SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, 228, 230, 232, and 239

[Release Nos. 33-11434; 34-106150; File No. S7-2026-27]

RIN 3235-AN38

Regulation Crypto Assets

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing new rules to create a tailored offering regime for certain investment contracts involving crypto assets. The 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. The proposed rules would be set forth in a new regulation titled "Regulation Crypto Assets" and would include two exemptions from the registration requirements of section 5 of the Securities Act of 1933. The first exemption would permit offerings of up to $5 million during a four-year period. The second exemption would permit offerings of up to $75 million during each 12-month period. Under both exemptions, issuers would be required to make certain principles-based narrative disclosures available to their investors. In addition, issuers under the second exemption would be required to provide financial statements and would be subject to ongoing reporting requirements. Issuers that rely on these exemptions would remain subject to the antifraud and antimanipulation provisions of the Federal securities laws. The proposed rules also would include a conditional safe harbor from the term "investment contract" in the definitions of "security" in the Securities Act of 1933 and the Securities Exchange Act of 1934. If the

conditions of that proposed safe harbor are satisfied, then a crypto asset would be deemed not to be subject to an investment contract for purposes of those definitions of "security."

DATES: This release was published in the *Federal Register* on August 21, 2026. Comments should be received on or before October 20, 2026.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's internet comment form (https://www.sec.gov/comments/s7-2026-27/regulation-crypto-assets).
- Send an email to rule-comments@sec.gov. Please include File Number S7-2026-27 on the subject line.

Paper comments:

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-2026-27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all submitted comments on its website (https://www.sec.gov/rules-regulations/public-comments/s7-2026-27). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. The Commission may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at www.sec.gov to receive notifications by email.

A summary of the proposal of not more than 100 words is posted on the Commission's website (https://www.sec.gov/rules-regulations/2026/08/s7-2026-27).

FOR FURTHER INFORMATION CONTACT: Patrick Faller, Special Counsel, Office of Chief Counsel, at (202) 551-3500, John Fieldsend, Special Counsel, Office of Rulemaking, at (202) 551-3430, or Irene Paik, Attorney-Advisor, Office of Crypto Assets, at (202) 551-2076, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to or proposing to add the following rules and forms:[1]

Commission Reference		CFR Citation (17 CFR)
Organization; Conduct and Ethics; and Information Requests	Rule 30-1	§ 200.30-1
Rules of Practice	Rule 431	§ 201.431
Regulation Crypto Assets	Rule 100 through 500	§§ 228.100 through 228.500
Securities Act of 1933 ("Securities Act")[2]	Rule 152	§ 230.152
	Rule 175	§ 230.175
	Form 1-CRYPTO	§ 239.600
	Form 1-KC	§ 239.601
	Form 1-SC	§ 239.602
	Form 1-UC	§ 239.603
	Form TR	§ 239.604
	Form NOR	§ 239.605
Regulation S-T	Rule 101	§ 232.101

1 The text of the forms listed in this table are located in the appendices of this release.

2 15 U.S.C. 77a *et seq*.

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I. INTRODUCTION

We are proposing new rules to create a tailored offering regime for certain investment contracts involving crypto assets.[3] We refer to those investment contracts throughout this release as "covered investment contracts."[4] The 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.

Since the advent of Bitcoin in 2008,[5] the crypto asset markets have grown significantly.[6] Although still only a fraction of the size of the global debt and equity markets,[7] the rapid rise in the market capitalization of crypto assets is one of several indicators of the growing importance of crypto assets to the global financial system.

Despite this growth, the Commission has not to date adapted its rules to address the unique aspects of the crypto asset markets. Instead, the Commission generally has looked to the

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3 Under the proposed rules, the term "crypto asset" would be defined to mean any digital representation of value that is recorded on a cryptographically-secured distributed ledger. *See* proposed 17 CFR 228.100. The term "distributed ledger" generally refers to databases that maintain information across a network of computers in a decentralized or distributed manner. These networks commonly use cryptographic protocols to ensure data integrity and consensus mechanisms to ensure data congruity. Blockchains are one type of distributed ledger, and they are often used to issue and transfer ownership of crypto assets.

4 Under the proposed rules, the term "covered investment contract" would be defined to mean a contract, transaction, or scheme that constitutes an investment contract; provided that the investment contract must meet the following requirements: (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. *See id.*

5 *See* Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System* (Oct. 31, 2008), *available at* https://bitcoin.org/bitcoin.pdf.

6 *See* President's Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology* 16 (July 30, 2025), *available at* https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf ("President's Working Group Report").

7 *See* Securities Industry and Financial Markets Association, *2025 Capital Markets Fact Book* 8 (July 28, 2025), *available at* https://www.sifma.org/wp-content/uploads/2024/07/2025-SIFMA-Capital-Markets-Factbook.pdf (noting that in 2024, the global fixed income markets outstanding was $145.1 trillion and the global equity market capitalization was $126.7 trillion).

test developed by the Supreme Court of the United States in *SEC v. W.J. Howey Co.*[8] (known as the "*Howey* test"[9]) to determine whether crypto assets, and transactions involving such assets, fall within the purview of the Federal securities laws. If the Federal securities laws applied, an issuer was required to comply with existing requirements.

Although relying on familiar and well-established legal standards in lieu of tailored rules has some merit, this approach has two primary drawbacks in the context of crypto assets. First, it can be difficult to apply the *Howey* test to crypto assets and transactions involving crypto assets. Second, the Commission's existing rules are not fully "fit-for-purpose" with respect to covered investment contract offerings. Both of these issues stem from the unique attributes of crypto assets. For example, although crypto assets may be subject to investment contracts (and, therefore, the Federal securities laws) when first offered or sold, the crypto assets may subsequently cease to be subject to investment contracts (at which point the Federal securities laws no longer would apply).[10] The Commission's existing rules generally do not contemplate or facilitate this type of evolution.[11] Further, many of the Commission's existing rules require issuers to provide disclosures that may not be relevant to investors in covered investment contract offerings. At the same time, those rules often do not elicit other types of disclosures that are likely to be material to such investors. In addition, the value of a crypto asset (and the success of the related network or application) often depends on the extent to which the crypto asset is

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8 328 U.S. 293 (1946).

9 The *Howey* test is discussed in more detail in section I.A.1 below. *See also Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets*, Release No. 33-11412 (Mar. 17, 2026) [91 FR 13714 (Mar. 23, 2026)] ("2026 Interpretation").

10 *See id.*

11 The fundamental nature of most non-crypto asset financial instruments does not change over time and, therefore, they either are permanently within or outside the scope of the Federal securities laws.

widely held and used—that is, the crypto asset's "network effects."[12] The Commission's existing exemptions have features that may impede such network effects. For example, securities issued pursuant to the Commission's existing exemptions may be restricted securities[13] or otherwise subject to resale restrictions.[14] Those exemptions also may limit the extent to which an issuer may sell securities to retail investors,[15] which could result in concentrated (rather than widespread) holdings.

Without fit-for-purpose rules, existing regulatory requirements, many of which were adopted well before the proliferation of crypto assets, could complicate an issuer's transaction planning and, in turn, impede capital formation and innovation in the crypto asset markets. Furthermore, in response to these regulatory challenges, some issuers may choose to conduct their crypto asset transactions offshore, limiting investment options (and, therefore, the ability to diversify) for U.S. investors or exposing them to additional risks from participating in markets with less robust investor protections.

The Commission recently took steps to address these issues by clarifying its views on the application of the *Howey* test to crypto assets and transactions involving crypto assets.[16] These proposed rules are intended to complement those efforts. Similar to the Commission's historical approach of creating bespoke frameworks for certain other unique asset classes (such as asset-

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12 *See* 2026 Interpretation at n.52 (stating that the term "'network effects' refers to the phenomenon where the value, use, and security of a crypto system increase as more users participate and interact with the crypto system").

13 *See, e.g.*, 17 CFR 230.144(a)(3)(ii) (providing that the term "restricted securities" incudes "[s]ecurities acquired from the issuer that are subject to the resale limitations of § 230.502(d) under Regulation D").

14 *See, e.g.*, 17 CFR 227.501 (imposing a one-year restriction on resales of securities issued pursuant to Regulation Crowdfunding).

15 *See, e.g.*, 17 CFR 230.506(c)(2)(i) (requiring that all purchasers of securities sold in any offering under the exemption to be "accredited investors," as defined in 17 CFR 230.501(a)).

16 *See* 2026 Interpretation.

backed securities[17] and real estate investment trusts[18]), the proposed rules would establish an offering framework specifically tailored to covered investment contracts, thereby reducing compliance costs for issuers and delays caused by regulatory uncertainty, while, at the same time, ensuring that investors are adequately protected and well-informed.[19]

A. The Commission's Regulatory Approach to Crypto Assets

1. Approach Before 2025

Although the Commission and its staff began engaging with crypto assets as early as 2013,[20] the Commission first issued an analytical framework for applying the Federal securities laws to crypto assets and crypto asset-related transactions in 2017. At that time, there was an increased interest in capital raising transactions involving crypto assets often referred to as "initial coin offerings" or "ICOs."[21] One such ICO involved the issuance of crypto assets called

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[17] *See, e.g.*, Regulation AB, 17 CFR 229.1100 through 17 CFR 229.1125.

[18] *See, e.g.*, 17 CFR 239.18.

[19] While the Commission's rules for asset-backed securities and real estate investment trusts provide a framework for conducting registered offerings, the proposed offering framework for covered investment contracts would provide exemptions from registration and a conditional safe harbor. This difference reflects the fact that many crypto asset projects are intended to develop in such a way that the related crypto assets subsequently will cease to be subject to investment contracts. *See* section II.B.1 (discussing the need for the proposed startup exemption). There may be other securities involving crypto assets, such as digital securities, that are not expected to undergo such evolution and that may be more suitable for registration. We are not, at this time, proposing to amend our rules and forms governing registered offerings to address these other matters related to crypto assets.

[20] The first registration statement for the offer and sale of a crypto asset exchange-traded product was filed with the Commission in 2013. *See* Form S-1 Registration Statement filed with the Commission on July 1, 2013, https://www.sec.gov/Archives/edgar/data/1579346/000119312513279830/d562329ds1.htm.

[21] Generally, ICOs involve the issuance of crypto assets in exchange for cash or other consideration intended to fund the development of crypto asset networks and applications. ICOs often proceed as follows: A developer (or a team of developers) publishes a "whitepaper" that describes the technical specifications and other relevant details of a crypto asset project. See *infra* note 156 for a discussion of the term "whitepaper." At the time of the ICO, development of the project is in the early stages or has not yet begun and, therefore, the developer is seeking to raise capital to fund development of the project. Based on the information provided in the whitepaper, investors transfer cash or other consideration to the developer in exchange for crypto assets (or the promise of a future issuance of such assets, once the project is sufficiently complete). The ICO participants (both the developers and investors) contemplate that the project eventually will be completed, at which time the investors may, among other things, transfer their crypto assets (sometimes referred to as "tokens") or use them to access certain features in the crypto asset network or application.

"DAO Tokens" by an unincorporated organization named "The DAO."[22] In July 2017, the Commission issued the "DAO Report," which was a report of an investigation pursuant to section 21(a) of the Securities Exchange Act of 1934 ("Exchange Act")[23] with respect to the ICO of DAO Tokens.[24] In the DAO Report, the Commission found that the ICO constituted an offer and sale of securities subject to the Federal securities laws because, pursuant to the *Howey* test, the DAO Tokens were being offered and sold as "investment contracts."[25]

In the years following the DAO Report, the Commission and its staff continued to address ICOs (and crypto assets in general) on an ad hoc basis.[26] Consistent with the DAO Report, the Commission's general approach was to apply the *Howey* test to determine whether a crypto asset, in the context in which it was being offered and sold, constituted or was subject to an investment contract. If the crypto asset constituted or was subject to an investment contract, then the issuer of the investment contract was expected to comply with the existing Federal securities laws.

Some Commissioners and other commentators expressed concerns about the

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22 *See Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO*, Release No. 34-81207 (July 25, 2017) ("DAO Report").

23 15 U.S.C. 78a *et seq*.

24 *See* DAO Report.

25 *See id.* at 11-15. The definition of "security" in both the Securities Act and the Exchange Act enumerates several instrument types, including "investment contract." *See* 15 U.S.C. 77b(a)(1); 15 U.S.C. 78c(a)(10). The definitions are "virtually identical" in the Securities Act and Exchange Act and are treated by the courts as identical in "decisions dealing with the scope of the term." *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 686 n.1 (1985). Under the *Howey* test, the term "investment contract" means any contract, transaction, or scheme whereby a person invests money in a common enterprise and reasonably expects profits to be derived from the essential managerial efforts of others. *Howey*, 328 U.S. at 298-99.

26 *See, e.g.*, *Gladius Network LLC*, Release No. 33-10608 (Feb. 20, 2019); *Paragon Coin, Inc.*, Release No. 33-10574 (Nov. 16, 2018); *In re Munchee, Inc.*, Release No. 33-10445 (Dec. 11, 2017); Division of Corporation Finance no-action letter to *IMVU, Inc.* (Nov. 19, 2020); Division of Corporation Finance no-action letter to *Pocketful of Quarters, Inc.* (July 25, 2019); Division of Corporation Finance no-action letter to *TurnKey Jet, Inc.* (Apr. 3, 2019).

Commission's approach to crypto assets during this period.[27] Some described that approach as "regulation by enforcement," stating that the Commission pursued enforcement actions against crypto asset issuers for alleged violations of the Federal securities laws rather than developing a tailored regulatory framework that accommodates crypto asset innovation and entrepreneurship.[28] Others stated that the Commission's existing regulatory framework, which was designed with traditional securities (e.g., stocks and bonds) in mind, is unfit for application to covered investment contracts.[29]

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[27] Similarly, during this period, the Commission received several rulemaking petitions regarding its regulatory approach to crypto assets and transactions involving crypto assets. *See, e.g.*, Coinbase Global, Inc., *Rulemaking petition requesting that the Commission propose and adopt rules to govern the regulation of securities that are offered and traded via digitally native methods, including potential rules to identify which digital assets are securities* (July 21, 2022); J.W. Verret, *Petition for Rulemaking to request that the Commission issue an open call for comment from the public regarding the need for flexibility in the application of the federal securities laws to digital assets in order to initiate an open-sourced redesign of regulations enforced pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and the Investment Company Act of 1940, and other laws enforced by the SEC* (Jan. 22, 2022); Vincent Molinari, Sustainable Holdings, PBC, *Request the Commission provide regulatory clarity with respect to the regulation of a new form of digital assets – non-fungible tokens* (Apr. 12, 2021); Vincent R. Molinari, Templum Markets, LLC, *Rulemaking petition on digital asset mining (Revised)* (Apr. 4, 2019); Vincent R. Molinari, Templum, Inc., *Request for rulemaking to address how digital assets are regulated once a trade occurs* (Dec. 12, 2018); Vincent R. Molinari, Liquid M Capital, LLC, *Rulemaking petition related to issuance of initial coin offerings that took place prior to the promulgation of related guidance by the Commission* (Jan. 26, 2018); Vincent Molinari, Ouisa Capital, *Rulemaking petition regarding the regulation of digital assets and blockchain technology* (Mar. 15, 2017). The Commission has considered these petitions in connection with the proposed amendments, and the proposed amendments address several aspects of the petitions.

[28] *See, e.g.*, Commissioner Hester M. Peirce, *Outdated: Remarks before the Digital Assets at Duke Conference* (Jan. 20, 2023), *available at* https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-duke-conference-012023 ("Why not set forth a coherent legal framework in a rule? After all, if we continued with our regulation-by-enforcement approach at our current pace, we would approach 400 years before we got through the tokens that are allegedly securities. By contrast, an SEC rule would have universal—albeit not retroactive—coverage as soon as it took effect."); Commissioner Mark T. Uyeda, *Remarks at the "SEC Speaks" Conference 2022* (Sept. 9, 2022), *available at* https://www.sec.gov/newsroom/speeches-statements/uyeda-speech-sec-speaks-090922; Commissioner Mark T. Uyeda, *Remarks at the "SEC Speaks" Conference 2025* (May 19, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-sec-speaks-051925.

[29] *See, e.g.*, Brady Dale, *What SEC disclosure for crypto assets could look like*, AXIOS (Sept. 5, 2024), *available at* https://www.axios.com/2024/09/05/crypto-blockchain-sec-disclosure-regisrations-s1. Although commentators often referred to crypto assets that are subject to an investment contract, they did not use the term "covered investment contracts," as that is a new term that we are proposing to define in Regulation Crypto Assets. Nonetheless, we believe many of the views commentators expressed would apply equally to covered investment contracts (as we propose to define that term). For the sake of convenience and consistency, therefore, we use that term throughout this release.

2. Developments Beginning in 2025

a. Crypto Task Force and President's Working Group

In early 2025, the Commission's approach to crypto assets began to shift. The Commission's Acting Chairman Mark T. Uyeda established a Crypto Task Force.[30] The Crypto Task Force's focus is to support the Commission's efforts to draw clear regulatory lines, appropriately distinguish securities from non-securities, craft tailored disclosure frameworks, provide realistic paths to registration for both crypto assets and market intermediaries, ensure that investors have the information necessary to make investment decisions, and make sure that enforcement resources are deployed judiciously.[31] To this end, the Crypto Task Force has hosted a series of roundtables,[32] held meetings with members of the public,[33] and solicited and received written input from members of the public.[34] That written input is described in more detail in section I.B below.

In addition, as part of an effort to provide greater clarity on the application of the Federal securities laws to crypto assets, the Commission's Division of Corporation Finance issued a series of staff statements beginning in February 2025. These statements provided the Division's views regarding the application of the Federal securities laws to various crypto asset-related

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30 *See* U.S. Securities and Exchange Commission, Crypto Task Force, *available at* https://www.sec.gov/about/crypto-task-force.

31 *See id.*

32 *See* U.S. Securities and Exchange Commission, Crypto Task Force Roundtables, *available at* https://www.sec.gov/about/crypto-task-force/crypto-task-force-roundtables.

33 *See* U.S. Securities and Exchange Commission, Crypto Task Force Meetings, *available at* https://www.sec.gov/about/crypto-task-force/crypto-task-force-meetings.

34 *See* U.S. Securities and Exchange Commission, Crypto Task Force Written Input, *available at* https://www.sec.gov/about/crypto-task-force/crypto-task-force-written-input.

matters, including meme coins,[35] proof-of-work mining activities,[36] stablecoins,[37] offerings and registrations of securities in the crypto asset markets,[38] protocol staking activities,[39] crypto asset exchange-traded products,[40] liquid staking activities,[41] and tokenized securities.[42]

Further, President Donald J. Trump issued an executive order titled "Strengthening American Leadership in Digital Financial Technology" on January 23, 2025.[43] This executive order, among other things, established the President's Working Group on Digital Asset Markets

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35 *See* U.S. Securities and Exchange Commission, Division of Corporation Finance, *Staff Statement on Meme Coins* (Feb. 27, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins. This statement and any other staff statement referenced in this release is not a rule, regulation, guidance, or statement of the Commission, and the Commission has neither approved nor disapproved its content. Staff statements have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

36 *See* U.S. Securities and Exchange Commission, Division of Corporation Finance, *Statement on Certain Proof-of-Work Mining Activities* (Mar. 20, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025.

37 *See* U.S. Securities and Exchange Commission, Division of Corporation Finance, *Statement on Stablecoins* (Apr. 4, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425.

38 *See* U.S. Securities and Exchange Commission, Division of Corporation Finance, *Offerings and Registrations of Securities in the Crypto Asset Markets* (Apr. 10, 2025) ("CF Disclosure Statement"), *available at* https://www.sec.gov/newsroom/speeches-statements/cf-crypto-securities-041025.

39 *See* U.S. Securities and Exchange Commission, Division of Corporation Finance, *Statement on Certain Protocol Staking Activities* (May 29, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925.

40 *See* U.S. Securities and Exchange Commission, Division of Corporation Finance, *Crypto Asset Exchange-Traded Products* (July 1, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/cf-crypto-asset-exchange-traded-products-070125.

41 *See* U.S. Securities and Exchange Commission, Division of Corporation Finance, *Statement on Certain Liquid Staking Activities* (Aug. 5, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/corpfin-certain-liquid-staking-activities-080525.

42 *See* U.S. Securities and Exchange Commission, Division of Corporation Finance, Division of Investment Management, and Division of Trading and Markets, *Statement on Tokenized Securities* (Jan. 28, 2026), *available at* https://www.sec.gov/newsroom/speeches-statements/corp-fin-statement-tokenized-securities-012826?utm_medium=email&utm_source=govdelivery; *see also* U.S. Securities and Exchange Commission, Division of Trading and Markets, *Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology* (last reviewed or updated Feb. 19, 2026), *available at* https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology?utm_medium=email&utm_source=govdelivery.

43 Exec. Order No. 14178, *Strengthening American Leadership in Digital Financial Technology* (Jan. 23, 2025) [90 FR 8647 (Jan. 31, 2025)] ("Exec. Order No. 14178").

("President's Working Group")—composed of the Chairman of the Commission and the heads of several other Federal departments agencies—and directed the President's Working Group to "propose a Federal regulatory framework governing the issuance and operation of digital assets."[44]

On July 30, 2025, the President's Working Group issued a report consisting of several regulatory recommendations.[45] Some of those recommendations were directed at the Commission, including that the Commission should use its rulemaking and exemptive authority under the Securities Act to:

- Establish a fit-for-purpose exemption from registration under section 5 of the Securities Act for securities distributions involving digital assets;[46]
- Establish a time-limited safe harbor or exemption from certain securities law requirements for transactions involving digital assets that may be subject to an investment contract because they are not yet fully functional or associated with a sufficiently decentralized[47] network to allow for progressive functionality or decentralization; and
- Establish a safe harbor for certain airdrops from characterization as "sales" under section 2(a)(3) of the Securities Act[48] or an exemption from the corresponding registration requirements under section 5 of the Securities Act.

On July 31, 2025, following publication of the President's Working Group Report,

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44 *Id.* at section 4(c)(i).

45 *See* President's Working Group Report at 141-59.

46 The term "digital asset" is defined in the executive order as referring to "any digital representation of value that is recorded on a distributed ledger, including cryptocurrencies, digital tokens, and stablecoins." Exec. Order No. 14178 at section 2(a).

47 *See* President's Working Group Report at 20 ("The term 'decentralized' typically refers to the use of blockchain technologies to provide financial or nonfinancial services on a peer-to-peer basis.").

48 15 U.S.C. 77b(a)(3).

Commission Chairman Paul S. Atkins announced the launch of "Project Crypto"—a Commission-wide initiative to modernize the Federal securities rules and regulations—and directed the Commission's staff "to swiftly develop proposals to implement the [President's Working Group's] recommendations."[49] Among other things, Chairman Atkins directed the staff to "work to develop clear guidelines that market participants can use to determine whether a crypto asset is a security or subject to an investment contract" and "for those crypto asset transactions that are subject to the securities laws, . . . to propose purpose-fit disclosures, exemptions, and safe harbors, including for so-called 'initial coin offerings,' 'airdrops,' and network rewards."[50]

b. 2026 Interpretation

On March 17, 2026, the Commission issued a release titled *Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets* ("2026 Interpretation").[51] That release set forth an interpretation of the definition of "security" as applied to crypto assets and transactions involving crypto assets. Among other things, the 2026 Interpretation classified crypto assets into categories and analyzed each category under the definition of "security." Specifically, the release classified crypto assets into the following five categories based on their characteristics, uses, and functions: (i) digital commodities; (ii) digital collectibles; (iii) digital tools; (iv) stablecoins; and (v) digital securities. The release provided the Commission's view that digital securities are securities, stablecoins may or may not be securities depending on their characteristics, and digital commodities, digital

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49 Chairman Paul S. Atkins, *American Leadership in the Digital Finance Revolution* (July 31, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125.

50 *Id.*

51 *See* 2026 Interpretation.

collectibles, and digital tools are not themselves securities.[52]

The 2026 Interpretation further explained that, as with any asset that is not a security, a non-security crypto asset can be offered and sold subject to an investment contract, which is a security.[53] The Commission acknowledged, however, the difficulty of applying the *Howey* test to crypto assets and transactions involving crypto assets and market participants' requests for guidance regarding the circumstances under which the Commission will characterize crypto assets as securities and transactions involving crypto assets as securities transactions. To address those challenges and requests, and to provide greater clarity regarding the treatment of crypto assets under the Federal securities laws, the 2026 Interpretation addressed how non-security crypto assets become subject to, and how they cease to be subject to, an investment contract.

With respect to how non-security crypto assets become subject to an investment contract, the 2026 Interpretation noted that how an issuer markets and promotes a contract, transaction, or scheme is relevant to assessing whether the issuer is offering or selling an investment contract and thus a security.[54] That is, 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.

Under such circumstances, secondary market offers and sales of such a non-security crypto asset would constitute securities transactions that must be registered under the Securities

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52 *See id.* at 13717. The 2026 Interpretation also noted that there may be crypto assets that do not fall within any of these five categories, as well as crypto assets with hybrid characteristics that may fall within more than one category.

53 *Id*.

54 *Id.* at 13721.

Act or conducted pursuant to an available exemption from registration. The associated investment contract will continue to be transferred to subsequent purchasers of the non-security crypto asset in secondary market transactions until the non-security crypto asset separates from the issuer's representations or promises, as discussed below. Market participants should refer to the 2026 Interpretation for a more complete discussion of the Commission's views as to the circumstances under which a non-security crypto asset may become subject to an investment contract.

With respect to how a non-security crypto asset that was previously offered and sold subject to an investment contract ceases to be subject to such investment contract, the 2026 Interpretation stated that for the non-security crypto asset to remain subject to the investment contract, purchasers must continue to reasonably expect the issuer's representations or promises to engage in essential managerial efforts to remain connected to the non-security crypto asset.[55] The 2026 Interpretation also stated that, when a purchaser of a non-security crypto asset that had been subject to an investment contract could no longer reasonably expect the issuer's representations or promises to engage in essential managerial efforts to remain connected to the non-security crypto asset, the non-security crypto asset separates from such representations or promises, and thereafter the non-security crypto asset is not subject to the Federal securities laws. The 2026 Interpretation set forth the Commission's view that a non-security crypto asset would no longer be subject to an investment contract when: (1) the issuer has fulfilled its representations or promises to engage in essential managerial efforts, or (2) the purchaser would not reasonably expect the issuer to be able to fulfill or to continue to engage in the essential

[55] *See id.* at 13722.

managerial efforts it represented or promised it would undertake. Market participants should refer to the 2026 Interpretation for a more complete discussion of the Commission's views as to the circumstances under which a non-security crypto asset may separate from and cease to be subject to an investment contract.

The 2026 Interpretation also set forth the Commission's views regarding the investment contract status of certain crypto asset disseminations known as "airdrops." The Commission noted that "[a]n 'airdrop' is a means for crypto asset issuers to disseminate their crypto assets in exchange for no or nominal consideration" and discussed some of the reasons why an issuer may conduct an airdrop.[56] The Commission then provided its interpretation with respect to airdrops of non-security crypto assets to recipients who do not provide the issuer with money, goods, services, or other consideration in exchange for the airdropped non-security crypto asset. Specifically, the Commission stated that, in those circumstances, "the non-security crypto asset does not become subject to an investment contract because the first element of the *Howey* test—requiring an investment of money—is not met."[57] Market participants should refer to the 2026 Interpretation for a more complete discussion of the Commission's views regarding the investment contract status of airdrops.[58]

B. Written Input Provided to the Crypto Task Force

The Crypto Task Force was established on January 21, 2025 to "develop[] a

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56 *Id.* at 13730 ("Issuers use airdrops for a variety of reasons, such as to generate interest in and expand ownership and use of their crypto assets, reward early users or loyalty of users of a crypto system, promote a software application, build a community, decentralize governance authority with respect to an open-source crypto system, or award high-scoring players of an associated video game.").

57 *Id.* at 13731.

58 *See also infra* note 200 and accompanying text for a discussion of airdrops in the context of the startup exemption.

comprehensive and clear regulatory framework for crypto assets."[59] One month later, Commissioner Hester M. Peirce published a statement inviting input from the public on "some of the questions with which the Task Force is wrestling."[60] Those questions were categorized according to the following 10 topics: (1) Security Status; (2) Scoping Out; (3) Public Offerings; (4) Safe Harbor from Registration; (5) Trading; (6) Custody; (7) Crypto Lending; (8) Crypto Exchange-Traded Products; (9) Tokenized Securities; and (10) Sandbox and Related International Issues.[61]

To date, the Crypto Task Force has received over 300 comment letters.[62] Commenters include issuers, investors, law firms and legal professionals, audit and accounting professionals and firms, academics, professional and investor associations and organizations, investment companies and advisors, market intermediaries, service providers, network foundations, foreign entities, other crypto asset market participants, and other members of the public. Although we have considered all the comments received, the most relevant comments for purposes of this proposal were those that addressed the following four topics: Security Status, Scoping Out, Public Offerings, and Safe Harbor from Registration. We have summarized below some of the most significant themes from the comments received on each of these topics. As discussed in section I.A.2.b above, the Commission addressed many of the points raised by the "Security Status" and "Scoping Out" comments in the 2026 Interpretation. Nonetheless, some of those

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59 U.S. Securities and Exchange Commission, *Crypto Task Force Designation Letter from Acting Chairman Mark T. Uyeda* (Feb. 4, 2025), *available at* https://www.sec.gov/files/crypto-task-force-designation-letter.pdf.

60 Commissioner Hester M. Peirce, *There Must Be Some Way Out of Here* (Feb. 21, 2025), *available at* https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125 ("Cmr. Peirce Request for Input").

61 *Id.*

62 The comment letters are available at https://www.sec.gov/about/crypto-task-force/crypto-task-force-written-input. Unless otherwise specified, all references in this release to comment letters are to the written input submitted to the Crypto Task Force.

comments (e.g., those that express a concern about a current lack of regulatory clarity) are relevant for the proposed rules.

1. Security Status

With respect to the "Security Status" topic, Commissioner Peirce noted that "[m]arket participants have expressed a reasonable desire to determine with ease whether . . . [a given crypto] asset is a security or is being offered or sold as part of an investment contract."[63] She further observed that "[m]arket participants have expressed concern that the *Howey* test, as the Commission has applied it, is a complex analysis that can be difficult to apply consistently."[64] To address those concerns, Commissioner Peirce stated that the Crypto Task Force was seeking to "make it easier for investors, market participants, and the Commission to categorize crypto assets and crypto asset transactions."[65] The four questions in this category sought to solicit input on this point.

Several commenters that addressed these questions stated that many crypto assets are not themselves necessarily securities.[66] For example, one commenter stated that "crypto assets should be viewed as commodities that may be *offered and sold* as securities based on an assessment of the facts and circumstances of a particular offering, but do not intrinsically have the characteristics of securities."[67] At the same time, some commenters also acknowledged that

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63 Cmr. Peirce Request for Input.

64 *Id.*

65 *Id.*

66 *See, e.g.*, letters from a16z, *Comments on the SEC Crypto Task Force's Questions Concerning the Security Status of Crypto Assets* (Mar. 13, 2025) ("a16z 1"); Lewis Rinaudo Cohen (Mar. 20, 2025) ("L. Cohen"); Nasdaq, Inc. (Apr. 25, 2025) ("Nasdaq"); Perkins Coie LLP (Apr. 23, 2025) ("Perkins Coie 1"); Ripple Labs Inc. (Mar. 21, 2025) ("Ripple 1"); Ripple Labs Inc. (Jan. 9, 2026) ("Ripple 2"); The Digital Chamber (Apr. 28, 2025) ("TDC 1").

67 Letter from Perkins Coie 1 (emphasis in original).

some crypto assets, including those referred to as "digital securities," "tokenized securities," or something similar, are themselves securities.[68]

Several commenters described difficulty associated with the *Howey* test and requested additional clarity from the Commission regarding the application of that test to crypto assets and transactions involving such assets.[69] One commenter expressed the view that "the [*Howey*] test is subjective and has led to inconsistent and controvertible results."[70] According to the commenter, the *Howey* test's "shortcomings are evidenced by the bevy of SEC enforcement actions taken over the past few years, which arose from fierce disputes as to whether digital assets of varying types constituted securities."[71] Another commenter stated that the *Howey* test is unpredictable, difficult to enforce, impractical to apply, and of uncertain bounds.[72]

Further, some commenters suggested that the level of a crypto network's decentralization is essential for determining whether a crypto asset is the subject of an investment contract.[73] According to one commenter, "[t]he degree of centralized control and the extent of 'ongoing efforts' could be used as factors to distinguish between a commodity and a security."[74] Another commenter stated that "[a] digital asset does not satisfy [the *Howey*] test when no one has

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68 *See, e.g.*, letters from Coinbase Global, Inc. (Mar. 19, 2025) ("Coinbase"); Nasdaq; Perkins Coie 1.

69 *See, e.g.*, letters from Alternative Investment Management Association (Mar. 25, 2025) ("AIMA"); a16z 1; Blockchain Research Lab (Feb. 18, 2025); Figure Markets (Mar. 25, 2025) ("Figure Markets"); Foley & Lardner LLP (Mar. 20, 2025) ("Foley & Lardner"); Nasdaq. *But see, e.g.*, letter from Lee Reiners, Lecturing Fellow, Duke University (Mar. 21, 2025) (suggesting that the *Howey* test provides a viable regulatory taxonomy for crypto assets and transactions involving such assets).

70 Letter from Nasdaq.

71 *Id.*

72 *See* letter from a16z 1.

73 *See, e.g.*, letters from AIMA; a16z, *Recommendations Regarding a Safe Harbor for Certain Airdrops and Incentive-Based Rewards of Network Tokens* (Mar. 13, 2025) ("a16z 2"); Crypto Council for Innovation (May 29, 2025) ("Crypto Council"); Jump Crypto (May 1, 2025) ("Jump Crypto"); J.W. Verret (Feb. 23, 2025); Perkins Coie 1.

74 Letter from AIMA.

unilateral control over the protocol underlying the asset because, under those circumstances, there is no 'common enterprise' run by a "manage[r]' or 'promoter.'"[75] By contrast, one commenter stated that "'decentralization', while highly relevant for user confidence and the overall success of the crypto asset sector, is not necessarily the best bright-line standard for determining when securities law applies to crypto asset transactions."[76] Similarly, another commenter stated that "[b]ecause 'decentralization' is not a binary state, but a subjective and often fluid continuum involving code contribution, node distribution, economic factors, and governance participation and control, relying on it for legal classification introduces intolerable uncertainty."[77]

Finally, several commenters recommended that the Commission clarify the application of the Federal securities laws to certain technology functions that are inherent to a crypto network.[78] Examples of such functions include mining, staking, and validating. One commenter requested "guidelines that distinguish between tokens used for network operations and those structured as investment instruments. Tokens used for staking, governance, or paying [transaction] fees enable blockchain functionality rather than serving as investment vehicles."[79]

2. Scoping Out

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75 Letter from Jump Crypto.

76 Letter from L. Cohen.

77 Letter from Ripple 2; *see also* letter from Teresa Goody Guillén (Jan, 26, 2026) ("Goody Guillén") ("Decentralization is multifaceted and, in some cases, borders on illusory; it is often conflated with distributed; and it does not guarantee reduced risk or accountability. . . . The key question should not be 'is it decentralized' but whether residual risk is reduced by design, and if not, how to address it.").

78 *See, e.g.*, letters from AIMA; a16z 1; Cardano Foundation (Apr. 22, 2025) ("Cardano"); Coinbase; Dragonchain (Mar. 10, 2025) ("Dragonchain"); SIFMA (May 9, 2025) ("SIFMA 1"); TDC 1.

79 Letter from AIMA.

With respect to the "Scoping Out" topic, Commissioner Peirce stated that "[t]he Commission may be able to provide greater clarity to investors and other market participants by identifying categories of crypto assets (and transactions) that do not fall within its authority."[80] As such, the two questions on this topic solicited input on whether "the security status of certain categories of crypto assets [should] be addressed" and how to "establish a workable taxonomy while remaining merit- and technology-neutral."[81]

Commenters generally agreed that it would be helpful for the Commission to clarify the security status of different types of crypto assets and transactions involving crypto assets.[82] Many of those commenters suggested that, in determining security status, the Commission look to the economic substance of a particular crypto asset or associated network or application rather than the technological form of such asset, network, or application.[83] One commenter emphasized "the importance of adopting a principles-based approach that is merits-based, technology-neutral, focuses on the economic substance and risks of specific digital assets (rather than their technological form), and primarily considers an asset's function as the basis of determining its status as a security."[84] Another commenter suggested not "fixat[ing] on classification" but "regulating residual risk across three axes: agency risk, derivative risk, and market-integrity risk."[85]

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[80] Cmr. Peirce Request for Input.

[81] *Id.*

[82] *See, e.g.*, letters from AIMA; Cardano; Edward Lee (Apr. 1, 2025); Ethena Labs, S.A. (June 11, 2025); Figure Markets; Foley & Lardner; Josh Lawler (Mar. 17, 2025) ("J. Lawler"); National Society of Compliance Professionals (Sept. 8, 2025); SIFMA 1; Polsinelli PC (on behalf of The Digital Chamber) (June 27, 2025).

[83] *See, e.g.*, letters from AIMA; Cardano; SIFMA 1.

[84] Letter from SIFMA 1.

[85] Letter from Goody Guillén.

3. Public Offerings

With respect to the "Public Offerings" topic, Commissioner Peirce stated that "[p]eople who have conducted or attempted to conduct registered or qualified token offerings have expressed frustration about the cost and feasibility of registration."[86] Commissioner Peirce further noted that "[t]okens and their issuers can differ significantly in some aspects from traditional securities and their issuers."[87] Accordingly, Commissioner Peirce's statement solicited input on several aspects of this topic, including whether the Commission should develop tailored disclosure requirements for covered investment contracts and whether Regulation A "provide[s] a useful vehicle to conduct offerings" of covered investment contracts.[88]

Several commenters suggested that the Commission's existing offering regimes, including the related disclosure requirements, are unfit for application to covered investment contracts and their issuers.[89] For example, some commenters expressed the view that the

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[86] Cmr. Peirce Request for Input.

[87] *Id.*

[88] *Id.* Although commenters often referred to crypto assets that are subject to an investment contract when providing feedback to the Crypto Task Force, they did not use the term "covered investment contracts," as that is a new term that we are proposing to define in Regulation Crypto Assets. Nonetheless, we believe many of the views commenters expressed would apply equally to covered investment contracts (as we propose to define that term). For the sake of convenience and consistency, therefore, we use that term throughout this release, including when describing commenter input.

[89] *See, e.g.*, letters from a16z 2; a16z (May 1, 2025) ("a16z 3"); AIMA; Anderson P.C. (May 12, 2025) ("Anderson"); L. Cohen; Coinbase; CoinList (July 9, 2025) ("CoinList"); Crowdfunding Professional Association (June 13, 2025) ("CfPA"); Figure Markets; Global Digital Assets and Cryptocurrency Association (May 16, 2025) ("GDCA"); J. Lawler; Nasdaq; SIFMA (June 11, 2025) ("SIFMA 2"); The Digital Chamber (June 26, 2025) ("TDC 2"). One commenter conducted a survey of 2,000 self-identified crypto asset investors. *See* letter from Broadridge Financial Solutions (Apr. 29, 2025) ("Broadridge"). The results of that survey "show that individuals regard traditional types of disclosure information as important in making and monitoring crypto investments," including "information on risks, financial overview, management, and governance." *Id.* The commenter further noted that "[b]y contrast, survey respondents rated information on tokenomics, network/platform activity, and perspective of the core team *lower in importance*." *Id.* (emphasis in original).

