an appropriately tailored and fit-for-purpose offering, disclosure, and transition framework for certain investment contracts involving nonsecurity crypto assets. The proposal addresses many of the practical problems that have for years prevented fundraising through crypto asset sales. Proposed Regulation Crypto Assets marks a significant and welcome departure from the Commission’s historical “square peg in a round hole” approach to crypto asset issuer disclosure, which, as Chairman Atkins correctly observed, “impeded capital formation and innovation in the crypto asset markets.”³

We commend the Commission for its thoughtful approach and strongly support the prompt adoption of the proposal. That said, in our view, the ultimate utility of Regulation Crypto Assets will turn on key practical points, including whether projects can launch under proposed

¹ Solana Policy Institute is a non-partisan, non-profit entity focused on educating policymakers on how decentralized networks like Solana are the future infrastructure of the digital economy. We are also a member of Project Open—a collection of interested parties working collaboratively to address and enable tokenized securities on public blockchain networks in a manner consistent with existing regulations.

² SEC, *Regulation Crypto Assets*, 91 Fed. Reg. 54510 (Aug. 21, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-08-21/pdf/2026-17183.pdf>.

³ SEC Chairman Paul S. Atkins, *Statement on Regulation Crypto Assets: Fit-for-Purpose Exemptions for Crypto Market Innovation* (Aug. 18, 2026), <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-regulation-crypto-assets-081826>.

Rule 200, reasonably disclose the requisite material network facts under proposed Rule 103, and obtain reliable proposed Rule 400 transition treatment.⁴ Accordingly, we have identified in this letter a focused set of recommendations intended to make the proposal more useful in practice. Throughout, our aim is to preserve the proposal’s core structure and investment protections, while refining specific provisions to help ensure that the Commission achieves its stated objectives.

II. The Startup Exemption (Subpart B—Rule 200)

Proposed Rule 200, the “startup exemption,” would establish a one-time, non-exclusive exemption from the registration requirements under the Securities Act of 1933 (the “Securities Act”). The proposing release explains that the proposed startup exemption is “intended to provide issuers with a regulatory runway during which they could attempt to fulfill their representations or promises to engage in essential managerial efforts under covered investment contracts.”⁵ The exemption would permit issuers satisfying certain conditions to conduct offerings of covered investment contracts of up to \$5 million during a period of up to four years. Issuers relying on this exemption would be required to make public filings at the beginning and end of the four-year period and make certain principles-based narrative disclosures available to investors throughout the period.

We support the proposed startup exemption and agree with the Commission’s view that it would appropriately balance capital formation and investor protection. As noted above, however, the real test will be whether, in practice, the exemption enables issuers to successfully launch projects—particularly in light of its \$5 million offering cap.

Our more detailed comments and recommendations on the proposed startup exemption follow.

A. General Solicitation, Section 12(g) Treatment, and Antifraud Provisions

1. Support permitting general solicitation.

The proposed startup exemption would permit general solicitation without imposing accredited investor limitations or restrictions on resales in the secondary market. We support this approach. Transferability is a critical feature of crypto asset networks because it supports broad participation, liquidity, price discovery, and network utility. Permitting unrestricted resales in the secondary market is particularly appropriate in the context of the startup exemption, given its other limitations.

⁴ As discussed below, the ultimate utility of Regulation Crypto Assets will also depend more generally on whether the Commission develops a regulatory framework that permits secondary market trading of covered investment contracts, including appropriately tailored approaches to the regulation of brokers, dealers, exchanges, and clearing agencies.

⁵ Regulation Crypto Assets at 54530.

2. *Support codifying that covered investment contracts are not equity securities for Section 12(g) purposes.*

The proposal asks whether the Commission should codify in rule text its view, expressed in a footnote in the proposing release, that covered investment contracts are not “equity securities” and, therefore, are not subject to Section 12(g) of the Securities Exchange Act of 1934 (the “Exchange Act”).⁶ We believe that the Commission should codify this view in rule text. Absent the certainty and long-term reliability of codification, issuers are subject to greater risk of a future Commission changing course without notice—and becoming inadvertently subject to Exchange Act reporting obligations, which would undermine the accessibility and utility of the proposed startup exemption. As noted in the proposal, the Commission could codify its view by amending 17 CFR § 240.12g5-1 to provide that an issuer may exclude covered investment contracts when determining whether it is required to register a class of equity securities with the Commission pursuant to Section 12(g) of the Exchange Act.⁷ We urge the Commission to adopt such an amendment.

3. *Support applicability of antifraud provisions.*

The conditions for reliance on the proposed startup exemption would be less onerous than those applicable to offerings conducted under the separate fundraising exemption (discussed below), reflecting the distinct policy objectives and risk profiles associated with each pathway. Nevertheless, issuers relying on the startup exemption would remain subject to the antifraud and antimanipulation provisions of the federal securities laws, including Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, as well as Rule 10b-5. We believe that the continued applicability of the federal antifraud and antimanipulation provisions is appropriate and would provide a meaningful layer of investor protection.

B. *Duration, Commencement, and Good-Faith Development Plan*

Proposed Rule 200(c) would require an issuer seeking to rely on the proposed startup exemption to file with the Commission a “Notice of Reliance” on Form NOR prior to commencing its offering. The issuer would also need to file a “Transition Report” on Form TR with the Commission no later than four years after the date on which the issuer filed Form NOR. Form TR would inform investors, the Commission, and other members of the public that the issuer has ceased relying on the startup exemption.

1. *Begin the four-year period with the first covered transaction.*

The Commission explained that the four-year maximum duration of the startup exemption is intended to provide issuers with a “reasonable” amount of time to fulfill their representations or promises to engage in essential managerial efforts.⁸ We generally support this construct and do not disagree with the Commission’s stated concern that “a duration that is too

⁶ See *id.* at Question 45.

⁷ See *id.*

⁸ *Id.* at 54531.

prolonged could undermine the incentives that the limited duration otherwise would provide issuers to fulfill their representations or promises.”⁹

That said, we believe that the four-year period should commence with the first covered transaction rather than with the filing of Form NOR. As proposed, the four-year period would begin when Form NOR is filed, regardless of whether the issuer has conducted any offering activity. Any delay between the filing of Form NOR and the commencement of an offering—whether due to market conditions, technical challenges, or other factors beyond the issuer’s control—would shorten the period available to the issuer under the proposal to fulfill the essential managerial efforts it represented or promised. By contrast, our recommendation to instead tie the commencement of the four-year period to the first covered transaction would ensure that issuers receive the full benefit of the exemption’s intended duration.

2. *Certify awareness and acknowledgment of the four-year limitation and consider requiring a good-faith development plan.*

Proposed Rule 200(c) would require an issuer to certify on Form NOR that it “intend[s] to fulfill” the represented or promised essential managerial efforts within four years. We believe that the Commission should instead require an issuer to certify only to its awareness and acknowledgment of the four-year limitation.¹⁰ A certification of intent would introduce unneeded complexity that could expose issuers to future liability based on subjective assessments of intent at the time of filing, as opposed to the objective reasonableness of their conduct. By contrast, a certification of awareness and acknowledgment would achieve the Commission’s goal of ensuring that issuers understand and acknowledge the time-limited nature of the startup exemption without creating undue legal risk.

We also recommend that, instead of the intent representation, the Commission consider requiring an issuer relying on the startup exemption to disclose a good-faith, milestone-based development plan outlining how the issuer reasonably expects to fulfill its representations or promises to engage in essential managerial efforts within four years. This would promote transparency and accountability, while providing a meaningful benchmark against which investors and prospective investors could evaluate the issuer’s activities and progress. The Commission should make clear, however, that any such development plan is a disclosure item, and that a failure to achieve a milestone or expectation described in the development plan would not, by itself, result in the loss of the exemption.

