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SEC PROPOSES NEW REGULATION CRYPTO ASSETS

On August 18, 2026, the Securities and Exchange Commission (the "Commission" or the "SEC") published proposed rules, titled "Regulation Crypto Assets" ("Reg Crypto Assets"), which would establish a framework to raise capital and disclosure requirements involving certain crypto asset-related investment contracts. The proposed rules represent the next phase in the Commission's ongoing effort to regulate capital formation through certain investment contracts involving crypto assets, which the Commission terms "covered investment contracts." Beginning even before Paul Atkins was sworn in as Chairman of the SEC in April 2025, the Commission has taken a series of increasingly potentially significant steps to define its role related to digital assets. In January 2025, the Commission established the Crypto Task Force under Commissioner Hester Peirce, which has held roundtables and published numerous pieces of digital assets-related guidance. Then, in March 2026, the Commission published a release that included an interpretation of how the definition of "security" applied to digital assets and related transactions, further clarifying the treatment of certain crypto assets under the federal securities laws (the "March Guidance").

Reg Crypto Assets builds on this guidance by proposing a framework to raise capital through the issuance of covered investment contracts under the federal securities laws, as well as proposing a conditional safe harbor by which an investment contract issuer could delink a crypto asset from the investment contract. The proposed Reg Crypto Assets would also delineate the role of state law and preemption in certain covered investment contract-related transactions. In the words of the SEC, "[t]he proposed offering regime is intended to facilitate capital formation and accommodate innovation within the crypto asset markets while, at the same time, ensuring that investors are adequately protected and provided with the information they need to make informed investment decisions."

SUBPARTS A, B AND C OF REG CRYPTO ASSETS: PROPOSED EXEMPTIONS FROM SECURITIES ACT REGISTRATION REQUIREMENTS

As a baseline, all offers and sales of securities under the federal securities laws must be registered under the Securities Act of 1933, as amended (the "Securities Act"), or be exempt from registration. Reg Crypto Assets proposes two exemptions from Securities Act registration for offers and sales of covered investment contracts, which the SEC believes will "provide issuers of covered investment contracts with a framework to more efficiently raise capital as needed for their business, including to finance development of the subject crypto asset and associated crypto network or associated crypto application."

As noted below, Reg Crypto Assets specifically applies only to crypto assets that are not in and of themselves securities; as the SEC stated in the March Guidance, "[v]irtually any type of security, good, service, right, or interest can be represented in a digital format as a crypto asset." Further, as the SEC noted in the proposing release, "a non-security crypto asset becomes subject to an investment contract when an issuer offers it by inducing an investment of money in a common enterprise with representations or promises to undertake essential managerial efforts from which a purchaser would reasonably expect to derive profits." This differs from digital securities, or "tokenized" securities, which are "financial instruments enumerated in the definition 'security' that are formatted as or represented by crypto assets, where the record of ownership is maintained in whole or in part on or through one or more crypto networks,"[1] more akin to traditional equity or debt securities. As a result, many tokenization projects that involve tokenizing real world assets that are themselves securities would not benefit from these particular exemptions. Further, the covered investment contracts to which crypto assets are subject may eventually cease to exist, such that they will no longer be subject to the securities law framework, while tokenized securities remain securities and so subject to regulation under the federal securities laws. The value of these assets may depend on their utility and security, rather than on ownership rights and/or expected cashflows like traditional securities. For all of these and other reasons outlined in the proposing release, Reg Crypto Assets provide exemptions that are "fit-for-purpose" for this class of instruments.

Subparts A, B, and C of Reg Crypto Assets would create two new exemptions from Securities Act registration, named the "startup exemption" and the "fundraising exemption." and provide specific definitions, disclosure requirements and conditions applicable to issuers and transactions conducted pursuant to these exemptions, as applicable.

Subpart A: General Rules	
Rule 100: Definitions	Defines certain crypto-specific terms that would apply throughout Reg Crypto Assets, including: • "Covered investment contract": a contract, transaction, or scheme that constitutes an investment contract meeting the following: (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 (including any security or non-security asset) is subject to the investment contract;[2] • "Covered transaction": in reliance on the <u>startup exemption only</u>, any offer, sale, or other distribution of a covered investment contract, such as: (1) any public or private offering, including a distribution, of a covered investment contract in a capital raising transaction(s); or (2) any public or private offering, including "airdrops," of a covered investment contract in exchange for, in recognition of, or as incentive for use of an associated

[1] The SEC also clarified this in the March Guidance, "A non-security crypto asset that is subject to an investment contract is not a tokenized security."