Commission's current disclosure framework is not tailored to elicit the types of information that are likely to be material to investment decisions with respect to covered investment contracts.[90] As such, several commenters shared recommendations regarding the types of information that the Commission should mandate if it were to adopt a tailored disclosure regime with respect to crypto assets.[91] The information they recommended for disclosure includes the ecosystem and governance mechanism with respect to a crypto asset, plans of development for a crypto network or allocation, and source code security.[92]

In addition, several commenters generally supported Regulation A as a potential starting point or model for a covered investment contract offering framework.[93] Some commenters, however, identified certain features of Regulation A that either make it ill-suited or unavailable for covered investment contract offerings. Commenters noted, for example, that Regulation A is available only with respect to offerings of equity securities, debt securities, and equity-related convertible securities.[94] Commenters also pointed to the difficulty of complying with State securities laws with respect to securities purchased in Regulation A offerings, including because

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The commenter concluded, however, that these survey results "suggest[] that [the surveyed investors] are unaware of the importance of other relevant information that is helpful in evaluating and monitoring investments in these asset classes." *Id.* As a result, the commenter stated that "[t]ailored disclosures, together with greater financial literacy education, can support robust growth in the crypto asset markets, and protect investors by affording them high levels of innovation and greater choice." *Id.*

90 *See, e.g.*, letters from a16z 3; AIMA; Anderson; Broadridge; CfPA; L. Cohen; Coinbase; GDCA; Nasdaq; TDC 2.

91 *See, e.g.*, letters from a16z 3; Ava Labs Inc. (Sept. 3, 2025); CfPA; Coinbase; GDCA; Joon Kim (Mar. 6, 2025) ("J. Kim"); Nasdaq; SIFMA 2.

92 *See, e.g.*, letter from Coinbase.

93 *See, e.g.*, letters from a16z 3; CfPA; DealMaker (May 30, 2025) ("DealMaker"); Figure Markets; CrowdCheck Law (Mar. 19, 2025) ("CrowdCheck Law"); Nasdaq; TDC 2.

94 *See, e.g.*, letters from CrowdCheck Law; TDC 2. Eligible securities under Regulation A are defined as "[e]quity securities, debt securities, and securities convertible or exchangeable to equity interests, including any guarantees of such securities, but not including asset-backed securities as such term is defined in Item 1101(c) of Regulation AB." 17 CFR 230.261(c).

the Federal securities laws do not preempt State law with respect to secondary market transactions in such securities.[95]

4. Safe Harbor from Registration

Finally, the "Safe Harbor from Registration" topic solicited input on several aspects of a potential "time-limited exemption from the registration requirements under the Securities Act for offers and sales of crypto assets during the development of a blockchain project" that Commissioner Peirce first suggested in 2020.[96] Among other things, this potential exemption would "provide network developers with a grace period within which, under certain conditions, they can facilitate broad participation in and the development of a functional or decentralized network."[97] At the end of this grace period, "token transactions may not be securities transactions if the network had matured into a decentralized or functioning network that is not dependent on a single person or group to carry out the essential managerial or entrepreneurial efforts."[98] Commissioner Peirce's statement solicited input on several aspects of her suggested exemption.

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95 *See, e.g.*, letters from CrowdCheck Law; DealMaker.

96 *See* Cmr. Peirce Request for Input (citing Commissioner Hester M. Peirce, *Token Safe Harbor Proposal 2.0* (Apr. 13, 2021) ("Cmr. Peirce Proposal 2.0"), *available at* https://www.sec.gov/newsroom/speeches-statements/peirce-statement-token-safe-harbor-proposal-20). Cmr. Peirce Proposal 2.0 is an updated version of the token safe harbor proposal Commissioner Peirce originally suggested in February 2020. *See* Commissioner Hester M. Peirce, *Running on Empty: A Proposal to Fill the Gap Between Regulation and Decentralization* (Feb. 6, 2020) ("Commissioner Peirce, Running on Empty"), *available at* https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-blockress-2020-02-06).

97 Cmr. Peirce Request for Input.

98 *Id.*

Many commenters generally supported a potential exemption along these lines.[99] One commenter stated that "[a] thoughtfully calibrated Safe Harbor—appropriately tailored to the realities, risks, and opportunities of digital assets and blockchain technologies—will provide important information to investors, eliminate information asymmetries, and protect investors, token holders, builders, and projects operating in this space while the long-term legislative and regulatory policymaking processes play out."[100] Some commenters also suggested modifications to the potential exemption.[101] For example, one commenter proposed a revised exemption with multiple modifications, including a clarification regarding the distinction between the "utility" path to non-security status and the "decentralization" path.[102] Another commenter suggested modifications intended to better protect investors from projects that remain subject to centralized control.[103]

C. Summary of the Proposed Rules

In light of the concerns raised about the Commission's approach to covered investment contracts before 2025 (as described in section I.A.1), the regulatory developments beginning in

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[99] *See, e.g.*, letters from Anderson; Coinbase; DeFi Education Fund (Apr. 18, 2025) ("DeFi Education Fund"); Figure Markets; Gabriel Shapiro (Mar. 14, 2025) ("G. Shapiro"); Hedera Hashgraph LLC (June 3, 2025); J. Kim; Jump Crypto; L. Cohen; Plume Network LLC (May 5, 2025); The Digital Chamber (May 21, 2025) ("TDC 3"). *But see, e.g.*, letter from CrowdCheck Law ("We believe that if an exemption under Regulation A is available, there would be no need for a safe harbor of the kind described."). One commenter supported the "intent behind" the potential exemption but stated "we do not support an exemption" because the commenter "believe[d] that legislation is ultimately necessary to foster the growth of the crypto asset industry, continued blockchain innovation and to ensure investor protection." Letter from DealMaker; *see also* letter from a16z 3 (supporting "strongly" the goal of the potential exemption but stating that "the Crypto Task Force can best achieve its mandate by deferring this matter to Congress in the near term"). The commenter also expressed concern that the potential exemption could "potentially encourage existing entrepreneurs who utilize Regulation A and Regulation [Crowdfunding] to pivot to 'token' offerings that are entirely exempt from SEC registration and many of the disclosure obligations that protect investors." Letter from DealMaker.

[100] Letter from DeFi Education Fund.

[101] *See, e.g.*, letters from a16z 3; DeFi Education Fund; G. Shapiro.

[102] Letter from G. Shapiro.

[103] *See* letter from a16z 3.

2025 (as described in section I.A.2), and the public input that commenters provided to the Crypto Task Force (as described in section I.B), we are proposing new rules with respect to covered investment contracts.[104]

The proposed rules would be set forth in a new regulation titled "Regulation Crypto Assets"[105] that would comprise the following subparts:

- Subpart A would contain general rules, many of which would be applicable to all the other rules in the regulation.[106] These general rules are discussed in section II.A below.
- Subpart B would set forth an exemption from the registration requirements of section 5 of the Securities Act[107] for certain offers, sales, and other distributions of covered investment contracts during a period of up to four years ("startup exemption").[108] As discussed in more detail in section II.B below, the startup exemption would permit offerings of up to $5 million during the four-year period.
- Subpart C would set forth an exemption from the registration requirements of section 5 of the Securities Act that would permit offerings of up to $75 million during each 12-month period ("fundraising exemption").[109] The mechanics of the fundraising exemption, discussed in more detail in section II.C below, would be modeled, in large part, on Regulation A[110] and would consist of two tiers with distinct offering limits.
- Subpart D would set forth a safe harbor from the term "investment contract" in the

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[104] See *supra* note 4 for the definition of "covered investment contract" under the proposed rules.

[105] *See* proposed 17 CFR part 228.

[106] *See* proposed 17 CFR 228.100 through 104.

[107] 15 U.S.C. 77e.

[108] *See* proposed 17 CFR 228.200.

[109] *See* proposed 17 CFR 228.300 through 307.

[110] *See* 17 CFR 230.251 through 263.

definitions of "security" in the Securities Act[111] and the Exchange Act[112] ("investment contract safe harbor").[113] As discussed in more detail in section II.D below, if the conditions of the investment contract safe harbor are satisfied, then a crypto asset would be deemed by the Commission not to be subject to an investment contract for purposes of those definitions of "security."

- Subpart E would define "qualified purchaser" for purposes of section 18(b)(3) of the Securities Act such that State securities law registration and qualification requirements would be preempted with respect to offers and sales of covered investment contracts issued pursuant to an exemption in Regulation Crypto Assets, as well as certain secondary market transactions with respect to such covered investment contracts. This proposed definition of "qualified purchaser" is discussed in section II.E below.

We also are proposing new forms that issuers would file with the Commission when relying on the exemptions and safe harbor in Regulation Crypto Assets. In addition, we are proposing conforming amendments to certain existing rules that would help implement the new rules in Regulation Crypto Assets.

We invite and encourage interested parties to submit comments on any aspect of the proposed rules. When commenting, please include the reasoning in support of your position or recommendation and provide any supporting documentation or data.

II. DISCUSSION OF PROPOSED RULES

A. Regulation Crypto Assets and General Rules (Subpart A, Rules 100 through

[111] 15 U.S.C. 77b(a)(1).

[112] 15 U.S.C. 78c(a)(10).

[113] *See* proposed 17 CFR 228.400.

104)

Under our proposal, the rules in Regulation Crypto Assets would be set forth in part 228 of Title 17, Chapter II of the Code of Federal Regulations ("CFR"). Consolidating all the rules into a single part titled "Regulation Crypto Assets" may facilitate compliance with the proposed rules, especially for those issuers that are less familiar with our rules or may otherwise be unsure where the relevant rules are located in the CFR.

Subpart A of Regulation Crypto Assets would include the following proposed rules, each of which would be applicable to all or some of the other rules in Regulation Crypto Assets:

- Proposed 17 CFR 228.100 ("Rule 100"), titled "Definitions of terms used in Regulation Crypto Assets," would set forth certain definitions that would apply to each of the proposed rules in Regulation Crypto Assets as well as the related forms.
- Proposed 17 CFR 228.101 ("Rule 101"), titled "General provisions," would contain a series of provisions generally applicable to Regulation Crypto Assets.
- Proposed 17 CFR 228.102 ("Rule 102"), titled "Inflation adjustment for offering limits," would establish a process whereby the proposed offering limits would be adjusted for inflation on an ongoing, predetermined basis without requiring the Commission to engage in notice and comment rulemaking each time it makes those routine adjustments.
- Proposed 17 CFR 228.103 ("Rule 103"), titled "Disclosure requirements," would set forth principles-based disclosure requirements that issuers would be required to satisfy under the startup exemption and the fundraising exemption.
- Proposed 17 CFR 228.104 ("Rule 104"), titled "Disqualification," would condition the availability of the startup exemption and the fundraising exemption on the issuer and certain other related persons and insiders not being disqualified as a "bad actor," as set

forth in 17 CFR 230.262(a) of Regulation A ("Rule 262(a)").

These proposed rules are discussed below.

1. Definitions (Rule 100)

a. Background

Although defined terms are important in every new regulation, they are particularly important for Regulation Crypto Assets for several reasons. As a relatively novel and highly technological asset class, it is important that terms related to crypto assets be defined clearly so that they can be understood by all market participants, regardless of their technological sophistication. Given the rapid pace of innovation in the crypto asset markets, it also is important that the terms be both accurate with respect to the current state of the technology and sufficiently flexible to cover potential developments in the market to avoid a need to continually revisit and update the definitions. In addition, because the rules in Regulation Crypto Assets are intended to be tailored to offerings with respect to a specific type of security (i.e., covered investment contracts), it is important that they be appropriately scoped to ensure that offerings of those securities, and only those securities, are eligible to utilize these rules. Much of that "scoping" would be accomplished through the proposed definitions in Rule 100.

b. Proposed Rule

Proposed Rule 100 would set forth certain definitions that would apply to each of the rules in Regulation Crypto Assets as well as the related forms. The following terms would be defined in Rule 100:

- "Aggregate offering price" and "aggregate sales";
- "Associated crypto application";
- "Associated crypto network";

- “Business day”;
- “Covered investment contract”;
- “Covered transaction”;
- “Crypto asset”;
- “Final offering circular”;
- “Related person”; and
- “Subject crypto asset.”

In addition, Rule 100 would provide that other than these specifically defined terms (and unless otherwise provided), the terms used in Regulation Crypto Assets (and in new forms, Form 1-CRYPTO, Form 1-KC, Form 1-SC, Form 1-UC, Form TR, and Form NOR, which would be codified at 17 CFR 239.600 through 605) will have the same meanings as in 17 CFR 230.405 (“Rule 405”), except that all references to “registrant” in those definitions will refer to the issuer of the securities to be offered and sold under Regulation Crypto Assets.

The term “aggregate offering price” would be defined as the sum of all cash and other consideration to be received for the covered investment contracts being offered.[114] The term “aggregate sales” would be defined as the gross proceeds for all securities sold pursuant to other offering statements under Regulation Crypto Assets within the 12 months before the start of, and during, the current offering of securities. When a mixture of cash and non-cash consideration is

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[114] Proposed 17 CFR 228.100. The aggregate offering price or aggregate sales would include, for example, permitted payment stablecoins received for the covered investment contracts being offered. Additionally, any fees paid by the investor in connection with the offering that reduce the amount of consideration received by the issuer would not count toward the offering limit. Alternatively, fees incurred by the issuer that it pays with the proceeds of the offering would not be deducted from the offering amount for purposes of determining the aggregate offering price or aggregate sales. These fees instead would constitute a use of proceeds and should be described, as appropriate, in the issuer’s disclosures.

to be received, the aggregate offering price or aggregate sales would be based on the price at which the covered investment contracts are offered for cash. Any portion of the aggregate offering price or aggregate sales attributable to cash received in a foreign currency must be translated into U.S. currency at a currency exchange rate in effect on, or at a reasonable time before, the date of the sale of the covered investment contracts.

If covered investment contracts are not offered for cash, the aggregate offering price or aggregate sales would be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Valuations of non-cash consideration would be required to be reasonable at the time made. The proposed definitions generally are consistent with the terms as defined in 17 CFR 230.501 ("Rule 501") of Regulation D and as used in 17 CFR 230.251 of Regulation A. The terms are primarily used in Regulation Crypto Assets to set the offering limits in the startup exemption and the fundraising exemption.

The term "associated crypto application" would be defined to mean, with respect to a crypto asset, the smart contract or similar executable software program that is deployed to an associated crypto network and within which such crypto asset may be used for the transmission or storage of value or for which the crypto asset facilitates access or participation. This term is used throughout Regulation Crypto Assets and is intended to capture the particular application in which a given crypto asset can be used for various functions.

The term "associated crypto network" would be defined to mean, with respect to a crypto asset, the blockchain or similar distributed ledger technology network on which such crypto asset is generated, minted, or mined. This term is used throughout Regulation Crypto Assets and is intended to capture the particular network to which a given crypto asset is "native" and on which records regarding ownership of and transactions in that crypto asset are recorded.

The term "business day" would be defined as any day except Saturdays, Sundays, or Federal holidays. This proposed definition is consistent with the definition of "business day" set forth in 17 CFR 230.261 of Regulation A. This term is used in several rules in Regulation Crypto Assets, generally with respect to deadlines for making certain filings with the Commission.

As noted above,[115] the term "covered investment contract" would be defined as a contract, transaction, or scheme that constitutes an investment contract; provided that the investment contract must meet the following requirements: (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. This term is used throughout Regulation Crypto Assets, as the startup exemption and the fundraising exemption are available only for offers and sales of covered investment contracts (i.e., issuers may not rely on those exemptions with respect to offers and sales of other types of securities[116]). Thus, to ensure that it has an appropriate scope, the definition: (1) includes investment contracts that involve a crypto asset,[117] (2) excludes investment contracts that involve

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115 *See supra* note 4.

116 As discussed in note 19 above, the proposed exemptions are tailored to covered investment contract offerings. To the extent an issuer is seeking to conduct an offering of other types of securities (including investment contracts that involve other types of securities or non-security assets other than crypto assets), we believe it would be more appropriate to use another offering framework, such as a registered offering or an exempt offering under Regulation A or Regulation D, that is likely better tailored to the security being offered. For example, to the extent the security being offered is an equity security, the existing disclosure frameworks (which contain more issuer-focused disclosures) are more likely to elicit material disclosures.

117 The term "investment contract" is not defined in Rule 100. Issuers and other market participants should refer to the 2026 Interpretation for guidance as to whether an investment contract exists with respect to a crypto asset. *See* 2026 Interpretation at 13721. The term "crypto asset" is defined in Rule 100. *See supra* note 3.

crypto assets that are themselves securities (e.g., digital securities[118]), and (3) excludes investment contracts that involve any asset other than a non-security crypto asset.

The term "covered transaction" would be defined as an offer, sale, or other distribution of a covered investment contract in reliance on the startup exemption, including, but not limited to: (1) any public or private offering, including a distribution, of a covered investment contract in one or a series of capital raising transactions; or (2) any public or private offering, including a distribution and transactions referred to as "airdrops,"[119] of a covered investment contract in one or a series of transactions in exchange for, in recognition of, or as incentive for past or future use of an associated crypto network or associated crypto application, or as a reward or incentive for conducting activities primarily related to operating, governing, or securing an associated crypto network or associated crypto application.

As the proposed definition suggests, the term "covered transaction" is used only in the context of the startup exemption. While that definition would include any offer, sale, or other distribution of a covered investment contract in reliance on the startup exemption, it also sets forth examples of certain types of distributions.[120] These examples are meant to be illustrative and are not intended to suggest that these are the only or preferred types of offers, sales, or distributions of covered investment contracts that can be conducted under the startup exemption.

As noted in section I above,[121] the term "crypto asset" would be defined as any digital

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[118] *See supra* note 52 and accompanying text.

[119] See *infra* note 200 and accompanying text for a discussion of airdrops in the context of the startup exemption.

[120] See *infra* section II.B.2 for additional discussion of the startup exemption and the ways in which it may be used.

[121] *See supra* note 3.

representation of value that is recorded on a cryptographically-secured distributed ledger.[122] This term is used throughout Regulation Crypto Assets and dictates the scope of the proposed rules. For example, the investment contract safe harbor is available only with respect to investment contracts involving crypto assets (i.e., other types of assets may not rely on that safe harbor, even if they are subject to an investment contract[123]).

The term "crypto asset" is embedded in the definition of "covered investment contract," and, as previously noted in this section, the startup exemption and the fundraising exemption are available only for offers and sales of covered investment contracts. Thus, to ensure that Regulation Crypto Assets has an appropriately limited scope, the definition would include only those assets for which the relevant technology (i.e., cryptographically-secured distributed ledger) is a necessary feature.

As noted below,[124] "final offering circular" means, if the issuer is not relying on proposed 17 CFR 228.302(b) ("Rule 302(b)"), the more recent of: (1) the current offering circular contained in a qualified offering statement; and (2) any offering circular filed pursuant to proposed 17 CFR 228.302(f) ("Rule 302(f)").[125] If, however, the issuer is relying on Rule 302(b), the final offering circular is the more recent of: (1) the offering circular filed pursuant to Rule 302(f)(1) or (3); and (2) any subsequent offering circular filed pursuant to Rule 302(f). This

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122 The foregoing definition of "crypto asset" is identical to the definition of "Digital Asset" in section (2)(6) of the Guiding and Establishing National Innovation for U.S. Stablecoins Act, Pub. L. No. 119-27, 139 Stat. 419 (July 18, 2025).

123 Courts have determined that other types of non-securities, such as real estate, have been offered and sold subject to investment contracts. *See, e.g.*, *Howey*, 328 U.S. at 293 (real estate); *Cont'l Mktg. Corp. v. SEC*, 387 F.2d 466 (10th Cir. 1967), *cert. denied*, 391 U.S. 905 (1968) (beavers); *Miller v. Cent. Chinchilla Grp., Inc.*, 494 F.2d 414 (8th Cir. 1974) (chinchillas); *Glen-Arden Commodities v. Costantino*, 493 F.2d 1027 (2nd Cir. 1974) (Scotch whisky warehouse receipts).

124 *See infra* section II.C.2.a.iii.

125 *See* proposed 17 CFR 228.302(f) (requiring, among other things, an issuer to file an offering circular supplement disclosing information previously omitted from the offering circular).

term is consistent with its definition in 17 CFR 230.261(e) of Regulation A and is used throughout the fundraising exemption.[126]

The term "related person" would 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 member. This term is used in proposed Rule 103 ("Disclosure requirements"). The definition is intended to include any person that may be viewed as an "insider" of the issuer to ensure that investors are adequately protected and informed (via the disclosure requirements in the proposed rule) about those who are in the best position to influence the outcome of the project.

Finally, the term "subject crypto asset" would be defined as a crypto asset that is subject to a covered investment contract. This definition is intended to reflect a key principle: for purposes of Regulation Crypto Assets, the "security" at issue is the covered investment contract (to which the subject crypto asset is subject) rather than the crypto asset itself.[127] Information regarding the subject crypto asset, however, is likely to be material to an investment decision in an offering of covered investment contracts. Thus, the term "subject crypto asset" is referred to throughout Rule 103 ("Disclosure requirements").

<u>Request for Comment</u>

1. Should we adopt Rule 100 as proposed?
2. Are there any defined terms that we either should not adopt or should change in the final rules? If so, please identify those defined terms along with any recommended changes to

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126 The terms "offering statement" and "preliminary offering circular" also are defined in 17 CFR 230.261 for purposes of Regulation A. Although those terms also are used in the fundraising exemption, we believe they are sufficiently self-explanatory such that it is unnecessary to define them for purposes of the fundraising exemption.

127 *See* 2026 Interpretation at 13717.

the definitions.

3. Are there additional terms used in Regulation Crypto Assets that we should define?
4. Does the proposed definition of "associated crypto network" appropriately capture the particular network to which a given crypto asset is "native" and on which records regarding ownership and transactions in that crypto asset are recorded?
5. Does the definition of "covered investment contract" scope in the appropriate population of securities? If not, what scope would be more appropriate?
6. The definition of "covered investment contract" would exclude investment contracts that involve crypto assets that are securities or any other type of asset other than a non-security crypto asset. Should we instead adopt a definition of "covered investment contract" that would permit investment contracts involving assets other than a non-security crypto asset to constitute a "covered investment contract" so long as they also involve non-security crypto assets?[128] If so, should the portion of the covered investment contract that relates to the other type of asset be able to rely on the proposed exemptions, or should the issuer have to seek another exemption for that portion of the covered investment contract?
7. Would permitting other types of assets to be considered part of a "covered investment contract" have implications for the proposed approach for determining the number or purchase price of covered investment contracts and the required disclosures about the underlying assets in Rule 103(b)? If the rules permitted other types of assets to be considered part of a "covered investment contract," should there be a percentage limit on

[128] This could include, for example, a single investment contract that contemplates the sale of both a crypto asset and a share of the issuer's stock.

the portion of the covered investment contract that relates to other types of assets and, if so, what would be an appropriate percentage limit?

8. Are the definitions of "crypto asset," "associated crypto application," and "associated crypto network" both technologically accurate today and flexible enough to accommodate technological developments in the future? Are there other definitions of these terms that we should use? Given how fundamental the term "crypto asset" is to this proposal, is there a more specific definition we should consider? Is the definition too narrow or too broad?

9. Do the proposed definitions of "aggregate offering price" and "aggregate sales" reflect appropriate methodologies for determining the offering limits under the startup exemption and the fundraising exemption? If not, what would be a more appropriate methodology? Should these definitions provide greater specificity about how to convert cash received in a foreign currency? For example, should we prescribe a specific date and/or method of conversion? Should the issuer be required to disclose the manner in which it converted the cash received in a foreign currency?

10. As noted previously in this section, if covered investment contracts are not offered for cash, the aggregate offering price or aggregate sales would be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Should we establish a required standard for determining fair value under Regulation Crypto Assets? If not, why not? If so, what should that standard be? Should the standard be U.S. Generally Accepted Accounting Principles ("U.S. GAAP")? Should the rule provide a list of permitted standards?

11. Does the proposed definition of "related person" cover the appropriate scope of persons that may be viewed as insiders of the issuer and therefore should be subject to the relevant disclosure requirements in proposed Rule 103?

2. General Provisions (Rule 101)

a. Background

Many of the Commission's existing offering exemptions—including Regulation A, Regulation D, and Regulation Crowdfunding—contain general provisions that apply to the regulations as a whole and have various functions, including clarifying the scope of the regulations, the applicable liability standards, and general requirements or conditions to relying on the exemptions, among other things. Regulation Crypto Assets would include several of these general provisions, consistent with other offering exemptions. To facilitate compliance, we are proposing to consolidate these general provisions in Rule 101.

b. Proposed Rule

Rule 101 would set forth the following provisions: Rule 101(a) ("Non-exclusive"), Rule 101(b) ("Integration"), Rule 101(c) ("Electronic filing"), Rule 101(d) ("Insignificant deviations"), and Rule 101(e) ("Number of units and price per unit").

Rule 101(a) would provide that attempted compliance with any exemption or safe harbor in Regulation Crypto Assets would not act as an exclusive election.[129] That is, an issuer that elects to avail itself of Regulation Crypto Assets would not be precluded from claiming the availability of any other exemption from section 5 of the Securities Act or a safe harbor for which it meets the requirements. This provision is consistent with other non-exclusivity

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[129] Proposed 17 CFR 228.101(a).

provisions in our existing safe harbors and exemptions, including 17 CFR 230.144A and 17 CFR 230.500(c) of Regulation D. It is intended to clarify that the startup exemption, the fundraising exemption, and the investment contract safe harbor all are non-exclusive provisions and that an issuer may rely on one or more of these provisions while also relying on other exemptions or safe harbors in our rules (including existing exemptions and safe harbors or others within Regulation Crypto Assets).[130]

Rule 101(b) would provide that issuers should refer to 17 CFR 230.152 ("Rule 152") to determine whether offers and sales should be integrated.[131] This rule mirrors other rules in our existing exemptions, including 17 CFR 227.100(e) of Regulation Crowdfunding, 17 CFR 230.251(c) of Regulation A, and 17 CFR 230.502(a) of Regulation D. As with those provisions, this proposed rule is intended to remind issuers of the applicability of the integration doctrine and Rule 152 if they are contemplating an offering under one or more of the exemptions in Regulation Crypto Assets as well as other offerings under the Securities Act.[132] We also are proposing conforming amendments to Rules 152(c) and (d) to clarify when an offering under an exemption in Regulation Crypto Assets has been deemed to have commenced and when it has been deemed to have been terminated or completed, consistent with Rule 152's treatment of

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[130] An issuer's ability to rely on several exemptions or safe harbors assumes that the requirements of each separate exemption or safe harbor are satisfied. To the extent the issuer is relying on several exemptions either at the same time or in close proximity, the issuer also would have to ensure that it does not run afoul of the integration doctrine. *See Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets*, Release No. 33-10884 (Nov. 2, 2020) [86 FR 3496, 3499 (Jan. 14, 2021)] ("Facilitating Capital Formation Release") ("The integration doctrine seeks to prevent an issuer from improperly avoiding registration by artificially dividing a single offering into multiple offerings such that Securities Act exemptions would apply to the multiple offerings that would not be available for the combined offering."). We discuss the integration doctrine with respect to Regulation Crypto Assets below, in the context of Rule 101(b).

[131] *See* proposed 17 CFR 228.101(b).

[132] *See* Facilitating Capital Formation Release at 3517.

existing exemptions (including offerings under Regulation Crowdfunding, Regulation A, and Regulation D).

Rule 101(c) would require documents filed or otherwise provided to the Commission pursuant to Regulation Crypto Assets to be submitted in electronic format by means of the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR") in accordance with the electronic filing rules set forth in 17 CFR part 232 ("Regulation S-T").[133] This rule is consistent with 17 CFR 230.251(f) of Regulation A and is intended to ensure that issuers and investors alike benefit from the efficiencies associated with electronic filing on EDGAR.[134] We also are proposing conforming amendments to 17 CFR 232.101(a)(1) to reflect this mandatory electronic filing requirement with respect to filings made under Regulation Crypto Assets.[135]

Rule 101(d) would provide that failure to comply with a term, condition, or requirement of Regulation Crypto Assets would not result in the loss of any exemption under Regulation Crypto Assets for any offer or sale to a particular individual or entity, if the person relying on the exemption establishes that: (i) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; (ii) the failure to

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[133] *See* proposed 17 CFR 228.101(c).

[134] *See, e.g.*, *Amendments for Small and Additional Issues Exemptions Under the Securities Act (Regulation A)*, Release No. 33-9741 (Mar. 25, 2015) [80 FR 21806, 21822 (Apr. 20, 2015)] ("2015 Regulation A Release") ("We believe the approach to electronic filing adopted today will be both practical and useful for issuers of Regulation A securities, investors in such securities, and other market participants. Issuers will be able to maintain better control over their filing process, reduce the printing costs associated with filings, obtain immediate confirmation of acceptance of an offering statement, and ultimately save time in the qualification process. Investors will gain real-time access to the information contained in Regulation A filings.").

[135] *See* proposed 17 CFR 232.101(a)(1)(xxxix).

comply was insignificant with respect to the offering as a whole;[136] and (iii) a good-faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of Regulation Crypto Assets.[137] This rule is generally consistent with other rules in our existing exemptions, including 17 CFR 227.502 of Regulation Crowdfunding, 17 CFR 230.260 of Regulation A, and 17 CFR 230.508 of Regulation D. As with those provisions, this proposed rule is intended to allow for certain insignificant deviations that can occur in the offering process without causing the issuer to lose the exemption and incur the related consequences.[138]

Finally, Rule 101(e) would specify how to determine the number of units of covered investment contracts and the price per unit of a covered investment contract. That rule would provide that, for purposes of determining the number of units of covered investment contracts as required by any rule or form in Regulation Crypto Assets, one unit of a covered investment contract would be equivalent to one unit of the subject crypto asset. Similarly, the price per unit of a covered investment contract as required by any rule or form in Regulation Crypto Assets should be determined by reference to the price per unit of the subject crypto asset. The rule also

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136 Whether a deviation from the Regulation Crypto Assets requirements would be insignificant to the offering would depend on the facts and circumstances of the offering and the deviation. *See, e.g.*, *Crowdfunding*, Release No. 33-9974 (Oct. 30, 2015) [80 FR 71387, 71475 (Nov. 16, 2015)] ("Crowdfunding Adopting Release"). As noted below, proposed Rule 101(d) is modeled after similar provisions in existing exemptions, and those provisions specify certain deviations that would be significant. *See, e.g.*, 17 CFR 230.260 (providing that, for purposes of Regulation A, "any failure to comply with Rule 251(a), (b), and (d)(1) and (3) . . . shall be deemed to be significant to the offering as a whole"). We are not specifying such significant deviations in Rule 101(d) because we believe it is appropriate to assess each particular deviation based on its particular facts and circumstances.

137 *See* proposed 17 CFR 228.101(d)(1). The rule also would provide that a transaction made in reliance upon an exemption under Regulation Crypto Assets must comply with all applicable terms, conditions, and requirements of the exemption. *See* proposed 17 CFR 228.101(d)(2). Where an exemption is established only through reliance upon Rule 101(d)(1), the failure to comply is nonetheless actionable by the Commission under section 20 of the Securities Act. *See id.* Finally, the rule would provide that Rule 101(d)(1) does not preclude the Commission from bringing an enforcement action seeking any appropriate relief or a proceeding under proposed 17 CFR 228.306 for an issuer's failure to comply with all applicable terms, conditions, and requirements of Regulation Crypto Assets. *See* proposed 17 CFR 228.101(d)(3).

138 *See, e.g.*, Crowdfunding Adopting Release at 71474.

would set forth, as an instruction, an illustrative example stating that if an issuer sells a covered investment contract to an investor for $100, and the covered investment contract contemplates that the issuer will distribute 10 units of the subject crypto asset to the investor, then at the time of the sale of the covered investment contract, the investor is deemed to have purchased 10 units of the covered investment contract at a price of $10 per unit of covered investment contract. We believe that specifying how to measure the number of units of covered investment contracts and determine the price per unit of a covered investment contract would facilitate compliance and provide clarity for market participants.

Request for Comment

12. Should we adopt Rule 101 as proposed?
13. The provisions in proposed Rule 101 would be similar to the general provisions in several of our existing offering exemptions. Are there any provisions in Rule 101 that we either should not adopt or that we should change in the final rules? If so, please identify those provisions along with any recommended changes to the provisions or an explanation as to why those provisions should not be adopted.
14. Are there any other general provisions that should apply to Regulation Crypto Assets? Should any of the proposed general provisions not apply to one or more of the proposed exemptions or the safe harbor in Regulation Crypto Assets?
15. Should we adopt Rule 101(a) as proposed? Alternatively, should any of the proposed exemptions or the safe harbor in Regulation Crypto Assets act as an exclusive election?
16. Would Rule 101(b) be helpful to remind issuers of the applicability of the integration doctrine and Rule 152? For example, would Rule 101(b)'s reference to Rule 152 provide clarity regarding when offers and sales conducted pursuant to the exemptions in

Regulation Crypto Assets will be integrated?

17. Does Rule 101(c)'s reference to the requirements of Regulation S-T help to clarify issuers' electronic filing obligations?

18. Should Rule 101(d) deem the failure to comply with any particular rule in Regulation Crypto Assets to be significant to the offering as a whole? If so, which rules should be identified in Rule 101(d)?

19. Should we specify how to measure the number of units of covered investment contracts and determine the price per unit of a covered investment contract as proposed in Rule 101(e)? Is the proposed method of determining the number of units of covered investment contracts appropriate? If not, what would be a better method? Should the price per unit of a covered investment contract be determined by reference to the price per subject crypto asset, as proposed? If not, how should the price per unit be determined?

3. Inflation Adjustment for Offering Limits (Rule 102)

a. Background

As discussed in more detail in sections II.B and II.C, the startup exemption and the fundraising exemption each contain offering limits. Those limits are expressed in dollar amounts and reflect our preliminary determination about amounts that would be appropriate to meet issuers' capital raising needs while maintaining adequate investor protections. Those amounts are based on the specific purposes of each exemption as well as current economic and market conditions. We recognize, however, that over time, the efficacy of those dollar limits could be diluted as a result of the effects of inflation. We are proposing Rule 102 to address this possibility by setting up a streamlined process for future inflation adjustments.

b. Proposed Rule

Under Rule 102, the Commission would periodically, but not less than once every five years,[139] adjust the offering amount limitations in the startup exemption and the fundraising exemption to reflect any changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.[140] This proposed rule is intended to establish a process whereby the proposed offering limits would be adjusted on an ongoing, predetermined basis to maintain their current effectiveness without requiring the Commission to engage in notice-and-comment rulemaking each time it makes those routine adjustments. We would expect to implement the adjustment via a direct-to-final rulemaking. If the Commission desired to make other adjustments to the offering limits, such as lowering the limits or raising them beyond the effects of inflation, it could do so at any time through notice-and-comment rulemaking.

<u>Request for Comment</u>

20. Should we adopt Rule 102 as proposed?

21. Are there any portions of Rule 102 that we either should not adopt or that we should change in the final rules? If so, please identify those portions of the rule along with any recommended changes.

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[139] For consistency with Titles I and III of the Jumpstart Our Business Startups Act ("JOBS Act"), Public Law 112–106, 126 Stat. 306 (2012), we are proposing that the Commission adjust the offering amount limitations every five years in manner consistent with the adjustment for emerging growth companies, *see* 15 U.S.C. 77b(a) (Securities Act section 2(a)(19)) and 15 U.S.C. 78c(a) (Exchange Act section 3(a)(80)), and Regulation Crowdfunding companies, *see* 15 U.S.C. 77d(a)(6) (Securities Act section 4(a)(6)) and 15 U.S.C. 77d-1(h)(1) (Securities Act section 4A(h)(1)). *See also Inflation Adjustment under Titles I and III of the JOBS Act*, Release No. 33-11098 (Sept. 9, 2022) [87 FR 57394 (Sept. 20, 2022)].

[140] *See* proposed 17 CFR 228.102. The Consumer Price Index for All Urban Consumers is the statistical metric developed by the Bureau of Labor Statistics of the Department of Labor to monitor the change in the price of a set list of products. This index represents changes in prices of all goods and services purchased for consumption by urban households. *See* "Consumer Price Index," *available at* https://www.bls.gov/cpi.

22. Would it be more appropriate for the Commission to consider ad hoc adjustments to the offering limits through notice-and-comment rulemaking rather than establishing an ongoing, predetermined basis for making such adjustments?
23. Is the proposed frequency of the Commission's adjustments under this rule (periodically, but no less than once every five years) appropriate? Should these adjustments occur more or less frequently?
24. Should the Commission adjust the offering limits to reflect factors other than, or in addition to, changes in the Consumer Price Index for All Urban Consumers? If so, what other factors would be appropriate to consider?
25. Is the proposed rule's reference to "changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor" an appropriate measure for inflation? If not, what other measure(s) should we use?

4. Disclosure Requirements (Rule 103)

a. Background

A prominent theme in submissions to the Crypto Task Force as well as other public commentary is that the Commission's existing disclosure requirements do not elicit the types of information that are likely to be material to investors in covered investment contracts.[141] This

[141] *See, e.g.*, letters from a16z 2; a16z 3; AIMA; Anderson; Broadridge; L. Cohen; Coinbase; CoinList; Zack Dane (Feb. 23, 2025) ("Z. Dane"); Figure Markets; CrowdCheck Law; J. Kim; OpenZeppelin (Apr. 16, 2025) ("OpenZeppelin"); G. Shapiro; SIFMA 2; TDC 2; tZero Group, Inc. (Mar. 5, 2025) ("tZero"); *see also* LeXpunK, *Regulation X Proposal: An Exempt Offering Framework for Token Issuances* (Apr. 25, 2022) ("LeXpunK Regulation X Proposal"), *available at* https://github.com/LeXpunK-Army/Reg-X-Proposal-An-Exempt-Offering-Framework-for-Token-Issuances/blob/main/Lexpunk%20Reg%20X%20Proposal%20FINAL%20(4.25).pdf; Justin Slaughter, Katie Biber, and Rodrigo Seira, *The Current SEC Disclosure Framework Is Unfit for Crypto* (Apr. 20, 2023), *available at* https://www.paradigm.xyz/2023/04/secs-path-to-registration-part-iii.

includes the disclosure requirements in 17 CFR part 229 ("Regulation S-K")[142] and Form 1-A.[143] In the past, the Commission has adopted Regulation S-K subparts tailored to specific types of issuers and transactions, such as Regulation M-A (mergers and acquisitions),[144] Regulation AB (asset-backed securities),[145] subpart 1200 (oil and gas producing activities),[146] subpart 1300 (mining operations),[147] subpart 1400 (banks and savings and loans),[148] and subpart 1600 (Special Purpose Acquisition Companies).[149] To date, however, the Commission has not considered amendments to disclosure requirements specifically applicable to offerings of covered investment contracts.

Several commenters expressed concern that the Commission's existing disclosure requirements are "inflexible," requiring disclosure on topics that are not applicable or relevant to offerings of covered investment contracts.[150] Commenters also stated that existing disclosure frameworks do not elicit disclosure on a number of topics that are relevant to investors in

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142 Regulation S-K was created as part of the integrated disclosure initiative to be the repository for the non-financial statement disclosure to be included in Securities Act registration statements and Exchange Act periodic reports. *See Adoption of Integrated Disclosure System*, Release No. 33-6383 (Mar. 3, 1982) [47 FR 11380 (Mar. 16, 1982)]; *see also* U.S. Securities and Exchange Commission, *Report on Review of Disclosure Requirements in Regulation S–K* (Dec. 2013), *available at* https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf.

143 Form 1-A sets forth the form and content requirements included in Regulation A offering statements. *See* Form 1-A, Regulation A Offering Statement Under the Securities Act of 1933, *available at* https://www.sec.gov/files/form1a.pdf.

144 *See* 17 CFR 229.1000 through 17 CFR 229.1016.

145 *See* 17 CFR 229.1100 through 17 CFR 229.1125.