In addition, the final rule should make clear that an issuer’s failure to complete or otherwise resolve the essential managerial efforts it represented within four years does not, by itself, establish that the original certification or disclosure was false or that proposed Rule 200 was unavailable. The relevant questions should be whether the certification and disclosure were reasonable and made in good faith when made, and whether the issuer timely disclosed material developments. This clarification would provide issuers with the certainty needed to pursue development efforts without fear that unforeseen delays, which are common in the development of novel technologies, may retroactively undermine their reliance on the exemption.

⁹ See *id.* at Question 47.

¹⁰ See *id.* at Question 62.

C. Issuer Eligibility and Issuer-Group Status

Under proposed Rule 200(b)(2), the issuer could be an entity, an individual, or a group of individuals or entities. If the issuer is a group of individuals or entities, each member of the group would be required to sign Form NOR and Form TR and provide the relevant certifications. The proposing release explains that members of the group would be individually and collectively responsible for compliance.¹¹

We believe that the Commission’s proposed approach appropriately reflects the fact that many crypto asset initiatives are not the products of a single conventional issuer.¹² The proposed approach further accounts for the fact that early-stage crypto projects may not yet have consulted legal counsel or formed a legal entity through which to do business, yet may nevertheless benefit from reliance on the exemption. We note, however, that an issuer group should be defined by actual agreements or express understandings to offer or sell a covered investment contract or undertake essential managerial efforts represented to purchasers. To avoid discouraging collaboration, a person should not be treated as part of an issuer group solely because the person contributes open-source code, receives a grant, advises at arm’s length, operates infrastructure, provides liquidity, holds or votes governance tokens, builds an independent application, provides wallet or interface software, or passively invests.

D. One-Time Use and Substantially Similar Asset Restrictions

As proposed, the startup exemption could only be used once by an issuer and its affiliates for the same or a substantially similar crypto asset. In the proposal, the Commission stated that “two crypto assets would be substantially similar if they have different names but the crypto asset and the associated crypto network or associated crypto application are functionally identical.”¹³ The Commission explained that the proposed restriction is intended to prevent an issuer from circumventing the four-year limitation or the offering size limitation.

While we generally support the one-time use limitation, we believe that the “substantially similar” standard should be refined.¹⁴ In particular, we recommend that the Commission clarify that the standard is intended to capture projects involving the same economic project or asset—not merely the same base-layer network, technical framework, or a common service provider. Likewise, we recommend that the Commission clarify that the substantially similar standard would not capture independent applications simply because they operate on the same public blockchain or use a standard token program. Public blockchains are open, permissionless platforms on which unrelated developers may build applications. Treating independent applications as substantially similar simply because they share underlying infrastructure would penalize developers for building on widely adopted networks.

¹¹ *Id.* at 54531.

¹² *See id.* at Questions 48 and 49.

¹³ *Id.* at 54532 n.206.

¹⁴ *See id.* at Questions 51 and 52.

In a similar vein, because the proposed startup exemption could be used only once by an issuer and its affiliates, the proposal's approach to the concept of affiliation deserves careful definition. Affiliation should be determined by reference to the presence or absence of common control, and consideration should be given to whether there is coordinated or intentional circumvention of the one-time use limitation. A broad or formalistic construction of affiliation in this context could inadvertently prevent unrelated parties from independently accessing the startup exemption, discouraging new market entrants.

E. Disclosure, Amendment, and Updating Obligations

Under proposed Rule 200(d)(1), an issuer seeking to rely on the proposed startup exemption would also have to make certain disclosures publicly accessible and free of charge on a website specified in the issuer's Form NOR. Issuers would be required to amend such disclosures within 30 calendar days after the end of each calendar year if, as of the end of the calendar year, there are any material changes in the information previously disclosed. Issuers would also be required to update Form NOR promptly to address material mistakes or changes. These obligations would continue until the four-year period expires or the issuer files Form TR.

1. Support timing and duration of disclosure obligations.

In our view, the proposed disclosure and amendment obligations would appropriately balance the need to keep investors timely informed of changes to information disclosed with avoiding undue administrative and compliance burdens and costs for issuers.¹⁵ The proposed annual amendment cycle, along with the obligation to correct material mistakes or changes, would provide a predictable and manageable compliance timeline for early-stage issuers, while ensuring that investors receive updated information on a regular basis. Taken together, these proposed requirements would establish a disclosure regime that is proportionate to the nature and scale of offerings that will likely be conducted under the startup exemption.

2. Require concise change summaries and preservation of prior versions.

We believe that issuers should be required to identify any material changes to the filed Rule 103 disclosures to better ensure that investors are made aware of changes in the information previously disclosed.¹⁶ Specifically, we recommend that the Commission require issuers to provide a concise narrative summary of each material change at the time the updated disclosure is made available. This would be consistent with the spirit of proposed Rule 103, which would require that disclosures be presented in clear, concise, and understandable language. A narrative summary of changes would allow investors to quickly and efficiently identify and understand what has changed without having to undertake a more detailed, line-by-line analysis of successive disclosures.

Relatedly, since it does not appear that the proposed Rule 103 disclosures would also be filed on the Commission's EDGAR system, we recommend that the Commission require issuers to preserve and make publicly available on a website their prior disclosures for so long as the

¹⁵ See *id.* at Questions 63, 67, and 68.

¹⁶ See *id.* at Question 69.

issuer's disclosure obligations under the startup exemption continue. Requiring issuers to maintain an accessible archive of prior disclosures would facilitate review of those disclosures. It would also support version control and recordkeeping and help facilitate investors' access to information (and minimize investor confusion).

3. *Support not requiring an amendment for every software update, governance vote, network event, or independent contributor activity.*

The proposed startup exemption would require issuers to comply with a set of principles-based disclosure requirements. Issuers would need to describe the material aspects of each specified topic, tailored to the issuer's particular facts and circumstances. Disclosures would not be required where a particular topic is inapplicable or responsive information is unknown or not reasonably available. This approach acknowledges widely raised concerns that existing disclosure requirements are not sufficiently tailored for covered investment contracts, as they commonly fail to elicit the information that is likely to be material to investors, and at the same time may impose undue compliance costs and practical challenges on issuers.

We support this approach, which is appropriate in light of the diverse and evolving nature of crypto asset projects. Issuers generally should not be required to update their disclosures to reflect every software update, governance vote, network event, or independent contributor activity, provided that such events do not reflect "material" changes. Crypto asset networks and applications are characterized by potentially frequent technical and governance activity, much of which is routine. Requiring disclosure updates for each such occurrence would impose significant compliance burdens on issuers, particularly early-stage projects relying on the startup exemption.

4. *Permit delayed or confidential disclosure where immediate publication would create a material security risk.*

We recommend that the Commission permit delayed or confidential disclosure where immediate publication of information or disclosure of an event would create a material security risk. Crypto asset networks and applications present unique cybersecurity considerations. Requiring prompt disclosure of sensitive information—relating, for example, to a technical vulnerability—could expose networks and their users to exploitation before remedial measures can be implemented. Permitting delayed or confidential disclosure in such narrow circumstances would appropriately balance the interests of transparency and network security.

Any public disclosure should still describe the material nature and potential consequences of the risk at a level sufficient for investors, but the Commission should not require detail that would further enable exploits, private credentials, or other information whose publication would materially increase a known security risk. Where additional technical detail is required, the Commission should permit confidential submission or delayed public disclosure until remediation, with a prompt public update if the issue or remediation remains material.