[2] As discussed above, this definition specifically: (1) includes investment contracts that involve a crypto asset, (2) excludes investment contracts that involve crypto assets that are themselves securities (e.g., digital securities), and (3) excludes investment contracts that involve any asset other than a non-security crypto asset.

	crypto network or application, or as a reward or incentive for conducting activities primarily related to operating, governing, or securing an associated crypto network or application; • "Crypto asset": any digital representation of value that is recorded on a cryptographically-secured distributed ledger; • "Related person": with respect to an issuer, its founders, promoters, employees, affiliates, and any other person that is a director, officer, trustee, consultant, contractor, or advisor to the issuer, in each case also including immediate family members; and • "Subject crypto asset": a crypto asset that is subject to a covered investment contract. Importantly, the "security" at issue in Reg Crypto Assets is the covered investment contract to which the subject crypto asset is subject, not the crypto asset itself. Many terms, such as "aggregate offering price," "aggregate sales," "business day" and "final offering circular," would be defined consistently with existing definitions in Regulation D and Regulation A, as applicable.
Rule 101: General Provisions	Background rules governing non-exclusivity of the startup and fundraising exemptions, electronic filing, liability standards, and other general information, generally consistent with the general requirements of the Regulation D, Regulation A and Regulation Crowdfunding offering exemptions.
Rule 102: Inflation adjustment	Establishes the process whereby offering limits in the startup and fundraising exemptions will be adjusted for inflation on an ongoing, predetermined basis, not less than once every five years.
Rule 103: Disclosure	Principles-based disclosure requirements for both the startup and fundraising exemptions, specifically tailored to issuers and offerings of covered investment contracts, including disclosure about: • the covered investment contract, including the issuer's representations or promises to engage in essential managerial efforts under the covered investment contract and its related progress; • the offering of the covered investment contract, including purchase price, duration, estimated proceeds and expenses and intended use of proceeds; • description of the name and material aspects of the subject crypto asset; • information about the issuer's management, related persons, and other "material participants," conflicts of interest or related person transactions

	involving the issuer, and any resale or transfer restrictions[3] applicable to related persons; • the associated crypto network or application, including architecture, network protocols, security and governance mechanisms; • the subject crypto asset, including supply, distribution, and lockup information; economics and ecosystem;[4] and • material risks relating to the covered investment contract, subject crypto asset, and associated crypto network or application.
Rule 104: Disqualification	Availability of both exemptions depends on the issuer and certain others not being disqualified as a "bad actor," as defined in Rule 262 of Regulation A. As proposed, the disqualification provisions would not apply with respect to disqualifying events that occurred or were issued before the effective date of Rule 104. Requests for waivers of disqualification would be available consistent with the current approach to waivers under Regulation A.
Subpart B: Startup Exemption	
Rule 200(a)-(e)	One-time use for an issuer and its affiliates for a single or substantially similar subject crypto asset; exemption would permit "covered transactions" subject to certain conditions: • The sum of the aggregate offering price in the covered transaction plus the gross proceeds from all covered transactions before the start of and during the covered transaction must not exceed $5 million. • The covered transaction must occur during a four-year period beginning when the issuer files "notice of reliance" on Form NOR on EDGAR and ending on the earlier of four years from such date or when the issuer files a "transition report" on Form TR on EDGAR. • The issuer may be an entity, an individual, or a group of individuals or entities. Where an issuer is a group, each member would be responsible, individually and collectively, for satisfying the conditions of the exemption. • The issuer and its affiliates may not have previously relied on the startup exemption with respect to the same or a similar subject crypto asset. Issuers would be required to satisfy certain disclosure requirements, including filing a Form NOR at the outset of the period and amending annually for material changes, including information about the issuer and subject crypto asset, as well

[3] As proposed, covered investment contracts sold pursuant to an exemptions in Reg Crypto Assets would not be restricted securities under the federal securities laws, so would be available for resale immediately upon acquisition.