146 *See* 17 CFR 229.1200 through 17 CFR 229.1208.

147 *See* 17 CFR 229.1300 through 17 CFR 229.1305.

148 *See* 17 CFR 229.1400 through 17 CFR 229.1406.

149 *See* 17 CFR 229.1600 through 17 CFR 229.1610.

150 *See supra* section I.B.3; *see also* letter from a16z 3 (stating that "line item disclosures called for by the relevant forms and by Regulation S-K and Regulation S-X may not always be material to purchasers of crypto assets" and "Regulation A's disclosure framework is modeled on traditional corporate equity offerings and is not well suited to address the unique features of certain crypto assets").

covered investment contract offerings, including the technical, governance, and economic characteristics of crypto assets; description of the project; crypto asset allocations, liquidity, and tradability; crypto asset and network security; and unique technological, market, and redemption risks.[151] In sum, the existing disclosure frameworks, when applied to covered investment contract offerings, may compel issuers to incur the costs of providing ultimately immaterial disclosures while, at the same time, failing to provide investors consistently with the types of information most important to their investment decisions. To address these concerns, we are proposing disclosure principles that are intended to be tailored to covered investment contract offerings and provide investors in these offerings with the information they need to make informed investment decisions.

In developing the proposed disclosure requirements in Rule 103, we have considered a broad range of sources. The proposed requirements were informed, in part, by the Division of Corporation Finance's April 2025 statement titled, "Offerings and Registrations of Securities in the Crypto Asset Markets," which "reflect[ed] [the staff's] observations regarding disclosures provided in response to existing disclosure requirements."[152] We also considered recommendations in academic research, public commentary, and crypto asset safe harbor proposals from market participants.[153] Finally, a number of commenters, in their written input to

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[151] *See, e.g.*, letters from a16z 3 (stating that flexible, principles-based disclosure "would result in more concise, actionable disclosures that better promote informed decision-making and investor protection"); CfPA; GDCA; OpenZeppelin (recommending disclosure of third-party security audits and the methodology used in those audits); SIFMA 2; TDC 2.

[152] *See* CF Disclosure Statement, *supra* note 38.

[153] *See* Chris Brummer, Trevor I. Kiviat, and Jai Massari, *What Should Be Disclosed in an Initial Coin Offering?*, in Brummer, ed., CRYPTOASSETS: LEGAL, REGUL., AND MONETARY PERSPS. (2019); Chris Brummer, *Disclosure, Dapps, and DeFi*, 5 STAN. J. BLOCKCHAIN L. & POL'Y 137 (2022); Chris Brummer, *A Developer Theory of Disclosure* (Spring 2025) *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5137972; LeXPunK Regulation X Proposal, *supra* note 141.

the Crypto Task Force, included detailed discussion of evolving disclosure best practices and recommendations for disclosure tailored to issuers and offerings of covered investment contracts.[154]

Some common themes emerged from those external perspectives. Notably, there appeared to be some consensus regarding the key categories of information that should be required under a tailored disclosure regime, including information about the following: (1) the covered investment contract offering; (2) management, related persons, and other "material participants"; (3) the associated crypto network or associated crypto application, including the plan of development and the intended architecture, network protocols and functionality, and security and source code; (4) the subject crypto asset, including total supply, distribution, and lockup information; (5) the governance of the associated crypto network or associated crypto application; (6) the subject crypto asset's economics and its "ecosystem"; and (7) the material risks relating to the covered investment contract, the subject crypto asset, and associated crypto network or application. Proposed Rule 103 is intended to reflect these key categories as well as additional issuer-, security-, and offering-level information that we believe is necessary to help ensure investors in a covered investment contract offering are appropriately informed.

b. Proposed Rule

Based on the above considerations, Rule 103 would set forth principles-based disclosure requirements with respect to offerings of covered investment contracts. We believe these disclosure requirements would: (1) elicit material information for investors in these offerings, (2) result in disclosures that are appropriately tailored to reflect covered investment contract issuers'

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[154] *See, e.g.*, letters from a16z 3; AIMA; CfPA; Coinbase; GDCA; SIFMA 2; TDC 2.

particular facts and circumstances, (3) help investors compare covered investment contracts and covered investment contract offerings, and (4) generally reduce disclosure costs and compliance burdens (as compared to covered investment contract issuers' costs and burdens when trying to comply with existing disclosure requirements).

Rule 103(a) would set forth general disclosure principles that issuers should follow when responding to the disclosure requirements in Rule 103(b). Rule 103(a) would state that information provided under Regulation Crypto Assets should be tailored to the issuer, the subject crypto asset, and the associated crypto network or associated crypto application and should be presented in clear, concise, and understandable language, without overly relying on technical terminology or jargon.[155] When preparing this information, each issuer would be required to tailor its disclosure based on its own facts and circumstances. Information provided would also be required to address the current stage of development of the issuer, the subject crypto asset, and the associated crypto network or associated crypto application and should clearly delineate any forward-looking or future plans of development. Information provided would be required to 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[156]) relating to material aspects of the issuer, the subject crypto asset, and the associated crypto network or associated crypto application. Finally, disclosure would not be required to be provided where a particular disclosure requirement is not applicable, or responsive

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[155] *See* proposed 17 CFR 228.103(a).

[156] The term "whitepaper" generally refers to a document that describes the technical aspects of a crypto asset project (i.e., a crypto asset and the associated crypto network or associated crypto application) along with other relevant details. *See* President's Working Group Report at 31 ("Projects often disclose how their token issuance process occurs in their whitepaper, which describes technical aspects of the project, contractual rights of the token holders, and other pertinent details.").

information is unknown or not reasonably available.

Rule 103(b) would set forth the disclosure requirements that issuers would be required to comply with when relying on the startup exemption or the fundraising exemption.[157] These disclosure requirements would cover non-financial, narrative information relating to the key aspects of a covered investment contract offering. The disclosure requirements would be organized into the following topics: (1) covered investment contract; (2) offering; (3) subject crypto asset; (4) management, related persons, and conflicts of interest; (5) associated crypto network/application; plan of development; (6) security; source code; (7) subject crypto asset economics and allocation; (8) governance; (9) subject crypto asset ecosystem; and (10) risk factors.[158] Each of those topics is discussed in more detail below.

In addition, as noted previously in this section, the disclosure requirements in Rule 103(b) would be principles-based requirements. That is, the rule would require the issuer to describe the material aspects of the applicable topic without specifying detailed information that must be provided.[159] This principles-based approach is intended to give issuers the flexibility to tailor the disclosure to their particular facts and circumstances (and avoid compelling disclosure of irrelevant information) while still eliciting material information for investors. It also is intended to provide sufficient flexibility so that the proposed rules can accommodate potential

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157 *See* proposed 17 CFR 228.103(b).

158 Information regarding the issuer will be included in Form NOR for issuers relying on the startup exemption and in Part II of Form 1-CRYPTO for issuers relying on the fundraising exemption. Descriptions of proposed Form NOR and proposed Form 1-CRYPTO would be codified at 17 CFR 239.605 and 17 CFR 239.600, respectively. See *infra* section II.B for a more detailed discussion of the startup exemption and Form NOR. See *infra* section II.C for a more detailed discussion of the fundraising exemption and Form 1-CRYPTO.

159 In contrast to some of the other subparagraphs, Rules 103(b)(1) and (2) would enumerate certain information that an issuer must describe with respect to the covered investment contract and the offering. These enumerated items represent key details that we believe are necessary for investors to make informed investment decisions about the covered investment contract and the offering.

future developments in the crypto asset markets and thereby avoid the need for the Commission to continually revisit and update the disclosure requirements.

We recognize that some market participants may prefer a different approach with respect to the proposed disclosure requirements. For example, some investors may prefer more prescriptive disclosure requirements that give issuers less flexibility but elicit more consistent and comparable disclosures. In addition, notwithstanding the flexibility provided by the principles-based approach, some issuers may prefer that we set forth detailed disclosure requirements to help them more easily determine what information they must provide. Although we believe our proposed requirements strike the appropriate balance, we seek comment on potential alternative approaches, including 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.

i. Paragraph (b)(1) – Covered Investment Contract

Rule 103(b)(1) would require the issuer to provide a description of the material terms of the covered investment contract, including the issuer's representations or promises to engage in essential managerial efforts under the covered investment contract and its progress with respect to such representations or promises, a purchaser's obligations under the covered investment contract, any conditions to the covered investment contract, and any other material terms. Because the covered investment contract would be the security being offered under these exemptions, it is important for issuers to provide investors with information about the material terms of that security.

In addition, because the existence of the covered investment contract depends on the issuer's representations or promises to engage in essential managerial efforts,[160] we believe that requiring disclosure of these representations or promises may help investors and other market participants determine the circumstances under which the covered investment contract may cease to exist. Furthermore, requiring the issuer to provide disclosure regarding its progress with respect to such representations or promises will help investors and other market participants assess, on an ongoing basis, the likelihood that the issuer will satisfy those representations or promises. We also expect issuers may refer to this disclosure in determining whether they have satisfied the conditions of the investment contract safe harbor, including pursuant to their transition report obligations under the startup exemption and the fundraising exemption.

In the 2026 Interpretation, the Commission provided guidance regarding the types of efforts that may be regarded as essential managerial efforts. For example, the Commission noted that representations or promises by an issuer conveyed to purchasers to develop and achieve functionality for a non-security crypto asset and/or develop an associated crypto network or associated crypto application together with a business plan containing detailed milestones, a timeline, information about personnel, sources of funding and other resources needed to meet those milestones, and an explanation of how holders of the non-security crypto asset will profit from those efforts, likely would create a reasonable expectation of profits because they speak directly to those essential managerial efforts that affect the failure or success of the project.[161] In contrast, the Commission stated that representations or promises that are vague or contain no

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[160] *See* 2026 Interpretation at 13721-22.

[161] *See id*. at 13721-22.

semblance of an actionable business plan, such as those lacking milestones, funding, or other plans for needed resources, likely would not create a reasonable expectation of profits.[162]

We further note that an issuer may make other representations or promises to take certain actions that would not constitute essential managerial efforts. For example, once an issuer has satisfied its representations or promises to engage in essential managerial efforts under the covered investment contract, the associated crypto network or associated crypto application may be functional. Once such network or application is functional, it is our view that 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. In this regard, rather than deriving its value from the essential managerial efforts of the issuer, the relevant crypto asset should derive 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. Moreover, after the associated crypto network or associated crypto application is functional, and the crypto asset can be used in accordance with the programmatic utility of such network or application, such services (whether provided or coordinated by the issuer or another party) would no longer be among the undeniably significant ones because they would not affect the failure or success of the associated crypto network or associated crypto application. Rather, the activities of and

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162 *See id*.

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) would affect the failure or success of the associated crypto network or associated crypto application after such network or application is functional. Prior to functionality, however, such services are provided or coordinated by the issuer and likely constitute essential managerial efforts.

ii. Paragraph (b)(2) – Offering

Rule 103(b)(2) would require the issuer to provide a description of the material terms of the offering, including:

- The number of units of covered investment contracts to be offered, the purchase price per unit (or how the purchase price per unit will be determined),[163] the duration of the offering period, and any qualifications for or restrictions on purchasers in the offering;
- Any material agreements in furtherance of the distribution of covered investment contracts in the offering;
- The estimated net offering sale proceeds and expenses to be paid with the offering proceeds;
- The intended use of proceeds from any sales in the offering; and
- The website address at which any whitepapers or other offering materials that the issuer prepared or distributed, either publicly or to prospective purchasers in connection with the offering, are publicly accessible, free of charge.[164]

163 *See* proposed 17 CFR 228.101(e) (specifying how to determine the number of units of covered investment contracts and the price per unit of a covered investment contract).

164 *See* proposed 17 CFR 228.103(b)(2).

As noted in section II.A.4.a above, we believe this is fundamental information regarding the offering that should be provided to investors to support their ability to make a well-informed investment decision.

iii. Paragraph (b)(3) – Subject Crypto Asset

Rule 103(b)(3) would require the issuer to provide a description of the name and the material aspects of the subject crypto asset.[165] We expect that the value of the covered investment contract that is being offered and sold often will depend, in large part, on investors' perception of the subject crypto asset. Thus, the proposed rule seeks to elicit material information regarding the subject crypto asset so that an investor can make an informed investment decision with respect to the covered investment contract.

iv. Paragraph (b)(4) – Management, Related Persons, and Conflicts of Interest

Rule 103(b)(4) would require the issuer to provide a description of: (i) the material aspects of the issuer's management and related persons; (ii) the material aspects of any conflicts of interest or related person transactions involving the issuer; and (iii) whether related persons are subject to any transfer or resale restriction(s) with respect to the covered investment contract or subject crypto asset and, if so, the material terms of such restriction(s).[166] As noted in section II.A.4.a above, information about management, related persons, and other "material participants" is one of the key categories of information that several commenters stated would be important for a disclosure framework tailored to covered investment contracts. We agree that a covered investment contract issuer should provide information to investors regarding these persons

[165] *See* proposed 17 CFR 228.103(b)(3).

[166] *See* proposed 17 CFR 228.103(b)(4).

because they are in the best position to influence the outcome of the project. As such, information about these persons' expertise and professional background, as well as arrangements that may affect their incentives with respect to the project, is likely to be material to investors. The proposed rule is intended to elicit information about those persons in a principles-based manner.

In addition, covered investment contracts sold pursuant to one of the exemptions in Regulation Crypto Assets would not be restricted securities for purposes of the Federal securities laws. Absent a contractual or other applicable holding period or restriction, therefore, purchasers of covered investment contracts issued under the proposed exemptions would be able to sell those securities immediately upon acquisition. Several commenters expressed concerns about information asymmetries and misaligned incentives between issuer "insiders" and other investors, especially during the period after which the issuer has offered and sold covered investment contracts but before the issuer has fulfilled its representations or promises to engage in essential managerial efforts under the covered investment contract.[167] These commenters recommended that any exemption include limitations on insider sales of covered investment contracts in order to ensure investors are appropriately protected and insiders' incentives remain aligned with other investors.[168]

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[167] *See, e.g.*, letters from a16z 2; a16z 3 ("While an initial development team retains control of a network token and its underlying network, tokenholders are at the greatest risk of harm stemming from information asymmetries about a project, and the trust dependencies of such network token may be similar to that of an ordinary security."); Coinbase.

[168] *See, e.g.*, letters from a16z 3; Coinbase (recommending "[o]ther potential considerations that would apply conditions to [an] exemption or safe harbor," including "[a] limitation on token sales by the development team and related parties for their own account until the network or protocol has become sufficiently decentralized. Such a limitation would help ensure the issuer, development team and related persons have continued economic incentive to complete the project.").

We recognize that investor protection risks related to information asymmetries and misaligned incentives between insiders and investors may be heightened with respect to covered investment contract offerings due to the unique nature of the representations or promises in these offerings.[169] The proposed disclosure requirement regarding related person resale or transfer restrictions is intended to address these concerns by giving investors the information they need to determine whether there are risks associated with the issuer's related persons and, if so, whether the issuer has taken steps to mitigate those risks.

v. Paragraph (b)(5) – Associated Crypto Network/Application; Plan of Development

Rule 103(b)(5) would require the issuer to provide a description of the material aspects of the associated crypto network or associated crypto application and the issuer's plan of development with respect to the associated crypto network or associated crypto application, including the issuer's progress with respect to its plan of development. As noted in section II.A.4.a above, information about the associated crypto network or associated crypto application, including architecture, network protocols and functionality, and security and source code (the latter two of which are discussed in the next section) is one of the key categories of information that several commenters stated would be important for a disclosure framework tailored to covered investment contracts. We agree that a covered investment contract issuer should provide this information to investors because this information will inform investors' expectations as to the intended future state of the project (which, in turn, will help the investor evaluate the

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[169] For example, covered investment contract issuers often represent or promise to decentralize the associated crypto network or associated crypto application, at which point the issuer and its insiders may not have control over, or the ability to profit from, such network or application or the subject crypto asset. This situation could incentivize insiders to delay such decentralization (to the detriment of investors) to the extent they seek to retain their leverage to profit from such network, application, or subject crypto asset.

potential future value of the subject crypto asset). In addition, in many cases, the associated crypto network or associated crypto application will not yet have been developed at the time of the covered investment contract offering (in which case the funds from the offering may be funding development of that network or application). In those cases, information regarding the plan of development may be material for investors as they assess the likelihood of success for the project, as well as the expected timing and progress in connection with the plan of development, both at the time of the offering and on an ongoing basis. This proposed rule is intended to elicit that information in a principles-based manner.

vi. Paragraph (b)(6) – Security; Source Code

Rule 103(b)(6) 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 code underlying the associated crypto network or associated crypto application (also referred to as "source code") is accessible.[170] As noted in section II.A.4.a above, information about the associated crypto network or associated crypto application, including architecture, network protocols and functionality, and security and source code, is one of the key categories of information that several commenters stated would be important for a disclosure framework tailored to covered investment contracts.

We agree that a covered investment contract issuer should provide this information to investors because this information would help investors to independently assess whether the associated crypto network or associated crypto application may operate consistently with the

[170] *See* proposed 17 CFR 228.103(b)(6).

issuer's description. In addition, this information would help investors assess potential cybersecurity risks associated with the associated crypto network or associated crypto application. This proposed rule is intended to elicit information regarding the security and source code in a principles-based manner.

vii. Paragraph (b)(7) – Subject Crypto Asset Economics and Allocations

Rule 103(b)(7) would require the issuer to provide a description of the material aspects of the subject crypto asset's economics and allocations, including: (1) the subject crypto asset's supply, pricing, lockups, distribution methods, holdings by related persons, and release schedules; (2) the associated crypto network or associated crypto application's mechanisms for generating and destroying subject crypto assets; and (3) methods to verify the subject crypto asset's transaction history.[171] As noted in section II.A.4.a above, information about the subject crypto asset economics and allocations is one of the key categories of information that several commenters stated would be important for a disclosure framework tailored to covered investment contracts. We agree that a covered investment contract issuer should provide this information to investors because this information would help investors assess the total number of subject crypto assets that may be outstanding at a given point in time, which bears directly on the value of the subject crypto asset (and, therefore, the value of the covered investment contract). This proposed rule is intended to elicit that information in a principles-based manner.

viii. Paragraph (b)(8) – Governance

171 *See* proposed 17 CFR 228.103(b)(7).

Rule 103(b)(8) would require the issuer to provide a description of the material aspects of the subject crypto asset's and associated crypto network's or associated crypto application's governance mechanisms, smart contract governance mechanisms, and permissions.[172] As noted in section II.A.4.a above, information regarding the governance of the associated crypto network or associated crypto application is one of the key categories of information that several commenters stated would be important for a disclosure framework tailored to covered investment contracts. We agree that a covered investment contract issuer should provide this information to investors because this information would help investors understand the conditions under which changes may be made to the subject crypto asset or the associated crypto network or associated crypto application and who may be empowered to make such changes. Such changes could relate to the aspects of the subject crypto asset that are relevant to investors' valuation of the subject crypto asset and, ultimately, the covered investment contract. This proposed rule is intended to elicit that information in a principles-based manner.

ix. Paragraph (b)(9) – Subject Crypto Asset Ecosystem

Rule 103(b)(9) would require the issuer to provide a description of the material aspects of the subject crypto asset's current and anticipated ecosystem (i.e., 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), "onchain" and "offchain," including information regarding the technology infrastructure, types of participants, and other parties and systems using the subject crypto asset and the associated crypto network or associated crypto application.[173] As noted in section II.A.4.a above, information about the subject crypto asset's

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[172] *See* proposed 17 CFR 228.103(b)(8).

[173] *See* proposed 17 CFR 228.103(b)(9).

ecosystem is one of the key categories of information that several commenters stated would be important for a disclosure framework tailored to covered investment contracts. We agree that a covered investment contract issuer should provide this information to investors because this information would help investors understand potential activity with respect to, and uses of, the subject crypto asset, which may help inform investors' expectations with respect to potential demand for the subject crypto asset. Investors' expectations regarding demand for the subject crypto asset may be relevant to their valuations of the subject crypto asset and, ultimately, the covered investment contract. This proposed rule is intended to elicit that information in a principles-based manner.

x. Paragraph (b)(10) – Risk Factors

Finally, Rule 103(b)(10) would require the issuer to provide a description, in short, concise statements, of the material factors that make an investment in the offering speculative or risky, including risks related to the covered investment contract, the issuer, the subject crypto asset, and the associated crypto network or associated crypto application.[174] As noted in section II.A.4.a above, information about the material risks relating to the covered investment contract, the subject crypto asset, and associated crypto network or application is one of the key categories of information that several commenters stated would be important for a disclosure framework tailored to covered investment contracts. We agree that a covered investment contract issuer should provide this information to investors because this information would help investors assess the risks associated with investing in the covered investment contracts. This proposed rule is intended to elicit that information in a principles-based manner.

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[174] *See* proposed 17 CFR 228.103(b)(10).

The rule also would provide that this 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. This is intended to avoid boilerplate disclosure and help ensure that information disclosed under this rule is important to an investor's investment decision.

Request for Comment

26. Should we adopt Rule 103 as proposed?
27. Are there any specific disclosure requirements in Rule 103 that we either should not adopt or that we should change in the final rules? If so, please identify those provisions along with any recommended changes to the provisions.
28. Are there any other disclosure requirements that we should specify in Rule 103?
29. In lieu of the principles-based requirements, should we adopt more prescriptive disclosure requirements? Alternatively, should the final rules supplement the principles-based requirements with non-exclusive examples of disclosure that may be responsive?
30. Rather than adopting more prescriptive requirements or including examples of disclosure that may be responsive to the principles-based requirements, should we include more detailed guidance in the adopting release regarding what types of information may be responsive to the principles-based requirements?
31. Are there any material terms in the description of the offering we should add, eliminate, or revise? If so, please identify the term and the reasons for doing so.
32. Should we prescribe the methods by which issuers publicly provide or otherwise deliver to investors the disclosures in Rule 103? If so, what methods should the rules prescribe?
33. Will the proposed requirements result in disclosures that investors (including retail

investors) will be able to understand and use to make informed investment decisions? If not, how should we revise the requirements to better ensure investors (including retail investors) will be able to understand the resulting disclosures and use them to make informed investment decisions?

34. Do related persons of covered investment contract issuers pose heightened risks with respect to information asymmetries and misaligned incentives such that the disclosure of any resale or transfer restrictions is warranted? Are there other risks that such insiders pose that this disclosure would help address?
35. Instead of only requiring disclosure relating to any related person resale or transfer restrictions, should we require that issuers establish a specific minimum holding period for related persons, such as a one-year holding period, as a condition to relying on the proposed exemptions? Rather than a time-based holding period, should we base any holding period on the achievement of certain development milestones with respect to the associated crypto network or associated crypto application? Are there other resale or transfer restrictions that we should apply with respect to related persons as conditions to the proposed exemptions in Regulation Crypto Assets?
36. How should we modify proposed Rule 103(b)(10), if at all, to help ensure that the resulting risk factor disclosure will address only material risks to the issuer and avoid boilerplate disclosures?

5. Disqualification (Rule 104)

a. Background

Many of the Commission's existing offering exemptions—including Regulation A, Regulation D, and Regulation Crowdfunding—contain disqualification provisions.[175] These provisions generally "disqualify securities offerings from reliance on exemptions if the issuer or other relevant persons . . . have been convicted of, or are subject to court or administrative sanctions for, securities fraud or other violations of specified laws."[176] Disqualification provisions are intended to protect investors by reducing the risk of fraud in connection with exempt offerings that include such provisions.[177] As such, we believe it is important to include a disqualification provision (proposed Rule 104) in Regulation Crypto Assets to help ensure that investors in covered investment contracts offerings are protected from fraud.

b. Proposed Rule

Rule 104 would provide that the exemptions in Regulation Crypto Assets are not available if the issuer or any person listed in Rule 262(a)[178] would be subject to disqualification under Rule 262. Rule 262, in turn, sets forth various disqualifying actions or events,[179] as well as exceptions from those disqualifying actions or events.[180] Both the disqualifying actions and

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175 *See, e.g.*, 17 CFR 227.503 (setting forth the disqualification provision under Regulation Crowdfunding); 17 CFR 230.262 (setting forth the disqualification provision under Regulation A); 17 CFR 230.506(d) (setting forth the "bad actor" disqualification provision under Regulation D).

176 *Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings*, Release No. 33-9414 (July 10, 2013) [78 FR 44730, 44731 (July 24, 2013)].

177 *See, e.g.*, Crowdfunding Adopting Release at 71520-21 ("This will help reduce the potential for fraud in the market for such offerings, which in turn may reduce the cost of raising capital to issuers that rely on section 4(a)(6), to the extent that disqualification standards lower the risk premium associated with the presence of bad actors in securities offerings.").

178 In addition to the issuer, Rule 262(a) lists the following persons: any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner or managing member of the issuer; any beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of filing, any offer after qualification, or such sale; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; any general partner or managing member of any such solicitor; or any director, executive officer or other officer participating in the offering of any such solicitor or general partner or managing member of such solicitor.

179 *See* 17 CFR 230.262(a).

180 *See* 17 CFR 230.262(b).

events, as well as the exceptions from the disqualifying actions or events, would apply under Rule 104. Additionally, requests for waivers of disqualification, where appropriate, would remain available to the same extent they are available under Rule 262.[181]

We believe it is appropriate to cross-reference the existing standard in Regulation A, rather than enumerate disqualification requirements specific to the proposed exemptions in Regulation Crypto Assets, in the interest of regulatory consistency and simplicity. We also believe that aligning the proposed disqualification standard with the existing standard under Regulation A (which is aligned with similar provisions in Regulation D and Regulation Crowdfunding) is appropriate because it is likely to simplify due diligence, particularly for issuers that may engage in different types of exempt offerings.[182] Our experience with existing offering exemptions leads us to believe that a bad actor disqualification provision would provide appropriate investor protections in the context of covered investment contract offerings.

Further, under Rule 104, the disqualification provisions in Rule 262 would not apply with respect to any conviction, order, judgment, decree, suspension, expulsion, or bar that occurred or was issued before the date on which Rule 104 becomes effective, if the rule ultimately is adopted. This approach would prevent prior conduct from triggering disqualification without prior notice. To address concerns regarding prior disqualifying events, however, Rule 104 would require the issuer to include in an offering circular or otherwise furnish to each purchaser, a

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[181] *See* U.S. Securities and Exchange Commission, *Waivers of Disqualification Under Regulation A and Regulation D* (last reviewed or updated Apr. 2, 2025), *available at* https://www.sec.gov/about/divisions-offices/division-corporation-finance/waivers-disqualification-under-regulation-regulation-d.

[182] We recognize that, in some places, Rule 262 refers to "Regulation A" or other Regulation A rules. Those references may be somewhat confusing when trying to apply Rule 262 to the Regulation Crypto Assets exemptions pursuant to proposed Rule 104. For example, Rule 262(a) provides that "[n]o exemption under §§ 230.251 through 230.263 (Regulation A) shall be available for the sale of securities if the issuer" or certain other persons have engaged in certain disqualifying events. 17 CFR 230.262(a). Therefore, we propose including an instruction to Rule 104(a) stating that references to "Regulation A" or other Regulation A rules in Rule 262(a) should, for purposes of Rule 104(a), be read as references to Regulation Crypto Assets or its rules.

reasonable time prior to sale, a description in writing of any matters that would have triggered disqualification under Rule 104 but occurred before the date on which Rule 104 becomes effective.[183] This disclosure would help put investors on notice of events that would, but for the timing of such events, have disqualified the issuer from relying on an exemption in Regulation Crypto Assets. This approach is consistent with the approach the Commission took when imposing bad actor disqualifications on newly created exemptions in the past.[184] Moreover, the failure to provide such information would not prevent an issuer from relying on an exemption under Regulation Crypto Assets if the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known of the existence of the undisclosed matter or matters.[185]

Request for Comment

37. Should we adopt Rule 104 as proposed?
38. Are there any portions of Rule 104 that we either should not adopt or that we should change in the final rules? If so, please identify those provisions along with any recommended changes to the rule.
39. Would it be beneficial to maintain general uniformity between Rule 104 and the disqualification provisions in Regulation A, as proposed? Are there aspects of this

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183 *See* proposed 17 CFR 228.104(b). This provision is based on a similar disclosure provision in Rule 262. That provision, however, applies only to disqualifying events that occurred before Rule 262 became effective. Accordingly, we are including a similar provision in Rule 104 to clarify the date to which such disclosure provision applies.

184 *See, e.g.*, 17 CFR 230.262(d); 17 CFR 230.506(e).

185 Rule 104 further would provide that an issuer would not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the required factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants. *See* proposed 17 CFR 228.104, instruction to paragraph (b).

disqualification provision that are not well suited to Regulation Crypto Assets?

40. Are there types of persons that are subject to disqualification as proposed under Rule 104 that should be excluded? Alternatively, are there types of persons that are not subject to disqualification under Rule 104 that should be included?
41. Are there types of disqualifying events that would trigger disqualification under Rule 104 that should be excluded? Alternatively, are there types of disqualifying events that would trigger disqualification under Rule 104 that should be included?
42. Rather than cross-referencing Rule 262, should we instead cross-reference the disqualification provision in Regulation D or Regulation Crowdfunding? Are there aspects of these disqualification provisions that are better suited to Regulation Crypto Assets than the disqualification provision in Rule 262? Alternatively, should we adopt a standalone disqualification provision rather than cross-referencing a disqualification provision set forth in an existing exemption?

B. Startup Exemption (Subpart B, Rule 200)

Subpart B of Regulation Crypto Assets would set forth an exemption from the registration requirements of section 5 of the Securities Act for certain offers, sales, and other distributions of covered investment contracts during a period of up to four years. This proposed startup exemption would permit offerings of up to $5 million during the four-year period. The exemption is intended to provide issuers with temporary relief from Securities Act registration requirements—during which time they may work towards fulfilling the essential managerial efforts they represented or promised investors they would engage in under the covered investment contract—while, at the same time, ensuring that investors remain sufficiently protected and informed. Issuers that rely on the exemption would remain subject to the antifraud and antimanipulation provisions of the Federal securities laws, including, but not limited to, section 17 of the Securities Act and section 10 of the Exchange Act.

1. Background

As noted above,[186] issuers often conduct ICOs when the relevant project (i.e., the crypto asset and associated crypto network or associated crypto application) is in its early stages or has not yet begun. In those cases, the issuer typically uses the capital raised in the ICO to fund development of the project. Because issuers in ICOs typically pair the offer or sale of a crypto asset (or the promise to deliver a crypto asset at a later date) with representations or promises regarding their efforts to, for example, develop and market the project, those issuers often are offering and selling covered investment contracts.[187] If that is the case, then those offers and sales are subject to the Securities Act and, therefore, must be either registered under section 5 or made pursuant to an exemption.

As with offers and sales of other types of securities, an issuer of a covered investment contract must either register its offering or rely on a valid exemption from registration. The Commission's existing rules, however, pose two main difficulties when applied to offerings of covered investment contracts. First, as discussed above,[188] the Commission's existing disclosure requirements may not elicit the types of information that are most likely to be material to investors in covered investment contracts. Thus, these disclosure requirements, when applied to covered investment contract offerings, can impose undue compliance costs on issuers while failing to provide investors with information important to their investment decisions. The

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[186] *See supra* note 21.

[187] *See* 2026 Interpretation at 13722.

[188] *See supra* section II.A.4.

Commission has confronted similar issues with respect to other asset classes and sought to address them with bespoke disclosure requirements.[189]

Second, subject crypto assets may eventually separate from the issuer's representations or promises to engage in essential managerial efforts, and, as a result, the covered investment contract may cease to exist. This process of the covered investment contract ceasing to exist generally occurs under the circumstances described in the 2026 Interpretation (e.g., as a result of the issuer fulfilling, or failing to satisfy, its representations or promises to engage in essential managerial efforts under the covered investment contract).[190] This process also may be consistent with issuers' and investors' expectations in a covered investment contract offering. For example, the completion of an issuer's stated goal at the outset of the offering (i.e., the fulfillment of its representations or promises to engage in essential managerial efforts under the covered investment contract) should give rise to the cessation of the covered investment contract. Similarly, investors' interest in the offering often is driven by their perception of the likelihood of the issuer fulfilling its representations or promises and achieving its stated goal. Thus, in these circumstances, the relevant stakeholders in the offering may share a common interest in achieving an outcome that will result in the subject crypto assets (that initially were sold subject to an investment contract) eventually not being subject to the Federal securities laws.

Some have asserted that, as currently applied, the Federal securities laws can inhibit the realization of this mutually beneficial outcome.[191] In short, for developers to complete crypto

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[189] *See id.* (noting that the Commission has adopted Regulation S-K subparts tailored to specific issuers and transactions, such as Regulation M-A (mergers and acquisitions), Regulation AB (asset-backed securities), subpart 1200 (oil and gas producing activities), subpart 1300 (mining operations), subpart 1400 (banks and savings and loans), and subpart 1600 (Special Purpose Acquisition Companies)).

[190] *See* 2026 Interpretation at 13722-23.

[191] *See, e.g.*, Commissioner Peirce, Running on Empty; *see also* letters from Nasdaq; CrowdCheck Law; AIMA; a16z 1; Crypto Council; Figure Markets.

asset projects as they envision and represent or promise to crypto asset offerees and purchasers, they often must distribute crypto assets to other persons. This is especially the case when the project contemplates a functional and decentralized crypto network or application. To the extent those distributions constitute offerings of covered investment contracts, however, the Securities Act and the Commission's rules thereunder can impose prohibitive costs or burdens.[192]

The startup exemption, set forth in proposed 17 CFR 228.200 ("Rule 200"), would help address these concerns, thereby avoiding unduly burdening issuers as they attempt to fulfill their representations or promises to engage in essential managerial efforts under covered investment contracts.[193] Specifically, issuers that qualify for the startup exemption would be able to distribute subject crypto assets to potential associated crypto network or associated crypto

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[192] 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. To the extent concerns have been raised about whether an issuer may need to register a class of covered investment contracts under section 12(g) of the Exchange Act, we do not view covered investment contracts as equity securities, and, therefore, we believe they are not subject to section 12(g). Specifically, a covered investment contract is not an "equity security" under section 3(a)(11) of the Exchange Act, 17 CFR 240.3a11-1, or 17 CFR 230.405. The term "investment contract" is not included in the aforementioned statutory section or rules, and a covered investment contract does not constitute any of the financial instruments enumerated in the definition of "equity security" in such section or rules. *See also infra* note 249 and accompanying text.

[193] In that regard, we note that several commenters suggested that the level of decentralization associated with a crypto asset should determine whether such crypto asset is subject to an investment contract and, therefore, that the Commission should adopt an exemption to facilitate such decentralization. *See supra* sections I.B.1 and 4. As discussed in the 2026 Interpretation, we believe the determination as to whether a crypto asset is subject to an investment contract is based on whether a crypto asset purchaser's profit expectations depend on the issuer's representations or promises to engage in essential managerial efforts. *See* 2026 Interpretation at 13721. That investment contract would, in turn, cease to exist if the issuer fulfills those representations or promises. Whether an issuer fulfills its representations or promises to engage in essential managerial efforts depends on how the issuer defines or otherwise describes such efforts in marketing and promoting the investment contract. If the issuer represents or promises to achieve decentralization of an associated crypto network or associated crypto application, whether the issuer has achieved decentralization would be based on how the issuer defined or otherwise described decentralization, not a general market conception of what constitutes decentralization. Thus, we believe the proper focus of the startup exemption (and the investment contract safe harbor, as discussed in section II.D below) should be on the issuer's fulfillment of the representations or promises it made to engage in essential managerial efforts under the covered investment contract rather than a general market conception of decentralization.

application participants via an offering framework that, on the one hand, is tailored to covered investment contracts such that it avoids undue costs and contemplates the potential eventual cessation of the covered investment contract and, on the other hand, ensures investors are appropriately protected and well-informed.

2. Proposed Rule

As noted in the preceding section, the 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. Those representations often focus on developing the functionality of, and pursuing decentralization with respect to, the associated crypto network or associated crypto application, which may necessitate the distribution of subject crypto assets.[194] Issuers relying on the exemption would be able to perform the tasks needed to develop, test, and launch their projects with increased certainty about the application of the registration requirements of section 5 of the Securities Act to their projects[195] and with requirements that are tailored to covered investment contracts and their issuers. Issuers also would be able to rely on this exemption to conduct smaller capital-raising transactions involving covered investment contracts (subject to a $5 million offering limit). As explained in more detail below, we believe this proposed exemption is appropriate in the public

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[194] Covered investment contracts issued pursuant to the startup exemption would not be restricted securities or otherwise subject to rule-based resale restrictions, and the startup exemption would not limit an issuer's ability to sell covered investment contracts to retail investors (by, for example, prohibiting sales to non-accredited investors or limiting the amount that may be sold to such investors). General solicitation also would be permitted under the startup exemption. These features would help to avoid impediments to the development of network effects. *See supra* notes 12-15 and accompanying text.

[195] Many of these tasks (including those functions that are inherent to the operation of an associated crypto network or associated crypto application) involve the transfer or distribution of crypto assets that may constitute an offer or sale of covered investment contracts subject to the Securities Act (e.g., distributions in connection with airdrops or transfers as gas fees, fees for testing, or other compensation). *See, e.g.*, letter from Kiln (Apr. 3, 2025) ("Kiln").

interest and consistent with the protection of investors because it appropriately balances capital formation and the protection of investors in this space.

Rule 200 would be separated into five paragraphs, denominated (a) through (e). Under Rule 200(a), a covered transaction would be exempt from the registration requirements of section 5 of the Securities Act if the issuer satisfied the rule's conditions. Rule 200(b) would set forth those conditions, which are as follows: (1) four-year duration; (2) issuer eligibility; (3) one-time use; (4) offering limit; (5) disclosure and filing requirements; and (6) general conditions. Rule 200(c) would set forth the filing requirements for issuers relying on the startup exemption. This provision would require the issuer to file a notice of reliance with the Commission on a new form titled "Form NOR," a description of which would be codified at 17 CFR 239.605.[196] Rule 200(d) would require the issuer to make the information set forth in Rule 103 publicly accessible, free of charge, at a website address specified in the notice of reliance at or prior to the time it files the notice of reliance. Rule 200(d) also would require the issuer to periodically update that information, as set forth in the rule. Finally, Rule 200(e) would require the issuer to file a transition report with the Commission on a new form titled "Form TR," a description of which would be codified at 17 CFR 239.604,[197] no later than four years after the date on which the issuer filed the notice of reliance. Each of these provisions is discussed in more detail below.

a. Scope of Exemption (Rule 200(a))

Under Rule 200(a), a covered transaction would be exempt from the registration requirements of section 5 of the Securities Act if the conditions set forth in Rule 200(b) were satisfied. As discussed in section II.A.1.b above, a "covered transaction" would be defined in

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[196] As noted below, proposed Form NOR is set forth in Appendix F to this release.

[197] As noted below, proposed Form TR is set forth in Appendix E to this release.

Rule 100 as any offer, sale, or other distribution of a covered investment contract in reliance on the startup exemption.[198] A covered transaction would include, but not be limited to, capital raising transactions as well as other offerings of covered investment contracts in exchange for, in recognition of, or as incentive for past or future use of an associated crypto network or associated crypto application, or as a reward or incentive for conducting activities primarily related to operating, governing, or securing an associated crypto network or associated crypto application.[199]

The broad scope of the definition of "covered transaction" is intended to allow issuers to conduct distributions of covered investment contracts in connection with the development, testing, and launch of a subject crypto asset and associated crypto network or associated crypto application, subject to the offering limit and the other conditions in Rule 200(b). Importantly, this would enable the issuer to more easily conduct the various distributions of covered investment contracts that may be necessary in connection with the development of a crypto network or application, including airdrops;[200] distributions related to staking, governance, and

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[198] Because the startup exemption would apply only to covered transactions once the conditions of Rule 200(b) (including filing a notice of reliance on Form NOR and providing the disclosures set forth in proposed Rule 103) are satisfied, issuers should be aware that any communication made before that time may constitute an "offer" under the Securities Act that would not fall within the scope of the exemption. As such, issuers should exercise caution with respect to any such communications, including, for example, by ensuring those communications are accurate and consistent with any subsequent communications or disclosures made during the offering period.