III. The Fundraising Exemption (Subpart C—Rules 300–307)

Proposed Rule 300, the “fundraising exemption,” would establish a non-exclusive, two-tier exemption from Securities Act registration requirements, modeled in part on Regulation A. The proposing release explains that the proposed fundraising exemption is “intended to facilitate larger capital raising transactions for covered investment contract issuers than would be permitted under the startup exemption.”¹⁷ Under Tier 1, issuers would be permitted to conduct offerings of up to \$20 million of covered investment contracts in a 12-month period. Under Tier 2, issuers would be permitted to conduct offerings of up to \$75 million of covered investment contracts in a 12-month period. Issuers relying on the fundraising exemption would be required to publicly file offering materials consisting of the same principles-based narrative disclosures required under the startup exemption, and a discussion of the issuer’s financial condition and financial statements. Issuers would also be subject to ongoing reporting requirements.

We support the proposed fundraising exemption. Our recommendations follow.

A. Ordinary Project Communications and Offering-Communication Safe Harbor

Issuers relying on the proposed fundraising exemption would be required to file offering statements with the Commission. Before qualification, offers would be limited to specified oral, written, and “testing the waters” communications (and subject to legends and filing conditions).

1. Accommodate ordinary project communications.

We generally support the Commission’s proposed framework governing offering communications and practices.¹⁸ However, we believe that it would be beneficial for the Commission to make clear that technical and governance updates, code releases, security notices, ecosystem announcements, and other types of ordinary developer communications would not be deemed prohibited offering communications merely because an offering is pending.

These communications are important to the ongoing operation and development of crypto asset networks and applications, and they serve functions unrelated to the solicitation of investments. Restricting such communications during a pending offering could compromise network integrity and disrupt the development processes on which these projects depend. Accordingly, it would be beneficial for the Commission to make this point clear in the final rulemaking to avoid any potential uncertainty.

2. Permit onchain indications of interest.

Given the technological innovations and practices associated with crypto assets, we recommend that the final rule text contemplate and permit wallet and other onchain-based actions—such as preregistration of crypto wallet addresses or other network-specific actions—to serve as an indication of interest by a prospective investor seeking to purchase a covered

¹⁷ *Id.* at 54536.

¹⁸ *See id.* at Questions 78, 88, and 90.

investment contract, to the extent such methods are verifiable and the required information is delivered.¹⁹ Crypto asset markets operate in a natively digital environment where participants commonly interact through blockchain wallets. Requiring indications of interest to be submitted exclusively through conventional means would be inconsistent with the technological realities of the market and could create unnecessary costs and inefficiencies for both issuers and investors. Permitting onchain indications of interest would align the regulatory framework with existing market practices.

B. Delivery, Notice, and Crypto-Native Communication Methods

We recommend that the Commission provide that the filing of the final offering circular on EDGAR would, on its own, satisfy the applicable delivery requirements.²⁰ Investors and other market participants rely on EDGAR as a primary source of publicly filed information. Confirmation that the relevant EDGAR filing is sufficient to satisfy the applicable delivery requirements would provide issuers with a clear compliance pathway, and would be consistent with the treatment of EDGAR filings in other Commission disclosure regimes.

Under the proposed fundraising exemption, as with Regulation A, “electronic-only” offerings would be permitted, provided issuers and intermediaries comply with applicable requirements. In the proposal, the Commission acknowledges that there may be new blockchain-based technologies that may be used as mediums to satisfy the electronic delivery requirements.²¹ We recommend that the Commission clarify in the final rulemaking that issuers may provide investor notices through a wide range of communication methods, including email, wallet notification, project interfaces, and other official channels designated by the issuer. The final rulemaking should also make clear that the Commission intends for the delivery framework to remain open to additional technologies as they develop.

C. Ongoing Reporting Tailored to Network and Application Facts

Under proposed Rule 301(a), issuers relying on the proposed fundraising exemption would be required to file an offering statement on Form 1-CRYPTO, including a narrative disclosure and accompanying financial statements. Issuers with a qualified offering statement would also be required to make annual, semiannual, and current reports with the Commission. Each form would be modeled on the analogous Regulation A form, tailored to covered investment contract offerings and issuers.

We commend the Commission for developing and proposing this thoughtful, tailored approach.²² We believe that the triggering events for Forms 1-CRYPTO, 1-KC, 1-SC, and 1-UC should be tailored to focus on promised efforts, functionality, token economics, governance, security, control, and material network or application changes. We support the Commission’s proposed principles-based disclosure requirements set forth in Rule 103, which would require issuers to describe the material aspects of specified topics. This proposed approach appropriately

¹⁹ See *id.* at Question 78.

²⁰ See *id.* at Question 89.

²¹ *Id.* at 54542 n.291.

²² See *id.* at Question 116.

recognizes that a one-size-fits-all disclosure regime designed for traditional securities offerings may not capture the information that is most meaningful to participants in crypto asset markets.

To avoid duplicative reporting, the Commission should ensure that reporting obligations take into account the availability of information that is already accessible through an incorporated public ledger or repository. For many crypto asset networks, significant categories of information—such as transaction histories, token supply data, governance actions, and smart contract code—are already recorded on public, permissionless blockchains (or in public code repositories) and freely accessible to any interested party. Requiring issuers to reproduce such information would impose compliance costs without a corresponding benefit to investors. Accordingly, the Commission should expressly permit issuers to substantiate or cross-reference applicable factual disclosure through public ledger records or repositories and, where formal incorporation by reference is permitted, to identify those records. The issuer should preserve version history and provide a concise human-readable explanation where the technical record would not be understandable to a reasonable investor.

D. Reporting Suspension: The 300-Holder Test and Wallet-Address Limitations

Under proposed Rule 305, an issuer would be able to suspend reporting in certain circumstances, including when the relevant class is held of record by fewer than 300 persons, the issuer is current in its reporting, and no offering remains active. The issuer would be able to terminate reporting upon filing Form TR if it satisfies the investment contract safe harbor or the covered investment contract otherwise ceases to exist.

We support providing issuers with clear pathways to suspend and terminate reporting when the conditions justifying ongoing disclosure are no longer present.²³ However, the proposal does not address the fact that wallet addresses do not necessarily map reliably to beneficial owners. For example, one person may have multiple wallets. Accordingly, applying a quantitative holder threshold based on wallet addresses would produce unreliable results, and could prevent issuers from suspending reporting even when the actual number of beneficial owners is below the stated threshold—or, conversely, could permit suspension when the actual number of beneficial owners exceeds the threshold.

We believe that the primary termination pathway should be the filing of Form TR upon the satisfaction of the investment contract safe harbor. This approach would tie the termination of reporting to a substantive milestone (the conclusion that the covered investment contract has ceased to exist) rather than a quantitative holder threshold that is difficult to verify in crypto asset networks. If the Commission retains a quantitative holder threshold as a basis for suspending or terminating reporting, it should permit issuers to rely on a reasonable methodology based on information available to the issuer that does not equate addresses with persons, provided the methodology is applied in good faith and documented appropriately.

²³ See *id.* at Question 123.

E. Legal Opinion: Scope of Counsel’s Obligation

Proposed Form 1-CRYPTO would require an opinion of counsel as to the legality of the securities covered by the offering statement. The proposed form would require the opinion to indicate whether the securities will be binding obligations of the issuer.