[4] A crypto asset's ecosystem is the system or network of contributors or participants that support and interact with the subject crypto asset and associated crypto network or associated crypto application.

	as website where the issuer will make the information required by Rule 103 (summarized above) freely available; Rule 103 information would not be filed on EDGAR. No later than four years after the filing of the Form NOR, the issuer would be required to file a Form TR to inform investors that it is no longer relying on the startup exemption and provide updated information about the status of the covered investment contract, subject crypto asset, and associated crypto network or application. The startup exemption is intended to provide flexibility to early stage issuers who require capital, or wish to offer covered investment contracts as an incentive to use an associated crypto network or application or as a reward for activities related to an associated crypto network or application, while providing time for the issuer to fulfill the essential managerial efforts that it represented or promised investors that it would engage in under the covered investment contract. This is balanced by the need to ensure that investors remain sufficiently informed, and are protected by the federal securities laws.
Subpart C: Fundraising Exemption	
Rule 300: Offering conditions; eligibility requirements; delivery requirements; continuous and delayed offerings; selling securityholder participation	The exemption would be modeled after Regulation A, with two offering tiers: under Tier 1, issuers would be permitted to conduct offerings of up to $20 million of covered investment contracts (or "eligible securities" for purposes of the exemption) in a 12-month period, including no more than $6 million offered by selling securityholders who are affiliates of the Issuer; under Tier 2, issuers would be permitted to conduct offerings of up to $75 million of covered investment contracts in a 12-month period, including no more than $22.5 million offered by selling securityholders who are affiliates of the issuer. To be eligible to rely on the exemption, issuers must be entities organized in the United States and (i) a majority of the issuer's executive officers or directors must be U.S. citizens or residents, (ii) more than 50% of the issuer's assets must be located in the United States, and (iii) the issuer's business must be administered principally in the United States. Notably, Regulation A only requires that an issuer be organized under the laws of, and have its principal place of business in, the United States or Canada. The exemption would not be available to blank check companies, registered investment companies or business development companies, certain bad actors or those that are not current with any existing filing obligations under Rule 305 of Reg Crypto Assets or Sections 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for the previous two years. The proposed rules would also clarify when oral and written offers of securities could be made, substantially similar to Regulation A, and would require that no sales be made until the offering statement is qualified. Also similar to Regulation A, the proposed rules would include a requirement that the aggregate purchase price that may be paid by a non-accredited investor cannot exceed 10% of the

	greater of the purchaser's annual income or net worth. Unlike Regulation A, these limits would be applicable to both Tier 1 and Tier 2 offerings, with no carveouts for listed securities. Analogous to Regulation A, certain continuous and delayed offerings would be permitted, as would selling securityholder participation in offerings; however, at-the-market offerings would not be allowed. Throughout the Commission's commentary on the fundraising exemption, it is clear that its aim was to balance facilitation of capital raising with investor protection, including by proposing terms and conditions that are more restrictive than those currently in Regulation A. For example, the proposed exemption would require issuers and their control persons to be U.S.-based, which the Commission notes would make it easier for the SEC, and investors, to "seek recourse against issuers in the event of fraud or other misconduct," and prevent potential information asymmetries between foreign issuers and unsophisticated investors. Similarly, the proposal would apply the proposed investment limits for non-accredited investors in both Tier 1 and Tier 2 offerings, which may help to mitigate the risk of loss and enhance investor protection in these offerings. It will be interesting to see how commenters react to these deviations from Regulation A, and whether there is support for the premise that they will, indeed, enhance investor protection.
Rules 301, 306, 307 and Form 1-CRYPTO	Offerings pursuant to the fundraising exemption would use new Form 1-CRYPTO, largely modeled after Regulation A's Form 1-A. The form would include three parts: a fillable notice form requiring basic disclosure about the issuer and the offering in Part I; in Part II, the offering circular; and, in Part III, signatures and exhibits to the Form. The Form would be filed and publicly available on EDGAR. Part II of Form 1-CRYPTO would include (i) non-financial disclosure, in line with Rule 103, (ii) a narrative discussion of the issuer's financial condition modeled on that required by Regulation Crowdfunding and (iii) financial statements prepared in accordance with U.S. GAAP and, for Tier 2 offerings only, subject to an assurance requirement and audited by an independent auditor. For Tier 1 offerings, there is no financial statement assurance requirement and unaudited financial statements are acceptable, but if an audit was obtained for other purposes meeting certain standards, then those audited financial statements must be provided. The exhibits required by Part III of Form 1-CRYPTO would be substantially similar to those for Form 1-A, tailored to offerings of investment contracts. The proposed rules would provide for non-public submissions of offering statements, as well as procedures for offering statement amendment, qualification, withdrawal, and abandonment that are substantially similar to Regulation A.