[199] *See* proposed 17 CFR 228.100.

[200] As noted in the definition of "covered transaction," an issuer would be able to conduct an airdrop in reliance on the startup exemption. *See supra* note 119 and accompanying text. As discussed in section I.A.2.a above, in the 2026 Interpretation, the Commission provided its view that airdrops of "non-security crypto assets by issuers to recipients who do not provide the issuer with money, goods, services, or other consideration in exchange for the airdropped non-security crypto assets" do not become subject to an investment contract and that issuers conducting such airdrops do not need to register those transactions with the Commission under the Securities Act or fall within one of the Securities Act's exemptions from registration. 2026 Interpretation at 13730-31. As such, issuers conducting airdrops that fall within the circumstances described in the 2026 Interpretation would

gas fees that are intended to enable crypto network or application functionality; and paying fees for testing or other compensation.[201]

Request for Comment

43. Should we exempt covered transactions from the registration requirements of section 5 of the Securities Act if the conditions in Rule 200(b) are satisfied, as proposed in Rule 200(a)?
44. Does the proposed definition of "covered transactions" establish an appropriate scope for the exemption?
45. In footnote 192 above, we express our view that covered investment contracts are not "equity securities" and, therefore, are not subject to section 12(g) of the Exchange Act. Should we codify this view by, for example, amending 17 CFR 240.12g5-1 to provide that for purposes of determining whether an issuer is required to register a class of equity securities with the Commission pursuant to section 12(g) of the Exchange Act, an issuer may exclude covered investment contracts?
46. Are there specific revisions we should make to the proposed startup exemption to address airdrops? For example, should we provide additional guidance on how to calculate any consideration provided in exchange for the airdrop? Alternatively, should we adopt a

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not need to rely on the startup exemption, or any other exemption, for such airdrops. This would include airdrops in which "consideration was provided to the issuer prior to the announcement of the airdrop and the recipients are not required to provide any further consideration to the issuer after such announcement in order to obtain the airdropped non-security crypto asset." *Id.* at 13731. If, however, an issuer conducts an airdrop that falls outside the scope of the circumstances described in the 2026 Interpretation, then such issuer may conduct such airdrop in reliance on the startup exemption, subject to the offering limit in proposed Rule 200(b)(4). This would include, for example, an airdrop in which the recipients would have to fulfill conditions subsequent to the announcement of the airdrop, such as buying a specific crypto asset, buying a good or service (whether or not related to a crypto asset), or performing a specific task (whether or not related to a crypto asset). *See* 2026 Interpretation at 13731, n.141.

201 *See, e.g.*, letters from AIMA; Kiln.

separate exemption specifically tailored for airdrops? If so, what should a standalone exemption contain?

b. Conditions (Rule 200(b))

Rule 200(b) would include six subparagraphs, each describing a condition with which an issuer must comply in order to rely on the startup exemption. Rule 200(b)(1) (*Four-year duration*) would require the covered transaction to occur during the period beginning after the issuer has filed a notice of reliance in accordance with Rule 200(c)(1) and ending on the date that is the earlier of (i) four years after the date of such filing or (ii) the date on which the issuer files a transition report pursuant to Rule 200(e). The four-year maximum duration of the startup exemption is intended to provide the issuers with a reasonable amount of time to fulfill their representations or promises to engage in essential managerial efforts under covered investment contracts. At the same time, we are conscious that a duration that is too prolonged could undermine the incentives that the limited duration otherwise would provide issuers to fulfill their representations or promises.

In this regard, we note that the startup exemption does not impose certain requirements on the issuer that are contained in the other proposed exemption (e.g., disclosing financial information or providing narrative disclosures regarding the issuer's financial condition in a Commission filing) so that the burdens of using the exemption are commensurate with the $5 million offering limit, and also because it is limited in its duration. The justification for less burdensome disclosure requirements under the startup exemption may be undermined if the duration were significantly extended. We believe the four-year period and offering limit strike the appropriate balance with respect to these considerations,[202] but we are seeking commenters' feedback on these aspects of the proposed rule.

Rule 200(b)(2) (*Issuer eligibility*) would state that the issuer may be an entity, an individual, or a group of individuals or entities. To help ensure that investors remain sufficiently protected and that each such member of the group of individuals or entities acknowledges responsibility under the proposed rule, each member of the group (or an authorized person for each member) would be required to sign the notice of reliance and transition report and provide the certifications thereunder.[203] The members of the group would be responsible, individually and collectively, for satisfying the conditions of the exemption.

This provision is intended to recognize the fact that, in the early stages of a crypto asset project, a developer or development team may not have consulted legal counsel or expended the time and money (especially if it has not yet raised funds) to form a legal entity through which to

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[202] In determining the appropriate maximum duration for the exemption, we note that commenters suggested between three and four years as the appropriate time period. *See, e.g.*, letters from a16z 3 ("[P]rojects should remain eligible for the safe harbor so long as they have achieved "Network Maturity" during the three-year period."); Injective Labs (July 9, 2025) (recommending a four-year exemption). We also note that Commissioner Peirce's recommended exemption would have a three-year duration, whereas draft legislation introduced in the House of Representatives would exempt from section 5 of the Securities Act offers and sales of covered investment contracts if the "issuer intends for the blockchain system to which the digital commodity relates to be a mature blockchain system," generally within four years. *See* Cmr. Peirce Proposal 2.0; Digital Asset Market Clarity Act of 2025, H.R. 3633, 119th Cong. (2025), *available at* https://www.congress.gov/bill/119th-congress/house-bill/3633. Having considered these recommendations, we are proposing the longer of the two alternatives (i.e., four years) in order to ensure that issuers would have sufficient time under the exemption to fulfill their representations or promises to engage in essential managerial efforts under covered investment contracts.

[203] The term "group" as used in Regulation Crypto Assets is intended to be consistent with the group concept under the beneficial ownership reporting rules. *See Modernization of Beneficial Ownership Reporting*, Release No. 33-11253 (Oct. 10, 2023) [88 FR 76896, 76932] (noting that determining whether a group has been formed "does not depend solely on the presence of an express agreement" and that "concerted actions by two or more persons for the purpose of acquiring, holding or disposing of securities of an issuer are sufficient to constitute the formation of a group"). Under 17 CFR 240.13d-1(k)(2), a group may satisfy its beneficial ownership reporting obligation either by a single joint filing or by each of the group's members making an individual filing. By contrast, under Rule 200, a joint notice of reliance and transition report filing would be required, and the group would not satisfy its filing obligations if each individual separately filed notices of reliance or transition reports.

conduct their business.[204] These early-stage projects, however, may still benefit from the ability to use the startup exemption in order to progress their projects toward fulfilling their representations or promises to engage in essential managerial efforts under covered investment contracts. As such, we believe it is appropriate not to limit use of the startup exemption to a single entity acting as the issuer.[205]

Rule 200(b)(3) (*One-time use*) would state that the issuer and its affiliates must not have previously relied on the startup exemption with respect to the same subject crypto asset, or a substantially similar crypto asset, other than with respect to covered transactions that occurred during the period set forth in Rule 200(b)(1). This provision is intended to avoid potential loopholes whereby an issuer could effectively circumvent the four-year limitation (by using the startup exemption for another four years after having used it for a prior four-year period) or the offering size limitation (by permitting multiple affiliated issuers to each separately raise funds pursuant to the startup exemption).

We recognize that some may view this proposed restriction as overly broad given that it would apply both to the issuer and its affiliates. We also recognize that the limitation on "substantially similar crypto assets"[206] may inhibit serial entrepreneurs from utilizing the startup exemption with respect to separate crypto asset projects. Despite those potential concerns, we

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204 *See, e.g.*, letter from Vanguard Global Holdings LLC (May 28, 2025) ("[T]he reality is that many blockchain initiatives are not born from large institutions or well-funded investors. They often originate in garages, home offices, and kitchen tables . . . . These are startups led by a single individual or a small team with a bold vision but limited financial resources.").

205 There is no requirement, however, that an issuer be a "startup" or early-stage in order to use the startup exemption, so long as the issuer satisfies the exemption's conditions

206 This "substantially similar" standard is intended to prevent an issuer or its affiliate from circumventing the one-time use restriction by making superficial changes to a crypto asset or the associated crypto network or associated crypto application. For example, 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.

believe the proposed one-time use requirement is needed to avoid circumvention of the four-year limitation and offering size limitation. Moreover, the potential availability of other exemptions on which issuers may rely for covered investment contract offerings (including the fundraising exemption) may help mitigate concerns about unduly restricting issuers' ability to develop crypto asset projects. Nonetheless, we invite comment as to whether there is a more appropriate way to ensure the four-year limitation and offering size limitation are not circumvented while, at the same time, addressing these potential concerns.

Rule 200(b)(4) (*Offering limit*) would provide that 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 current covered transaction must not exceed $5 million. As discussed above,[207] the "aggregate offering price" definition in proposed Rule 100 would explain how to calculate the value of non-cash consideration and foreign currency for purposes of evaluating compliance with the $5 million limit. Because issuers relying on the startup exemption would not be required to provide disclosures with respect to financial information, or at the same frequency as they would under a registered offering, we believe it is appropriate, in the interest of investor protection, to impose a limit on the amount of capital that can be raised under this exemption.[208] We believe that $5 million is an appropriate offering limit—especially in light of the higher offering limit we are proposing under the fundraising exemption, which covered investment contract issuers also may avail themselves of given the non-exclusive nature of these

[207] *See supra* note 114 and accompanying text.

[208] *See, e.g.*, letter from a16z 3 ("Ultimately, caps are necessary not only to mitigate investor risk, but also to preserve the broader incentive structure of the Proposal. Without a cap on primary sales, projects may use the Proposal to facilitate large-scale distributions that function more like exit liquidity events than capital-raising transactions intended to fund network development.").

exemptions—and is proportionate to the disclosure requirements and other investor protections in the startup exemption. That said, we invite comments as to this aspect of the proposed rule.

Rule 200(b)(5) (*Disclosure and filing requirements*) would require the issuer to satisfy the disclosure and filing requirements in Rule 200(c), (d), and (e). Those requirements, which are discussed in more detail below, are intended to help ensure that investors are provided with timely, material information in connection with their investment decisions.

Finally, Rule 200(b)(6) (*General conditions*) would remind the issuer that it must satisfy the applicable requirements set forth in subpart A of Regulation Crypto Assets, including the disqualification provision in Rule 104.[209] Although those general provisions would apply even in the absence of this condition, we believe it is appropriate to include this provision to help promote compliance (especially for those issuers that do not have legal counsel and are less familiar with our rules).

Request for Comment

47. Should Rule 200 be time-limited as proposed in Rule 200(b)(1)? If so, is four years an appropriate duration for Rule 200?
48. Should we allow individuals or a group of entities or individuals to rely on Rule 200, as proposed under Rule 200(b)(2)? By requiring each member of a group to make the certifications in the notice of reliance and transition report, would the rule discourage two or more persons (whether individuals or entities) from collaborating on projects?
49. Should we include an issuer eligibility requirement that would limit use of Rule 200 only to entities (i.e., excluding natural persons)? If so, should we require that such entity be

[209] *See supra* section II.A.5 for a discussion of this provision.

formed or incorporated in the United States? Should we have any other issuer eligibility requirements? For example, should we exclude certain types of issuers consistent with the proposed issuer eligibility requirements in the fundraising exemption?

50. To ensure that U.S. investors are adequately protected, should we add a condition to the exemption to limit its application? For example, similar to the fundraising exemption, should we limit use of Rule 200 to issuers that have a majority of their executive officers or directors that are U.S. citizens or residents, more than 50 percent of their assets located in the United States, and their business administered principally in the United States? Alternatively, should we limit use of Rule 200 to issuers that have their principal place of business in the United States? If so, should "principal place of business" be defined and, if so, how should we define "principal place of business"? Are there other ways to ensure that U.S. investors are adequately protected and provide them with more easily accessible investment opportunities?
51. Should we include a one-time use condition as proposed in Rule 200(b)(3)? If so, is it appropriate to apply this limitation to both an issuer and its affiliates? If not, how should that one-time use limitation be applied? Is the "substantially similar" standard in the proposed one-time use condition appropriate? If not, should it be eliminated or amended?
52. Would the one-time use condition in Rule 200(b)(3) unduly impede the ability of certain "repeat players" (e.g., serial entrepreneurs or angel investors) from participating in crypto projects? Should we make any changes to Rule 200(b)(3) to avoid such impediments? For example, should we include a *de minimis* investment or participation carveout from the condition in Rule 200(b)(3) that would permit an issuer to rely on the startup exemption with respect to the same subject crypto asset, or a substantially similar crypto

asset, more than once without running afoul of the one-time use condition? If so, what are the appropriate *de minimis* thresholds (for investment, participation, or otherwise) that we should include in a carveout from proposed Rule 200(b)(3)?

53. Should Rule 200 have a $5 million offering limit as proposed in Rule 200(b)(4)? Should we adopt a higher or lower offering limit? What would be the corresponding effects on investor protection and capital formation of a different offering limit?
54. Services rendered to the issuer, including those in furtherance of the development, testing, or promotion of the associated crypto network or associated crypto application, in exchange for covered investment contracts may constitute "covered transactions" that count towards the offering limit in proposed Rule 200(b)(4). Is the proposed definition of "covered transactions" too narrow or too broad for purposes of proposed Rule 200(b)(4)? For example, would the definition of "covered transactions" make it difficult to use the proposed exemption for airdrops? Should we scope any covered transactions out of the offering limit in Rule 200(b)(4)? Alternatively, are there transactions that should count towards the offering limit in Rule 200(b)(4) that are not captured by the proposal?
55. Should we include investment limits for individuals, as we have proposed for the fundraising exemption? If so, what limits should we adopt?
56. Should we require an issuer to satisfy the disclosure and filing requirements in Rule 200(c), (d), and (e) as proposed in Rule 200(b)(5)?
57. Should we include the reminder in Rule 200(b)(6) that the issuer must satisfy the applicable requirements set forth in subpart A of Regulation Crypto Assets? Would this provision help to promote compliance?

c. Notice of Reliance (Rule 200(c))

Rule 200(c) would include three subparagraphs related to the notice of reliance that the issuer would be required to file under the startup exemption.

Rule 200(c)(1) would require the issuer to file with the Commission a notice of reliance containing the information required by Form NOR, which is attached hereto as Appendix F, prior to any covered transaction. Form NOR, in turn, would require the issuer to provide the following information:

- Information regarding the issuer, including the issuer's name (or names, if the issuer is a group of individuals and/or entities), jurisdiction of incorporation or formation (if the issuer is or includes an entity), address of principal executive offices (if any), telephone number, and email address;[210]
- The name of the subject crypto asset;
- The website address at which the issuer will make the information described in Rule 103 publicly accessible, free of charge, pursuant to Rule 200(d)(1); and
- A certification that the information in the Form NOR is true, complete, and correct and that the issuer intends to fulfill, within four years after the date of the filing of the Form NOR, the essential managerial efforts the issuer represented or promised investors it would engage in under the covered investment contract.

This notice of reliance on Form NOR, which the issuer would be required to file publicly on EDGAR,[211] would serve to make investors, the Commission, and other members of the public

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[210] To the extent that the issuer is composed of a group of individuals and/or entities, the issuer would be required to designate a single telephone number and email address for purposes of the Form NOR.

[211] *See* proposed 17 CFR 228.101(c) (requiring documents filed pursuant to Regulation Crypto Assets to be submitted electronically on EDGAR). Form NOR would be required to be formatted in HyperText Markup Language ("HTML"), as would be further provided in the EDGAR Filer Manual, to be compatible with EDGAR.

aware that the issuer had begun relying on the startup exemption. The filing of the notice of reliance also would "start the clock" on the four-year period under Rule 200(b)(1). Furthermore, requiring the issuer to certify in the notice that it intends to fulfill those representations or promises within four years would help to ensure that the exemption is being used for its intended purposes.

Rule 200(c)(2) would provide that an issuer may file an amendment to a previously filed notice of reliance on Form NOR at any time. This permissive amendment provision is substantially similar to 17 CFR 230.503(a)(2) under Regulation D and is intended to permit issuers to update their notice of reliance as they see fit.

Finally, Rule 200(c)(3) would require an issuer to file an amendment to a previously filed notice of reliance on Form NOR: (i) to correct a material mistake of fact or error in the previously filed notice of reliance, as soon as practicable after discovery of the mistake or error; or (ii) to reflect a material change in the information provided in the previously filed notice of reliance, as soon as practicable after the change. The issuer would remain under this obligation to amend Form NOR until the earlier of: (1) the end of the four-year period after the issuer files the initial notice of reliance; and (2) the date on which the issuer files a transition report on Form TR pursuant to Rule 200(e). We recognize that the vast majority of the information required to be disclosed under the startup exemption would be made available on the issuer's website pursuant to Rule 103. Nonetheless, we believe it is appropriate to require the issuer to amend its notice of reliance in a timely manner if the notice of reliance contains a material mistake or error or if there is a change in the information previously provided in the form in light of the fundamental nature and importance of the information that is required to be disclosed in the Form NOR.

Request for Comment

58. Should we require an issuer to file a notice of reliance on Form NOR prior to any covered transaction as proposed in Rule 200(c)?
59. Would Form NOR, as proposed, provide market participants the appropriate amount and type of information to make an informed investment decision?
60. Are there certain types of organizational structures that cannot satisfy the disclosure requirement to provide a jurisdiction of incorporation or formation (if the issuer is or includes an entity)? For example, could decentralized unincorporated nonprofit associations satisfy this requirement? If not, should we revise this requirement to accommodate any such organizational structures?
61. Should we require disclosure of the address of the issuer's principal executive office only if the issuer has a principal executive office, as proposed in Rule 200(c)? If an issuer does not have a principal executive office, should we require the issuer to provide a different address (e.g., the address for the issuer's agent for service of process)?
62. Would the requirement in Form NOR that the issuer certify that it intends to fulfill its representations or promises within four years help to ensure that the exemption is being used for its intended purposes? If not, should this certification be eliminated or revised? For example, should we change the proposed standard from "intent" to a different standard? If so, what standard should we use? Instead of the proposed approach, should we require an issuer to certify that it is aware of the time limitations of the exemption without having to certify that it intends to fulfill its representations or promises within four years?
63. Should we require an issuer to file an amendment to Form NOR to correct a material mistake or reflect a material change in the information provided previously? If not, why

not? If so, is "as soon as practicable" after the discovery or change the proper time period to file the amendment? Should we adopt a specific timeframe, such as 24 hours or four business days? Is there another specific timeframe we should consider?

d. Disclosure Requirements (Rule 200(d))

Rule 200(d) would include three subparagraphs related to the disclosure requirements that the issuer would be required to comply with under the startup exemption.

Rule 200(d)(1) would require the issuer to make the information described in Rule 103 publicly accessible, free of charge, at the website address specified in the notice of reliance at or prior to the time that the notice of reliance is filed with the Commission in accordance with Rule 200(c)(1).[212] Taken together with the information required in Form NOR itself, this requirement would help to ensure that investors have access to the information needed to make informed investment decisions before issuers can begin making offers and sales of covered investment contracts under the startup exemption. It also would be consistent with our understanding of current practice in many ICOs, in which the primary disclosure document (i.e., the project's whitepaper) is posted on the developer's public website. The proposed rule is intended to be compatible with this existing practice in order to limit issuers' compliance costs (especially in view of the fact that many of these issuers are smaller and may not be familiar with EDGAR), but with additional conditions that would help to ensure investors are appropriately informed and protected. Those other conditions (including the relatively low offering amount limit, one-time

[212] Rule 200(d)(1) does not require that the issuer include the information required by Rule 103 in its Form NOR, which is filed on EDGAR. Instead, the rule allows the issuer the flexibility to determine the location and manner of presentation of such information, so long as it meets the requirements of Rule 103 and is publicly accessible and free of charge at the website address specified in the notice of reliance. That said, to the extent an issuer elects to include that information in its notice of reliance, such an approach would be permitted by Rule 200(d)(1).

use limitation, and the four-year limitation), as well as the requirement to specify the website address containing the information in the notice of reliance, should mitigate any investor protection concerns associated with this accommodation.[213]

Rule 200(d)(2) would require the issuer to ensure that the information disclosed under Rule 200(d)(1) of this section remains publicly accessible and free of charge at the website address specified in the notice of reliance. This obligation would continue until the earlier of: (1) the end of the four-year period after the issuer files the initial notice of reliance; or (2) the date on which the issuer files a transition report on Form TR pursuant to Rule 200(e). Because the information disclosed under Rule 200(d)(1) is not required to be filed on EDGAR, this provision is intended to prevent a situation in which an issuer technically complies with Rule 200(d)(1) by providing the information at or prior to filing the notice of reliance but removes that information shortly (or immediately) after filing the notice of reliance.

Finally, Rule 200(d)(3) would require the issuer periodically to amend the information disclosed under Rule 200(d)(1) for any material changes. This obligation would continue until the earlier of: (1) the end of the four-year period after the issuer files the initial notice of reliance; or (2) the date on which the issuer files a transition report on Form TR pursuant to Rule 200(e). Specifically, the issuer would be required to amend the information disclosed under Rule 200(d)(1) 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.

Because the issuer may be conducting offers and sales of covered investment contracts throughout the duration of the startup exemption, we believe it is important that the information

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213 The Commission may assess whether a similar approach could be extended to other exemptions.

required under Rule 103 periodically be updated to the extent material changes are made to that information so that investors are sufficiently informed. This is consistent with the feedback the Crypto Task Force received from several commenters.[214] This ongoing disclosure obligation also would help keep existing investors apprised of the issuer's progress toward fulfilling its representations or promises to engage in essential managerial efforts under the covered investment contract. Further, to the extent a secondary market develops for the covered investment contracts issued under the startup exemption, this ongoing disclosure obligation would promote liquidity in that market.[215]

We believe the annual amendment obligation under Rule 200(d)(3), as well as the filing deadline in that rule, would keep investors timely informed of changes in the information disclosed under Rule 200(d)(1) while also avoiding undue compliance costs for issuers. That said, we are seeking commenters' input on whether the proposed rule appropriately balances these considerations.

<u>Request for Comment</u>

64. Do the proposed disclosure requirements in Rule 200(d) strike the appropriate balance between avoiding undue burdens on issuers while ensuring that investors are sufficiently protected and well-informed?

65. Should Rule 200(d)(1) require the information required by Rule 103 be filed on EDGAR

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[214] *See, e.g.*, letters from DeFi Education Fund ("[I]t would be logical to condition the Safe Harbor on ongoing periodic disclosures until the end of the Safe Harbor period."); Figure Markets ("Ongoing disclosures should focus on material changes, such as protocol updates, security audits, and network performance metrics, ensuring transparency and enabling informed decision-making. These disclosures, facilitated through blockchain's transparent ledger and self-custody wallets, would enhance investor access to information and improve regulatory oversight, aligning with goals of market efficiency and regulatory effectiveness.").

[215] As noted in section II.A.4 and footnote 194 above, covered investment contracts sold under the startup exemption would not be restricted securities. As such, investors generally would be able to transfer their covered investment contracts after acquiring them from the issuer.

rather than permitting the issuer to provide such information on a separate website? Would permitting this information to be provided on a separate website adversely impact the ability of investors and the Commission to pursue claims against the issuer for material misstatements or omissions? For example, absent the requirement to file such information on EDGAR, how would investors and the Commission be able to determine what information the issuer provided to investors at the time they were offered and sold covered investment contracts? Are there changes we should make to address these concerns?

66. Should the information required in Rule 200(d)(1) be required to remain accessible on the issuer's website for the duration of the period described in Rule 200(b)(1)?
67. Should we adopt the proposed amendment obligation and amendment deadline in Rule 200(d)(3)? If so, is 30 calendar days after the end of each calendar year the appropriate amendment deadline? Should the deadline be extended or shortened?
68. Should issuers be required to assess their amendment obligations under Rule 200(d)(3) more or less frequently than the proposed annual frequency? If so, what is an appropriate frequency? For example, should we require issuers to assess their amendment obligations semiannually? Alternatively, should issuers' amendment obligations be triggered upon a material change to the information previously disclosed? If so, what would be an appropriate amendment deadline after a material change?
69. Should we include a requirement that issuers identify any changes to the filed Rule 200(d)(3) information to better ensure that investors are made aware of changes in the information previously disclosed? If so, how should those changes be identified? For example, should issuers be required to mark the changes made in the amendment to allow

an easier comparison to the previous version? Alternatively, should issuers only be required to explain the changes as a note to the information? Should issuers be required to keep prior versions of the information available on their websites?

e. Transition Report (Rule 200(e))

Finally, Rule 200(e) would require the issuer to file with the Commission a transition report containing the information required by Form TR no later than four years after the date on which the issuer filed a notice of reliance under Rule 200(c)(1). This transition report, which the issuer would be required to file publicly on EDGAR,[216] would serve to make investors, the Commission, and other members of the public aware that the issuer has ceased relying on the startup exemption. Thus, after filing the transition report, the issuer would no longer be able to offer and sell covered investment contracts in reliance on the startup exemption. The issuer, however, also would no longer be required to comply with the amendment requirements with respect to the notice of reliance or the disclosure obligations under Rule 200(d).

In order to satisfy the transition report requirement in Rule 200(e), the issuer would have to provide the information required in Form TR, which is attached hereto as Appendix E. Form TR would be used to satisfy the transition report requirements under the startup exemption, the fundraising exemption, and the investment contract safe harbor.[217] As such, the form would set forth different disclosure requirements depending on the rule pursuant to which it was being

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[216] *See* proposed 17 CFR 228.101(c) (requiring documents filed pursuant to Regulation Crypto Assets to be submitted electronically on EDGAR). Form TR would be required to be formatted in HTML, as would be further provided in the EDGAR Filer Manual, to be compatible with EDGAR.

[217] See *infra* sections II.C and D for discussions of the fundraising exemption and the investment contract safe harbor. Under the proposed rules, neither the Commission nor its staff would be required to review or take action with respect to a Form TR. As such, an issuer that filed a Form TR pursuant to Rule 200(e) would, immediately upon such filing, satisfy the applicable transition report requirement under the startup exemption, the fundraising exemption, or the investment contract safe harbor.

filed. With respect to a transition report filing under Rule 200(e), Form TR would require the issuer to provide the following information:

- Information regarding the issuer, including the issuer's name (or names, if the issuer is a group of individuals and/or entities), jurisdiction of incorporation or formation (if the issuer is or includes an entity), address of principal executive offices (if any), telephone number, and email address;[218]
- Other information based on whether the issuer has or has not satisfied certain conditions:
    - If the issuer has satisfied the condition in proposed 17 CFR 228.400(a) ("Rule 400(a)")[219]: (1) a brief description of the covered investment contract and crypto asset sufficient for a reasonable investor to identify the security and crypto asset to which the filing relates (Item 1 of Form TR); (2) a certification that the issuer has satisfied the condition in Rule 400(a) with respect to such covered investment contract and crypto asset (Item 2 of Form TR); and (3) an analysis supporting that certification (Item 3 of Form TR); and
    - If the issuer has not satisfied the condition in Rule 400(a): (1) a brief description of the covered investment contract for a reasonable investor to identify the

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[218] To the extent that the issuer is composed of a group of individuals and/or entities, the issuer would be required to designate a single telephone number and email address for purposes of the Form TR.

[219] *See* proposed 17 CFR 228.400(a). As discussed in more detail in section II.D below, the condition in Rule 400(a) would be satisfied if the issuer of the covered investment contract has completed or otherwise permanently ceased all essential managerial efforts that it represented or promised it would engage in under the covered investment contract and 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. This condition is intended to reflect the point in time at which the crypto asset has separated from the issuer's representations or promises and the covered investment contract has ceased to exist. In analyzing whether it has completed or otherwise permanently ceased all essential managerial efforts that it represented or promised it would engage in under the covered investment contract, we expect that an issuer would refer to its disclosure pursuant to proposed Rule 103(b)(1). *See* proposed 17 CFR 228.103(b)(1) (requiring disclosure, among other things, of the issuer's representations or promises to engage in essential managerial efforts under the covered investment contract and its progress with respect to such representations or promises); *see also infra* note 370 and accompanying text.

security to which the filing relates (Item 4 of Form TR); (2) a description of the current status of the covered investment contract, the subject crypto asset, and the associated crypto network or associated crypto application and the issuer's plans with respect to these items (Item 5 of Form TR); and (3) if the issuer indicates that the covered investment contract has ceased to exist, an analysis supporting that determination (Item 6 of Form TR).

If the issuer had, at the time of the Form TR filing, satisfied the condition in Rule 400(a), then the Form TR filing under Rule 200(e) also would satisfy the transition report condition under the investment contract safe harbor.[220] In that case, the issuer would note on the Form TR that it was being filed pursuant to both Rule 200(e) and the investment contract safe harbor.

If the issuer had not, at the time of the Form TR filing, satisfied the condition in Rule 400(a), the disclosure required under Form TR would be intended to apprise investors, the Commission, and other members of the public of the current status of, and the issuer's plans with respect to, the covered investment contract, subject crypto asset, and associated crypto network or associated crypto application. With respect to the covered investment contract, this would require the issuer to, for example, describe its progress with respect to its representations or promises to engage in essential managerial efforts under the covered investment contract and its plans for how it intends to satisfy those representations or promises (if the issuer does, in fact, plan to satisfy those representations or promises). With respect to the subject crypto asset and associated crypto network or associated crypto application, this would require the issuer to, for example, discuss the current status of, and its plans with respect to, the development of the

[220] *See infra* section II.D.

subject crypto asset and the associated crypto network or associated crypto application. It also is possible that, although the issuer has not satisfied the condition in Rule 400(a), the issuer may have determined that the covered investment contract ceased to exist.[221] In those cases, the issuer would be required to provide an analysis supporting that determination.

Request for Comment

70. Should we adopt the transition report requirement in Rule 200(e) as proposed? If we should not require a transition report, please explain why not**.**
71. Is there any information in Form TR that should not be required? If so, what information should be excluded? Is there any information that we should add to the form? If so, what should be added and why?
72. Are there certain types of organizational structures that cannot satisfy the disclosure requirement to provide a jurisdiction of incorporation or formation (if the issuer is or includes an entity)? For example, could decentralized unincorporated nonprofit associations satisfy this requirement? If not, should we revise this requirement to accommodate any such organizational structures?
73. Should we require disclosure of the address of the issuer's principal executive office only if the issuer has a principal executive office, as proposed in Rule 200(e)? If an issuer does not have a principal executive office, should we require the issuer to provide a different address (for example, the address for the issuer's agent for service of process)?
74. Should we provide additional guidance as to what type of information should be included in the analyses required by Items 3 and 6 of Form TR? Are there alternative disclosures

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221 *See* 2026 Interpretation at 13723; *see also supra* section I.A.2.b.

that we should require in lieu of such analyses?

C. Fundraising Exemption (Subpart C, Rules 300 through 307)

Subpart C of Regulation Crypto Assets would set forth an exemption from the registration requirements of section 5 of the Securities Act for offerings of up to $75 million of covered investment contracts in a 12-month period. This proposed fundraising exemption, composed of two tiers with separate offering limits, is modeled in part on Regulation A. The fundraising exemption, which we are proposing pursuant to the Commission's exemptive authority under section 28 of the Securities Act,[222] is intended to facilitate larger capital raising transactions for covered investment contract issuers than would be permitted under the startup exemption.[223] Issuers that rely on the exemption would remain subject to the antifraud and antimanipulation provisions of the Federal securities laws, including, but not limited to, section 17 of the Securities Act and section 10 of the Exchange Act.

1. Background

As discussed in section I.B.3 above, a number of public commentators, including some Commissioners, have expressed concerns that the existing exempt offering and disclosure framework is not "fit-for-purpose" for covered investment contract offerings.[224] In particular,

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[222] 15 U.S.C. 77z-3 ("The Commission, by rule or regulation, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this subchapter or of any rule or regulation issued under this subchapter, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.").

[223] *See supra* section II.B (proposing a $5 million offering limit under the startup exemption).

[224] *See, e.g.*, letters from a16z 2; a16z 3; AIMA; Anderson; Broadridge; L. Cohen; Coinbase; CoinList; Z. Dane; Figure Markets; CrowdCheck Law; J. Kim; OpenZeppelin; G. Shapiro; SIFMA 2; TDC 2; tZero. *See also* Chairman Paul S. Atkins, *Keynote Address at the Crypto Task Force Roundtable on Tokenization* (May 12, 2025) ("Chairman Atkins Keynote Address"), *available at* https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-crypto-roundtable-tokenization-051225; Parikshit Mishra, *SEC Commissioner Mark Uyeda Calls for S-1 Form Tailored for Digital Assets*, COINDESK (Sept. 3, 2024), *available at* https://www.coindesk.com/policy/2024/09/03/sec-commissioner-mark-uyeda-calls-for-s-1-form-tailored-for-digital-assets; LeXpunK Regulation X Proposal, *supra* note 141.

several commenters stated that the Commission's existing forms and disclosure rules, which were designed with traditional securities (e.g., stocks and bonds) in mind, are not well-suited to covered investment contract offerings and their issuers based on characteristics that are unique to those offerings and issuers, nor do they elicit the types of information that are likely to be material to investors in those offerings.[225] For example, one commenter with "extensive experience in trying to fit [covered investment contract] issuances into available exemptions under the Securities Act" suggested that issuers often encounter "too much confusion" when working within the existing regulatory framework and noted that their "experience in many cases has proved frustrating."[226] Some commenters have expressed the view that these conditions have resulted in certain adverse consequences for the U.S. crypto asset markets, including: barriers to capital raising; capital flight overseas; stifled innovation in the crypto assets market; information asymmetries and insufficient disclosure for investors in covered investment contract offerings (as a result of investors receiving mandated disclosure that is not relevant, while simultaneously not receiving disclosure that would be relevant, to their investment decisions); potential uncertainty regarding the application of accounting and financial reporting standards and levels of assurance to covered investment contract offerings; and what those commenters view as unreasonable restrictions on retail and other public investors' ability to participate in covered investment contract offerings.[227]

Several commenters suggested using existing exempt pathways, including Regulation A, to facilitate capital raising by issuers of covered investment contracts,[228] with some commenters

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225 *See, e.g.*, letters from a16z 2; AIMA; Coinbase; CoinList; GDCA; TDC 2.

226 Letter from CrowdCheck Law.

227 *See, e.g.*, letters from The Center for Audit Quality (May 2, 2025) ("CAQ"); Coinbase; CoinList.

228 *See, e.g.*, letters from CrowdCheck Law; Nasdaq; SIFMA 2.

stating that Regulation A provides a "strong foundation" and a "practical starting point" for a bespoke offering exemption.[229] One commenter suggested that Commission staff guidance could clarify that covered investment contracts are eligible securities under 17 CFR 230.261 of Regulation A ("Rule 261").[230] This commenter also stated that disclosure relevant to covered investment contract offerings could be tailored to satisfy Form 1-A requirements with a "common-sense, principles-based approach" to disclosure.[231] Nonetheless, these commenters also generally recommended that the disclosure requirements be tailored to include relevant information relating to covered investment contracts (rather than requiring disclosure of information that may not be relevant but is required in "traditional" offerings).[232]

Other commenters, however, highlighted some potential concerns associated with using Regulation A, in its current form, with respect to covered investment contract offerings. As noted in section I.B.3 above, some commenters suggested that Regulation A may be legally unavailable for covered investment contract offerings.[233] Commenters also expressed a variety of concerns regarding the practical limitations of using Regulation A in the context of covered investment contract offerings, as described in section I.B.3 above and as discussed in more detail below.

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[229] *See, e.g.*, letters from Coinbase; DealMaker (Regulation A provides a "strong foundation"); GDCA ("[A] version of Regulation A that accounts for the types of disclosures relevant to a token purchaser may be useful at this time and can serve as a practical starting point."); PricewaterhouseCoopers LLP (May 1, 2025) ("PwC") (stating that "regulatory requirements that guide traditional public offerings provide a robust foundation for public offerings of crypto assets"); SIFMA 2.

[230] *See* letter from CrowdCheck Law.

[231] *Id.*

[232] *See, e.g.*, letters from CrowdCheck Law; PwC; SIFMA 2.

[233] *See supra* note 94 and accompanying text.

Some commenters stated that Regulation A, in its current form, may be ill-suited for covered investment contract offerings. For example, one commenter described Regulation A as "not currently a useful vehicle" for covered investment contract offerings and noted several challenges with it, including, in its view, Regulation A's (1) inflexible disclosure requirements modeled on traditional equity offerings, (2) ongoing reporting obligations that presume a perpetual issuer (which differs from crypto asset projects designed to eliminated centralized control over time), (3) offering limits misaligned with crypto asset projects' needs, and (4) uncertainty regarding whether "tokenized assets that trade via decentralized exchanges or alternative trading systems" can trade freely on the secondary market.[234] Another commenter suggested that Regulation A's disclosure and ongoing reporting requirements are inflexible and ill-suited for covered investment contract offerings and asserted that Regulation A's forms do not reflect the technological and operational aspects of such offerings that may occur via smart contracts, network launch conditions, and wallet-based eligibility criteria.[235] Other commenters described Regulation A as designed for "traditional securities"[236] and observed that "[w]here there is a securities offering involving novel technological or operational features or the sale of new digital assets, there will likely be new types of information that are relevant to investors in assessing risk."[237] Commenters also expressed a need for greater regulatory clarity and accounting and auditing guidance for crypto assets and related transactions[238] and described

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[234] Letter from a16z 3.

[235] *See* letter from Perkins Coie LLP (Aug. 15, 2025).

[236] *See* letter from Coinbase.

[237] Letter from SIFMA 2.

[238] *See, e.g.*, letters from CAQ (stating that "establishment of clear regulatory frameworks . . . will enable a more consistent application of accounting, financial reporting, and auditing requirements related to crypto assets.");

additional burdens associated with Regulation A offerings, including the costs they incur to prepare disclosure in connection with ongoing reporting obligations and to obtain audits (especially with respect to smaller, early-stage ventures).[239]

Several commenters expressed the view that Regulation A's disclosure requirements would need revision to elicit the types of information that would be material to investors in covered investment contracts.[240] One commenter stated that Regulation A would require a "significant update" before it could serve as a framework for covered investment contract offerings.[241] Another commenter that supported revising Regulation A identified certain Regulation A disclosure requirements about equity securities—such as issuer information about

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Deloitte & Touche LLP (May 7, 2025) ("Deloitte") ("We believe a coordinated effort to develop US GAAP, as needed, through the FASB, with established processes to seek interpretive guidance with input from the FASB, the SEC, and the profession, will result in higher quality guidance and more clarity to all market participants than will fragmented guidance emanating from different sources."); Ernst & Young LLP (May 22, 2025) ("EY") ("We encourage the SEC to monitor crypto asset activities to help identify transactions that could warrant additional standard setting and to refer such cases to the FASB for a possible standard-setting project."); PwC ("The application of the current regulatory framework to crypto assets is unclear, with varying interpretations resulting in inconsistencies in how companies apply them and how regulators enforce them. . . . A new framework that combines regulations and interpretive guidance is needed to provide regulatory certainty, support investor protection, and maintain the attractiveness of the US capital markets for crypto asset-related transactions.").

239 *See generally* letters from a16z 2; AIMA; Coinbase; DealMaker; Figure Markets; GDCA; *see also* Attachment to Crypto Task Force Memorandum regarding Meeting with Representatives of Hiro Systems PBC and Wilson Sonsini Goodrich & Rosati (May 13, 2025) ("Hiro Meeting Agenda"), *available at* https://www.sec.gov/files/ctf-memo-hiro-systems-pbc-wilson-sonsini-goodrich-rosati-051325.pdf.