We believe that it would be appropriate for the scope of the required legal opinion to cover only the valid issuance and enforceability of the covered investment contract under applicable law.²⁴ The Commission should not require a legal opinion concerning the “security” status of a crypto asset, including whether an investment contract involving crypto assets exists. As the Commission correctly acknowledged in the proposal, “the *Howey* test can be complex and difficult to apply to crypto assets.”²⁵ As such, it would be inappropriate to require an opinion concerning the security status of a crypto asset. Any such opinion would necessarily be heavily qualified and caveated and would provide little meaningful assurance to investors.

Further, the Commission should not require a legal opinion that addresses other topics germane to the proposal, such as whether Rule 400 eventually will be satisfied. These topics are outside of counsel’s competence. Instead, the required opinion should be limited to legal conclusions that counsel is in a position to reach based on its examination of the relevant documents and applicable law.

IV. The Investment Contract Safe Harbor (Subpart D—Rule 400)

Proposed Rule 400 includes a non-exclusive investment contract safe harbor, which would provide that, if specified conditions are satisfied, a covered investment contract will be deemed to have ceased to exist and the crypto asset that was subject to that covered investment contract will be deemed not to constitute, represent, or be subject to that investment contract for purposes of Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act.²⁶

We support the Commission’s decision to include such a safe harbor, which we believe is essential to making the broader framework workable since many crypto asset projects are designed to develop over time in a way that permits the related crypto asset to separate from the issuer’s earlier representations or promises to engage in essential managerial efforts.²⁷ We recommend preserving the core structure of proposed Rule 400, while refining the rule and Form TR to clarify the effect of safe harbor reliance, the meaning of “all essential managerial efforts,” ordinary post-functionality activity, filing mechanics, no-admission protections, and legacy or nontraditional filer structures.²⁸

Our more detailed comments and recommendations follow.

²⁴ See *id.* at Question 112.

²⁵ *Id.* at 54553.

²⁶ *Id.* at 54554–55.

²⁷ *Id.* at 54510 and 54554.

²⁸ See *id.* at Questions 124 and 125.

A. Support for Codifying a Transition Safe Harbor

We support the proposed safe harbor, which would codify an administrable safe harbor based on the Commission’s March 2026 interpretation regarding circumstances under which a crypto asset may cease to be subject to an investment contract.²⁹ Codifying a transition safe harbor would provide greater predictability and certainty than the current patchwork of staff statements, Commission interpretations, and individual, fact-specific outside counsel legal opinions or analyses. Greater predictability should reduce transaction costs, facilitate better transaction planning, and provide investors with clearer information about the point at which a covered investment contract has ceased to exist.

1. Support no prior reliance requirement.

We further support the Commission’s proposal to make Rule 400 available irrespective of whether the issuer previously relied on the startup exemption or the fundraising exemption. This is appropriate because the question addressed by Rule 400—whether the issuer has completed or otherwise permanently ceased the essential managerial efforts it represented or promised—does not depend on the exemption (if any) under which the covered investment contract originally was offered and sold.

We recommend that the Commission confirm in the final rulemaking that the safe harbor is available with respect to covered investment contracts arising from offers and sales that predate the effective date of the final rule, and that reliance operates prospectively from the date the conditions of Rule 400 are satisfied.³⁰

2. Codify effects of satisfaction and immaterial deviations.

If the conditions of proposed Rule 400 are satisfied, the covered investment contract would be deemed to have ceased to exist, and the crypto asset would be deemed not to constitute, represent, or be subject to that investment contract for purposes of Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act.³¹ The proposal further states that, regardless of the path taken, the Commission would take the position 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.³² We believe that the Commission should codify this in final rule text, and confirm that satisfaction of Rule 400 terminates ongoing disclosure and reporting obligations under Rule 200(d) and Rule 305 upon the filing of Form TR, consistent with proposed Rule 305(d)(2).

Proposed Rule 101(d) states that “insignificant deviations” from the requirements of Regulation Crypto Assets would not result in the loss of any exemption thereunder with respect

²⁹ See *id.* at Questions 124 and 131; SEC, *Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets*, Release Nos. 33-11412; 34-105020, 91 Fed. Reg. 13714, 13721–23 (Mar. 23, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-03-23/pdf/2026-05635.pdf> (the “2026 Interpretation”).

³⁰ See Regulation Crypto Assets at Questions 125, 131, and 133.

³¹ *Id.* at 54554–55.

³² *Id.* at 54555.

to transactions meeting certain enumerated criteria, including the issuer’s good-faith and reasonable attempt at compliance. We recommend clarifying that this extends to Rule 400 where such deviation is immaterial or technical and the issuer has made a good-faith and reasonable compliance attempt. If Rule 101(d) does not apply to Rule 400, we urge the Commission to consider adding a cure provision within Rule 400 to account for immaterial or technical deviations in Form TR where Rule 400’s substantive requirements are otherwise satisfied.

B. Refining the “All Essential Managerial Efforts” Standard

Proposed Rule 400(a) would require that the issuer has completed or otherwise permanently ceased all essential managerial efforts that it represented or promised it would engage in under the covered investment contract. The proposed rule would further require that the issuer is not making and does not intend to make any new representations or promises to engage in essential managerial efforts with respect to the crypto asset.³³

1. Clarify the scope of the “all essential managerial efforts” standard.

The Commission stated that whether an issuer has fulfilled its representations “depends on how the issuer defines or otherwise describes such efforts in marketing and promoting the investment contract,” rather than “a general market conception.”³⁴ We support anchoring the analysis to the issuer’s own representations or promises, because that approach is consistent with the Commission’s 2026 Interpretation and gives issuers, investors, and market participants a more objective reference point than an abstract inquiry into decentralization or maturity. We are concerned, however, that the word “all” could be read to make every detailed forecast or ordinary refinement part of an immutable set of promised essential managerial efforts, which would reward issuers that make vague or unspecific representations and penalize those that publish detailed development plans.

That result would be in tension with the Commission’s observation that representations “that are vague or contain no semblance of an actionable business plan” likely would not create a reasonable expectation of profits in the first instance.³⁵ We agree with the stated sentiments of then-Commissioner Peirce, who noted, when discussing the proposal, that she hoped it would “encourage[] a healthy disclosure environment” to flip the historic “perverse effect of encouraging people to keep their heads down and say as little as possible.”³⁶

The Supreme Court’s *Howey* test asks whether purchasers reasonably expect profits to be derived from the efforts of others.³⁷ The Commission’s 2026 Interpretation describes “essential managerial efforts” by reference to those efforts that satisfy that requirement.³⁸ Consistent with that framework, proposed Rule 400 should not require proof that the issuer and all related persons have ceased every activity touching the crypto asset, associated crypto network, or associated crypto application. Rather, the relevant question should be whether the issuer has

³³ *Id.* at 54554.

³⁴ *Id.* at 54530 n.193.

³⁵ 2026 Interpretation at 13722.

³⁶ Law of Code, *Interview: SEC Commissioner Hester Peirce on Reg Crypto* (Apple Podcasts, Sep. 1, 2026).

³⁷ *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298–99 (1946).

³⁸ 2026 Interpretation at 13717 n.42.

completed or permanently ceased the essential managerial efforts that it represented or promised it would undertake and on which purchasers could reasonably continue to rely for expected profits. This clarification would make proposed Rule 400 more administrable without reducing investor protection.

2. *Address the impact of updates to prior representations and promises.*

As noted above, proposed Rule 400(a) would require that the issuer (i) “has completed or otherwise permanently ceased all essential managerial efforts that it represented or promised it would engage in,” and (ii) “is not making and does not intend to make any new representations or promises to engage in essential managerial efforts.”³⁹ With respect to the first prong, potential ambiguity exists in the proposal as to whether and when representations or promises may be revised without jeopardizing the availability of the safe harbor. This ambiguity could disincentivize ordinary-course revisions to a development plan due to fears of inadvertently triggering longer-term or permanent security status.