Rules 302 and 303: Offering circulars	The rules propose requirements for the use of offering circulars that are substantially similar to those in Regulation A, including with regard to preliminary offering circulars and offering circular supplements.
Rule 304: Testing-the-waters	The rules would permit non-binding solicitations of interest and similar pre-qualification "testing the waters" offering communications subject to certain conditions, substantially similar to the non-binding solicitations of interest allowed in Regulation A offerings.
Rule 305(a), (b) and (c): Ongoing reporting	Issuers with qualified Tier 1 or Tier 2 offerings would be subject to ongoing periodic reporting requirements, including semiannual, annual, and current reports on proposed Form 1-SC, Form 1-KC, and Form 1-UC, respectively, which would be modeled on the forms applicable in Regulation A offerings, with the addition of tailored requirements for covered investment contract offerings and issuers, including certain of the disclosure requirements in Rule 103 and financial statement requirements. This across-the-board ongoing reporting requirement represents a divergence from Regulation A; Tier 1 Regulation A offerings are not subject to ongoing reporting obligations. The Commission noted its view that the disclosure in Tier 1 offerings "is appropriate given that the issuer's ongoing efforts to develop its associated crypto network or associated crypto application are directly relevant to the value of the covered investment contract and the subject crypto asset," and that, unlike Tier 1 Regulation A offerings, Tier 1 offerings under the fundraising exemption are not expected to be "more local in nature" than Tier 2 offerings. The Commission also highlighted the need for increased disclosure should secondary markets for securities issued in Tier 1 offerings develop.
Rule 305(c) and (d): Transition reporting	The proposed rules would substantially mirror the provisions regarding the suspension and termination of duty to file reports in Regulation A. Issuers would use proposed Form TR for transition reports filed under Reg Crypto Assets.

SUBPART D OF REG CRYPTO ASSETS: SAFE HARBOR FROM THE TERM "INVESTMENT CONTRACT"

The proposing rules recognize that some covered investment contracts "eventually will cease to exist" because of a lack of essential managerial efforts, but, without clear guidance, issuers may hesitate to conclude that the federal securities laws no longer apply. Proposed Rule 400 would address this issue by creating a non-exclusive safe harbor from the term "investment contract" in the definitions of "security" in the Securities Act and the Exchange Act. If the conditions of the safe harbor are satisfied, then a covered investment contract will be deemed to have ceased to exist, and the crypto asset that was subject to the contract will be deemed not to be subject to such contract for purposes of these statutory definitions. Therefore, the reporting and other requirements of the federal securities laws will no longer apply.

Under Rule 400, an issuer must permanently cease all essential managerial efforts that it represented or promised it would engage in under a covered investment contract, and not make or intend to make any new representations. The issuer must certify this fact in a Form TR filed with the SEC, and provide a clear and detailed analysis supporting that certification, likely referring to information it previously disclosed under proposed Rule 103, if applicable.

The investment contract safe harbor would be available to any issuer that satisfies its conditions, not just those that utilized the startup exemption or the fundraising exemption. Like all safe harbors, the safe harbor would only be available to issuers that satisfy its conditions, a fact that the Commission would be able to challenge. Last, even if the safe harbor was satisfied, it "would not prevent other parties from asserting that a crypto asset is subject to an investment contract (or is otherwise a security)."

SUBPART E OF REG CRYPTO ASSETS: DEFINITION OF "QUALIFIED PURCHASER" AND PREEMPTION

As proposed, the new rules would preempt state securities law registration and qualification requirements with respect to offers and sales of covered investment contracts pursuant to Reg Crypto Assets, as well as certain secondary market transactions.

Specifically, under Section 18(a) of the Securities Act, 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 defining all persons to whom covered investment contracts are offered or sold under Reg Crypto Assets as "qualified purchasers," the proposed rules would render covered investment contracts "covered securities," thereby preempting state-level registration and qualification requirements.

The proposed rules would broadly define "qualified purchaser" as any person to whom securities are offered or sold pursuant to a primary offering under Reg Crypto Assets or pursuant to a secondary market transaction by a person other than an issuer, underwriter, or dealer, provided that: (i) the issuer has satisfied the requirements of an exemption under Reg Crypto Assets with respect to the same covered investment contract; and (ii) the issuer remains subject to, and is current with respect to, such exemption's disclosure and filing requirements and/or periodic reporting obligations, as applicable.