240 *See, e.g.*, letter from DealMaker ("While Regulation A's disclosure framework is based on traditional corporate equity offerings, it can be adapted to suit the unique characteristics of crypto assets . . . ."); Hiro Meeting Agenda ("The absence of bespoke crypto disclosures means the substance of existing disclosures may not include key network commentary expected by users and investors. To align expectations and increase the utility of the filings, we recommend a revision of [Regulation A] disclosures to incorporate network activities and metrics."); GDCA ("For bona fide securities offerings that involve crypto assets, a version of Regulation A that accounts for the types of disclosures relevant to a token purchaser may be useful at this time and can serve as a practical starting point for digital asset token offerings."); SIFMA 2 ("SEC Regulation A and Regulation D would need to be supplemented by issuing guidance which addresses investor protection, suitability, and disclosures that are specific to fundraising sales of digital assets.").

241 *See* letter from Coinbase.

stockholder's equity, previously issued outstanding securities, and earnings per share—that the commenter viewed as inapplicable to covered investment contracts.[242]

Finally, several commenters stated that Regulation A's offering mechanics and conditions may limit the utility of the exemption with respect to covered investment contract offerings. For example, several commenters supported an offering limit for covered investment contract offerings that is higher than the current offering limit permitted under Regulation A (which is $75 million for a Tier 2 offering).[243] One commenter recommended increasing the Regulation A offering limit to at least $150 million to better support capital-intensive infrastructure and protocol development projects and enable broader retail investor participation in early-stage ventures.[244] Some commenters stated that the "exit" provisions of Regulation A are not suited for covered investment contracts where, for example, the related crypto project develops over time in a manner that transforms the covered investment contract's status under the securities laws.[245] One such commenter sought "clarification that the issuer has no remaining obligations pursuant to the investment contract under Regulation A once its responsibilities via token delivery and network maturity have been achieved."[246] This commenter suggested revising the Form 1-Z exit report to allow the issuer to include narrative discussion about the

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242 *See* letter from TDC 2.

243 *See, e.g.*, letters from CfPA (recommending increasing the Tier 2 offering limit to $150 million); DealMaker (recommending removal of the "arbitrary ceiling" on Regulation A); GDCA (addressing the possibility of covered investment contract offerings larger than current Regulation A offering amount limits); Nasdaq.

244 *See* letter from CfPA.

245 *See, e.g.*, Hiro Meeting Agenda; letter from CrowdCheck Law.

246 Hiro Meeting Agenda.

development status of the crypto asset project, as well as the status of the overlying investment contract.[247]

We agree with commenters that Regulation A provides a "strong foundation" and a "practical starting point,"[248] but we believe that, in light of the limitations associated with using Regulation A in the context of covered investment contract offerings, including those raised by commenters, there is a need for a new, tailored exemption for covered investment contract offerings. One fundamental legal limitation is that covered investment contracts are not "eligible securities" under Regulation A.[249] As such, issuers may not offer or sell covered investment contracts pursuant to Regulation A. Even if covered investment contracts were "eligible securities" under Rule 261, we agree with commenters that Regulation A's disclosure requirements, as well as some of its existing offering mechanics and conditions, limit the exemption's suitability for offerings of covered investment contracts.

Thus, we are proposing a fundraising exemption which is modeled, in part, on Regulation A but is tailored in several ways to covered investment contract offerings and their issuers, including with respect to the disclosures required under the exemption. By both modeling the

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247 *Id.*

248 *See supra* note 229 and accompanying text.

249 Section 3(b)(3) of the Securities Act limits the availability of any exemption adopted under section 3(b)(2) to "equity securities, debt securities, and debt securities convertible or exchangeable into equity interests, including any guarantees of such securities." Based on this statutory limitation, Regulation A defines eligible securities in Rule 261(c) as "[e]quity securities, debt securities, and securities convertible or exchangeable to equity interests, including any guarantees of such securities, but not including asset-backed securities as such term is defined in Item 1101(c) of Regulation AB." 17 CFR 230.261(c). As the Commission previously observed, "[o]n the basis of the statutory language [in section 3(b)(3)], it is unclear which types of securities were meant to be excluded, although there is some evidence that suggests the exemption is meant for ordinary—and not exotic—securities." *See Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act*, Release No. 33-9497 (Dec. 18, 2013) [79 FR 3926, 3935 (Jan. 23, 2014)] ("2013 Regulation A Proposing Release"). Given the novelty of covered investment contracts, we believe they fall outside the limitation of section 3(b)(3) of the Securities Act and the definition of "eligible securities" in Rule 261.

proposed fundraising exemption on Regulation A and tailoring it for covered investment contract offerings, we believe issuers' compliance costs may be mitigated (to the extent those issuers or their advisors are familiar with Regulation A) while, at the same time, avoiding the practical concerns commenters expressed about relying on existing Regulation A with respect to covered investment contract offerings.

2. Proposed Rules

The proposed fundraising exemption is intended to address many of the concerns discussed in section II.C.1 above. In particular, we are proposing the creation of rules (including forms and disclosure requirements) tailored to the unique circumstances associated with offerings of covered investment contracts.[250] We believe this 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.[251] At the same time, we are proposing conditions on the use of the fundraising exemption that are designed to ensure that investors in these offerings

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[250] Covered investment contracts issued pursuant to the fundraising exemption would not be restricted securities or otherwise subject to rule-based resale restrictions, and the fundraising exemption would not unduly limit an issuer's ability to sell covered investment contracts to retail investors (by, for example, prohibiting sales to non-accredited investors). *But see* proposed 17 CFR 228.300(c)(2)(i)(C) (limiting that amount of covered investment contracts that an issuer can sell to non-accredited investors under the fundraising exemption to 10 percent of the greater of the purchaser's annual income or net worth (or in the case of non-natural persons, the greater of revenue or net assets for the most recently completed fiscal year)). These features would help to avoid impediments to the development of network effects. *See supra* notes 12-15 and accompanying text.

[251] Although we expect that issuers that utilize the fundraising exemption would be seeking to fulfill the essential managerial efforts they represented or promised investors they would engage in under the covered investment contracts, unlike the startup exemption, there is no requirement that the issuer certify its intention to do so in order to rely on the fundraising exemption. We believe this difference between the two exemptions is warranted. The primary purpose of the startup exemption is to provide issuers with a regulatory runway during which they could work to fulfill their representations or promises to engage in essential managerial efforts under the covered investment contracts. By contrast, the fundraising exemption is intended to facilitate larger capital raising transactions for covered investment contract issuers. This difference is reflected in the fact that the fundraising exemption includes additional disclosure requirements (notably, financial statement requirements) and ongoing reporting obligations that are not included in the startup exemption.

will remain adequately informed and protected. Thus, we believe the proposed fundraising exemption is appropriate in the public interest and consistent with the protection of investors.

At a high level, the fundraising exemption would operate as follows: issuers relying on this exemption would be required to file offering statements on EDGAR. These offering statements would include an offering circular consisting of: (1) the same principles-based narrative disclosure topics as required for issuers relying on the proposed startup exemption (which are set forth in Rule 103); (2) a discussion of the issuer's financial condition; and (3) financial statements of the issuer, requiring varying levels of assurance depending on offering size (falling in one of two tiers), as described in section II.C.2.b.iii below. Issuers who have qualified offering statements under this fundraising exemption would be subject to periodic, current, and transition reporting requirements modeled on analogous provisions in Regulation A, tailored to offerings of covered investment contracts. The proposed fundraising exemption would include additional provisions described below, consistent with Regulation A offerings, including the ability to solicit non-binding indications of interest ("test the waters") and investment limitations. The proposed fundraising exemption also would include provisions for the suspension of the exemption in certain circumstances and would be subject to the disqualification provision in Rule 104. Finally, consistent with the startup exemption, the fundraising exemption would be non-exclusive (as set forth in Rule 101(a)). As such, issuers would retain the ability to raise capital in registered offerings, rely on other existing exemptions, such as Regulation D or Regulation Crowdfunding, or rely on the startup exemption.

The fundraising exemption would be set forth in subpart C of Regulation Crypto Assets and would comprise the following rules: proposed 17 CFR 228.300 ("Rule 300"), titled "Scope of exemption"; proposed 17 CFR 228.301 ("Rule 301"), titled "Offering statement"; proposed 17

CFR 228.302 (“Rule 302”), titled “Offering circular”; proposed 17 CFR 228.303 (“Rule 303”), titled “Preliminary offering circular”; proposed 17 CFR 228.304 (“Rule 304”), titled “Solicitations of interest and other communications”; proposed 17 CFR 228.305 (“Rule 305”), titled “Periodic and current reporting; transition report”; proposed 17 CFR 228.306 (“Rule 306”), titled “Suspension of the exemption”; and proposed 17 CFR 228.307 (“Rule 307”), titled “Withdrawal or abandonment of offering statements.” Each of these rules is discussed in more detail below. In addition to the specific requests for comment in each subsection below, we also seek feedback on the exemption as a whole and whether it is “fit-for-purpose” for covered investment contract offerings and their issuers.

<u>Request for Comment</u>

75. Should we adopt a fundraising exemption modeled on Regulation A but tailored to the unique circumstances associated with offerings of covered investment contracts, as proposed?
76. Are there any portions of the fundraising exemption that we either should not adopt or that we should change in the final rules? If so, please identify those provisions along with any recommended changes to the rule.
77. Are there any terms used in the fundraising exemption that we either should define or otherwise modify in the final rules? If so, please identify those terms along with any recommended changes to the definitions.
78. Given the technological innovations and practices associated with crypto assets, are there any modifications or additions to the proposed rules we should consider to better facilitate transactions under the fundraising exemption? Are there particular amendments to the proposed rules governing offering communications and practices (e.g.,

solicitations, indications of interest, permitted communications, and "testing the waters" materials) that would be appropriate in light of the unique characteristics of crypto assets and their associated crypto networks and associated crypto applications? For example, should the rule contemplate specific practices, such as preregistration of crypto wallet addresses or other network specific actions, that could serve as an indication of interest by a prospective investor seeking to purchase a covered investment contract.

79. Should we amend the definition of "eligible securities" in 17 CFR 230.261(c) of Regulation A to provide that an "investment contract" is not an "eligible security" thereunder.

a. Scope of Exemption (Rule 300)

i. Tier 1 and Tier 2 Offering Limits

Rule 300(a) would set forth a two-tier exemption from registration pursuant to section 5 of the Securities Act for public offers and sales of covered investment contracts. This two-tier approach is modeled on Regulation A with the same offering limits as that exemption. Under Tier 1 ("Tier 1 offerings"), issuers would be permitted to offer and sell up to $20 million of covered investment contracts (which, for purposes of the fundraising exemption, would be defined as "eligible securities"[252]) in a 12-month period, including no more than $6 million offered by selling securityholders who are affiliates of the issuer.[253] Under Tier 2 ("Tier 2 offerings"), issuers would be permitted to offer and sell up to $75 million of eligible securities in

[252] We believe it is appropriate to limit the fundraising exemption to covered investment contracts because the disclosure and other requirements of the exemption (including under proposed Form 1-CRYPTO, a description of which would be codified at 17 CFR 239.600) would be tailored to offerings of covered investment contracts. As such, permitting offerings of securities beyond covered investment contracts would undermine the objective of creating an exemption that is specifically designed for offerings of covered investment contracts.

[253] Proposed 17 CFR 228.300(a)(1).

a 12-month period, including no more than $22.5 million offered by selling securityholders who are affiliates of the issuer.[254] As discussed in section II.C.2.b.iii below, a key difference between the two tiers is that for Tier 1 offerings there is no financial statement assurance requirement. Rule 300(a)(3) also would include an additional limitation on secondary sales in the first year of reliance on the fundraising exemption. Under this rule, the portion of the aggregate offering price attributable to securities of selling securityholders would not be permitted to exceed 30 percent of the aggregate offering price of a particular offering in (i) the issuer's first offering under this exemption or (ii) subsequent offerings under this exemption that are qualified within one year of the qualification date of the issuer's first offering.[255]

In addition, for purposes of the Tier 1 and Tier 2 offering limits under Rule 300(a), the amount of eligible securities sold by the issuer and the amount sold by its affiliates would be aggregated together. This restriction is intended to avoid circumvention of the offering limits by precluding multiple affiliated issuers (e.g., each of which is under common control) from each selling an amount of eligible securities that, individually, does not exceed the offering limits but, when combined, would exceed those limits.[256]

Rule 300(a) would permit Tier 2 offerings of up to $75 million in a 12-month period, which is the same limit as in Tier 2 of Regulation A. Some commenters stated that issuers may desire to conduct covered investment contract offerings exceeding the limits in Regulation A and that a higher limit would accommodate issuers' funding needs for the development of crypto

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[254] *See* proposed 17 CFR 228.300(a)(2).

[255] *See* proposed 17 CFR 228.300(a)(3).

[256] See *supra* note 114 and accompanying text for a discussion of how "aggregate offering price" and "aggregate sales" are determined for purposes of the offering limits in both the startup exemption and the fundraising exemption.

asset projects.[257] On the other hand, we note that when the Commission amended Regulation A in 2015, it expressed concerns that larger offering limits may increase risks to investors by encouraging larger issuers to conduct Regulation A offerings in instances where the disclosure required in registered offerings would be more appropriate.[258] We believe that limiting the fundraising exemption to offerings of covered investment contracts coupled with the other issuer eligibility criteria discussed in section II.C.2.a.ii below sufficiently mitigates this risk. As such, we believe that the proposed $75 million offering limit for Tier 2 offerings of covered investment contracts appropriately balances issuers' potential capital needs with the investor protection interests underlying the offering limit.

To the extent issuers have capital raising needs beyond the $75 million limit in Tier 2 offerings, they may rely on other offering pathways, including the proposed startup exemption. In addition, to address potential concerns that offering limit amounts may become diluted over time, Rule 102 would establish a process for the Commission to periodically adjust the proposed Tier 1 and Tier 2 offering amount limitations as necessary for inflation. We are seeking commenter input on the appropriateness of the proposed offering limits.

Request for Comment

80. Should the fundraising exemption include both Tier 1 and Tier 2 offerings as proposed or should the exemption consist of a single tier?
81. Should the fundraising exemption permit resales by selling securityholders for offerings under Tier 1, Tier 2, or both tiers? Should there be additional restrictions on an insider's

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257 *See, e.g.*, letters from CfPA (suggesting an increase of the offering limit for Tier 2 of Regulation A to at least $150 million to better align with "with modern capital needs"); GDCA; *see also supra* note 243 and accompanying text.

258 *See* 2015 Regulation A Release at section II.B.3.c.

ability to participate as a selling securityholder under the proposed fundraising exemption?

82. Are the proposed Tier 1 and Tier 2 offering limits appropriate? Should we adopt higher or lower offering limits? For example, should the Tier 1 offering limit be $25 million rather than $20 million?
83. Should issuers be permitted to conduct a Tier 2 offering if they offer less than $20 million? In other words, should we require a minimum offering amount of $20 million for Tier 2 offerings and, if so, would this minimum offering amount provide any benefit to issuers or investors or both?
84. Is it appropriate to apply the offering limits to both the issuer and its affiliates, as proposed?

ii. Issuer Eligibility Criteria

Rule 300(b) would set forth the eligibility criteria that an issuer would have to satisfy in order to rely on the fundraising exemption. Under these criteria, the fundraising exemption would be available only for an issuer that is an entity organized in the United States. The proposed rule would also require that (i) a majority of the issuer's executive officers or directors are U.S. citizens or residents, (ii) more than 50 percent of the issuer's assets are located in the United States, and (iii) the issuer's business is administered principally in the United States.[259] The fundraising exemption would not be available to:

- A development stage company that either has no specific business plan or purpose, or has indicated that its business plan is to merge with or acquire an unidentified company or

[259] *See* proposed 17 CFR 228.300(b)(1).

companies;[260]

- An investment company registered or required to be registered under the Investment Company Act of 1940 ("Investment Company Act") or a business development company as defined in section 2(a)(48) of the Investment Company Act;[261] or
- An issuer that is or has been subject to any order of the Commission entered pursuant to section 12(j) of the Exchange Act within five years before the filing of the offering statement; provided, however, that the exemption would be available to any issuer subject to an order of the Commission entered pursuant to section 12(j) before the date on which Rule 300 becomes effective, if the rule is ultimately adopted.[262]

In addition, in order to be eligible to rely on the fundraising exemption, the issuer would have had to have filed with the Commission all reports required to be filed, if any, pursuant to Rule 305 or pursuant to section 13 or 15(d) of the Exchange Act during the two years before the filing of the offering statement (or for such shorter period that the issuer was required to file such reports), as applicable.[263] Finally, the issuer must have satisfied the applicable requirements set forth in subpart A of Regulation Crypto Assets.[264] This includes the disqualification provision in Rule 104.[265]

[260] *See* proposed 17 CFR 228.300(b)(2).

[261] *See* proposed 17 CFR 228.300(b)(3).

[262] *See* proposed 17 CFR 228.300(b)(4). This carveout with respect to section 12(j) orders entered prior to the proposed rule's effectiveness is intended to be consistent with the similar carveout in the disqualification provision in proposed Rule 104 with respect to otherwise disqualifying events that occurred before the date on which the proposed rule becomes effective. *See supra* section II.A.5.

[263] *See* proposed 17 CFR 228.300(b)(5).

[264] *See* proposed 17 CFR 228.300(b)(6).

[265] See *supra* section II.A.5 for a discussion of this provision. As noted in that section, requests for waivers of disqualification, where appropriate, would remain available to the same extent they are available under Rule 262. *See supra* note 181 and accompanying text.

We believe that the proposed issuer eligibility requirements would appropriately balance, on the one hand, ensuring that a sufficiently broad scope of issuers can utilize the fundraising exemption so as to increase investment opportunities for investors and capital formation options for covered investment contract issuers with, on the other hand, maintaining appropriate investor protections by limiting issuer eligibility. Further, the issuer eligibility criteria are modeled in large part on issuer eligibility criteria in Regulation A, with some differences reflecting that this is a bespoke fundraising exemption intended to be tailored to the unique circumstances of covered investment contract offerings and issuers.[266]

Unlike the startup exemption,[267] an issuer would be required to be an entity organized under, and subject to, the laws of the United States (or any State or territory of the United States or the District of Columbia) to be eligible to conduct offerings under the fundraising exemption. We believe this requirement in the fundraising exemption (as compared to the startup exemption, which would allow the issuer to be an entity, an individual, or a group of individuals or entities) is appropriate in light of the much higher offering limit under this exemption as compared to the startup exemption.

It also is appropriate given that an issuer would be required to provide financial statements under the fundraising exemption (but would not be required to do so under the startup exemption). We believe that a financial statement requirement would become much more administratively complex if an issuer could be an individual or a group of unrelated individuals

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[266] For example, as compared to 17 CFR 230.251(b)(5) under Regulation A, the proposed issuer eligibility criteria omit as unnecessary a prohibition on issuers of interests in mineral rights. Because this proposed fundraising exemption is limited to offerings of covered investment contracts, based on the definitions of "covered investment contract" and "crypto asset" in Rule 100, those mineral rights would not constitute eligible securities. As such, excluding issuers of those rights in Rule 300(b) would be duplicative.

[267] Under the startup exemption, an eligible issuer could be an entity, an individual, or a group of individuals or entities. *See* proposed 17 CFR 228.200(b)(2).

or entities (as is permitted under the startup exemption). The ability to clearly define a reporting entity and separate its economic activities from those of other reporting entities is a fundamental concept in U.S. GAAP[268] and, therefore, is foundational to the preparation and presentation of the financial statements meeting the requirements we propose in Part F/S to Form 1-CRYPTO and other filings in conjunction with the fundraising exemption.

Similarly, unlike the startup exemption, we also believe it is appropriate to require that (i) a majority of the issuer's executive officers or directors are U.S. citizens or residents, (ii) more than 50 percent of the issuer's assets are located in the United States, and (iii) the issuer's business is administered principally in the United States. We believe these requirements—which are based on a portion of the definition of "foreign private issuer"[269]—as well as the requirement that the issuer be organized under, and subject to, the laws of the United States (or any State or territory of the United States or the District of Columbia), could serve as an additional investor protection. Specifically, they would facilitate the ability of the Commission and investors to seek recourse against issuers in the event of fraud or other misconduct and provide domestic investors with more easily accessible investment opportunities.[270] Additionally, as the Commission explained in the 2015 Regulation A Release, there may be challenges and costs for less sophisticated investors resulting from information asymmetries for foreign issuers and other categories of issuers justifying the eligibility restriction.[271] As the President's Working Group and commenters noted, regulatory uncertainty in the United States has encouraged crypto asset

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[268] *See* FASB Statement of Financial Accounting Concept No. 8, Conceptual Framework for Financial Reporting (Dec. 2021).

[269] *See* 17 CFR 230.405; 17 CFR 240.3b-4(c)(2).

[270] *See, e.g.*, letter from Decentralization Research Center (Mar. 10, 2025) (stating that "US users should have access to the broadest swath of opportunities to participate").

[271] *See* 2015 Regulation A Release at section III.C.1.

projects to move overseas.[272] We believe that this proposed requirement could help reverse this trend and result in better protections for U.S. investors and encourage domestic innovation and capital formation.

Some commenters and others suggested that we extend eligibility of any proposed offering exemption to certain non-U.S. issuers and other categories of issuers.[273] The Commission sought comment in the 2013 Regulation A Proposing Release on whether to expand eligibility to use Regulation A to foreign issuers "with a substantial U.S. nexus."[274] The Commission relatedly sought comment regarding the implications of extending Regulation A eligibility to foreign private issuers, particularly the applicability of Exchange Act section 10(b) and Securities Act section 17(a) liability to foreign private issuers.[275] The Commission determined not to expand to non-Canadian foreign issuers eligibility to conduct Regulation A offerings before the Commission had an opportunity to assess new market practices.[276] We believe that these considerations apply with equal force to the proposed fundraising exemption. We invite comment on the appropriate scope of issuer eligibility criteria in requests for comment below.

Request for Comment

85. Should we expand or otherwise modify the proposed issuer eligibility requirements? Why or why not?

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272 *See, e.g.*, President's Working Group Report at 24-25 (noting that "[m]any crypto firms turned their attention overseas due to regulatory uncertainty," among other factors); letters from a16z 4; Healthy Markets Association (Apr. 11, 2025); Lawrence J. Trautman (July 11, 2025).

273 *See*, *e.g.*, LeXpunK Regulation X Proposal, *supra* note 141; letter from Nasdaq.

274 *See* 2013 Regulation A Proposing Release at 3932.

275 *See id.* at 3932 and n.72 (discussing *Morrison v. Nat'l Australia Bank Ltd*., 130 S. Ct. 2869 (2020) and section 929P(b) of the Dodd-Frank Act, Pub. L. 111-203, § 929P(b)).

276 2015 Regulation A Release at section II.B.1.c.

86. Should we expand the proposed issuer eligibility criteria to permit Canadian issuers (or other types of foreign issuers) to rely on the fundraising exemption?

87. To the extent that an issuer has relied on Regulation A to issue securities, should the issuer be required to have filed all reports required to be filed under Regulation A, if any, in order for the issuer to rely on the fundraising exemption? Alternatively, should a requirement to have filed all reports required under Regulation A, if any, be limited to a specific time period (such as a certain number of months or years immediately prior to the filing of an offering statement under the fundraising exemption), in order for the issuer to qualify for the fundraising exemption? Why or why not? If so, what amount of time should be required and why?

iii. Offers and Sales; Investment Limitations

Rule 300(c) would include offering conditions that are substantially similar to those in 17 CFR 251(d) of Regulation A. With respect to offers, the rule would provide that, other than solicitation of interest (i.e., testing the waters) communications under proposed Rule 304, no offer of securities may be made unless an offering statement has been filed with the Commission.[277] After the offering statement has been filed but prior to qualification, the following offers would be permitted: oral offers, written offers under proposed Rule 303, and solicitations of interest and other communications under proposed Rule 304. In addition, offers would be permitted after the offering statement has been qualified, but any written offers would be required to be accompanied with or preceded by the most recent offering circular filed with

[277] Proposed 17 CFR 228.300(c)(1).

the Commission for the offering.[278] As with Regulation A, offerings conducted under the fundraising exemption after qualification would be public offerings with no prohibition on general solicitation.

With respect to sales, the rule would provide that no sale of securities may be made until the offering statement has been qualified.[279] Additionally, if the issuer is not subject at the time of sale to the reporting requirements in Rule 305(b), it must deliver a preliminary offering circular at least 48 hours prior to sale to any person that indicated an interest in purchasing securities in the offering.[280]

Finally, if the purchaser is not an accredited investor as defined in Rule 501 of Regulation D, the aggregate purchase price to be paid by the purchaser cannot exceed 10 percent of the greater of the purchaser's annual income or net worth (or in the case of non-natural persons, the greater of revenue or net assets for the most recently completed fiscal year).[281] For this purpose, annual income and net worth would be calculated as provided for in the definition of "accredited investor" contained in Rule 501 of Regulation D.[282] Consistent with Regulation A, an issuer may

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[278] Proposed 17 CFR 228.300(c)(1)(iii). This requirement with respect to written offers made after the offering statement has been qualified mirrors the requirement in 17 CFR 230.251(d)(1)(iii) of Regulation A. As with that rule, for written confirmations and notices of allocation in the post-qualification period, issuers and intermediaries may rely on the EDGAR filing of the final offering circular to satisfy any delivery requirements that may apply under Rule 300(c)(1)(iii). *See* 2015 Regulation A Release at n.260. This approach also is consistent with 17 CFR 230.172(a) in the context of registered offerings. *Id.* As discussed *infra* note 292 and accompanying text, however, we are soliciting input as to the proposed delivery requirements under the fundraising exemption.

[279] Proposed 17 CFR 228.300(c)(2)(i)(A).

[280] Proposed 17 CFR 228.300(c)(2)(i)(B).

[281] Proposed 17 CFR 228.300(c)(2)(i)(C).

[282] Under Rule 501 of Regulation D, natural persons are accredited investors if they (i) have an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse or spousal equivalent in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year, (ii) serve as director, executive officer, or general partner of the issuer or serve

rely on a representation of the purchaser when determining compliance with this investment limitation, provided that the issuer does not know at the time of sale that the representation is untrue.[283] This proposed investment limitation is generally consistent with the analogous offering condition in Regulation A.[284] Unlike Regulation A, however, as an additional investor protection to mitigate potential losses, the investment limitation in the proposed fundraising exemption would apply to all offerings irrespective of whether the offering is a Tier 1 offering or a Tier 2 offering. Additionally, unlike Regulation A, there would not be a carveout for Tier 2 offerings of securities listed on a registered national securities exchange.[285]

We believe that the proposed investment limitations serve an important investor protection function. Consistent with the Commission's adoption of investment limitations for Tier 2 offerings under Regulation A, we believe that the proposed investment limitations may help to mitigate the risk of potential losses for non-accredited investors.[286] In this regard, we believe that applying the investment limitation to all offerings under the proposed fundraising exemption would enhance investor protection and would be appropriate in the context of offerings of covered investment contracts. We recognize that one commenter stated that existing offering exemptions are not efficient options for sales of covered investment contracts, in part, because of investment limitations on non-accredited investors.[287] We do not believe that

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as any director, executive officer, or general partner of a general partner of the issuer, or (iii) their individual net worth, or joint net worth with that person's spouse or spousal equivalent, exceeds $1,000,000 (excluding the value of their primary residence). Additional criteria are contained in Rule 501 including, among other things, that certain enumerated entities that satisfy an asset-based test also qualify as accredited investors, while others, including regulated entities such as banks and registered investment companies, are not subject to the asset test.

283 Proposed 17 CFR 228.300(d)(2)(i)(D).

284 *See* 17 CFR 230.251(d)(2)(i)(C) and (D).

285 *See* 17 CFR 230.251(d)(2)(i)(C).

286 *See* 2015 Regulation A Release at section II.B.4.

287 *See* letter from Coinbase.

including the investment limitation in the fundraising exemption will undermine the utility of the rules we are proposing today. We note, for example, that despite its investment limitations for non-accredited investors, Tier 2 of Regulation A accounted for over 80 percent of the more than 1,400 Regulation A offerings qualified during a nearly 9.5 year period ending December 31, 2024.[288] We also note that, under our proposed rules, covered investment contract issuers also could rely on the startup exemption to the extent they are seeking to ensure that non-accredited investors make up a particular portion of their investor base (e.g., if they expect that such investors are more likely to participate in the associated crypto network or associated crypto application). Nonetheless, we are seeking commenters' input on this aspect of the proposal.

Finally, Rule 300(c) would set forth several other offering conditions with respect to sales that are consistent with 17 CFR 230.251(d)(ii) in Regulation A. The rule would provide that in a transaction that represents a sale by the issuer or an underwriter, or a sale by a dealer within 90 calendar days after qualification of the offering statement, each issuer, underwriter or dealer selling in such transaction must deliver to each purchaser from it, not later than two business days following the completion of such sale, a copy of the final offering circular, subject to the following provisions:

- If the sale was by the issuer and was not effected by or through an underwriter or dealer, the issuer is responsible for delivering the final offering circular as if the issuer were an underwriter;
- For continuous or delayed offerings under Rule 300(c)(3), the 90-calendar day period for

[288] *See* Angela Huang, *Analysis of the Regulation A Market: A Decade of Regulation A* (May 2025), *available at* https://www.sec.gov/files/dera-reg-2505.pdf ("Across all metrics, Tier 2 accounted for the vast majority of capital raising under Regulation A, including over 80 percent of qualified offerings, over 90 percent of amounts sought in qualified offerings, and over 95 percent of reported proceeds.").

dealers must commence on the day of the first bona fide offering of securities under such offering statement;

- If the security is listed on a registered national securities exchange, no offering circular need be delivered by a dealer more than 25 calendar days after the later of the qualification date of the offering statement or the first date on which the security was bona fide offered to the public;
- No offering circular need be delivered by a dealer if the issuer is subject, immediately prior to the time of the filing of the offering statement, to the reporting requirements of Rule 305(a); and
- The final offering circular delivery requirements set forth in this rule may be satisfied by delivering a notice to the effect that the sale was made pursuant to a qualified offering statement that includes a link to where the final offering circular, or the offering statement of which such final offering circular is part, may be obtained on EDGAR and contact information sufficient to notify a purchaser where a request for a final offering circular can be sent and received in response.

As with Regulation A, these requirements reflect an "access equals delivery" model for final offering circulars when sales are made on the basis of offers conducted during the prequalification period and the final offering circular is filed and available on EDGAR.[289] Under this model, where sales occur after qualification on the basis of offers made using a preliminary offering circular, issuers, underwriters, and dealers can presume that investors have access to the internet and may satisfy their delivery requirements for the final offering circular by filing it on

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[289] *See* 2015 Regulation A Release at 21822; *see also Securities Offering Reform*, Release No. 33-8591 (July 19, 2005) [70 FR 44722 (Aug. 3, 2005)].

EDGAR. Issuers are, however, required to include a notice in any preliminary offering circular that will inform potential investors that the issuer may satisfy its delivery obligations for the final offering circular electronically.[290] Further, as with Regulation A, "electronic-only" offerings would be permitted under the proposed fundraising exemption provided that issuers and intermediaries comply with applicable requirements.[291]

Broadly speaking, the proposed delivery requirements are modeled on the delivery requirements in Regulation A. Those requirements, in turn, were designed to be consistent with the requirements for registered offerings.[292] Although we believe there are benefits associated with aligning the proposed delivery requirements with these existing delivery requirements, we are soliciting input as to whether an alternative approach is warranted with respect to the proposed fundraising exemption.

Request for Comment

88. Should the fundraising exemption include the proposed delivery requirements, which are modeled on the delivery requirements in Regulation A (which were, in turn, modeled on

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290 *See* proposed 17 CFR 228.303(a).

291 *See* 2015 Regulation A Release at 21823. An electronic-only offering is an offering in which investors are permitted to participate only if they agree to accept the electronic delivery of all documents and other information in connection with the offering. *See Use of Electronic Media*, Release No. 34-42728 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)]; *Use of Electronic Media by Broker-Dealers, Transfer Agents and Investment Advisers for Delivery of Information*, Release No. 34-37182 (May 9, 1996) [61 FR 24644 (May 15, 1996)]; *Use of Electronic Media for Delivery Purposes*, Release No. 33-7233 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)] ("The Commission would view information distributed through electronic means as satisfying the delivery or transmission requirements of the federal securities laws if such distribution results in the delivery to the intended recipients of substantially equivalent information as these recipients would have had if the information were delivered to them in paper form." (internal citation omitted)). Potential issuers could consult the foregoing releases when considering whether a potential medium of electronic delivery satisfies the proposed requirements. For example, we recognize that there may be new blockchain-based technologies that may be used as mediums to satisfy the electronic delivery requirements.

292 *See, e.g.*, 2015 Regulation A Release at 21822 ("The expanded use of the Internet and continuing technological developments suggest that we should update the final offering circular delivery method for Regulation A in a manner that is consistent with similar updates to delivery requirements for registered offerings.").

the requirements for registered offerings)? Alternatively, is a different approach warranted with respect to the proposed fundraising exemption and, if so, how should that approach operate?

89. Should we revise the fundraising exemption such that an EDGAR filing by itself (i.e., without a notice to investors) satisfies the delivery requirements?
90. Given the unique technological attributes associated with crypto assets and the blockchain-based technologies that issuers may want to use as mediums to satisfy the electronic delivery requirements, should the Commission clarify how electronic means may satisfy the delivery requirements under the proposed fundraising exemption?

iv. Continuous or Delayed Offerings

Rule 300(c)(3) would permit continuous or delayed offerings under the fundraising exemption, modeled on the analogous provision in Regulation A, and tailored to offerings of covered investment contracts. The Regulation A continuous and delayed offering framework, most recently amended by the Commission in 2015, is based upon 17 CFR 230.415 ("Rule 415"), but its scope is limited to permissible Regulation A offerings. The Commission adopted Rule 415 in 1983 to promote efficiency and flexibility with respect to capital raising transactions by permitting continuous or delayed offerings in certain contexts.[293] Rule 300(c)(3) is intended to achieve these same benefits and would permit the following continuous or delayed offerings: (A) offerings of covered investment contracts by selling securityholders; (B) offerings of covered investment contracts pursuant to an employee benefit plan; (C) offerings of covered investment contracts to be issued upon the exercise of outstanding options, warrants, or rights;

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[293] *See* 2013 Regulation A Proposing Release at 3953 (citing *Shelf Registration*, Release No. 33-6499 (Nov. 17, 1983) [48 FR 52889 (Nov. 23, 1983)]).

(D) offerings of covered investment contracts that are to be issued on conversion of other outstanding securities; (E) offerings of covered investment contracts pledged as collateral; and (F) certain continuous offerings of covered investment contracts.

Rule 300(c)(3)(i)(A) would permit selling securityholders to participate in offerings qualified under the fundraising exemption, subject to the limitations on offering amount in Rule 300(a). Consistent with the Commission's rationale for permitting selling securityholder participation in Regulation A offerings, we believe that permitting selling securityholder participation in offerings under this proposed exemption may decrease the cost of capital for issuers, encourage investment in an innovative and rapidly growing sector of the economy, and facilitate liquidity for existing securityholders and new investors in the offering.[294] Commenters and others generally supported selling securityholder participation in covered investment contracts offerings, subject to limitations.[295] Further, permitting selling securityholder participation in offerings under the proposed exemption may facilitate a more widespread distribution of the subject crypto assets, which in turn may help issuers more efficiently meet development targets. This would be consistent with the principles underlying Regulation Crypto Assets. Unduly restricting selling securityholder participation in offerings under this fundraising exemption may also greatly offset the utility of this exemption for issuers relative to other public

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[294] *See* 2013 Regulation A Proposing Release at section II.B.3.

[295] *See, e.g.*, LeXpunK Regulation X Proposal at nn.30-31 and accompanying text (addressing concerns with "dump on retail," stating "[w]e are reluctant to facilitate Insider exit liquidity due to the risks it imposes on retail investors; however, we would prefer that these sales occur transparently and this resale limit is consistent with that provided in existing securities laws. Additionally, these resale limits would provide more certainty around underwriter liability for early purchasers. Selling tokenholders would also be limited in their participation by any pre-existing vesting or lockup requirements attached to their Tokens, which would need to be disclosed at the time of the offering.").

or private capital raising methods, which risks undermining the policy objectives in creating a bespoke offering exemption.

We acknowledge that some of the concerns expressed by commenters in prior Regulation A rulemakings about secondary sales may similarly apply to the fundraising exemption.[296] These commenters stated that certain insiders should be restricted from participating in Regulation A offerings because those insiders had superior negotiating power at the time of their initial investment and greater access to information relative to new, unaffiliated investors and could therefore "offload their investment on the general public."[297] Additionally, these commenters expressed the view that, to the extent selling securityholders are participating in the offering, this would reduce the net proceeds available to the issuer, thus undermining the capital raising benefits of the fundraising exemption.[298] Commenters that provided input to the Crypto Task Force suggested we impose insider restrictions specific to covered investment contract issuers. For instance, one commenter suggested a limitation on covered investment contract sales by insiders until the crypto asset network or application has become sufficiently decentralized.[299] The goal of such a limitation would be to help "ensure [insiders] have continued economic incentive to complete the project."[300] Another commentator supported lockup periods for large holders and insiders to prevent a "dump on retail" by these large holders and insiders using other exemptions to sell significant amounts of crypto assets shortly after a public offering.[301]

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296 *See* 2013 Regulation A Proposing Release at section II.B.3; 2015 Regulation A Release at section II.B.3.

297 2013 Regulation A Proposing Release at 3937.

298 *See id.*

299 *See* letter from Coinbase.

300 *Id.*

301 LeXpunK Regulation X Proposal at n.36.

We believe these concerns would be mitigated, at least in part, by the limitations on securityholders in Rule 300(a) and the principles-based disclosure requirement in Rule 103(b)(4) regarding (i) the material aspects of the issuer's management and related persons; (ii) the material aspects of any conflicts of interest or related person transactions involving the issuer; and (iii) whether related persons are subject to any transfer or resale restriction(s) with respect to the covered investment contract or subject crypto asset and, if so, the material terms of such restriction(s). These proposed requirements would provide important investor protections while still facilitating liquidity for securityholders and preserving the utility of the proposed fundraising exemption for capital formation. That said, we invite comment below on the appropriate scope of restrictions on selling securityholder participation in offerings under the proposed fundraising exemption.

Rule 300(c)(3)(i)(B) would permit continuous or delayed offerings with respect to covered investment contracts that are to be offered and sold pursuant to an employee benefit plan of the issuer. This provision would be substantially identical to the analogous provision in 17 CFR 230.251(d)(3)(i)(B) of Regulation A. Although we are not aware of the extent to which this practice is being or would be used by covered investment contract issuers, we do not believe there is a compelling basis on which to omit this provision from the fundraising exemption. That said, 17 CFR 230.251(3)(i)(B) of Regulation A permits offerings of securities that are to be offered and sold pursuant to a dividend or interest reinvestment plan. Because the defined scope of the terms "covered investment contract" and "crypto asset" would exclude dividend- or interest-bearing assets,[302] we have excluded those references from proposed Rule 300(c)(3)(i)(B).