Accordingly, we recommend that the Commission clarify that the first prong applies with respect to the essential managerial efforts disclosed under Rule 103(b)(1) or otherwise under Form TR, and that such disclosures may be amended from time to time to reflect good-faith and ordinary-course revisions to a development plan without jeopardizing the availability of the safe harbor.

3. *Support the lack of prescriptive metrics.*

With respect to the second prong noted above, we support the Commission’s proposed approach of not requiring dissolution of the issuer, cessation of all development activity or satisfaction of a prescribed decentralization or functionality metric. Nevertheless, to provide greater certainty and predictability, we recommend that the Commission remove the second prong from Rule 400(a) in its entirety.⁴⁰ Its inclusion is unnecessary and contrary to the Commission’s stated view that fulfillment or permanent cessation are sufficient to trigger separation and that post-functional efforts generally would not constitute “essential managerial efforts” for *Howey* purposes.

C. *Alternative Objective Pathways*

We believe that the Commission should consider supplementing proposed Rule 400 with non-exclusive objective pathways that an issuer may use to support its Form TR analysis.⁴¹ The proposal would not impose a generalized decentralization or functionality test as the exclusive condition for safe harbor reliance because such tests may be difficult to apply across different networks and applications and may increase costs without a corresponding benefit for all issuers or investors.⁴² Objective indicators nevertheless can improve administrability if framed

³⁹ Regulation Crypto Assets at 54614.

⁴⁰ *See id.* at Question 131.

⁴¹ *See id.*

⁴² *Id.* at 54584.

appropriately. These objective pathways should be optional, non-exclusive evidentiary paths, not mandatory conditions or exclusive safe-harbor tests.

1. Abandonment, dissolution, or impossibility.

The Commission’s 2026 Interpretation states that a covered investment contract ceases to exist when either (i) the issuer has fulfilled its representations or promises to engage in essential managerial efforts, or (ii) the “purchaser would not reasonably expect the issuer to be able to fulfill or to continue to engage in the essential managerial efforts it represented or promised it would undertake.”⁴³ Proposed Rule 400(a) does not fully codify this test, which could create an asymmetry in which a project whose sponsor succeeded can exit investment contract status, while a project whose sponsor has dissolved, been wound up, or abandoned the project remains indefinitely subject to a covered investment contract that no person can perform.

We therefore recommend that proposed Rule 400(a) include an alternative certification option that would apply in circumstances in which the issuer has dissolved, has publicly and unambiguously announced that it will not perform the essential managerial efforts it represented or promised, or has otherwise ceased to be capable of performing them.⁴⁴ This would align with, and codify, the Commission’s stated views on the topic.⁴⁵ In the alternative, the Commission should, at a minimum, clarify that the reference in Rule 400(a) to “otherwise permanently ceased” is intended to capture abandonment, dissolution, impossibility, and any other issuer-centric situation in which a purchaser would objectively have no reasonable expectation that the issuer would be able to fulfill or to continue to engage in the essential managerial efforts it represented or promised it would undertake.

2. Functionality and/or Decentralization.

The Commission stated that once a network or application is functional, “services to secure, maintain, improve, or enhance such a network or application or its functionality, or to facilitate network effects, whether through sponsoring or funding development projects or other similar activities, would not constitute essential managerial efforts. As a result, any representations or promises (whether by the issuer or another party) to provide or continue to provide or arrange for the provision of such services after the network or application is functional would not satisfy the *Howey* test.”⁴⁶

We recommend that the Commission codify this functionality guidance by including in proposed Rule 400(a) an alternative certification that would apply in circumstances in which the filer concludes that, based on objectively observable facts, “rather than deriving its value from the essential managerial efforts of the issuer, the relevant crypto asset [] derive[s] its value from the programmatic operation of the associated crypto network or associated crypto application, as well as the market’s supply and demand dynamics with respect to such crypto asset” and that any continued development, maintenance, security work, governance participation, or ecosystem

⁴³ 2026 Interpretation at 13723.

⁴⁴ See Regulation Crypto Assets at Questions 125, 127, and 133.

⁴⁵ *Id.* at 54554 n.369.

⁴⁶ *Id.* at 54525.

support does not constitute “undeniably significant” efforts that “affect the failure or success of the associated crypto network or associated crypto application.”⁴⁷

D. Post-Functionality Activity Should Not Restart the Investment Contract

The final rulemaking should clarify that ordinary post-functionality activity does not, without more, restart or recreate an investment contract once Rule 400 has been satisfied. We recommend that the Commission provide a non-exhaustive list of additional categories of ordinary network and application activity that would not be characterized as renewed essential managerial effort in connection with a post-functional network. This would include, for example:

- Ordinary-course activities, such as maintenance, security patches, bug fixes, documentation, routine software upgrades, research, the development of new features, and ecosystem development;⁴⁸
- Grants to independent developers and support for integrations or additional applications;⁴⁹ and
- Participation in governance, the operation of validators or other infrastructure, and the promotion or use of an already functional network.⁵⁰

The appropriate line should be between ordinary post-functionality activity and new explicit representations or promises that could reasonably lead purchasers to expect profits from the issuer’s future essential managerial efforts. Where a network or application is functional, issuer statements about current utility, existing capabilities, routine improvements, or security work generally should not be treated as creating a new investment contract. By contrast, if an issuer later conducts a new offering or makes new explicit and unambiguous investment-oriented representations regarding future essential managerial efforts, that later conduct could and should be analyzed on its own facts under *Howey*.

This approach would preserve the Commission’s antifraud and enforcement authority while preventing routine technical and governance activity from defeating the certainty that proposed Rule 400 is designed to provide.

E. Form TR: Certification Mechanics and Immediate Effectiveness

Proposed Rule 400(b) would require the issuer to file a “Transition Report” on Form TR to provide information regarding the issuer, a description of the covered investment contract and crypto asset, a certification that the issuer has satisfied Rule 400(a), and an analysis supporting

⁴⁷ *Id.*

⁴⁸ This would be consistent with the Commission’s example of “services to secure, maintain, improve, or enhance such network or application or its functionality, or to facilitate network effects.” *Id.*

⁴⁹ This would be consistent with the Commission’s example of “sponsoring or funding development projects or other similar activities,” and would not constitute “essential managerial efforts.” *Id.*

⁵⁰ This would be consistent with the Commission’s example of “contributions made by many parties (including, for example, the issuer, other developers, validators and/or miners, liquidity providers, users and holders of the crypto asset),” as well as facilitation of “network effects.” *Id.*

that certification.⁵¹ We support the proposed use of Form TR as the notice mechanism for Rule 400. A Commission filing provides investors, other market participants, and the Commission a public reference point for the issuer's transition determination. We further support that Form TR, as proposed, would be effective immediately upon filing (without Commission review or approval) and recommend that this point be reflected in the operative rule text, as well as the accompanying discussion in the adopting release.⁵²

The Form TR analysis should be sufficiently clear and detailed for a reasonable investor to understand the issuer's determination and the date the issuer asserts that the safe harbor's conditions were satisfied, but should not require disclosure of a full legal analysis.⁵³ A factual submission would sufficiently serve the Commission's stated purpose of apprising investors of the basis for the determination without effectively compelling disclosure of counsel's privileged work product.