The SEC's rationale for preemption rests on the borderless nature of crypto asset markets. Transactions involving crypto assets are characterized by the ease of transacting worldwide and ability to reach users without intermediaries across geographic boundaries, which makes the review and qualification of covered investment contracts on a state-by-state basis difficult and costly. As the proposing release states, "[p]reemption would more efficiently allow issuers to communicate with potential investors across state lines, which we anticipate will happen within the ordinary course of capital formation efforts undertaken by covered investment contract issuers given the nature of the asset, the underlying blockchain technology, and potential markets."

The Commission also highlighted the fact that preemption could enhance secondary market liquidity by eliminating the need for state-specific registration and qualification. In the SEC's view, secondary market participants would benefit from the issuer's initial and ongoing disclosures under the Reg Crypto Assets exemptions, regardless of the manner in which a covered investment contract was initially sold, such that broad secondary market preemption is appropriate. This, in turn, could minimize illiquidity discounts and encourage the development of liquid trading markets, especially since securities sold under the exemptions are unrestricted.

The Commission acknowledged that preemption removes a layer of investor protection, which may be balanced by certain investor protection features in the proposed exemptions, including (i) disclosure and ongoing reporting requirements, (ii) issuer eligibility requirements, including "bad actor" disqualification provisions, (iii) the maximum four-year offering duration and one-time use limit under the startup exemption, and (iv) the qualification process for offering circulars and investment limit for non-accredited investors under the fundraising exemption.

The states would retain jurisdiction under Section 18(c) of the Securities Act to investigate and bring enforcement actions with respect to fraud or deceit and unlawful broker-dealer conduct, and to require notice filings and fee assessments. In addition, the federal securities laws' antifraud and antimanipulation provisions would continue to apply to all offers and sales.

COMMISSIONER RESPONSES, REQUESTS FOR COMMENT AND LEGISLATIVE UNCERTAINTY

Importantly, and consistent with recent past Commission crypto-related actions, the proposed rules represent a very different approach from that taken by prior SEC leadership, which has been frequently criticized as a "regulation by enforcement" approach. The current Commissioners lauded the proposed rules, with Commissioner Mark Uyeda stating that the provisions "are intended to give issuers a workable path to raise capital, reduce the incentive to move offshore, and provide U.S. investors more opportunities to invest with clearer, more consistent protections," and Chairman Atkins declaring that the SEC is "charting a road to invite innovators back to the United States." Commissioner Hester Pierce echoed these sentiments, while also stressing the importance of public comment on the proposed rules, "the Commission wants to accommodate innovation on many fronts, and our rules need to be tailored to changing market developments and designed to protect investors and market integrity. I would particularly welcome thoughts on facilitating the ability of crypto assets to serve a role akin to equity to enable token holders to share in the growth and value of the enterprise that builds a crypto network."

To that end, the proposing release includes more than 150 comprehensive requests for comment. It remains to be seen whether commenters will support this approach to capital raising, including the clear and prominent framework based on Regulation A, with updates and changes mostly intended to increase investor protection and speak specifically to covered investment contracts. The proposed broad preemption of state securities regulation, while perhaps more conducive to the creation of liquid secondary trading markets, is likely to raise some opposition by the states and other market participants, particularly in light of the fact that currently preemption under Regulation A is more narrow, applying only to offers and sales of securities by issuers in primary offerings under Tier 2 of Regulation A.

In addition, stakeholders may be interested in whether the proposed rules will have any impact on the progress of the Digital Asset Market Clarity (CLARITY) Act, which is intended to provide market-wide regulation for the digital-asset markets and remains pending in Congress. Chairman Atkins specifically addressed this issue in his statement, saying that the "legislation remains indispensable to enacting "future-proofed" rules of the road that are durable enough to protect the work we are undertaking today from being unwound by a future rogue regulator." Commissioner Uyeda shared similar thoughts: "[n]otably, with respect to any legislative developments, nothing in the proposal precludes the Commission from taking into account such developments in formulating or responding to future crypto policies. To the contrary, legislative CLARITY would be beneficial to market participants and regulatory agencies."

Regardless of stakeholder responses and the legislative environment, it is abundantly clear that the SEC remains focused on digital assets, and views the proposed rules as a single step in a growing regulatory framework.

Comments are due 60 days after publication of the proposing release in the Federal Register and can be submitted (i) via the comment form on the SEC's website, (ii) via e-mail to rule-comments@sec.gov, including File Number S7-2026-27 on the subject line, or (iii) on paper to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

Read the proposing release here, Chairman Atkins' statement here, Commissioner Uyeda's statement here and Commissioner Peirce's statement here.

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