Rule 300(c)(3)(i)(C), (D), and (E) would permit continuous or delayed offerings with respect to (1) covered investment contracts that are to be issued on exercise of outstanding options, warrants, or rights; (2) covered investment contracts that are to be issued on conversion of other outstanding securities; and (3) covered investment contracts that are pledged as collateral. These provisions would be substantially identical to the analogous provisions in 17 CFR 230.251(d)(3)(i)(C), (D), and (E) of Regulation A. As noted in section II.A.1.b above, the only securities that may be offered under the fundraising exemption (or any other exemption in Regulation Crypto Assets) are covered investment contracts. And, as noted in section II.A.1.b above, the definition of "covered investment contract" excludes investment contracts that involve any other type of security, such as a stock or bond that is convertible. Nonetheless, it is possible that an issuer would offer an option, warrant, right, or convertible security that is convertible into a covered investment contract. Although the overlying security would not be eligible to use the fundraising exemption, the issuer may be able to rely on the fundraising exemption with respect to the covered investment contracts into which those overlying securities are convertible. In those circumstances, the issuer may be able to utilize Rule 300(c)(3)(i)(C) and (D).

Finally, Rule 300(c)(3)(i)(F) would permit continuous or delayed offerings with respect to covered investment contracts the offering of which will be commenced within two business days after the qualification date, will be made on a continuous basis, may continue for a period in excess of 30 calendar days from the date of initial qualification, and will be offered in an amount

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302 *See supra* section II.A.1.b.

that, at the time the offering statement is qualified, is reasonably expected to be offered and sold within two years from the initial qualification date. As with the other provision of Rule 300(c)(3), this provision would largely mirror the analogous provision in 17 CFR 230.251(d)(3)(i)(F) of Regulation A.[303] Among other things, similar to Regulation A, offerings under proposed Rule 300(c)(3)(i)(F) would be conditioned on the issuer being current in its annual and semiannual reporting obligations at the time of sale. Unlike Regulation A, however, this requirement would apply irrespective of Tier, as we propose that both Tier 1 and Tier 2 issuers be subject to ongoing reporting obligations as discussed in section II.C.2.e below.

Several commenters recommended that the Commission should permit delayed or at the market offerings of covered investment contracts.[304] One commenter stated that permitting delayed and at the market offerings of covered investment contracts would allow issuers to match supply and demand, noting that "market dynamics often require the ability to adjust offering terms in real time."[305] Other commentators have proposed a "token shelf" offering similar to short-form registration on Form S-3 or Form F-3.[306]

Rule 415 permits at the market offerings only for issuers eligible to conduct primary offerings on Form S-3 or Form F-3.[307] Under Rule 415, an at the market offering is "an offering of equity securities into an existing trading market for outstanding shares of the same class at

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303 As compared to Regulation A, however, the proposed rule would require the offering to commence within two business days after the qualification date rather than two calendar days. The use of "business days" is intended to avoid a situation where the rule would require an offering to commence on a weekend or Federal holiday.

304 *See* letter from TDC 2; LeXpunK Regulation X Proposal, *supra* note 141.

305 Letter from TDC 2.

306 *See* LeXpunK Regulation X Proposal at 13-14. This proposal would involve offerings through an intermediary using a short form statement consisting of a facing page, prior filings and ongoing reports incorporated by reference, signatures, and pricing and other information related to the offering.

307 17 CFR 230.415(a)(4).

other than a fixed price." The Commission prohibited at the market offerings in Regulation A, stating at that time that it was premature to permit at the market offerings under Regulation A because a market for Regulation A securities had not yet developed.[308] The Commission also expressed concern with the challenge of administering maximum offering limits in an offering sold at fluctuating market prices.[309]

We note that some of the considerations that led the Commission not to permit delayed and at the market offerings under Regulation A similarly apply to offerings under the proposed fundraising exemption. Accordingly, the proposed fundraising exemption does not permit delayed or at the market offerings beyond what is currently permitted under Regulation A (and as described in this section).[310] We invite comment, however, on the appropriate scope of continuous and delayed offerings under the fundraising exemption, including whether we should expand offerings permitted under the proposed fundraising exemption to include delayed offerings, at the market offerings, or other mechanisms to promote flexibility in offerings of covered investment contracts.

<u>Request for Comment</u>

91. Should we permit delayed offerings under the proposed fundraising exemption? Should we consider a "token shelf" for secondary or follow-on offerings? If so, under what circumstances? What aspects of offerings of covered investment contracts make delayed offerings appropriate?

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[308] *See* 2015 Regulation A Release at 21840.

[309] *See id*.

[310] Proposed Rule 300(c)(3)(ii) would provide that at the market offerings, by or on behalf of the issuer or otherwise, are not permitted under the fundraising exemption. The rule would further state that the term "at the market offering" means an offering of securities at other than a fixed price. The proposed provision is intended to require offerings under the fundraising exemption to be made at a specified dollar amount per security and, by contrast, prohibiting variable pricing.

92. Should we permit at the market offerings under the proposed fundraising exemption? If so, under what circumstances? Consistent with Rule 415, should we require that there be an "existing trading market" for the covered investment contracts? If so, how should we determine what constitutes an existing trading market?
93. As discussed in footnote 310, proposed Rule 300(c)(3)(ii) is intended to require offerings under the fundraising exemption to be made at a specified dollar amount per security and, by contrast, prohibiting variable pricing. If we continue to prohibit at the market offerings under the fundraising exemption, should we otherwise permit variable pricing?
94. Proposed Rule 300(c)(3)(ii) largely mirrors the corresponding provision in Regulation A. Should we revise the proposed rule to clarify our view, as provided in footnote 310, that the proposed rule would require offerings under the fundraising exemption to be made at a specified dollar amount per security and, by contrast, prohibit variable pricing?

vi. Confidential Treatment

Finally, Rule 300(d) would provide that a request for confidential treatment may be made under 17 CFR 230.406 for information required to be filed, and under 17 CFR 200.83 for information not required to be filed. This provision would mirror the analogous provision in 17 CFR 230.251(e) of Regulation A.

b. Offering Statement (Form 1-CRYPTO and Rules 301, 306, and 307)

Offering statements filed under Regulation Crypto Assets would utilize a new Form 1-CRYPTO (with a description codified at 17 CFR 239.600), which uses Form 1-A as a model but is tailored to offerings of covered investment contracts and is attached hereto as Appendix A. Similar to Form 1-A, proposed Form 1-CRYPTO would consist of three parts:

- *Part I*: An eXtensible Markup Language ("XML") based fillable form with key information about the issuer and offering.
- *Part II*: Attachments containing the body of the disclosure document and financial statements (the offering circular); and
- *Part III*: Attachments containing the signatures, exhibit index, and exhibits to the offering statement.

As discussed above,[311] Rule 101(c) would require that all documents filed or otherwise provided to the Commission pursuant to Regulation Crypto Assets, including offering statements and other documents required under the fundraising exemption, be submitted or filed electronically on EDGAR.

i. Part I of Form 1-CRYPTO (Notification)

Part I of proposed Form 1-CRYPTO serves as a notice of basic information about the issuer and the proposed offering. Issuers would file Part I of proposed Form 1-CRYPTO with the Commission via EDGAR in XML specific to proposed Form 1-CRYPTO ("Form 1-CRYPTO-specific XML"). Issuers would have two ways to file proposed Form 1-CRYPTO with the Commission. An issuer could use a fillable web form the Commission would provide on EDGAR to input the proposed disclosures for Part I of Form 1-CRYPTO, which EDGAR would convert to the Form 1-CRYPTO-specific XML. Alternatively, an issuer could use its own software tool to file Part I of Form 1-CRYPTO to EDGAR directly by following EDGAR's Form 1-CRYPTO technical specifications. The information contained in Part I would be publicly

[311] *See supra* section II.A.2.b.

available on EDGAR as an online data cover sheet but not otherwise required to be distributed to investors.

Part I of Form 1-CRYPTO would require information be provided in response to the following items:

- Item 1 (Issuer Information) would require the issuer to disclose its identity and certain contact information.
- Item 2 (Summary Information Regarding the Offering and Other Current or Proposed Offerings) would require the issuer to disclose the number of units of covered investment contracts offered, the number of covered investment contracts already outstanding, the price per covered investment contract, proposed sales by selling securityholders and affiliates, and estimated aggregate sales of any concurrent offerings under this proposed fundraising exemption. As compared to the corresponding item in Form 1-A, Item 2 would not solicit information about the types of securities being offered, as only covered investment contracts may be offered under Form 1-CRYPTO.

Request for Comment

95. Should we require the information in Part I of Form 1-CRYPTO as proposed? Would that information benefit investors and/or other market participants? If so, please describe how such information would be beneficial.
96. Are there other information requirements (other than those in Part I of Form 1-A) that we should include in Part I of Form 1-CRYPTO? Alternatively, should we reduce (or eliminate entirely) the proposed information requirements in Part I of Form 1-CRYPTO?
97. Are there certain types of organizational structures that cannot satisfy the disclosure requirement to provide a jurisdiction of incorporation or formation (if the issuer is or

includes an entity)? For example, could decentralized unincorporated nonprofit associations satisfy this requirement? If not, should we revise this requirement to accommodate any such organizational structures?

98. Should we require disclosure of the address of the issuer's principal executive office only if the issuer has a principal executive office, as proposed in Form 1-CRYPTO? If an issuer does not have a principal executive office, should we require the issuer to provide a different address (for example, the address for the issuer's agent for service of process)?

99. Should we require the disclosures in Part I of proposed Form 1-CRYPTO to be submitted using a different structured data language than Form 1-CRYPTO-specific XML? Why or why not? If another structured data language would be more appropriate, please identify which one, and explain why.

ii. Part II of Form 1-CRYPTO (Offering Circular)

Part II of Form 1-CRYPTO would consist of the following substantive offering circular disclosure requirements[312]:

- *Non-financial Disclosure*: Items 1 through 12 would consist of the following non-financial disclosure requirements: Cover Page of Offering Circular (Item 1), which would require the cover page of the offering circular to include some fundamental details regarding the issuer and the offering;[313] Table of Contents (Item 2), which would require the second page of the offering circular to include a table of contents; Covered

[312] Part II of Form 1-CRYPTO would consist of an attachment to Part I containing the body of the disclosure document and financial statements, formatted in HTML, as would be further provided in the EDGAR Filer Manual, to be compatible with EDGAR.

[313] Those fundamental details include, for example, the name of the issuer, the full mailing address of the issuer's principal executive offices (if any) and the issuer's telephone number and (if applicable) website address, the date of the offering circular, and the title and amount of securities offered.

Investment Contract (Item 3), which would require the issuer to furnish the information required by Rule 103(b)(1); Offering (Item 4), which would require the issuer to furnish the information required by Rule 103(b)(2); Subject Crypto Asset (Item 5), which would require the issuer to furnish the information required by Rule 103(b)(3); Management, Related Persons, and Conflicts of Interest (Item 6), which would require the issuer to furnish the information required by Rule 103(b)(4); Associated Crypto Network/Application; Plan of Development (Item 7), which would require the issuer to furnish the information required by Rule 103(b)(5); Security; Source Code (Item 8), which would require the issuer to furnish the information required by Rule 103(b)(6); Subject Crypto Asset Economics and Allocations (Item 9), which would require the issuer to furnish the information required by Rule 103(b)(7); Governance (Item 10), which would require the issuer to furnish the information required by Rule 103(b)(8); Subject Crypto Asset Ecosystem (Item 11), which would require the issuer to furnish the information required by Rule 103(b)(9); and Risk Factors (Item 12), which would require the issuer to furnish the information required by Rule 103(b)(10). The principles-based non-financial information requirements in Rule 103 are discussed in detail in section II.A.4 above.

- *Discussion of Financial Condition* (Item 13): Additionally, the offering circular would be required to contain a narrative discussion of the issuer's financial condition modeled on the narrative discussion required in 17 CFR 227.201(s) of Regulation Crowdfunding. This discussion of the issuer's financial condition would include, to the extent material, changes in financial condition, liquidity, capital resources, and historical results of operations. The narrative would cover each period for which financial statements of the issuer are provided. Issuers also would be required to discuss any material changes or trends known to management in the financial condition and results of operations of the issuer subsequent to the period for which financial statements are provided. The proposed Item 13 includes instructions to guide the narrative discussion for those issuers with no prior operating history and for those issuers with an operating history.

- *Financial Statements (Part F/S)*: Form 1-CRYPTO would require that offering statements include financial statements prepared in accordance with U.S. GAAP meeting the requirements set forth in proposed Part F/S of Part II to Form 1-CRYPTO. Further, financial statements will be subject to assurance requirements based on whether the offering statement relates to a Tier 1 offering or a Tier 2 offering. For Tier 1 offerings, there is no financial statement assurance requirement. As we discuss in section II.C.2.b.iii below, to the extent the issuer has obtained an audit of its financial statements performed by an independent public accountant in accordance with either U.S. Generally Accepted Auditing Standards ("U.S. GAAS") or the standards of the Public Company Accounting Oversight Board ("PCAOB"), the issuer would be required to file the signed audit report accompanying the audited financial statements. For Tier 2 offerings, the financial statements included in the offering statement must be audited in accordance with either U.S. GAAS or PCAOB standards by an auditor that is independent under 17 CFR 210.2-01 ("Rule 2-01") of Regulation S-X.

As noted previously in this section, Form 1-CRYPTO would incorporate the principles-based narrative disclosure requirements in Rule 103 rather than create a separate set of non-financial disclosures. These principles-based disclosure requirements are tailored to covered investment contract offerings and issuers. These disclosures are based on the unique attributes of these offerings and issuers and are designed to capture the information most relevant to investors in these offerings.

Item 13 of Form 1-CRYPTO also would require disclosure of the issuer's financial condition. Given the potential size of the offering amount under this exemption (i.e., up to $75 million in a 12-month period), we believe that this additional disclosure would be important to investors in capital-raising transactions involving the offering of covered investment contracts. We believe the proposed requirement, modeled on an analogous provision in Regulation Crowdfunding, is more appropriate for covered investment contract offerings and issuers than the Form 1-A requirement to provide a full Management's Discussion and Analysis of Financial Condition and Results of Operations.[314] Similar to Regulation Crowdfunding issuers, we expect that many of the issuers who would utilize the proposed fundraising exemption would be in an early stage of development, with a narrower operational focus and with less complex operations relative to reporting companies and issuers conducting registered offerings.[315] Moreover, this principles-based discussion is intended to provide, in a clear and understandable manner, management's perspective on the issuer's operations and financial results, including information about liquidity and capital resources and known material trends or uncertainties. We believe, therefore, that the flexible nature of this principles-based disclosure requirement would elicit material information that investors need to make informed investment decisions with respect to

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314 *See* Item 9, Management's Discussion and Analysis of Financial Condition and Results of Operations in Part II of Form 1-A; *see also* 17 CFR 229.303 (Item 303 of Regulation S-K).

315 *See* Crowdfunding Adopting Release at section II.B.a.2(a).

offerings by both mature and early-stage issuers.[316] We discuss more fully the proposed financial statements and assurance requirements in section II.C.2.b.iii below.

Request for Comment

100. Should we require the information in Part II of Form 1-CRYPTO as proposed? Is there information that we should require to be disclosed under Part II other than what we have proposed? For example, is there any information required to be provided under Part II of Form 1-A that also should be required to be disclosed under Part II of Form 1-CRYPTO?

101. As noted in this section above, the information requirement in Item 13 is modeled on the narrative discussion required in 17 CFR 227.201(s) of Regulation Crowdfunding. Is 17 CFR 227.201(s) an appropriate model? Should we instead require a Management's Discussion and Analysis of Financial Condition and Results of Operations similar to Item 9 of Form 1-A?

102. As an alternative to both the approach taken in proposed Item 13 of Form 1-CRYPTO and the approach taken in Item 9 of Form 1-A, should the information requirement in Item 13 instead be more closely tailored to reflect the characteristics of covered investment contracts? If so, what should such alternative discussion require? For example, rather than focusing on the financial condition of the issuer, should such requirements focus on financial matters related to the development of the associated crypto network or associated crypto application?

103. Rather than cross-referencing the disclosure requirements in proposed Rule 103, should we set forth the disclosure requirements directly in Form 1-CRYPTO? Would that

[316] *See supra* section II.B.2.b.ii. (discussing proposed instructions for narrative disclosure that would recognize that issuers may or may not have a prior operating history).

facilitate compliance or otherwise reduce burdens for issuers?

iii. Financial Statements and Assurance Requirements

Part F/S of Part II to Form 1-CRYPTO would require that offering statements include financial statements prepared in accordance with U.S. GAAP.[317] The proposed financial statements requirements are substantially similar to the corresponding requirements under Form 1-A.[318] Under Part F/S of Form 1-CRYPTO, issuers using the fundraising exemption would be required to provide the following financial statements prepared in accordance with U.S. GAAP for the issuer or the issuer and its predecessors or any businesses to which the issuer is a successor: consolidated balance sheets and statements of comprehensive income, cash flows, and changes in stockholder's equity.

Consistent with the requirements in Regulation A offerings, we propose the following requirements for the age of the balance sheet at the date of filing and at qualification:

- If the filing is made, or the offering statement is qualified, during the period from inception until three months after reaching the annual balance sheet date for the first time, include a balance sheet as of a date within nine months of filing or qualification.
- If the filing is made, or the offering statement is qualified, within three months after the most recently completed fiscal year end, include a balance sheet as of the two fiscal year ends preceding the most recently completed fiscal year end and an interim balance sheet as of a date no earlier than six months after the date of the most recent fiscal year-end balance sheet that is required.

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[317] Financial statements included in offerings under Regulation Crowdfunding similarly must be prepared in accordance with U.S. GAAP. *See* 17 CFR 227.201, instruction 3 to paragraph (t).

[318] *See* Part F/S of Form 1-A.

- If the filing is made, or the offering statement is qualified, more than three months but no more than nine months after the most recently completed fiscal year end, include a balance sheet as of the two most recently completed fiscal year ends.
- If the filing is made, or the offering statement is qualified, more than nine months after the most recently completed fiscal year end, include a balance sheet as of the two most recently completed fiscal year ends and an interim balance sheet as of a date no earlier than six months after the most recently completed fiscal year end.

Additionally, and consistent with the requirements in Regulation A offerings, we propose that the issuer include consolidated statements of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income), cash flows, and changes in stockholders' equity for each of the two fiscal years preceding the date of the most recent balance sheet being filed or such shorter period as the issuer has been in existence.

As with Regulation A, these age of financial statements requirements are intended to align with the timing of the proposed ongoing updating requirements.[319] Further, the proposed requirements would ensure that the financial statements included in the offering statement at the date of filing and qualification are no older than nine months.

Consistent with Regulation A, in Tier 1 offerings under the proposed fundraising exemption, issuers would need to follow the rules for providing the appropriate financial statements set forth in proposed Part F/S of Form 1-CRYPTO, but financial statements for Tier 1 offerings would not need to be prepared in accordance with Regulation S-X. In Tier 2 offerings,

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[319] *See* 2015 Regulation A Release at section II.C.3.b.(2). The proposed ongoing updating requirements are discussed in greater detail in section II.C.2.e. below.

issuers would be required to follow the financial statement requirements of Article 8 of Regulation S-X, as if the issuer conducting the Tier 2 offering were a smaller reporting company (unless otherwise noted). Further, consistent with the treatment of issuers in Regulation A offerings and emerging growth companies under section 102(b)(1) of the JOBS Act, we propose to permit issuers, where applicable, to delay complying with new or revised financial accounting standards with election and disclosure requirements as is permitted in Regulation A offerings.[320]

As discussed in section II.C.2.a.ii above, the proposed fundraising exemption is intended to be used by an entity. The reporting entity concept establishes the boundaries of economic activities to be included in the financial statements. Identifying the boundaries of economic activities is necessary to faithfully present financial information, and there can be practical complexities when those boundaries are not clearly defined.[321] As such, we believe that the proposed fundraising exemption should be limited to entity-issuers.

Further, financial statements will be subject to assurance requirements based on whether the offering statement relates to a Tier 1 offering or a Tier 2 offering.

- With respect to Tier 1 offerings, issuers would not be subject to a financial statement assurance requirement. Issuers in Tier 1 offerings that do not provide audited financial statements would be required to label the financial statements as unaudited. Consistent

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[320] *See* paragraph (a)(3) of Part F/S of proposed Form 1-CRYPTO and paragraph (a)(3) of Part F/S of Form 1-A. Additionally, and consistent with Regulation A, in certain less common circumstances, such as in the case of an acquired business or an issuer or guarantor of a guaranteed security, proposed Part F/S would require Tier 1 issuers to consider the requirements of Regulation S-X. This requirement would be applicable to circumstances in which the financial statements of, or disclosures about, entities other than the issuer would be required. Regulation S-X would be applicable in these circumstances to issuers in Tier 2 offerings because, as discussed above, they would be required to follow the financial statement requirements of Article 8 of Regulation S-X as if the issuer conducting the Tier 2 offering were a smaller reporting company (unless otherwise noted). *See* proposed paragraph (b)(6) of Part F/S of Form 1-CRYPTO.

[321] *See* FASB Statement of Financial Accounting Concept No. 8, Conceptual Framework for Financial Reporting (Dec. 2021).

with the requirement in Regulation A,[322] to the extent the issuer has obtained an audit of its financial statements performed in accordance with either U.S. GAAS or the standards of the PCAOB—by an auditor that is independent under either the independence standards of the American Institute of Certified Public Accountants ("AICPA") or Rule 2-01 of Regulation S-X—the issuer would be required to file those audited financial statements as well as an audit opinion complying with 17 CFR 210.2-02 ("Rule 2-02") of Regulation S-X.[323]

- With respect to Tier 2 offerings, the financial statements included in the offering statement would be required to be audited in accordance with either U.S. GAAS or the standards of the PCAOB—by an auditor that is independent under the independence standards of Rule 2-01 of Regulation S-X—and the report and qualifications of the independent accountant would be required to comply with the requirements of Article 2 of Regulation S-X.[324]

We believe that the proposed assurance requirements would appropriately balance the costs imposed on issuers against the investor protection benefits derived from audited financial statements. We believe the proposed assurance provisions, which are the same as the assurance requirements in Regulation A, are consistent with issuer, investor, and market expectations relating to the audit of financial statements by an independent accountant in offerings involving the amounts that may be raised under the proposed fundraising exemption. We further believe

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322 Paragraph (b)(2) of Part F/S of Part I-A; *see* 2015 Regulation A Release at n.445 ("[I]ssuers in Tier 1 offerings may have independent business reasons why they seek to provide, or investors that may otherwise demand, audited financial statements.").

323 Paragraph (b)(2) of Part F/S of proposed Form 1-CRYPTO.

324 Paragraph (c)(1)(iii) of Part F/S of proposed Form 1-CRYPTO.

that independent audit firms would be willing and able to perform audits of covered investment contract issuers.[325]

We believe that the proposed approach to financial reporting under the proposed fundraising exemption is appropriate and consistent with investor protection, including because it would be consistent with the approach in offerings under Regulation A. U.S. GAAP provides a comprehensive basis for the preparation of general-purpose financial statements, which is best suited to provide the information that investors need to make decisions about providing resources to covered investment contract issuers. Further, we believe that financial statements prepared in accordance with U.S. GAAP provide the most appropriate framework for reflecting the effects of an entity's activities on its operating results, financial position, and capital structure.

We acknowledge requests from commenters for additional clarity with respect to accounting standards relating to crypto asset-related transactions.[326] The Financial Accounting Standards Board ("FASB") recently issued Accounting Standards Update ("ASU") 2023-08 requiring the subsequent measurement of certain crypto assets at fair value.[327] Stakeholders provided feedback that because ASU 2023-08 does not address the initial measurement, recognition, or derecognition of crypto assets, the FASB should prioritize a project to address those areas. The FASB included in its January 2025 Invitation to Comment, Agenda Consultation a solicitation for additional feedback regarding potential standard setting to address

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[325] Several audit firms provided input to the Crypto Task Force. *See* letters from AICPA (Apr. 21, 2025); CAQ; Deloitte; EY; PwC. Each of these commenters discussed developments in audit and attestation practices regarding covered investment contracts and made recommendations for future standard-setting or guidance.

[326] *See supra* section II.C.1; *see also* President's Working Group Report at 147 ("observ[ing] that many questions on the accounting for digital asset transactions relate to . . . key concepts that FASB should consider for further consultation through public engagement," including issues related to recognition and derecognition and issuer accounting).

[327] *See* FASB, Intangibles—Goodwill and Other—Crypto Assets (Subtopic 350-60), Accounting Standards Update No. 2023-08 (Dec. 2023).

existing challenges in accounting for crypto asset-related transactions. [328] The FASB then added two projects to its technical agenda to address the accounting for crypto asset transfers[329] and whether certain digital assets may be classified as cash equivalents.

We agree with commenters that the FASB is best positioned to establish and revise accounting standards relating to crypto assets.[330] We also agree with commenters that independent accountants are willing and able to provide assurance on crypto asset issuers' financial statements using existing auditing standards and guidance.[331] We will continue to engage with issuers, the public, and with the FASB, PCAOB, and AICPA to help ensure that the relevant accounting and auditing standards and best practices keep pace with emerging technology. Additionally, we believe that the proposed period for which financial statements would be required (two fiscal years or such shorter period as the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor has been in existence) is appropriate. This requirement is consistent with the periods required in offerings under Regulation A and Regulation Crowdfunding, and therefore consistent with the expectations of

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328 *See* Financial Accounting Standards Board Agenda Consultation Invitation to Comment, File Ref. No. 2025-ITC100, (Jan. 3, 2025) 15. Question 24 of the Invitation to Comment asks: "What challenges, if any, are there in applying current recognition and derecognition guidance to crypto asset transactions? Are there specific transactions that are more challenging? If so, how pervasive are those transactions and does the application of the current guidance appropriately portray the economics of those transactions (and if not, why)? Please explain, including whether and how these challenges could be addressed through standard setting."

329 The project addresses the accounting for crypto asset transfers that will include expanding the scope of the guidance issued in ASU 2023-08 to address wrapped tokens and receipt tokens, as well as clarifying the derecognition guidance for crypto transfer arrangements to assess whether the control of a crypto asset has been transferred.

330 *See* letters from Deloitte; EY; PwC.

331 *See* letters from Deloitte; EY; PwC (stating that "the principles-based nature of the PCAOB's auditing standards and guidance have allowed auditors of public companies to adapt traditional procedures to address crypto assets" and observing that additional "guidance and clarification from the PCAOB would help maintain consistency in application and execution as well as help align regulatory and stakeholder expectations").

issuers and investors.[332] We considered proposing a shorter period for the required financial statements, but we believe two years is appropriate given that covered investment contract issuers at various stages of development may utilize the exemption. While many issuers who utilize the proposed fundraising exemption may be newly-formed or otherwise developing subject crypto assets and associated crypto networks or associated crypto applications that have not yet been launched or are at an early stage (in which case the issuer would need to provide financial information only for so long as it has been in existence, if less than two years), Regulation Crypto Assets is not limited to these types of issuers. We expect that issuers of covered investment contracts related to more mature subject crypto assets and associated crypto networks or associated crypto applications also may utilize the proposed fundraising exemption.

As discussed more fully in section IV below, we believe that alternatives to U.S. GAAP would not be appropriate, may not provide investors with the information they need to make an informed investment decision, and may not realize meaningful benefits relative to our proposed approach. Nonetheless, we invite comment below on the proposed financial statement and assurance requirements.

Request for Comment

104. Should we adopt the financial statement requirements in Part F/S of Form 1-CRYPTO as proposed? Should we adopt different financial statement requirements for Tier 1 offerings versus Tier 2 offerings? What are the costs and benefits of the proposed financial statement requirements?

105. Are there alternative financial information requirements that we should consider? What

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332 *See* Part F/S of Form 1-A and Instruction 3 to paragraph (t) of Rule 201.

are the costs and benefits of alternative approaches compared to the proposed financial statement requirements?

106. Beyond FASB's current efforts, is there a need for additional clarity on accounting for crypto assets and crypto asset-related transactions?

107. Is there a need for additional standard-setting or guidance from the PCAOB or AICPA with respect to auditing crypto assets and related transactions?

108. Is it appropriate to allow the financial statements included in the Tier 2 offering statement to be audited in accordance with U.S. GAAS, or should we require audits to be conducted in accordance with PCAOB standards?

109. Should the financial statement assurance requirements for Tier 1 and Tier 2 offerings mirror the assurance requirements that are required under Regulation A, as proposed?

110. Should the financial statements of an issuer conducting a Tier 1 offering be required to be reviewed or audited by an independent public accountant, and if so, at what level of assurance?

111. Under the proposed rule, when the issuer is required to obtain an audit of its financial statements, should the audit be required to be performed by an accounting firm that is registered with the PCAOB?

iv. Part III of Form 1-CRYPTO (Exhibits)

Part III of Form 1-CRYPTO would set forth exhibit requirements that are similar to those in Part III of Form 1-A, but tailored to covered investment contract offerings and issuers.[333] The proposed requirements would include filing with the offering statement an Exhibit Index (Item

[333] Part III of Form 1-CRYPTO would consist of attachments, containing the signatures, exhibits index, and the exhibits to the offering statement, formatted in HTML to be compatible with the EDGAR filing system.

14) and the following exhibits: underwriting agreement; charter and by-laws; instrument defining the rights of securityholders (including any whitepaper or similar document published by the issuer); subscription agreement; voting trust agreement; material contracts; plan of acquisition, reorganization, arrangement, liquidation, or succession; escrow agreements; consents; opinion regarding legality; "testing the waters" materials; appointment of agent for service of process; and any additional exhibits the issuer may wish to file. The exhibit requirements are largely consistent with those in Part III of Form 1-A. Certain exhibit requirements are tailored to covered investment contract offerings and issuers. For example, the legality opinion relating to the securities covered by the offering statement would require counsel to opine that the securities, when sold, will be binding obligations of the issuer, to reflect that the securities offered and sold under this proposed fundraising exemption are limited to covered investment contracts. Other exhibit requirements are tailored to simplify the form and reduce issuers' compliance costs. For example, the material contracts exhibit requirement in Form 1-CRYPTO only requires the filing of a contract: (a) not made in the ordinary course of business; (b) that is material to the issuer; and (c) that either (i) is to be performed in whole or in part at or after the filing of the offering statement or (ii) was entered into not more than two years before such filing.[334] Finally, we have omitted certain exhibits required by Form 1-A relating to appointment of agent for service of

[334] By contrast, the "Material contracts" requirement in Item 17 of Form 1-A contains this general principal as well as additional provisions that, among other things, specify certain types of contracts that must be filed (notwithstanding the fact that the contract would otherwise not have to be filed under the general principal) and require that certain management contracts and compensatory plans, contracts, and arrangements are deemed material and must be filed.

process[335] and certain technical reports[336] as these exhibits are not applicable to offerings of covered investment contracts under this proposed fundraising exemption.

Request for Comment

112. Item 15 to Form 1-CRYPTO requires an opinion of counsel as to the legality of the securities covered by the offering statement and specifies that the opinion should indicate whether the securities will be binding obligations of the issuer. Are there additional instructions or modifications to the substance of the required opinion(s) that we should make?

113. Item 15 to Form 1-CRYPTO takes a principles-based approach to the requirement of filing material contracts. Should we provide examples of contracts that are deemed material or otherwise revise this item to more closely align with the requirement in Item 17 of Form 1-A?

v. Rules 301, 306, and 307

Rules 301, 306, and 307 would set forth some of the filing, amendment, qualification, and other mechanics with respect to Form 1-CRYPTO. Rule 301 would set forth the following general requirements applicable to offering statements and amendments, each of which are substantially similar to analogous provisions in 17 CFR 230.252 under Regulation A:

- *Content, filing fees, and signatures*: Under Rule 301(a), the offering statement would consist of the information required by Form 1-CRYPTO and any other material information necessary to make the required statements, in light of the circumstances in

335 *See* exhibit 14 in Part III of Form 1-A. This exhibit is required for Canadian issuers.

336 *See* exhibit 15 in Part III of Form 1-A. This exhibit is required for technical reports under subpart 1300 of Regulation S-K, which applies to registrants engaged in mining operations.

which they are made, not misleading. Rule 301(b) would provide that no fee is payable to the Commission upon either the submission or filing of an offering statement on Form 1-CRYPTO, or any amendment to an offering statement. Rule 301(c) would set forth who must sign the offering statement, in what capacity, and requirements with respect to signatures by a person on behalf of another person.

- *Non-public submission*: Rule 301(d) would permit issuers to submit draft offering statements to the Commission for non-public review by the Commission's staff before public filing of the offering statement.[337] All non-public submissions under the proposed rule would be required to be publicly filed on EDGAR not less than 15 calendar days prior to qualification of the offering statement. We note that in 2015 the Commission adopted a similar provision under Regulation A but required non-public submissions to be publicly filed on EDGAR not less than 21 calendar days prior to qualification of the offering statement.[338] At that time, section 6(e) of the Securities Act,[339] added by Title 1 of the JOBS Act, required non-public submissions made under that section to be publicly filed not later than 21 calendar days before the issuer conducts a roadshow. Section 6(e) was subsequently amended by the FAST Act and currently requires non-public

[337] The corresponding provision in Regulation A limits non-public submission to issuers whose securities have not been previously sold pursuant to a qualified offering statement under Regulation A or an effective registration statement under the Securities Act. *See* 17 CFR 230.252(d). We are not proposing to include a similar limitation in the fundraising exemption in order to further reduce barriers to entry and support capital formation. This is consistent with recent action taken by the staff of the Division of Corporation Finance, which expanded the availability of the nonpublic review process by permitting issuers to submit draft registration statements regardless of how much time has elapsed since becoming subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act. *See* U.S. Securities and Exchange Commission, Division of Corporation Finance, *Enhanced Accommodations for Issuers Submitting Draft Registration Statements* (Mar. 3, 2025), *available at* https://www.sec.gov/about/divisions-offices/division-corporation-finance/draft-registration-statement-processing-procedures-expanded.

[338] *See* 2015 Regulation A Release at section II.C.2.c.

[339] 15 U.S.C. 77f(e).

submissions to be publicly filed not later than 15 days before the issuer conducts a road show. Our proposed rule, therefore, would be consistent with section 6(e) in this regard.

- *Qualification, withdrawal, and abandonment*: We are proposing offering statement qualification, withdrawal, and abandonment procedures that are substantially similar to those applicable to Regulation A offering statements. Consistent with 17 CFR 230.252(e) under Regulation A, Commission action would be required to qualify the offering statement under the fundraising exemption. Specifically, Rule 301(e) would permit the offering statement to be qualified by disseminating a notice of qualification, issued by the Division of Corporation Finance pursuant to delegated authority.[340] In addition, consistent with 17 CFR 230.259(a) of Regulation A, Rule 307(a) would permit an issuer to withdraw an offering statement, with the Commission's consent, if none of the securities that are the subject of the offering statement have been sold and the offering statement is not the subject of a Commission order temporarily suspending a Regulation Crypto Assets exemption. Finally, consistent with 17 CFR 230.259(b) of Regulation A, Rule 307(b) would permit the Commission to declare an offering statement abandoned if the offering statement has been on file with the Commission for more than nine months

[340] A notice of qualification is analogous to a notice of effectiveness in registered offerings. *See* 17 CFR 200.30-1(a)(5) (providing the Director of the Division of Corporation Finance with the delegated authority to declare registration statements to be effective within shorter periods of time than 20 days after filing, consistent with section 8(a) of the Securities Act); 17 CFR 200.30-1(b) (providing the Director of the Division of Corporation Finance with the delegated authority to determine the date and time of qualification for offering statements and amendments to offering statements filed pursuant to Regulation A). We are also proposing a conforming amendment to the Commission's organizational rules, by adding 17 CFR 200.30-1(n), to delegate authority to the staff to qualify offering statements under the proposed fundraising exemption. Relatedly, we are also proposing an amendment to the Commission's Rules of Practice, 17 CFR 201.431, that would add 17 CFR 200.30-1(n)(2) to the list of actions for which there is no automatic stay of the delegated action when the Commission reviews that action. *See* 17 CFR 201.431(e)(3). This amendment is intended to conform to the Commission's recent change of its rule of practice in this area. *See Amendments to the Commission's Rules of Practice*, Release No. 34-103980 (Sept. 17, 2025) [90 FR 45123 (Sept. 19, 2025)].

without amendment and has not become qualified.

- *Amendments*: Rule 301(f) would set forth form and content rules for amendments to the offering statement that are substantially similar to 17 CFR 230.252(f).
- *Post-qualification amendments*: We are proposing requirements for post-qualification amendments to the offering statement that are substantially similar to those in 17 CFR 230.252(f)(2) of Regulation A. Rule 301(f)(2)(i) would require a post-qualification amendment for ongoing offerings at least every 12 months after the qualification date to include the financial statements that would be required by Form 1-CRYPTO as of such date. Rule 301(f)(2)(ii) would require a post-qualification amendment for ongoing offerings to reflect any facts or events arising after the qualification date of the offering statement (or the most recent post-qualification amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the offering statement. Consistent with Regulation A, an issuer may qualify the offering of additional covered investment contracts by filing a post-qualification amendment to the qualified offering statement.[341]
- *Suspension of the exemption*: Rule 306 would provide that the Commission may issue an order suspending the availability of the fundraising exemption in certain specified circumstances, modeled on an analogous provision 17 CFR 230.258 in Regulation A.

Request for Comment

114. Should we adopt the proposed period for filing non-public submissions?

115. Should we permit non-public submission from issuers whose securities have been

[341] Proposed 17 CFR 228.300(d)(3)(i)(F); Proposed 17 CFR 228.302, note to paragraph (b).

previously sold pursuant to a qualified offering statement under the proposed exemption?

c. Offering Circular (Rules 302 and 303)

Rules 302 and 303 would set forth requirements for the use of offering circulars that are substantially similar to the offering circular requirements in 17 CFR 230.253 and 254 of Regulation A.[342] The proposed rules would include general requirements for use of offering circulars, requirements for preliminary offering circulars, and requirements for offering circular supplements, summarized as follows:

- *General requirements*: Under Rule 302(a), an offering circular used pursuant to the fundraising exemption would be required to include the information required by proposed Form 1-CRYPTO. Rule 302(b) would provide that a qualified offering circular may omit information with respect to the public offering price, certain information relating to the underwriting arrangements, and certain terms dependent on the offering price, offering date, or delivery dates. The omission of certain information from the qualified offering circular is subject to the same conditions in the analogous provisions in 17 CFR 230.253 of Regulation A and, for registered offerings, 17 CFR 230.430B under the Securities Act. Consistent with Regulation A and similar to registered offerings, Rule 302(c) would provide that information omitted in reliance on proposed Rule 302(b) would be required to be contained (i) in an offering circular supplement filed within 15 business days of the date the offering statement is qualified (or 15 business days of the date a post-qualification amendment that contains an offering circular is qualified) or (ii) a qualified post-qualification amendment. In addition, Rule 302(d) and (e) would include provisions

[342] As discussed in the 2015 Regulation A Release, the offering circular requirements for Regulation A offerings were modeled on analogous requirements for the use of prospectus supplements in registered offerings. *See* 2015 Regulation A Release at section II.C.4; *see also* 17 CFR 230.424(b) and 230.430B.

for the date the offering circular was filed with the Commission and the required cover page legend, respectively. As with offering statements and other materials, all offering circulars would be subject to electronic filing and delivery requirements that are substantially similar to analogous requirements in Regulation A.