F. No-Admission and Non-Waiver Protections

The proposal states that while the safe harbor would control with respect to the Commission's administration of the federal securities laws, the safe harbor "would not prevent other parties from asserting that a crypto asset is subject to an investment contract (or is otherwise a security)."⁵⁴ The proposing release recognizes that some parties may be reluctant to rely on the investment contract safe harbor because they may view it as requiring a tacit admission that the crypto asset previously was subject to an investment contract and that the party relying on the safe harbor was the issuer for that investment contract. We believe that concern is both legitimate and substantial, and it should be addressed directly in the text of Rule 400.⁵⁵

The final rule text should make clear that filing a Form TR, making the certification required by Rule 400(b), or otherwise relying on the safe harbor does not constitute an admission that the crypto asset is or ever was a security, that any transaction involving the crypto asset is or ever was a securities transaction, or that the filer is or ever was the issuer of a covered investment contract. The final rule text should also provide that reliance on Rule 400 does not waive any argument, defense, exemption, or position otherwise available to the filer.

G. Legacy Projects, Successor Filers, and Nontraditional Structures

The final rule text should address how proposed Rule 400 applies to legacy projects, successor filers, and nontraditional organizational structures. Proposed Rule 400(b) assumes that "[t]he issuer of the covered investment contract" will file the Form TR. But it does not address who or what may file when the original issuer has dissolved, has been wound up, or otherwise no longer exists. This gap is significant because the circumstances most likely to satisfy an

⁵¹ *Id.* at 54554–55.

⁵² *See, e.g., id.* at 54533 n.217 (confirming that neither the Commission nor its staff would be required to review or act with respect to a Form TR filing).

⁵³ *See id.* at Question 130.

⁵⁴ *Id.* at 54555.

⁵⁵ *See id.* at Question 134.

abandonment or non-performance pathway are those in which the original issuer is no longer available to file.

We therefore recommend that the Commission avoid any definitions or requirements that assume that a single conventional corporate issuer would remain responsible throughout the project lifecycle. The final rule text should also permit a successor, foundation, administrator, sponsor, decentralized unincorporated nonprofit association, or other person reasonably positioned to make the Form TR determination to file the report where the original issuer no longer exists, has reorganized, or is not the appropriate person to make the filing, subject to adequate disclosure concerning the filer's identity, its relationship to the original issuer, and the basis for its knowledge.

V. Preemption of State Registration and Qualification (Subpart E—Rule 500)

Proposed Rule 500 provides that state securities law registration and qualification requirements would be preempted with respect to offers and sales of covered investment contracts under a Regulation Crypto Assets exemption. For secondary market transactions by any person other than an issuer, underwriter, or dealer, the proposed rule would preempt state securities law registration and qualification requirements for covered investment contracts that were initially sold by the issuer under a Regulation Crypto Assets exemption or another exemption under federal securities laws.

We generally support the Commission's approach, but we believe that preemption should apply broadly to primary and secondary transactions and should not depend on facts that an unaffiliated wallet holder, purchaser, or venue cannot reasonably know or cure.

A. Support Broad Preemption Across Both Exemptions and Tiers

Section 18(a) of the Securities Act provides that states may not require registration or qualification of "covered securities." Section 18(b)(3) provides that a security "is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule." As proposed, Rule 500 would define "qualified purchaser" for that purpose to preempt state registration and qualification requirements with respect to offers and sales under Regulation Crypto Assets and specified secondary market transactions.

We support this approach. As the Commission correctly observed, state registration and qualification requirements "do not fit with the typically global (cross-states, or even cross-country) nature of purchasers of covered investment contracts," and, absent preemption of secondary trading, resales would be "subject to a patchwork of manual exemption regimes that vary state-by-state," producing "a fragmented and opaque system that places unnecessary burdens on issuers, investors, broker-dealers, and trading platforms."⁵⁶ Preemption is also directly connected to the network effects on which the value of a subject crypto asset depends. The Commission recognizes that the success of an associated crypto network or application

⁵⁶ *Id.* at 54562 and 54585.

“often depends on the extent to which the crypto asset is widely held and used,” and that fragmented state requirements would impede that distribution.⁵⁷

Section 18(c) of the Securities Act preserves state authority notwithstanding covered security status. States retain jurisdiction to investigate and bring enforcement actions concerning fraud or deceit and unlawful conduct by brokers or dealers, retain the ability to require notice filings and fees, and retain the power to suspend the offer or sale of securities within the state for failure to make a required filing or pay a required fee. We support the proposed rule’s adherence to this statutory preservation of state authority.

B. Fungibility and Pathway Independence

Proposed Rule 500(b) would preempt from state securities law registration and qualification requirements secondary market transactions in a covered investment contract “regardless of whether a given covered investment contract was initially issued under one of the Regulation Crypto Assets exemptions,” so long as the issuer has satisfied an exemption with respect to that contract and remains subject to and current with the applicable disclosure, filing, or periodic reporting obligations.⁵⁸

We support this approach and do not believe that secondary market preemption should instead be limited to covered investment contracts initially issued under a Regulation Crypto Assets exemption.⁵⁹ Fungible units are not traceable to a particular issuance pathway, so a pathway-dependent rule could not be applied by a trading venue or an unaffiliated holder and would therefore deliver no liquidity benefit. Indeed, we support extending preemption to all secondary market transactions in the same covered investment contract, by any person other than an issuer, underwriter, or dealer, once the issuer has validly relied on Regulation Crypto Assets with respect to that contract.

We agree with the Commission’s stated rationale that broad secondary preemption is appropriate “because of the investor protections provided by secondary market participants’ ability to access and benefit from the issuer’s initial and ongoing disclosures.”⁶⁰

C. Holder Protection Against Unknown Issuer Noncompliance

1. Do not make holders responsible for unknowable or hidden issuer noncompliance.

Under proposed Rule 500(b)(2), secondary market preemption would continue only for so long as the issuer “remains subject to, and is current with respect to” the applicable exemption’s disclosure and filing requirements or periodic reporting obligations.⁶¹ The

⁵⁷ *Id.* at 54585.

⁵⁸ *Id.* at 54557.

⁵⁹ *See id.* at Question 140.

⁶⁰ *Id.* at 54557.

⁶¹ *Id.*

Commission explained that if an issuer “fell out of compliance with those requirements, preemption would not apply until the issuer cured such defect.”⁶²

We believe that this proposed condition should be reconsidered. As proposed, an issuer’s missed filing would remove covered security status from secondary transactions by unaffiliated holders who had no way to know of, and no ability to cure, the issuer’s default, and may then face state registration or qualification requirements with respect to transactions they have already completed. We recommend that the Commission address this through the reasonable-belief standard that it raises in Question 141: Preemption should apply where “it is reasonable for a purchaser to conclude that the issuer has satisfied the requirements of an exemption under Regulation Crypto Assets.”⁶³ A missed filing would remain fully actionable against the issuer, including under Section 20 of the Securities Act and, for the fundraising exemption, through a suspension order under Rule 306 or, for Rule 200, through a comparable public suspension mechanism, but should not alter the legal position of unaffiliated holders who have acted reasonably and in good faith.

2. *Preemption should begin with Form NOR filing or offering-statement qualification and continue until an objectively identifiable public event changes status.*

We recommend that Rule 500 identify objectively ascertainable start and end points for preemption. Preemption should attach upon the filing of a Form NOR under Rule 200(c) or the qualification of an offering statement under the fundraising exemption, and should continue until an objectively identifiable public event—such as the filing of a Form TR or the entry of a suspension order under Rule 306—changes the issuer’s status. Anchoring preemption to filings and orders that appear on EDGAR would allow a trading venue, an intermediary, or an unaffiliated holder to determine status from the public record at the time of a transaction, which the “current” standard in proposed Rule 500(b)(2) would not permit.