- *Preliminary offering circulars*: Rule 303 would set forth requirements for preliminary offering circulars that are substantially similar to those for preliminary offering circulars under 17 CFR 230.254 of Regulation A. Under Rule 303(a), the preliminary offering circular would be required to be appropriately captioned, include the date of issuance, and include a prominent legend. Rule 303(b) would require the preliminary offering circular to contain substantially the information required to be in an offering circular by Form 1-CRYPTO except information that may be omitted under proposed Rule 302(b). Rule 303(c) would require the preliminary offering circular to be filed as part of the offering statement.
- *Offering circular supplements*: Rule 302(f) would set forth requirements for the use of offering circular supplements that are substantially similar to the requirements in 17 CFR 230.253(g) of Regulation A and consistent with analogous requirements in 17 CFR 230.424(b) for prospectus supplements used in registered offerings. Under Rule 302(f), an issuer would be required to file an offering circular supplement to reflect information previously omitted from the offering circular in reliance on proposed Rule 302(b) no later than two business days following the earlier of the date of the determination of the offering price or the date of first use of the offering circular in a public offering or sale following qualification. Further, to the extent an offering circular reflects information that constitutes a substantive change from or addition to information included in the last

offering circular filed with the Commission, an issuer must file an offering circular supplement reflecting this substantive change no later than five business days following the date it is first used after qualification in connection with a public offering or sale. Rule 302(f) also contains provisions relating to offering circular supplements, including a requirement with respect to offering circulars not timely filed.

d. "Testing the Waters" Communications (Rule 304)

Rule 304 would permit non-binding solicitations of interest and similar pre-qualification "testing the waters" offering communications subject to specified conditions, substantially similar to the non-binding solicitations of interest permitted in 17 CFR 230.255 of Regulation A offerings.

Under proposed Rule 304(a), at any time before qualification of the offering statement, including before any non-public submission or public filing of the offering statement, an issuer or any person authorized to act on behalf of the issuer may communicate orally or in writing to determine whether there is any interest in the contemplated offering under the fundraising exemption. Written communications under this rule may include a means by which a person may indicate to the issuer that the person is interested in the potential offering.[343] Consistent with other proposed provisions in Regulation Crypto Assets, communications under this proposed rule would be deemed to be an offer of a security for sale for purposes of the antifraud provisions of the Federal securities laws.[344]

Similar to the testing the waters provision in Regulation A, no solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any person

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343 *See* proposed 17 CFR 228.304(c).

344 *See* proposed 17 CFR 228.304(a).

would be permitted until the offering statement is qualified.[345] Communications under this proposed rule would be subject to the conditions detailed in proposed Rule 304(b). The proposed rule also provides for the redistribution of revised solicitation of interest materials in the event solicitation of interest materials used after the public filing of the offering statement and before its qualification contain information that is inaccurate or inadequate in any material respect.[346] Finally, written communications or broadcast scripts used in testing the waters communications under this proposed rule must be filed as an exhibit to the Form 1-CRYPTO offering statement.[347]

e. Ongoing Reporting (Rule 305(a), (b), and (c))

Under Rule 305(a), issuers that have qualified Tier 1 or Tier 2 offerings under the fundraising exemption would be subject to ongoing periodic reporting requirements. Issuers subject to ongoing reporting would be required to file semiannual, annual, and current reports on proposed new Form 1-SC (with a description codified at 17 CFR 239.602), Form 1-KC (with a description codified at 17 CFR 239.601), and Form 1-UC (with a description codified at 17 CFR 239.603), respectively, which are attached hereto as Appendix C, Appendix B, and Appendix D, respectively. Each of those forms would be modeled on the analogous Regulation A ongoing reporting forms and tailored to covered investment contract offerings and issuers.[348]

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345 *See id.*

346 *See* proposed 17 CFR 228.304(d).

347 *See* proposed exhibit number 13 to Item 15 of Part III to Form 1-CRYPTO. The instruction for the "testing the waters" exhibit in the proposed Form 1-CRYPTO is substantially similar to the instruction in Form 1-A, which also requires filing of any written communication or broadcast script used under the generic solicitations of interest rule, 17 CFR 230.241. *See* 2015 Regulation A Release at section II.B.2.iii.

348 Rule 305(b) would set forth requirements for amendments to the required reports that are substantially similar to the requirements under the analogous provision in 17 CFR 230.257(c) of Regulation A. Rule 305(a)(5), (6), and (7) also would set forth provisions applicable to successor issuers, Exchange Act reporting requirements, and subsidiary issuers of guaranteed securities and subsidiary guarantors that would substantially mirror the analogous provisions in 17 CFR 230.257(b)(5), (6), and (7) of Regulation A.

Rule 305(a)(1) would require each issuer that has qualified an offering statement under the fundraising exemption to file with the Commission an annual report on Form 1-KC for the fiscal year in which the offering statement became qualified and for any fiscal year thereafter, unless the issuer's obligation to file such annual report is suspended under Rule 305(c) or is terminated under Rule 305(d).[349] Annual reports would be required to be filed within 120 calendar days after the end of the fiscal year covered by the report. Annual reports would include non-financial disclosure items corresponding to the disclosure requirements in Rule 103(b) (other than Rule 103(b)(2), which requires a description of the material terms of an offering). Annual reports also would require the issuer to provide a Discussion of Financial Condition (which would require the issuer to include the disclosure required by Item 13 of Form 1-CRYPTO) and would require disclosure of any information required to be disclosed, but not reported, in a report on proposed Form 1-UC during the last six months of the fiscal year covered by the annual report.

Rule 305(a)(3) would require each issuer that has qualified an offering statement under the fundraising exemption to file with the Commission a semiannual report on Form 1-SC within 90 calendar days after the end of the semiannual period covered by the report. Semiannual reports would be required to cover the first six months of each fiscal year of the issuer, commencing with the first six months of the fiscal year immediately following the most recent fiscal year for which financial statements were included in the offering statement, or, if the offering statement included financial statements for the first six months of the fiscal year

[349] Form 1-KC would be required to be formatted in HTML, as would be further provided in the EDGAR Filer Manual, to be compatible with EDGAR.

following the most recent full fiscal year, for the first six months of the following fiscal year.[350] Semiannual reports would include the following non-financial disclosure items: Item 1 (Covered Investment Contract), which would include the information required by proposed Rule 103(b)(1); Item 2 (Associated Crypto Network/Application; Plan of Development), which would include the information required by proposed Rule 103(b)(5); Item 3 (Discussion of Financial Condition), which would include the information required by the related item of Form 1-CRYPTO for the interim period for which financial statements are required; and Item 4 (Other Information), which would include any information required to be disclosed, but not reported, in a report on proposed Form 1-UC during the last six months of the fiscal year covered by the semiannual report (whether or not otherwise required by Form 1-SC).

The financial statements requirements for semiannual reports on Form 1-SC and annual reports on Form 1-KC would be the same as provided in the qualified offering statement. The assurance requirements in semiannual and annual reports would be modeled on Regulation A ongoing reporting: the financial statements in a semiannual report would not be subject to any assurance requirement; and the financial statements in an annual report filed by issuers who qualified a Tier 2 offering would be subject to the same assurance requirement as in the qualified offering statement, as discussed in section II.C.2.b.iii above. The financial statements in an annual report filed by issuers who qualified a Tier 1 offering need not be audited; however, as discussed in section II.C.2.b.iii above for Tier 1 offering statements, if an audit of these financial statements is obtained for other purposes and that audit was performed in accordance with either U.S. GAAS or the standards of the PCAOB—by an auditor that is independent under either the

[350] Form 1-SC would be required to be formatted in HTML, as would be further provided in the EDGAR Filer Manual, to be compatible with EDGAR.

independence standards of the AICPA or Rule 2-01 of Regulation S-X—the issuer would be required to file those audited financial statements as well as an audit opinion complying with Rule 2-02 of Regulation S-X along with those audited financial statements. Rule 305(a)(4) would require each issuer that has qualified an offering statement under the fundraising exemption to file with the Commission current reports on Form 1-UC with respect to the matters specified in the form, within four business days after the occurrence of one of the specified events, unless substantially the same information has been previously reported to the Commission by the issuer under cover of Form 1-KC or Form 1-SC.[351]

Rule 305(a)(2) would require each issuer that has qualified an offering statement under the fundraising exemption to file with the Commission a special financial report on Form 1-KC or Form 1-SC if the offering statement did not contain the following: (A) financial statements (which are required to be audited for Tier 2 offerings) for the issuer's most recent fiscal year (or for the life of the issuer or the issuer and its predecessors or any businesses to which the issuer is a successor if less than a full fiscal year) preceding the fiscal year in which the issuer's offering statement became qualified; or (B) unaudited financial statements covering the first six months of the issuer's current fiscal year if the offering statement was qualified during the last six months of that fiscal year. With respect to special financial reports filed on Form 1-KC, they would be required to be filed within 120 calendar days after the qualification date of the offering statement and must include audited financial statements for such fiscal year or other period specified in that paragraph, as the case may be. With respect to special financial reports filed on Form 1-SC, they would be required to be filed within 90 calendar days after the qualification

[351] Form 1-UC would be required to be formatted in HTML, as would be further provided in the EDGAR Filer Manual, to be compatible with EDGAR.

date of the offering statement and must include the semiannual financial statements for the first six months of the issuer's fiscal year, which may be unaudited. Those special financial reports also would be required to be signed in accordance with the requirements of the form on which it is filed.

Unlike Regulation A, issuers who have qualified Tier 1 offerings under the proposed fundraising exemption would be subject to ongoing reporting requirements. We believe that requiring ongoing and current reporting for all issuers under the proposed fundraising exemption 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. Further, and unlike the rationale for excepting Tier 1 issuers under Regulation A from ongoing reporting, we do not anticipate that Tier 1 issuers using the proposed rule will be conducting offerings that are "more local in nature" than Tier 2 offerings and we do anticipate that there may be secondary markets for the securities issued in Tier 1 offerings.[352]

We do not believe that requiring ongoing reporting for all issuers would impose undue costs on issuers in smaller, Tier 1 offerings. These issuers would benefit from tailored disclosure requirements, would not be subject to greater financial statement or assurance requirements than in their qualified offering statements,[353] and the scope of disclosure to be updated would not be greater than that required to be updated by issuers relying on the startup exemption. If an issuer is or becomes subject to the reporting requirements of section 13 or 15(d) of the Exchange Act,

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[352] *See* 2015 Regulation A Release at section II.E.

[353] As discussed above, if an audit of a Tier 1 issuer's financial statements is obtained for other purposes and that audit was performed in accordance with either U.S. GAAS or the standards of the PCAOB—by an auditor that is independent under either the independence standards of AICPA or Rule 2-01 of Regulation S-X—the issuer would be required to file those audited financial statements as well as an audit opinion complying with Rule 2-02 of Regulation S-X along with those audited financial statements.

its duty to file reports under the proposed rule will be deemed to have been met if, as of each Form 1-KC and Form 1-SC due date, the issuer has filed all reports required to be filed by section 13 or 15(d) of the Exchange Act during the 12 months (or such shorter period that the registrant was required to file such reports) preceding such due date.

Commenters supported varying degrees of ongoing periodic disclosure focusing on material changes in the development of the subject crypto asset and the associated crypto network or associated crypto application.[354] One commenter stated that "[o]ne-time disclosures at launch are insufficient to protect investors in dynamic, evolving token ecosystems."[355] Other commenters observed that the importance of ongoing periodic disclosure decreases as control of an associated crypto network or associated crypto application becomes dispersed.[356] In these cases, in the view of some commenters, material information likely would consist of progress toward development milestones or other material changes during the time the issuer retains control over the subject crypto asset or the associated crypto network or associated crypto application.[357]

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354 *See, e.g.*, letters from GDCA ("We strongly suggest requiring disclosure at both the time of sale and on an ongoing basis."); L. Cohen; Coinbase.

355 Letter from GDCA.

356 *See, e.g.*, letter from L. Cohen ("A project team that has completed a fundraising transaction involving crypto assets associated with a blockchain system they are developing might remain subject to certain scaled disclosure obligations so long as the team's ongoing efforts remain material to the growth and development of the blockchain system (and, hence, the value of the associated crypto asset)."); *see also* letter from Coinbase ("To the extent that ongoing disclosure is required, it should be limited to material changes in the token and associated network and, to the extent that the token and/or associated network was not yet operational or was still in development at the time of any securities transactions pursuant to these rules, any material developments related to the issuer's ability to complete its initially disclosed development efforts.").

357 *See* letter from Coinbase; *see also* letter from GDCA (noting that as the network or application decentralizes, financial and other information may be publicly available timelier than the information is made available in periodic reports).

We believe that ongoing public disclosures serve an important investor protection function in offerings involving covered investment contracts. An issuer's ongoing reporting obligations will, however, terminate once the covered investment contract has ceased to exist, including if the issuer has qualified for the investment contract safe harbor. Rule 305(d), discussed in section II.C.2.f below, would address these circumstances.

Request for Comment

116. As noted previously in this section, each form for the proposed fundraising exemption is attached hereto as Appendices A through D. The forms generally track corresponding Regulation A forms with changes intended to reflect the circumstances of covered investment contract offerings and their issuers. Should we further tailor the forms to better reflect such circumstances? To illustrate, as proposed, many of the events triggering disclosure in Form 1-UC relate to matters involving the issuer rather than focusing on the associated crypto network or associated crypto application. For example, under Item 6 of Form 1-UC, disclosure is required upon certain changes in control of the issuer. Should we revise Form 1-UC such that the triggering events are more focused on the associated crypto network or associated crypto application rather than the issuer by, for example, requiring disclosure upon certain changes in control of the associated crypto network or associated crypto application?

117. As proposed, periodic and current reporting would be required for both Tier 1 and Tier 2 issuers that have qualified an offering statement under Regulation Crypto Assets. Should we require such reporting for issuers that have conducted only a Tier 1 offering? Alternatively, similar to Regulation A, should we require ongoing reporting only for issuers conducting Tier 2 offerings?

118. Form 1-SC would require the issuer to furnish the information required by proposed Rule 103(b)(1) and (b)(5). Among other things, those rules would require the issuer to provide disclosure regarding its progress with respect to its representations or promises to engage in essential managerial efforts under the covered investment contract and its progress with respect to its plan of development. Should we include the proposed financial statements requirements for semiannual reports on Form 1-SC, or should that form's disclosure requirements focus on the issuer's progress with respect to such representations or promises and its plan of development? If we do not adopt the proposed financial statement requirements for that form, should those financial statements be disclosed in some other manner? If not, would the lack of semiannual financial statements result in material risks to investors?

119. As noted in section II.C.2.b.v above, proposed Rule 301(f)(2) would require post-qualification amendments for ongoing offerings in certain circumstances. To the extent an issuer files a post-qualification amendment before the issuer's Form 1-KC is due, and such post-qualification amendment contains the information (including the financial statements) that the issuer would be required to provide on the Form 1-KC, should the issuer not be required to also file the Form 1-KC? That is, in those circumstances, would filing a Form 1-KC provide investors with any benefits, or would it simply be duplicative of the information provided in the post-qualification amendment?

120. Should the proposed fundraising exemption, consistent with Regulation A, permit an issuer to register a class of securities sold in a Tier 2 offering under the Exchange Act by filing a Form 8-A in conjunction with the qualification of a Form 1-CRYPTO?

121. Are there certain types of organizational structures that cannot satisfy the disclosure

requirement in Form 1-KC, Form 1-SC, and Form 1-UC to provide a jurisdiction of incorporation or formation (if the issuer is or includes an entity)? For example, could decentralized unincorporated nonprofit associations satisfy this requirement? If not, should we revise this requirement to accommodate any such organizational structures?

122. Should we require disclosure of the address of the issuer's principal executive office only if the issuer has a principal executive office, as proposed in Form 1-KC, Form 1-SC, and Form 1-UC? If an issuer does not have a principal executive office, should we require the issuer to provide a different address (for example, the address for the issuer's agent for service of process)?

f. Transition Reporting (Rule 305(c) and (d))

Rule 305(c) and (d) would set forth transition reporting provisions that would apply equally to issuers in Tier 1 and Tier 2 offerings and set forth pathways to suspend or terminate ongoing reporting obligations under the proposed fundraising exemption.

Rule 305(c) and (d)(1) would substantially mirror the suspension and termination of duty to file reports that are in 17 CFR 230.257(d) and (e)(1) of Regulation A. Under Rule 305(c)(1), the duty to file reports under Rule 305(a) with respect to a class of securities held of record (which, for purposes of determining whether securities are "held of record" under the proposed rule, will be as defined in 17 CFR 240.12g5-1) by less than 300 persons would be suspended for such class of securities immediately upon filing with the Commission a transition report on Form TR if the issuer of such class has filed all reports required to be filed under Rule 305 before the date of such Form TR filing for the shorter of: (i) the period since the issuer became subject to such reporting obligation; or (ii) its most recent three fiscal years and the portion of the current year preceding the date of filing Form TR. Rule 305(c)(2) would provide that the term "class" is construed to include all securities of an issuer that are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The rule further would provide that if the Form TR is subsequently withdrawn or if it is denied because the issuer was ineligible to use the form, the issuer must, within 60 calendar days, file with the Commission all reports which would have been required if such transition report had not been filed. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the notice must be filed by the successor issuer.

Further, under Rule 305(c)(3), the ability to suspend reporting under Rule 305(c)(1) would not be available if: (i) during that fiscal year the issuer has an offering statement that was qualified; (ii) the issuer has not filed an annual report under Rule 305 or the Exchange Act for the fiscal year in which an offering statement was qualified; or (iii) offers or sales of securities of that class are being made pursuant to an offering under the fundraising exemption.

Rule 305(d)(1) would provide that if the duty to file reports is deemed to have been met under Rule 305(a)(6) (i.e., because the issuer is subject to Exchange Act reporting requirements and is current with respect to those requirements) and such status ends because the issuer terminates or suspends its duty to file reports under the Exchange Act, the issuer's obligation to file reports under Rule 305(a) will: (i) automatically terminate if the issuer is eligible to suspend its duty to file reports under Rule 305(c)(1) and (3); or (ii) recommence with the report covering the most recent financial period after that included in any effective registration statement or filed Exchange Act report.

Rule 305(d)(2) sets forth separate bases on which an issuer may terminate its ongoing reporting obligations. These bases reflect the unique nature of covered investment contracts. Under Rule 305(d)(2), if an issuer satisfies the conditions of the investment contract safe harbor[358] or the covered investment contract otherwise ceases to exist during the period in which the issuer is required to file reports under Rule 305(a), the issuer's obligation to file reports under Rule 305(a) will terminate immediately upon filing with the Commission a transition report on Form TR.[359]

As discussed previously in this section, issuers would use proposed Form TR for any transition report filed under Regulation Crypto Assets, checking the box to indicate the specific provision under which the issuer is filing the report. If the issuer is filing the Form TR to suspend its ongoing reporting obligations pursuant to Rule 305(c), Form TR would require similar information as would be required in an exit report on Form 1-Z under Regulation A. If the issuer is filing the Form TR to terminate its ongoing reporting obligations under Rule 305(d)(2), then Form TR would require the same information as would be required in a transition report under the startup exemption.[360] The issuer's ongoing reporting obligations would terminate in the two scenarios discussed in Rule 305(d)(2) because there would no longer be a covered investment contract.

<u>Request for Comment</u>

123. Should we adopt the provisions for suspension and termination of ongoing reporting as proposed? Is 300 record holders an appropriate threshold in the context of covered investment contracts? Should we define "held of record" by reference to 17 CFR 240.12g5-1 as proposed?

D. Investment Contract Safe Harbor (Subpart D, Rule 400)

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358 *See infra* section II.D.

359 *See* 2026 Interpretation at 13723; *see also supra* section I.A.2.b.

360 *See supra* section II.B.2.e.

Subpart D of Regulation Crypto Assets would set forth a non-exclusive safe harbor from the term "investment contract" in the definitions of "security" in section 2(a)(1) of the Securities Act[361] and section 3(a)(10) of the Exchange Act.[362] As proposed, if the conditions of the safe harbor are satisfied, then a covered investment contract will be deemed by the Commission to have ceased to exist, and the crypto asset that was subject to the covered investment contract will be deemed by the Commission not to be subject to such investment contract for purposes of those statutory definitions of "security." This safe harbor is intended to provide market participants with greater clarity as to when a covered investment contract has ceased to exist because of a lack of essential managerial efforts and, therefore, the crypto asset is no longer a "subject crypto asset."

1. Background

As discussed throughout this release, many covered investment contracts eventually will cease to exist. In addition, as noted in section I.B.1 above, the *Howey* test can be complex and difficult to apply to crypto assets. As such, issuers understandably may be concerned that the Commission may second-guess their determinations as to whether a crypto asset is subject to an investment contract under the *Howey* test. We recognize that this uncertainty could complicate an issuer's transaction planning which, in turn, may impede capital formation and innovation in the crypto asset markets. Several commenters, echoing this concern, expressed a desire for greater clarity as to when a crypto asset is subject to an investment contract.[363]

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[361] 15 U.S.C. 77b(a)(1).

[362] 15 U.S.C. 78c(a)(10).

[363] *See supra* section I.B.1 and 2.

The Commission recently took steps to increase clarity on this point by issuing the 2026 Interpretation which, among other things, provided the Commission's view that a covered investment contract separates from the subject crypto asset and ceases to exist when either: (1) the issuer has fulfilled its representations or promises to engage in essential managerial efforts under the covered investment contract, or (2) 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.[364] Proposed Rule 400 would codify this portion of the 2026 Interpretation in a safe harbor and provide a mechanism whereby the issuer can notify the Commission and the public that it has determined that the covered investment contract has ceased to exist and explain the basis on which it has made that determination. The proposed safe harbor may provide issuers, investors, and other market participants with greater certainty as to when a crypto asset is no longer subject to an investment contract. Any resulting increased predictability and certainty may reduce transaction costs and facilitate better transaction planning while also protecting investors.

2. Proposed Rules

The investment contract safe harbor would be set forth in proposed Rule 400. Rule 400 would provide that a covered investment contract will be deemed to have ceased to exist, and the crypto asset that was subject to the covered investment contract will be deemed not to constitute or represent or to 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, if the conditions set forth in Rule 400(a) and (b) are satisfied.

[364] *See* 2026 Interpretation at 13722-23.

Rule 400(a) would require that the issuer of the covered investment contract has completed or otherwise permanently ceased all essential managerial efforts that it represented or promised it would engage in under the covered investment contract and 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.[365] These conditions are intended to codify the Commission's views expressed in the 2026 Interpretation regarding some of the circumstances under which a covered investment contract ceases to exist.[366]

Rule 400(b) would require the issuer of the covered investment contract to file a transition report containing the information required by Form TR with the Commission (which would be required to be filed on EDGAR, pursuant to Rule 101(c)[367]). Form TR would set forth the information that the issuer would have to provide to perfect their reliance on the investment contract safe harbor. Form TR would require the issuer to provide the following information:

- Information regarding the issuer, including the issuer's name (or names, if the issuer is a group of individuals and/or entities), jurisdiction of incorporation or formation (if the issuer is or includes an entity), address of principal executive offices (if any), telephone number, and email address;[368]
- A brief description of the covered investment contract and crypto asset sufficient for a

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365 See *supra* section II.A.4.b.i for a discussion of the types of efforts that may be regarded as essential managerial efforts as well as those that would not constitute essential managerial efforts.

366 As noted above, the 2026 Interpretation provided the Commission's view that a covered investment contract separates from the subject crypto asset and ceases to exist when either: (1) the issuer has fulfilled its representations or promises to engage in essential managerial efforts under the covered investment contract, or (2) the purchaser would not reasonably expect the issuer to fulfill or to continue to engage in the essential managerial efforts it represented or promised it would undertake. *See* 2026 Interpretation at 13722-23.

367 See *supra* section II.A.2 for a discussion of proposed Rule 101(c).

368 To the extent that the issuer is composed of a group of individuals and/or entities, the issuer would be required to designate a single telephone number and email address for purposes of the Form TR.

reasonable investor to identify the security and crypto asset to which the filing relates;

- A certification that the issuer has satisfied the condition in Rule 400(a) with respect to that covered investment contract; and
- An analysis supporting that certification.

The purpose of this Form TR filing is to apprise investors, the Commission, and the public that the issuer has determined that the covered investment contract has ceased to exist, as well as the basis on which the issuer made that determination.[369] The issuer's analysis should be sufficiently clear and detailed such that a reasonable investor could understand how the issuer made its determination. In conducting this analysis, we expect that the issuer would refer to information it disclosed in response to proposed Rule 103(b)(1),[370] to the extent it had relied on the startup exemption or the fundraising exemption and, therefore, was required to provide such information. As noted in section II.A.4.b.i above, those disclosures may provide issuers, investors, and other market participants with a more objective means by which to determine whether a covered investment contract has ceased to exist. The Form TR filing requirement would serve to inform investors and other members of the public that the issuer has determined

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369 In the 2026 Interpretation, the Commission stated that "[a] non-security crypto asset that was offered and sold subject to an investment contract is no longer subject to an investment contract if . . . the issuer . . . publicly announce[s] that it will no longer perform the essential managerial efforts it represented or promised it would undertake (e.g., where the issuer effectively 'abandons' the development of a crypto system)." 2026 Interpretation at 13723. The Commission further stated that "[a] public announcement of non-performance should be widely disseminated to market participants and unambiguous in order for investors to no longer reasonably expect the issuer to perform the essential managerial efforts." *Id.* at n.98. A Form TR filed pursuant to proposed Rule 400 that contains the information required by that form would constitute such a public announcement.

370 *See* proposed 17 CFR 228.103(b)(1) (requiring disclosure, among other things, of the issuer's representations or promises to engage in essential managerial efforts under the covered investment contract and its progress with respect to such representations or promises).

that the protections of the Federal securities laws are no longer applicable to transactions involving a particular crypto asset.[371]

The investment contract safe harbor would be available to any issuer that satisfies its conditions. Thus, the safe harbor would be available to issuers that have utilized the startup exemption or the fundraising exemption once they have satisfied the safe harbor's conditions. The safe harbor also would be available to issuers that have not utilized these proposed exemptions.

Regardless of the path taken, if issuers have satisfied the investment contract safe harbor, the Commission would take the position in its administration of the Federal securities laws that the reporting, registration, and other requirements of the Federal securities laws no longer apply from the point in time at which the issuer satisfied the safe harbor and thereafter. As with any safe harbor, however, the investment contract safe harbor would apply only to the extent that an issuer satisfies its conditions, and the Commission would not be precluded from challenging whether an issuer did, in fact, satisfy those conditions. For example, if an issuer files a Form TR and misrepresents, either intentionally or otherwise, that it has satisfied the conditions in Rule 400(a), the Commission may take the position that, notwithstanding the issuer's attempted reliance on the investment contract safe harbor, the issuer's covered investment contract has not ceased to exist and the reporting, registration, and other requirements of the Federal securities laws continue to apply.

Finally, even if an issuer has not satisfied the investment contract safe harbor, a crypto asset may nonetheless not be subject to an investment contract under the *Howey* test. That is, the

[371] With such knowledge, purchasers of that crypto asset may choose to take other steps to protect themselves, including seeking contractual arrangements with their transactional counterparties that provide them with potential recourse.

investment contract safe harbor, if satisfied, does not provide the sole means by which a crypto asset may fall outside the scope of the Federal securities laws.[372] Moreover, while the investment contract safe harbor would control with respect to the Commission's administration of the Federal securities laws, it would not prevent other parties from asserting that a crypto asset is subject to an investment contract (or is otherwise a security).

Request for Comment

124. Should we adopt Rule 400 as proposed?

125. Are there any portions of Rule 400 that we either should not adopt or that we should change in the final rules? If so, please identify those provisions along with any recommended changes to the rule.

126. Should Rule 400 address any of the other terms that are enumerated in the Securities Act and Exchange Act definitions of "security" in addition to the term "investment contract" (such as, for example, the terms "note" or "certificate of interest or participation in any profit-sharing agreement")?

127. Are there other conditions to relying on Rule 400 that we should include in the final rule?

128. Would investors and other market participants stand to benefit from the Form TR filing requirement in Rule 400(b)? Should Form TR require different or additional information as compared to what we have proposed? In particular, is there any additional information we should require pursuant to Part I of Form TR?

129. Instead of Form TR, which also would be used as a transition report pursuant to the

372 *See, e.g.*, 2026 Interpretation at 13723 (noting that a covered investment contract may cease to exist if an issuer fails to satisfy its representations or promises to engage in essential managerial efforts under the covered investment contract).

proposed startup exemption and fundraising exemption, should there be a dedicated form for reliance on Rule 400 (e.g., to avoid potential investor confusion)?

130. Should Form TR require issuers to include an analysis supporting their determination with respect to the proposed condition in Rule 400(a)? Alternatively, should we allow issuers to certify that they have made this determination without requiring them to include any analysis?

131. Would codifying the 2026 Interpretation in Rule 400 as we have proposed provide greater certainty to issuers? Is there a more objective standard that we should use in place of the proposed standard in Rule 400(a) for determining whether an issuer has completed or otherwise permanently ceased all essential managerial efforts that it represented or promised it would engage in under a covered investment contract and 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 ?

132. Is additional guidance required beyond the views that the Commission expressed in the 2026 Interpretation regarding the types of efforts that may be regarded as essential managerial efforts for purposes of the investment contract safe harbor? If so, which issues should we address on this point?

133. Should we modify the proposed safe harbor to cover only certain circumstances in which a covered investment contract may cease to exist? For example, should the proposed safe harbor only be available for issuers that have fulfilled their representations or promises to engage in essential managerial efforts under the covered investment contract?

134. We recognize that some parties may be reluctant to rely on the investment contract safe

harbor because they may view the safe harbor 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 such investment contract. Are there changes we could make to the investment contract safe harbor that would address these concerns? Will issuers opt to rely on the 2026 Interpretation instead of using Rule 400?

135. Should Rule 400 also set forth a safe harbor from the term "investment contract" in the definitions of "security" in section 2(a)(36) of the Investment Company Act and section 201(a)(18) of the Investment Advisers Act of 1940? If so, how should we revise Rule 400 to incorporate these uses of the term?

E. Preemption of State Registration and Qualification Requirements (Definition of "Qualified Purchaser" in Subpart E, Rule 500)

Section 18(a) of the Securities Act provides that States may not require registration or qualification of "covered securities."[373] Section 18(b)(3) of the Securities Act states 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."[374] We are proposing to add a new definition of "qualified purchaser" under section 18(b)(3) of the Securities Act such that State securities law registration and qualification requirements would be preempted with respect to offers and sales of covered investment contracts pursuant to an exemption in Regulation Crypto Assets, as well as secondary market transactions with respect to such covered investment contracts by any

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[373] 15 U.S.C. 77r(a).

[374] 15 U.S.C. 77r(b)(3).

person other than an issuer, underwriter, or dealer of such covered investment contracts.[375] With respect to secondary market transactions, the proposed amendments would preempt State securities law registration and qualification requirements for covered investment contracts that were initially sold by the issuer either pursuant to an exemption in Regulation Crypto Assets or another exemption under the Federal securities laws. Such secondary market preemption would continue for the period during which the issuer continues to satisfy the disclosure and filing and/or periodic reporting requirements of an exemption under Regulation Crypto Assets for that covered investment contract.

1. Background

Section 18(a) of the Securities Act provides that no law, rule, regulation, or order, or other administrative action of any state (or political subdivision thereof) requiring (or with respect to) the registration or qualification of securities shall (1) directly or indirectly apply to a covered security or to a security that will be a covered security upon completion of the transaction, (2) directly or indirectly prohibit, limit, or impose any conditions upon the use of any offering document that is prepared by or on behalf of the issuer, among other things, or (3) directly or indirectly prohibit, limit, or impose any conditions based on the merits of such offering or issuer, upon the offer or sale of any covered security.[376]

Sections 18(b)(1), (b)(2), and (b)(4) of the Securities Act specify certain covered securities.[377] Section 18(b)(3) provides that a security "is a covered security with respect to the

[375] The proposed definition of "qualified purchaser" under section 18(b)(3) of the Securities Act does not relate to or affect the definition of the term "qualified purchaser" under section 2(a)(51) of the Investment Company Act of 1940 and the rules thereunder.

[376] 15 U.S.C. 77r(a)(1)-(3).

[377] 15 U.S.C. 77r(b)(1)-(2) and 77r(b)(4).

offer or sale of the security to qualified purchasers, as defined by the Commission by rule" and states that "[i]n prescribing such rule, the Commission may define the term 'qualified purchaser' differently with respect to different categories of securities, consistent with the public interest and the protection of investors."[378]

Section 18(c) of the Securities Act preserves State authority with respect to "covered securities" in several ways. Pursuant to section 18(c), States:

- retain jurisdiction under the laws of such State to investigate and bring enforcement actions, in connection with securities or securities transactions, with respect to (i) fraud or deceit or (ii) unlawful conduct by brokers or dealers;
- retain the ability to require the filing of any document filed with the Commission (together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in such state, if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee; and
- have the power to suspend the offer or sale of securities within the state as a result of the failure to submit any filing or required fee.[379]

Congress added these provisions to section 18 of the Securities Act when it enacted the National Securities Markets Improvement Act of 1996 ("NSMIA"). The legislative history indicates that Congress intended for its amendments preempting State law in section 18 to "eliminate the costs and burdens of duplicative and unnecessary regulation by, as a general rule, designating the Federal government as the exclusive regulator of national offerings of

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[378] 15 U.S.C. 77r(b)(3).

[379] *See* 15 U.S.C. 77r(c)(1)-(3).

securities."[380] The Commission has understood the policy underlying NSMIA's enactment to suggest that states should "generally retain their authority to regulate small, regional, or intrastate securities offerings."[381]

Based on industry feedback and our own observations of covered investment contract offerings, we believe that most issuers of covered investment contracts will conduct offerings that are neither regional nor solely intrastate. As explained by the President's Working Group Report, "[a]ctivity in digital asset markets is often characterized as borderless, reflecting the ease of transacting worldwide."[382] One commenter observed that "every policy discussion, whether in the securities context or otherwise, concerning blockchain technology must take account of its global phenomenology."[383] In addition, hallmarks of crypto assets include their "ability to reach people without intermediaries and . . . ease of storage, transport, and access."[384] As such, we expect that issuers will not routinely seek to limit sales of covered investment contracts to a single state because of the unlikelihood that information about such asset will be limited or tied to one geographic location.

This technological and geographic reality makes the review and qualification of covered investment contracts a difficult and inefficient task for issuers to conduct on a state-by-state

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380 H.R. Rep. No. 622, 104th Cong. 2d Sess. at 16 (1996) (House Report).

381 *See* 2015 Regulation A Release at section II.H.3.d (quoting House Report at 16); *see also Lindeen v. SEC*, 825 F.3d 646, 650 (D.C. Circ. 2016) (upholding the Commission's preemption of Tier 2 Regulation A offerings and stating that NSMIA "designated the federal government to oversee nation-wide securities offerings while allowing the states to retain control over small, regional or intrastate offerings," and that NSMIA intended for the SEC to play a role in determining its preemptive scope by: (i) including in its list of covered securities any security sold to qualified purchasers, as defined by the Commission by rule, and (ii) granting the Commission authority to define the term qualified purchaser differently with respect to different categories of securities, consistent with the public interest and the protection of investors) (citations omitted).

382 President's Working Group Report at 17.

383 Letter from Consensys (Feb. 21, 2025).

384 *See, e.g.*, Commissioner Hester M. Peirce, *Paper, Plastic, Peer-to-Peer.* (Mar. 15, 2021), *available at* https://www.sec.gov/newsroom/speeches-statements/peirce-paper-plastic-peer-peer-031521.

basis. This potential difficulty and inefficiency supports using section 18(b)(3) to preempt State registration and qualification requirements in this context. For example, the Commission has previously observed that offerings made through the Internet could result in an issuer potentially violating State securities laws absent preemption of State-level registration and qualification requirements.[385] The Commission also has discussed how preemption would reduce both costs associated with State registration laws and issuer uncertainty about whether State registration is required.[386]

Preemption 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. We anticipate that preemption of State securities laws registration and qualification requirements would reduce issuer costs and promote efficiency by reducing duplicative requirements. We also believe such preemption would enhance secondary market liquidity by eliminating uncertainty as to whether investors need to register or qualify their resale of a covered investment contract in a specific state. Our proposed rules contain investor protections that could address potential concerns that may arise as a result of the preemption of State securities laws. These investor protections include the following:

- Disclosure requirements under the startup exemption and the fundraising exemption;
- Amendment and ongoing reporting obligations under the startup exemption and the fundraising exemption, respectively;

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385 *See, e.g.*, Crowdfunding Adopting Release at 71519; 2015 Regulation A Release at 21856-62.

386 *See, e.g.*, Crowdfunding Adopting Release at 71519; 2015 Regulation A Release at 21886-88.

- A “bad actor” disqualification provision applicable to the startup exemption and the fundraising exemption;
- Issuer eligibility conditions under the fundraising exemption;
- A maximum four-year offering duration and one-time use limitation under the startup exemption;
- A qualification process under the fundraising exemption;
- Investment limitations under the fundraising exemption for non-accredited investors;
- Financial statement disclosure and assurance requirements under the fundraising exemption; and
- Application of the Federal securities laws’ antifraud and antimanipulation provisions.

We also note that covered investment contract issuers often engage in developing and utilizing associated crypto networks and associated crypto applications that have publicly available open-source code, as well as networks and applications in which ownership records and crypto asset transactions are recorded. Given the unique technological attributes of crypto assets, we expect that many such issuers will publish their source code in a manner that makes it available to potential investors in all states prior to conducting any offering. Put simply, access and information concerning crypto assets and their associated crypto networks and associated crypto applications generally are not (nor expected to be) limited to a single state.

As a result, consistent with the public interest and protection of investors, we are proposing preemption of State registration and qualification requirements for transactions conducted in reliance on one or more of the exemptions in Regulation Crypto Assets and secondary market transactions (i.e., transactions by any person other than an issuer, underwriter, or dealer) with respect to a covered investment contract for which the issuer has satisfied the requirements of an exemption under Regulation Crypto Assets.

2. Proposed Rule

Subpart E of Regulation Crypto would set forth a definition of "qualified purchaser" in Rule 500. The proposed definition would, for purposes of section 18(b)(3) of the Securities Act (15 U.S.C. 77r(b)(3)) provide that a "qualified purchaser" include any person to whom securities are offered or sold pursuant to an offering under Regulation Crypto Assets or an offering pursuant to a transaction by any person other than an issuer, underwriter, or dealer with respect to a covered investment contract; provided that: (1) the issuer has satisfied the requirements of an exemption under Regulation Crypto Assets with respect to such covered investment contract; and (2) 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.[387] Thus, covered investment contracts sold in an offering conducted pursuant to Regulation Crypto Assets, as well as secondary market transactions of such covered investment contracts under the circumstances described in the section above, would be "covered securities," resulting in preemption of certain State securities regulations as provided under section 18 of the Securities Act.

With "covered security" status, transactions conducted pursuant to Regulation Crypto Assets would be primarily regulated by the Federal securities laws. Our goal, as it was when the Commission adopted Regulation Crowdfunding[388] and Regulation A,[389] is to enhance efficiency

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387 When using its authority to define "qualified purchasers" under section 18(b)(3), the Commission is not prohibited from concluding that all offerees and purchasers in an offering are qualified purchasers. *See Lindeen*, 825 F.3d at 654.

388 *See* Crowdfunding Adopting Release at section III.B.7.

389 *See* 2015 Regulation A Release at section II.H.3.b and section II.H.3.d.

and reduce duplicative regulation while maintaining investor protection. We also note that several commenters supported preemption of State securities regulation for crypto asset transactions.[390]

The proposed exemption would apply preemption to all offerings of covered investment contracts under the startup exemption and the fundraising exemption. We considered whether our proposed definition of "qualified purchaser" should distinguish between Tier 1 and Tier 2 offerings conducted pursuant to the fundraising exemption. Unlike what the Commission observed in the Regulation A Release in 2015 with respect to Tier 1 offerings, we do not anticipate that there will be issuers likely to rely on our proposed exemptions to conduct offerings that are more "local" in nature (given, as explained in the background section above, our understanding of the crypto asset ecosystem and its use of technology that spans geographies and aims to develop decentralized networks). There are additional investor protections for Tier 1 offerings under the fundraising exemption that are not present with respect to Tier 1 Regulation A offerings. These include ongoing reporting requirements for issuers and investment limitations for non-accredited investors (neither of which apply to issuers or investors, respectively, in Tier 1 offerings conducted under Regulation A). In light of these investor protection-based requirements applicable to both Tier 1 and Tier 2 offerings under the fundraising exemption, we believe it is appropriate to preempt both types of offerings.