3. *Consider a Commission suspension order or machine-readable public status notice as the mechanism for prospective change.*

We recommend that the Commission adopt a machine-readable status indicator on EDGAR identifying for each covered investment contract whether the issuer has claimed an exemption under Regulation Crypto Assets, a Form TR has been filed, and a suspension order under Rule 306 or comparable Rule 200 public suspension notice is in effect. We further recommend that a Rule 306 suspension order, or a comparable public status notice, serve as the exclusive mechanism by which preemption is prospectively withdrawn.⁶⁴ Such public status indicator would directly address the ascertainability problem.

⁶² *Id.* at 54558 n.391.

⁶³ *Id.* at 54558.

⁶⁴ *See id.* at Question 143.

4. *Permit market participants to rely on the Commission’s public record.*

We believe that the final Rule 500 should provide that a person other than an issuer, underwriter, or dealer may rely on the Commission’s public record (the filings and orders described above) in determining whether preemption applies to a secondary market transaction, and that such reliance would not be defeated by facts the person could not have reasonably known. A rule of reliance is a logical complement to the reasonable-belief standard discussed above. Without it, the ascertainability problem is mitigated but not resolved, because a holder or trading venue would still bear the risk of undisclosed issuer noncompliance.

VI. Other Matters

A. Exchange, Broker-Dealer, and Intermediary Registration

Under the proposed rule, it is unclear what activities or functions in connection with a transaction or arrangement involving a nonsecurity crypto asset that is deemed subject to an investment contract would trigger the various entity registration requirements. Indeed, the proposal states:

Some concerns also have been raised about other aspects of the Federal securities laws that may apply to transactions involving covered investment contracts. *See* Commissioner Peirce, *Running on Empty* (recommending exemptions from the definitions of “exchange,” “broker,” and “dealer” under the Exchange Act). This proposal does not address those recommendations. We will continue to consider whether further action with respect to covered investment contracts beyond the proposed rules in this release is warranted.⁶⁵

This is a significant gap that the Commission should continue to address to ensure usability of the Regulation Crypto Assets exemptions and safe harbor. We urge the Commission to close this gap through the near-term issuance of a proposing release, such as the potential “Crypto Market Structure Amendments” rule currently being considered by the Division of Trading and Markets “to account for the trading of crypto assets on ATs and national securities exchanges,” including by “providing clear rules of the road for the issuance, custody, and trading of crypto assets.”⁶⁶ This is critical because, absent such clarity, intermediaries will not have sufficient comfort to meaningfully engage with these assets, making it difficult to achieve the necessary network effects. If this Commission does not answer these questions, another Commission may answer them through enforcement actions.

⁶⁵ *Id.* at 54529 n.192.

⁶⁶ *Crypto Market Structure Amendments*, Regulatory Identification Number 3235-AN49, Proposed Rule Stage, SEC (2026), <https://www.reginfo.gov/public/do/eAgendaViewRule?RIN=3235-AN49&pubId=202510>.

VII. Definitions and General Provisions (Subpart A—Rules 100–104)

A. “Covered Investment Contract” Scope

Proposed Rule 100 would define “covered investment contract” to mean a contract, transaction, or scheme involving a crypto asset that constitutes an investment contract, provided that (1) a crypto asset is subject to the investment contract, (2) such crypto asset is not a security, and (3) no asset other than such crypto asset is subject to the investment contract. We recommend against expanding the definition to cover investment contracts involving other assets, as limiting the regime to investment contracts involving only a nonsecurity crypto asset keeps the framework aligned with the taxonomy set out in the 2026 Interpretation and avoids the definitional complexity that would arise if hybrid arrangements involving securities or other assets could qualify.⁶⁷

B. “Associated Crypto Network” and “Associated Crypto Application” Definitions

Proposed Rule 100 would define “associated crypto network” by reference to “the blockchain or similar distributed ledger technology network on which such crypto asset is generated, minted, or mined.” The proposed rule would define “associated crypto application” by reference to “the smart contract or similar executable software program that is deployed to an associated crypto network.” Both proposed definitions are framed in the singular. We recommend that the Commission revise the definitions to permit an issuer to identify more than one associated crypto network or associated crypto application where the subject crypto asset is deployed to, or derives material utility from, more than one.⁶⁸

C. Related Person: Materiality Nexus Overlay

Proposed Rule 100 would define “related person” to mean, with respect to an issuer, “founders, promoters, employees, affiliates, and any person that is a director, officer, trustee, consultant, contractor, or advisor to the issuer, in each case together with any immediate family members.”⁶⁹ The Commission states that the definition “is intended to include any person that may be viewed as an ‘insider’ of the issuer” so that investors are informed about “those who are in the best position to influence the outcome of the project.”⁷⁰

As proposed, the definition would capture persons by status rather than by function, and would include a junior employee, a short-term contractor, or an immediate family member with no authority over, interest in, or ability to influence the project. We recommend that the Commission retain the categories enumerated in the proposed definition but overlay a materiality nexus, so that a person is a related person only if the person has material authority over the issuer or the represented essential managerial efforts, material control over the associated crypto network or associated crypto application, material beneficial ownership of or allocations in the

⁶⁷ See Regulation Crypto Assets at Questions 6 and 7.

⁶⁸ See *id.* at Questions 4 and 8.

⁶⁹ *Id.* at 54520.

⁷⁰ *Id.*

subject crypto asset, a material conflict of interest, or the ability to materially influence project outcomes.⁷¹

We recommend that the Commission consider establishing an additional defined term, such as “material related person,” for use in the Rule 103 disclosure requirements, so that the broader status-based concept can be retained where it serves an anti-evasion purpose without driving the disclosure obligation.⁷² Adopting a distinct defined term would enable the Commission to calibrate the Rule 103(b)(4) disclosure requirements to the persons whose interests and authority are actually material to a purchaser, while retaining the broader “related person” concept where a status-based test is appropriate.

VIII. Disclosure Requirements (Rule 103)

A. Principles-Based Framework

Proposed Rule 103 would establish principles-based disclosure requirements organized around ten topics, requiring the issuer to describe the material aspects of each topic without specifying the detailed information that must be provided. The Commission states that this approach is intended to give issuers flexibility to tailor disclosure to their particular facts and circumstances, to “avoid compelling disclosure of irrelevant information” and to accommodate future developments without the need to “continually revisit and update the disclosure requirements.”⁷³

1. Support principles-based framework.

We support this principles-based approach and would oppose potential efforts to replace proposed Rule 103 with a prescriptive checklist. A prescriptive regime would present practicality concerns and conflict with the Commission’s obligations to consider whether a rule will promote efficiency, competition, and capital formation.⁷⁴

The Commission’s economic analysis included in the proposal correctly observes that the proposed principles-based approach “would allow issuers of covered investment contracts to more directly tailor their disclosures to provide the information about their particular circumstances that is material to an investment decision,” that this ability “could in turn help reduce an issuer’s compliance costs compared to a more prescriptive disclosure requirements regime” and that such requirements “are less likely to lead to disclosure that is outdated or is less applicable to the particular offering.”⁷⁵ We agree with these statements.

⁷¹ See *id.* at Question 11.

⁷² See *id.* at Question 3.

⁷³ *Id.* at 54524.

⁷⁴ Securities Act Section 2(b) and Exchange Act Section 3(f).

⁷⁵ Regulation Crypto Assets at 54578.

2. *Support non-exclusive examples and form instructions.*

The Commission seeks comment on the possibility of “replacing the principles-based approach with more prescriptive disclosure requirements or, alternatively, supplementing the principles-based requirements with non-exclusive examples of disclosure that may be responsive.”⁷⁶ While we oppose replacing proposed Rule 103 with a prescriptive checklist, we support supplementation of the principles-based requirements with non-exclusive examples of potentially responsive disclosure, which could improve compliance without freezing the disclosure regime around the current state of the technology. We recommend, however, that any such examples be accompanied by an express statement that they are illustrative only, that they do not create a presumption of materiality, and that they do not establish a compliance floor. Absent that limitation, illustrative examples risk being treated in practice as a prescriptive checklist.

3. *Avoid boilerplate and immaterial disclosures.*

Proposed Rule 103(b)(10) would require risk factor disclosure “in short, concise statements” and would provide that the description “must avoid generalized statements and include only factors specific to the covered investment contract, the issuer, the subject crypto asset, and the associated crypto network or associated crypto application.”⁷⁷ Proposed Rule 103(a) likewise would require clear, concise, and understandable language “without overly relying on technical terminology or jargon.”⁷⁸

We support these provisions. We recommend that the Commission reinforce the provision with an expansion of the description contained in proposed Rule 103(b)(10) or related guidance to explicitly state that generic risks common to all crypto assets or to all early-stage ventures need not be disclosed unless the issuer’s particular facts and circumstances make them material, and that immaterial disclosure is affirmatively disfavored because it obscures the facts most relevant to purchasers.⁷⁹

B. *Materiality, Knowledge, and Practical Control Limitations*

1. *Support requiring only information material to a reasonable purchaser.*

Proposed Rule 103(a) would provide that “disclosure is not required to be provided where a particular disclosure requirement is not applicable, or responsive information is unknown or not reasonably available.”⁸⁰ Each subsection of proposed Rule 103(b) is explicitly qualified throughout in terms of the “material” aspects of each topic.⁸¹ We support these limitations and recommend that the Commission preserve them in the final rulemaking. We further recommend that the materiality qualifier be stated by reference to a reasonable investor considering the covered investment contract in light of the circumstances.

⁷⁶ See *id.* at Questions 26 through 29.

⁷⁷ *Id.* at 54527.

⁷⁸ *Id.* at 54524.

⁷⁹ See *id.* at Question 36.

⁸⁰ *Id.* at 54608.

⁸¹ *Id.*

2. *Support limiting the obligation to information known or reasonably available.*

We support the “unknown or not reasonably available” limitation in proposed Rule 103(a) and recommend that it be carried into the operative text of proposed Rule 103(b), rather than appearing only in the general principles paragraph. We also recommend that the Commission clarify that the limitation extends to information the issuer cannot reasonably verify. On an open, permissionless network, an issuer frequently can observe that activity has occurred without being able to verify the identity or intentions of the persons conducting it.

3. *Do not require an issuer to vouch for every participant, validator, application, market, or development activity.*

Proposed Rule 103(b)(9) would require a description of the material aspects of the subject crypto asset’s current and anticipated “ecosystem,” including “the system or network of contributors or participants that support and interact with the subject crypto asset,” both “onchain” and “offchain.”⁸² We support ecosystem disclosure but recommend that the Commission clarify that the requirement calls for a description of the categories of participants and the material dependencies of the network or application, and does not require the issuer to identify, monitor, or vouch for every participant, validator, application, market, or development activity occurring on an open network. Without this clarification, the requirement would impose an obligation that many issuers of assets available on public, permissionless networks could not reasonably discharge, and would create an incentive to introduce centralized control in order to make the obligation satisfiable—the opposite of the outcome the framework is designed to encourage.

C. *Disclosure Topics: Network, Application, and Investment Contract*

Proposed Rule 103(b)(1) would require a description of the material terms of the covered investment contract, including the issuer’s representations or promises to engage in essential managerial efforts and its progress with respect to those representations. Proposed Rule 103(b)(5) would require a description of the associated crypto network or associated crypto application and the issuer’s plan of development, including its progress against that plan. We support these requirements. As the Commission observes, disclosure of the represented efforts “may help investors and other market participants determine the circumstances under which the covered investment contract may cease to exist.”⁸³

Proposed Rule 103(b)(7) would require a description of the material aspects of the subject crypto asset’s economics and allocations, including supply, pricing, lockups, distribution methods, holdings by related persons, release schedules, the mechanisms for generating and destroying subject crypto assets, and methods to verify the transaction history. Proposed Rule 103(b)(4) would require disclosure regarding related persons, conflicts of interest, and any related-person transfer or resale restrictions. We support these proposed disclosure requirements.

⁸² *Id.*

⁸³ *Id.* at 54525.

Supply, allocation, and release information may bear directly on the value of the subject crypto asset and are material information for a potential purchaser. Further, related-person holdings may be material to a purchaser. Likewise, we support the Commission’s proposal to utilize these disclosure requirements as the mechanism to address insider-sale concerns in lieu of a mandatory holding period for related persons.

We also support the proposed provisions under proposed Rule 103(b)(8) that would require a description of the material aspects of the governance mechanisms, smart contract governance mechanisms, and permissions of the subject crypto asset and the associated crypto network or associated crypto application. We agree with the Commission’s view that this information would help purchasers understand “the conditions under which changes may be made . . . and who may be empowered to make such changes.”⁸⁴ We support this aspect of the proposal and recommend that the Commission confirm that it encompasses upgrade authority, administrative keys, emergency controls, and the persons or processes capable of changing material functionality.

Together, proposed Rules 103(b)(5) and 103(b)(9) would elicit information regarding the architecture of the associated crypto network or associated crypto application and its technology infrastructure and participants. For many projects, disclosure regarding material dependencies is particularly useful because dependency failures can create operational, counterparty, and security risks. We recommend that the Commission confirm that material third-party dependencies—including oracles, bridges, custody arrangements, sequencers, data availability layers, and other infrastructure providers—are within the scope of these requirements where material.

We support the proposed provisions under Rule 103(b)(6) that would require a description of the material aspects of the security of the subject crypto asset and the associated crypto network or associated crypto application and, “to the extent the issuer has made it publicly available,” the website address at which the source code is accessible.⁸⁵ We recommend that the Commission confirm that audit status, material incident history, migrations, forks, and changes to canonical deployment are within scope where material, subject to the protections for security-sensitive information discussed in this letter.

Finally, we support disclosure of the resources the issuer has committed to completing its disclosed development plan and of material changes in those resources.

D. Responsibility for Public Statements and Authorized Channels

Proposed Rule 103(a) would require that information provided be “consistent with the issuer’s public statements in its established public communication channels (such as its website or official social media accounts) and promotional materials (such as whitepapers).”⁸⁶ We support the proposed requirement but note that the proposal does not define what constitutes an “established public communication channel,” or when a statement by a third party is adopted or

⁸⁴ *Id.* at 54527.

⁸⁵ *Id.* at 54608.

⁸⁶ *Id.* at 54524.

authorized by the issuer. We recommend that the Commission clarify that the consistency obligation would attach to material statements made through channels the issuer identifies as official and by persons the issuer authorizes to speak on its behalf, and that the issuer be permitted to identify those channels and representatives in its Rule 103 disclosure.

* * *

Proposed Regulation Crypto Assets is a major step toward a fit-for-purpose offering, disclosure, and transition framework for certain investment contracts involving nonsecurity crypto assets—one that would address many of the structural impediments that have prevented fundraising through crypto asset sales. We commend this Commission for its recent and ongoing leadership in this area and thoughtful approach to this proposal.

We appreciate the opportunity to comment on the proposal, welcome any questions, and look forward to providing additional feedback in the future.

Respectfully submitted,

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