We also considered whether preemption should be available for offerings under only the fundraising exemption and not the startup exemption. Although the startup exemption would not include financial statement disclosure requirements, ongoing reporting requirements to the same

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390 *See, e.g.*, letters from TDC 3; GUARDD (May 13, 2025); CrowdCheck Law; CfPA.

extent as the fundraising exemption, or investment limitations, we believe the investor protection-based requirements of the startup exemption support preemption. For example, the startup exemption's disclosure requirements would require issuers to provide the same disclosures under Rule 103 as would be required under the fundraising exemption. In addition, although not as robust as the ongoing reporting obligations under the fundraising exemption, the startup exemption would include an annual amendment requirement to reflect any material changes in the information previously disclosed. When considered in the context of the lower offering limit (as compared to the fundraising exemption), as well as the four-year maximum duration and one-time use requirements, we believe the startup exemption contains appropriate investor protections that also support preemption.

For both the startup exemption and fundraising exemption, a potential investor's need for an illiquidity discount at the time of the initial purchase of a covered investment contract (issued pursuant to one of the proposed exemptions) likely would depend on the extent that a liquid secondary market for securities issued pursuant to Regulation Crypto Assets develops, which could be hampered by uncertainty as to whether resales need to be qualified or registered with specific states. In order to encourage capital formation and not inhibit the development of this potential secondary market, we are including the specified secondary market transactions in our proposed definition of "qualified purchaser."

The proposed amendment also would apply preemption to all secondary market transactions of a covered investment contract—by any person other than the issuer, an underwriter, or a dealer—if the issuer of such covered investment contract has satisfied the requirements of an exemption under Regulation Crypto Assets with respect to that covered investment contract. Thus, under the proposed amendments, preemption would apply to secondary market transactions of such covered investment contracts regardless of whether a given covered investment contract was initially issued under one of the Regulation Crypto Assets exemptions so long as the issuer (1) satisfies an exemption under Regulation Crypto Assets with respect to such covered investment contract and (2) remains subject to (and is current with respect to) such exemption's disclosure and filing requirements and/or periodic reporting obligations (as applicable). For example, if an issuer offered and sold some covered investment contracts under the fundraising exemption, and then later offered and sold some of the same covered investment contracts under Regulation D, secondary market transactions in those covered investment contracts all would be equally subject to preemption.

We believe it is appropriate to apply preemption broadly to secondary market transactions involving the same covered investment contract (regardless of the manner in which they were initially offered and sold) because of the investor protections provided by secondary market participants' ability to access and benefit from the issuer's initial and ongoing disclosures under either the startup exemption or the fundraising exemption. To that end, such preemption would apply only to the extent that the issuer remains subject to, and current with respect to,[391] the applicable Regulation Crypto Asset exemption's disclosure and filing requirements or periodic reporting obligations.[392] To illustrate, if an issuer offered and sold some covered

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391 In the context of proposed Rule 500, "current" means that the issuer would have had to file all periodic reports required under the fundraising exemption or made all required amendments to the information previously reported under startup exemption. If an issuer fell out of compliance with those requirements, preemption would not apply until the issuer cured such defect.

392 Proposed Rule 500's reference to "periodic reporting obligations" is intended to cover each of the reporting obligations under proposed Rule 305 other than the requirement to file current reports under proposed Rule 305(a)(4) (i.e., current reports on Form 1-UC). We did not include these current reports in the proposed rule because it may be difficult for secondary market participants that are unaffiliated with the issuer to determine whether the issuer is current with respect to the filing of a Form 1-UC (based on their potential inability to independently determine whether a reportable event had occurred). Thus, such secondary market participants

investment contracts under the startup exemption, preemption would apply to secondary market transactions involving those covered investment contracts (and any of the same covered investment contracts that the issuer otherwise sold) during the four-year period, so long as the issuer continued to comply with the exemption's disclosure and filing requirements. If, after four years, the covered investment contract had not ceased to exist and the issuer filed a Form TR, thereby concluding its disclosure and filing requirements under the startup exemption, then preemption would not continue to apply to secondary market transactions involving any covered investment contracts that remained outstanding at that time.

Request for Comment

136. Should we adopt the definition of "qualified purchaser" in Rule 500 as proposed?

137. Are there any portions of the proposed definition of "qualified purchaser" that we either should not adopt or that we should change in the final rules? If so, please identify those provisions along with any recommended changes to the rule.

138. Is there an alternative approach by which we might address the concern that State registration and qualification requirements could pose a significant impediment to the use of the proposed rules? Should we treat all offerees and all purchasers in an offering conducted pursuant to Regulation Crypto Assets as qualified purchasers or should we impose additional limitations (based on, for example, an income threshold, a net worth threshold, and/or an investment assets threshold)?

139. Are there other approaches we should consider to defining "qualified purchaser" for Regulation Crypto Asset offerings? For example, should we define "qualified purchaser"

may not be able to determine whether preemption would apply to a potential secondary market transactions in the issuer's covered investment contract or whether they would have to comply with State registration and qualification requirements.

as any offeree or purchaser in a Regulation Crypto Asset offering by an issuer that meets certain criteria (e.g., specified financial criteria or operating or other criteria indicative of reduced risk)? Or should we define this term based on attributes of the offering that may reduce risk to investors (e.g., firm commitment underwritten offerings or offerings through a registered broker-dealer)? Alternatively, should we consider a "qualified purchaser" definition that reflects some attributes of the purchaser, issuer, and offering? Should we include, as proposed in our definition of "qualified purchaser," sales and offers made in secondary market transactions with respect to a covered investment contract that was issued pursuant to an offering relying on an exemption in Regulation Crypto Assets? Is it necessary or appropriate to include secondary market transactions as proposed?

140. Should the preemption of secondary market transactions be limited to the resale of covered investment contracts that were initially issued pursuant to an offering relying on an exemption in Regulation Crypto Assets and not another available exemption under the Federal securities laws? If so, how would secondary market participants be able to distinguish between covered investment contracts based on the manner in which they were originally issued, especially for covered investment contracts that involve fungible crypto assets?

141. Proposed Rule 500 generally would provide for preemption of secondary market transactions if issuer has satisfied the requirements of an exemption under Regulation Crypto Assets and if the issuer remains subject to, and is current with respect to, the disclosure and filing and/or periodic reporting requirements of such exemption. Will market participants be able to determine whether the issuer has satisfied the requirements

of an exemption under Regulation Crypto Assets such that they would know that secondary market transactions in the covered investment contracts are preempted? If not, should we adopt a different standard? For example, should the standard be that it is reasonable for a purchaser to conclude that the issuer has satisfied the requirements of an exemption under Regulation Crypto Assets? Alternatively, should the standard be that it is reasonable for a purchaser to conclude that the issuer has relied on an exemption under Regulation Crypto Assets? Should the standard be something else?

142. Should preemption of secondary market transactions apply for so long as the respective issuer of the covered investment contract (under either the startup or fundraising exemption) is current with respect to such exemption's disclosure and filing requirements and/or periodic reporting obligations, as applicable? For example, would a covered investment contract holder be able to determine whether the issuer is current with respect to an exemption's disclosure and filing requirements and/or periodic reporting obligations, as applicable, such that the investor would know whether preemption applies to its secondary market transactions in that covered investment contract? If not, should preemption of secondary market transactions apply for so long as the respective issuer of the covered investment contract (under either the startup or fundraising exemption) is subject to (and not necessarily current with respect to) such exemption's disclosure and filing requirements and/or periodic reporting obligations, as applicable?

143. Should we revise proposed Rule 500 such that secondary market preemption would depend on the issuer satisfying its current reporting obligations? That is, should we revise Rule 500 such that preemption of secondary market transactions would apply for so long as the respective issuer of the covered investment contract (under either the startup or

fundraising exemption) is current with respect to such exemption's disclosure and filing requirements and/or periodic *and current* reporting obligations, as applicable? Would it be too difficult for secondary market participants that are unaffiliated with the issuer to know whether the issuer had satisfied its current reporting obligations, given their potential inability to independently determine whether a reportable event had occurred? If so, are there any mechanisms we could include to address this?

144. Should we otherwise modify the conditions under which preemption of secondary market transactions would apply? Should we consider limiting the proposed preemption of State securities laws to only certain aspects of Regulation Crypto Assets offerings? For example, as in Regulation A, should we limit preemption to only Tier 2 offerings under the proposed fundraising exemption? Should preemption of secondary market transactions apply equally regardless of whether the issuer satisfied the startup exemption or the fundraising exemption?

GENERAL REQUEST FOR COMMENT

We request and encourage any interested person to submit comments on any aspect of this proposing release, other matters that might have an impact on the topics discussed in this release, and any suggestions for additional changes. Please be as specific as possible in your discussion and analysis of any additional issues. We particularly welcome comments on any costs, burdens, or benefits that may result from possible regulatory responses related to the items identified in this release or otherwise proposed by commenters.

III. OTHER MATTERS

This proposing release is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866 and has been reviewed by the Office of Management and Budget ("OMB"), consistent with Executive Order 14215.

IV. ECONOMIC ANALYSIS

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Securities Act section 2(b)[393] and Exchange Act section 3(f)[394] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, Exchange Act section 23(a)(2) requires the Commission to consider the effects on competition of any rules that the Commission adopts under the Exchange Act and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[395]

Offerings of covered investment contracts are different from traditional securities offerings, such as equity or debt offerings. As discussed throughout this release, many covered investment contracts eventually will cease to exist. Although the covered investment contracts are subject to the Federal securities laws when first offered or sold, the crypto assets may subsequently cease to be subject to the covered investment contracts. At that point, the Federal securities laws no longer would apply. As noted earlier in the release, the Commission's existing rules generally do not contemplate or facilitate this type of evolution.[396]

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[393] 15 U.S.C. 77b(b).

[394] 15 U.S.C. 78c(f).

[395] 15 U.S.C. 78w(a)(2).

[396] See discussion in section I.

In contrast to traditional securities, whose value may depend on ownership rights and/or expected cash flows, the value of crypto assets typically depends on their utility and security.[397] These features often benefit from network effects, where the utility and security of a crypto system increases as more users participate and interact with the crypto system. In addition to crypto assets, sometimes economic incentives are also funded by externally-raised capital. As the crypto network matures, incentives can be financed by, for example, transaction fees, trading fees, and service fees. The Commission's existing exemptions have features that may impede the development of crypto networks. For example, securities issued pursuant to the Commission's existing exemptions may be restricted securities[398] or otherwise subject to resale restrictions.[399] Those exemptions also may limit the extent to which an issuer may sell securities to retail investors,[400] which could result in concentrated (rather than widespread) holdings, impeding the accretion of desired network effects. Thus, issuers of covered investment contracts are likely to have reasons for choosing to raise capital using covered investment contracts instead of issuing traditional securities.

Further, many of the Commission's existing rules require issuers to provide disclosures that may not be relevant to investors in covered investment contract offerings, and those rules often do not elicit other types of disclosures that are likely to be material to such investors. Existing disclosure rules are inapposite partially because purchasers of covered investment

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397 *See* Lin W. Cong, et al., *Tokenomics: Dynamic Adoption and Valuation*, 34 REV. FIN. STUDS. 1105 (Sept. 2021).

398 *See, e.g.*, 17 CFR 230.144(a)(3)(ii) (providing that the term "restricted securities" incudes "[s]ecurities acquired from the issuer that are subject to the resale limitations of § 230.502(d) under Regulation D").

399 *See, e.g.*, 17 CFR 227.501 (imposing a one-year restriction on resales of securities issued pursuant to Regulation Crowdfunding).

400 *See, e.g.*, 17 CFR 230.506(c)(2)(i) (requiring that all purchasers of securities sold in any offering under the exemption to be "accredited investors," as defined in 17 CFR 230.501(a)).

contracts are unlikely to have ownership rights on assets or cash flows, as they do with equity securities. Unlike traditional securities, many purchasers of covered investment contracts could be potential users of the network or application. These users may derive nonpecuniary benefits from providing capital to issuers of covered investment securities and thus be willing to provide capital at lower cost. This contrasts with traditional equity securities where investors have claims on future cash flows and are generally distinct from intended customers.[401]

Many commenters that provided input to the Crypto Task Force requested that the Commission adopt disclosure rules tailored to offerings of covered investment contracts.[402] Several commenters suggested that the Commission's existing offering regimes, including the related disclosure requirements, are unfit for application to covered investment contracts and their issuers.[403] Other commenters supported the adoption of an exemption from the registration requirements under the Securities Act for offers and sales of crypto assets during the development of a blockchain project.[404]

The proposed rules would address the need for a tailored offering regime for covered investment contracts. The 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. The proposed rules would achieve these goals by, among other

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401 *See, e.g.*, Sabrina Howell, Marina Niessner & David Yermack, *Initial Coin Offerings: Financing Growth with Cryptocurrency Token Sales*, 33 REV. FIN. STUDS. 3925 (Sept. 2020) ("Howell, et al."). The study argues that "raising capital from customers could potentially redistribute network growth gains from financial intermediaries, such as VCs, to developers and customers. It also helps promote the brand among customers and provide the issuer with an early signal about demand." *See id.* at 3946-47.

402 *See supra* section I.B.

403 *See supra* section I.B.3.

404 *See supra* section I.B.4.

things, establishing two new exemptions from Securities Act section 5—the startup exemption and the fundraising exemption—as well as the investment contract safe harbor. These proposed rules are described in more detail in section II above.

Although the proposed rules are intended to promote capital formation while ensuring that investors are adequately protected, the proposed rules also may advance broader public benefits. For example, the proposed rules may enhance competition and innovation in markets for covered investment contracts and encourage offers and sales of covered investment contracts to be conducted in the United States, rather than abroad. Further, innovation in decentralized financing and transactional systems that facilitate automated, non-intermediated financial market activities (which often utilize cryptographically-secured distributed ledgers[405]) could have efficiencies (e.g., reduced transaction and intermediation costs and greater transactional speed and accessibility)[406] that benefit U.S. entrepreneurship and the public.

We consider below the potential benefits and costs of the proposed rules and their likely effects on efficiency, competition, and capital formation. Many of the benefits and costs are difficult to quantify or estimate with any degree of certainty. These difficulties are exacerbated by the limited public data that would inform how market participants may respond to the proposed rules.[407] Where we are unable to quantify the economic effects of the proposal, we provide a qualitative assessment of the potential effects and encourage commenters to provide

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405 *See supra* note 3.

406 *See* Christian Catalini & Joshua S. Gans, *Some Simple Economics of the Blockchain*, 63 COMMC'N ACM 80, 85 (June 18, 2020), *available at* https://doi.org/10.1145/3359552 (noting blockchain technology lowering the cost of verification of transaction attributes and the cost of coordinating economic activity over the internet).

407 *See* section IV.A.2 for a discussion of available data.

data and information that would help quantify the benefits and costs of the proposed rules, and the potential impacts of the proposed rules on efficiency, competition, and capital formation.

A. Economic Baseline

The baseline against which the benefits, costs, and effects on efficiency, competition, and capital formation of the proposed rules are measured consists of the current state of the market and the current regulatory framework, in which issuers raise capital through securities offerings by registering the offer and sale of those securities under the Securities Act unless they can rely on an exemption from registration. The economic analysis considers the existing Federal securities laws and the Commission's rules and regulations, as further clarified through the views expressed by the Commission in the 2026 Interpretation,[408] as part of its economic baseline against which the costs and benefits of the proposed rules are measured.

The 2026 Interpretation set forth an interpretation of the definition of "security" as applied to crypto assets and transactions involving crypto assets.[409] The interpretation classified crypto assets into five categories: digital commodities, digital collectibles, digital tools, stablecoins, and digital securities. The 2026 Interpretation addressed the Commission's view on how a non-security crypto asset can be offered and sold subject to an investment contract.[410] The interpretation also addressed how a non-security crypto asset ceases to be subject to an investment contract. Specifically, when a purchaser of a non-security crypto asset that had been subject to an investment contract could no longer reasonably expect the issuer's representations or promises to engage in essential managerial efforts to remain connected to the non-security

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408 *See supra* note 51.

409 See section I.A.2.b above for more detailed information on the 2026 Interpretation.

410 *See supra* note 53.

crypto asset, the non-security crypto asset separates from such representations or promises, and thereafter the non-security crypto asset is not subject to the Federal securities laws. The 2026 Interpretation set forth the Commission's view that a non-security crypto asset would no longer be subject to an investment contract when: (1) the issuer has fulfilled its representations or promises to engage in essential managerial efforts, or (2) 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.

1. Current Methods of Raising up to $75 Million in Capital

The potential economic impact of the proposed rules, including their effects on efficiency, competition, and capital formation, will depend on how the proposed exemptions compare to existing methods that issuers currently may have available to raise capital. Issuers can potentially access a variety of external financing sources in the capital markets through registered or exempt offerings of debt, equity, and hybrid securities, as well as bank loans. We expect issuers to choose the capital raising option that is optimal for them. The choice of financing method may depend on, among other things, the size of the issuer, the type of investors the issuer seeks to attract, and the amount of new capital sought.[411] For instance, small businesses usually have smaller, more variable cash flows than larger, more established companies, and internal financing from their own business operations tends to be limited and unstable. These businesses tend to have smaller asset bases[412] and, thus, less collateral for

[411] Issuers of covered investment contracts may also consider how certain financing methods facilitate or restrict their ability to establish a functional associated crypto network or associated crypto application. For example, does the financing method impede issuers' ability to decentralize the associated crypto network or associated crypto application?

[412] *See, e.g.*, John Asker, et al., *Corporate Investment and Stock Market Listing: A Puzzle?*, 28 REV. FIN. STUDS. 342 (Feb. 7, 2015), *available at* https://ssrn.com/abstract=1603484 (retrieved from SSRN Elsevier database).

traditional bank loans. We expect that most issuers of covered investment contracts would be small.[413] Registered offerings entail initial and ongoing costs that can weigh more heavily on smaller issuers, providing incentives to remain private and to raise capital outside of public markets.[414] To the extent that these issuance costs constrain issuers' access to capital, they may result in underinvestment in some value-generating projects and thus potentially less efficient allocation of capital to investment projects. Hence, issuers, particularly small issuers and issuers in early stages of development, may benefit significantly from the Commission's exempt offering framework for raising capital. This section describes the various offering methods currently available, including existing offering exemptions.

Every offer and sale of securities, including covered investment contracts, must be registered under Securities Act section 5 or conducted pursuant to an exemption from section 5. Although registered offerings provide issuers and investors alike with many benefits, such as access to a large pool of investors, liquidity, and lower information asymmetry, they also include costs (e.g., Commission filing fees, legal and accounting fees, and costs associated with Exchange Act reporting requirements) that can be disproportionately burdensome for many startups and small businesses vis-a-vis the amount of capital that they are seeking to raise. One survey concluded that the average initial compliance cost associated with conducting an initial public offering ("IPO") (excluding underwriter fees) is $5.2 million, followed by ongoing

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413 *See* Howell, et al., *supra* note 401. This study finds that companies conducting ICO issuances had on average thirteen employees (with a median of three employees). *See also* Ruediger Fahlenbrach & Marc Frattaroli, *ICO Investors*, 35 FIN. MKTS. & PORTFOLIO MGMT. 1 (2021) ("Fahlenbrach study"). The study mentions that "Entities conducting ICOs have unproven business models and are most often in the preproduct stage."

414 *See* IPO Task Force, *Rebuilding the IPO On-Ramp* (Oct. 20, 2011).

compliance costs for issuers, once public, averaging $2.0 million per year.[415] Hence, for a small issuer, a registered offering may not be economically feasible. Moreover, issuers conducting registered offerings often pay underwriter fees, which are, on average, approximately four to seven percent of the proceeds for IPOs, approximately five percent for follow-on equity offerings, and approximately one to one-and-a-half percent for public bond issuances.[416]

As an alternative to raising capital through registered offerings, issuers may instead offer and sell securities in reliance on an exemption from Securities Act section 5. The Securities Act and the rules promulgated thereunder contain a number of such exemptions. Issuers can rely on current exemptions from registration under the Securities Act, such as section 4(a)(2), Regulation D, Regulation Crowdfunding, Regulation A, and the intrastate exemptions in section 3(a)(11) (as well as the related safe harbor in Rule 147) and Rule 147A. We note, however, that Regulation A is unlikely to be a viable option for issuers that are considering covered investment contract offerings. Covered investment contracts are not "eligible securities" under Regulation A.[417] Thus, issuers may not offer or sell covered investment contracts pursuant to Regulation A. We

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415 *See Rebuilding the IPO On-Ramp: Putting Emerging Companies and the Job Market Back on the Road to Growth*, U.S. DEP'T TREAS. (Oct. 20, 2011), *available at* http://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf; Price Waterhouse Coopers (PwC) Deals, *Considering an IPO to Fuel Your Company's Future? Insight into the Costs of Going Public and Being Public* (Nov. 2017), *available at* https://www.pwc.com/hu/hu/szolgaltatasok/konyvvizsgalat/szamviteli-tanacsadas/kiadvanyok/cost_of_an_ipo_2017.pdf.

416 *See, e.g.*, Hsuan-Chi Chen & Jay R. Ritter, *The Seven Percent Solution*, 55 J. FIN. 1105-31 (2000); Mark Abrahamson, et al., *Why Don't U.S. Issuers Demand European Fees for IPOs*? 66 J. FIN. 2055-82 (2011); Shane A. Corwin, *The Determinants of Underpricing for Seasoned Equity Offers*, 58 J. FIN. 2249-79 (2003); Lily Hua Fang, *Investment Bank Reputation and the Price and Quality of Underwriting Services*, 60 J. FIN. 2729-61 (2005); Rongbing Huang & Donghang Zhang, *Managing Underwriters and the Marketing of Seasoned Equity Offerings*, 46 J. FIN. QUANT. ANALYSIS 141-70 (2011); Stephen J. Brown, et al., *Convertibles and Hedge Funds as Distributors of Equity Exposure*, 25 REV. FIN. STUDS. 3077-112 (2012).

417 *See supra* note 249 and accompanying discussion.

therefore do not consider Regulation A as an alternative method of raising capital for issuers of covered investment contracts.[418]

The statutory exemptions and those established by our rules include a variety of offering limits, requirements, disclosure frameworks, investor protections, and conditions. Some exemptions (e.g., Regulation Crowdfunding and Rule 504 of Regulation D) limit the amount of securities that may be offered or sold, while others (e.g., Rules 506(b) and (c) of Regulation D) allow issuers to offer and sell an unlimited amount of securities. Some exemptions (e.g., offerings under section 4(a)(2) and Rule 506(b) of Regulation D) limit the manner in which the offering can be conducted, such as by prohibiting the use of general solicitation or general advertising to solicit investors while others (e.g., Regulation Crowdfunding and Rule 506(c) of Regulation D) allow issuers to generally solicit and advertise subject to certain restrictions. Some exemptions are available only to offers and/or sales to persons within a single State or territory (e.g., section 3(a)(11) of the Securities Act, as well as its related safe harbor in Rule 147, and Rule 147A). One exemption (i.e., Rule 506(c) of Regulation D) restricts sales to accredited investors and requires issuers to take reasonable steps to verify such investors' status as accredited prior to such sales.[419] The eligibility criteria for many of the exemptions prohibit certain types of issuers from relying on the exemption, such as non-U.S. issuers, issuers subject to the reporting requirements of the Exchange Act, investment companies, development stage or blank check companies, or certain "bad actors," with the exact type of prohibitions varying from

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[418] Issuers could raise capital pursuant to Regulation A by issuing "eligible securities" and separately using that capital to fund crypto asset projects. Such a strategy, however, would forgo the benefits and synergies of directly offering the crypto assets to investors via covered investment contracts.

[419] Accredited investors are presumed to possess sufficient financial sophistication and ability to sustain the risk of loss of their investment or to fend for themselves to render the protections of the Securities Act's registration process unnecessary. *See Regulation D Revisions; Exemption for Certain Employee Benefit Plans*, Release No. 33-6683 (Jan. 16, 1987) [52 FR 3015 (Jan. 30, 1987)].

exemption to exemption. For example, Regulation Crowdfunding is not available to non-U.S. issuers (except Canadian issuers), blank check companies, Exchange Act reporting companies, and investment companies (including business development companies[420]).

In addition, some exemptions specify disclosures required to be included in prescribed forms that must be filed with the Commission or otherwise provided to all or a subset of prospective investors. For example, Regulation Crowdfunding has broader disclosure requirements compared to some other existing offering exemptions. Under Regulation Crowdfunding, an issuer must file an offering statement at the onset of an offering and provide company financial statements for a specified period. Under certain circumstances, these financial statements must be audited. In addition to the initial disclosures, issuers relying on Regulation Crowdfunding must provide certain ongoing disclosures through the duration of their offering, including periodic reports and, at the culmination of the offering, a termination of reporting form. On the other hand, Regulation D requires only an initial notice filing on Form D with the Commission, which includes basic offering and issuer information without any financial statements. Rule 506(b) of Regulation D, however, requires issuers that are not subject to the reporting requirements of Exchange Act section 13 or 15(d) to provide a disclosure document to non-accredited investors (if any) with the kind of information as would be required in Part II of Form 1-A (if the issuer is eligible to use Regulation A)[421] and the financial statements required by Part F/S of Form 1-A of Regulation A, but there are no periodic reporting requirements.

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[420] *See* 15 U.S.C. 80a-2(a)(48) for the definition of business development company.

[421] *See* 17 CFR 230.502(b)(2)(i)(A). If an issuer is not eligible to use Regulation A, it is required to provide the same type of information that would be required by Part I of a registration statement filed on a form that it is eligible to use.

Issuers relying on Securities Act section 4(a)(2), section 3(a)(11) (as well as its related safe harbor in Rule 147), or Rule 147A are not required to provide one-time or ongoing disclosure.

Another characteristic of many of the existing offering exemptions (e.g., offerings under Rule 506(b), Rule 506(c), and section 4(a)(2)) is that investors acquire restricted securities. Those investors, therefore, may need to hold such securities for a specified period of time without the possibility of trading them. For example, if a non-affiliated investor relies on Rule 144 to resell its restricted securities, the investor must wait a year (if the issuer is not an Exchange Act reporting company) or six months (if the issuer is an Exchange Act reporting company) before trading the securities. Securities issued pursuant to Regulation Crowdfunding are not restricted securities under Rule 144; however, they are subject to resale restrictions within the first year of sale pursuant to 17 CFR 227.501.

Many of the aforementioned characteristics of existing offering exemptions may significantly limit the ability of issuers of covered investment contracts to create economic incentives that encourage participation in their networks and applications. For example, some of the offering exemptions limit the type of investors that may purchase in the offering or restrict the ability of purchasers to resell those securities. This in turn may limit these issuers' ability to raise capital to help achieve such participation and ultimately benefit from network effects. Treating covered investment contracts as restricted securities would likely slow down the diffusion of the underlying crypto asset across potential users and other network participants, thus impeding the issuer's ability to achieve network effects. Additionally, State registration and qualification requirements (which are not preempted under some existing exemptions, either with respect to the primary offering of securities issued under the exemption, secondary market transactions with respect to such securities, or both) do not fit with the typically global (crossstates, or even cross-country) nature of purchasers of covered investment contracts and the underlying crypto assets. Further, existing offering exemptions often rely on accredited investors for offering participation, thus potentially restricting the pool of purchasers of covered investment contracts and, therefore, the subject crypto assets. This could inhibit the development of many networks or applications, which require broad distribution of the related crypto asset among users who may be anonymous,[422] global, and retail.[423] Lastly, some of the offering exemptions require issuers to provide disclosures that may not be relevant to investors in covered investment contract offerings. The cost of preparing those disclosures may limit issuers' interest in pursuing current exemptions.

Table 1 summarizes some of the characteristics of the most commonly used exemptions from registration.[424]

Table 1: Overview of Capital-Raising Exemptions

Type of Offering	Offering Limit within 12-month Period	General Solicitation	Issuer Requirements	Investor Requirements	SEC Filing Requirements	Restrictions on Resale	Preemption of State Registration and Qualification
Section 4(a)(2)	None	No	None	Transactions by an issuer not involving any public offering. *See SEC v. Ralston Purina Co.*[425]	None	Yes. Restricted securities	No
Rule 506(b) of Regulation D	None	No	"Bad actor" disqualifications apply	Unlimited accredited investors Up to 35 sophisticated but non-accredited	Form D notice of sale filed with the SEC Delivery of a disclosure document to non-accredited	Yes. Restricted securities	Yes

[422] Although a public observer can see and trace all transactions of a blockchain address which is theoretically associated with an investor, the public profile or any other private information is hidden. *See*, *e.g.*, Dimitri Boreiko & Dimche Risteski, *Serial and Large Investors in Initial Coin Offerings*, 57 SMALL BUS ECON, 1053 (2021)

[423] For example, the Fahlenbrach study finds that the average ICO has 4,700 investors, and the median ICO investor invests approximately $1,200. *See supra* note 430.

[424] Division of Corporation Finance, Office of Small Business Policy, *Overview of Capital-Raising Exemptions*, *available at* https://www.sec.gov/files/2024-ospb-overview-capital-raising-exemptions-table-2.pdf.

[425] 346 U.S. 119, 126 (1953).

				investors in a 90-day period	investors with financial statements consistent with Regulation A. Not filed with SEC.		
Rule 506(c) of Regulation D	None	Yes	“Bad actor” disqualifications apply	Unlimited accredited investors Issuer must take reasonable steps to verify that all purchasers are accredited investors	Form D notice of sale filed with the SEC	Yes. Restricted securities	Yes
Rule 504 of Regulation D	$10 million	Permitted in limited circumstances	Excludes blank check companies, Exchange Act reporting companies, and investment companies “Bad actor” disqualifications apply	None	Form D notice of sale filed with the SEC	Yes. Restricted securities except in limited circumstances	No
Regulation A: Tier 1	$20 million	Permitted; before qualification, testing the waters permitted before and after the offering statement is filed	U.S. or Canadian issuers Excludes blank check companies, registered investment companies, business development companies, issuers of certain securities, certain issuers subject to a section 12(j) order, and Regulation A and Exchange Act reporting companies that have not filed certain required reports “Bad actor” disqualifications apply No asset-backed securities.	None	Form 1-A, including two years of financial statements Exit report	No	No
Regulation A: Tier 2	$75 million			Non-accredited investors are subject to investment limits based on the greater of annual income and net worth, unless securities will be listed on a national securities exchange	Form 1-A, including two years of audited financial statements Annual, semi-annual, current, and exit reports	No	Yes
Regulation Crowdfunding; Section 4(a)(6)	$5 million	Testing the waters permitted before Form C is filed Permitted with limits on advertising after Form C is filed Offering must be conducted on an internet platform through a registered intermediary	Excludes non-U.S. issuers, blank check companies, Exchange Act reporting companies, and investment companies “Bad actor” disqualifications apply	No investment limits for accredited investors Non-accredited investors are subject to investment limits based on the greater of annual income and net worth	Form C, including two years of financial statements that are certified, reviewed or audited, as required Progress and annual reports	12-month resale limitations	Yes

Intrastate: Section 3(a)(11)	No Federal limit (generally, individual state limits between $1 and $5 million)	Offerees must be in-state residents.	In-state residents "doing business" and incorporated in-state; excludes registered investment companies	Offerees and purchasers must be in-state residents	None	Securities must come to rest with in-state residents	No
Intrastate: Rule 147	No Federal limit (generally, individual state limits between $1 and $5 million)	Offerees must be in-state residents.	In-state residents "doing business" and incorporated in-state; excludes registered investment companies	Offerees and purchasers must be in-state residents	None	Yes. Resales must be within state for six months	No
Intrastate: Rule 147A	No Federal limit (generally, individual state limits between $1 and $5 million)	Yes	In-state residents and "doing business" in-state; excludes registered investment companies	Purchasers must be in-state residents	None	Yes. Resales must be within state for six months	No

Finally, businesses may also seek to rely on private debt financing. While equity accounts for a significant proportion of the total capital of a typical small business, other sources of capital for small businesses include loans from commercial banks, finance companies and other financial institutions, and trade credit.[426] Borrowing can be relatively costly for many early-stage issuers as they may have low revenues, irregular cash-flow projections, insufficient assets to offer as collateral, and high external monitoring costs; therefore, they may be deemed riskier and may be unable to secure the most favorable loan terms.[427] Financial institutions generally require

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426 *See* Allen N. Berger & Gregory F. Udell, *Small Business Credit Availability and Relationship Lending: The Importance of Bank Organisational Structure*, 112 ECON. J. F32-F53 (Feb. 2002). In this study, equity accounted for approximately half of the total capital, including approximately 31 percent (45 percent for the smallest firms—that is, those, with less than $1 million in revenues or less than 20 employees) attributed to the principal owner. The remainder came from debt financing, with about one quarter accounted for by loans from commercial banks, finance companies and other financial institutions, and another 16 percent comprised of trade credit. The study was conducted based on the 1993 edition of the Federal Reserve Board's Survey of Small Business Finances, which collects information on small businesses (fewer than 500 employees) in the United States.

427 *See* Alicia M. Robb & David T. Robinson, *The Capital Structure Decisions of New Firms*, 27 REV. FIN. STUDS. 153, 153-79 (Jan. 2014).

such small business borrowers to provide collateral or a guarantee by owners,[428] which some issuers may be unable or reluctant to provide. As mentioned above, it is likely that most issuers of covered investment contracts would be small, thus for them borrowing could be very costly.

2. Affected Issuers

The affected issuers consist of any issuer that has decided or may decide to offer and sell covered investment contracts. Any issuer meeting the eligibility criteria[429] could use the exemptions set forth in the proposed rules to offer and sell covered investment contracts and/or rely on the investment contract safe harbor. We do not have reliable data or information that would allow us to estimate the number of issuers that would be able to rely on the proposed rules or that are likely to use them in the future. In light of this limitation, to inform our understanding of the scope of affected issuers, we look to available data about issuers that have made offerings involving crypto assets (which we refer to as "crypto asset-related offerings") in the past. In particular, we analyzed information on each of the number of ICOs that were undertaken before the release of the DAO Report,[430] the number of crypto assets that are listed/traded on secondary

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[428] Approximately 92 percent of all small business debt to financial institutions is secured, and owners of the firm guarantee about 52 percent of that debt. *See* Allen N. Berger & Gregory F. Udell, *Relationship Lending and Lines of Credit in Small Firm Finance*, 68 J. BUS. 351, 351-81 (1995). Some studies of small business lending also document the creation of local captive markets with higher borrowing costs for small, opaque firms as a result of strategic use of soft information by local lenders. *See* Sumit Agarwal & Robert Hauswald, *Distance and Private Information in Lending*, 23 REV. FIN. STUDS. 2757, 2757-88 (Apr. 2010).

[429] Issuers could be public or private, from the crypto asset industry or otherwise. The proposed rules would be applicable to any issuer, regardless of whether the issuer has operations that are unrelated to the crypto asset industry or whether, prior to engaging in the covered investment contract offering, the issuer was not engaged in operations related to the crypto asset industry.

[430] There is empirical evidence in recent economic studies that the number of ICOs has declined dramatically after 2018. *See, e.g.*, Evgeny Lyandres, et al., *ICO Success and Post-ICO Performance*, 68 MGMT. SCI. 8658 (Feb. 2022) ("Lyandres Study"); Tatyana Davydiuk, et al., *De-Crypto-ing Signals in Initial Coin Offerings: Evidence of Rational Token Retention*, 69 MGMT. SCI. 6584 (Nov. 2023) ("Davydiuk Study"). For example, the Lyandres Study notes that "[p]ossibly due to regulatory uncertainty, ICOs became less frequent in the end of 2018 and in 2019, being partially replaced by 'Security Token Offerings' (STOs), which adhere to securities regulations, and 'Initial Exchange Offerings' (IEOs), in which an issuer combines raising capital with listing the token on a crypto exchange." The Davydiuk Study mentions that "[s]ince 2019, industry reports show that ICO activity has declined, although the number of STOs and IEOs has been growing."

crypto markets, and past exempt offerings that may have a connection to the crypto asset market. While our analysis below describes certain sets of potentially affected parties and estimates their numbers, we also recognize that there could be issuers that have not made crypto asset-related offerings in the past that may choose to do so in the future that are not represented in the estimates below. For the reason noted above, the challenges of conducting a crypto asset-related offering under the current offering exemptions may limit offerings in the United States. Our analysis provides some information about the approximate number of issuers that may be able to rely on the proposed rules. The number of affected issuers, however, is likely to be higher than the estimates we provide.

The proposed rules could incentivize some covered investment contract issuers that have used, or are currently using, existing offering exemptions to switch to the proposed startup exemption and/or the proposed fundraising exemption if they provide a cheaper way to raise capital. Further, the proposed rules could incentivize other covered investment contract issuers that have not pursued an offering under existing offering exemptions, or that pursued or are pursuing an offering abroad, to consider an offering in reliance on the proposed startup exemption and/or the proposed fundraising exemption. Importantly, to the extent the proposed rules help to bridge a gap in capital formation for prospective covered investment contract issuers, we expect that the proposed rules could draw new covered investment contract issuers to the market that have not, to date, relied on existing offering exemptions. Thus, the number of issuers utilizing the new provisions is likely to be higher than the estimates in this section.

We also expect that many issuers that rely on the proposed exemptions, or that in the past issued covered investment contracts, would eventually seek to satisfy the investment contract safe harbor to obtain certainty that their crypto assets no longer are subject to the provisions of the Federal securities laws. Some affected issuers could, in fact, rely solely on the proposed investment contract safe harbor.[431] Thus, our analysis of prior exempt offerings, which is intended to approximate only the number of issuers that would rely on the proposed new exemptions, is likely to underestimate the number of potential affected issuers.

We first analyzed the number of ICOs that were undertaken before the release of the DAO Report.[432] ICOs were the most popular capital raising offerings for crypto asset issuers that were startups or in early stages of development.[433] One study observed that there were 5,644 ICOs globally between January 1, 2016, and December 31, 2018.[434] The study found that about 17 percent of the ICO sample used in the analysis had U.S.-based development teams. Based on that, we estimate that about 960 (i.e., 17 percent) of the 5,644 ICOs from 2016 through 2018 had U.S.-based teams.[435] We caveat that the peak of ICO activity was almost seven years ago, and the current number of potentially affected crypto asset issuers may differ significantly. Another study reports a similar total number of ICOs, 5,376 ICOs, from 2013 through 2019, with 13 percent of those ICOs (i.e., 699 ICOs) located in the United States.[436] A more recent study

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431 *See* section II.D.

432 *See supra* note 430.

433 Some crypto asset issuers have undertaken IEOs. Others have used Simple Agreements for Future Tokens ("SAFTs"). SAFT issuers enter into an agreement with an investor for the future delivery of tokens once a platform is developed and becomes functional. *See* Howell, et al., *supra* note 401.

434 *See* Davydiuk Study, *supra* note 430.

435 We note that the location of the development team which is used in the study may not meet the issuer eligibility requirements in the fundraising exemption (that the issuer is an entity organized in the United States and with a majority of its executive officers or directors being U.S. citizens or residents, more than 50 percent of its assets located in the United States, and its business is administered principally in the United States.) Nonetheless, given the data limitations we face, we use this study to inform our estimates.

436 *See* Lyandres Study, *supra* note 430. In the empirical analysis, the study restricts the analysis to a subsample of 5,376 ICOs for which there is data on the number of tokens issued for sale, the amount raised in the ICO, or both. This is done in an attempt to eliminate incomplete ICOs, which are those that are halted before offering tokens to investors, as opposed to completed but unsuccessful ICOs (that is, those that fail to raise money),

estimates the number of U.S. ICOs as of July 2025 to be 248, out of 1,096 ICOs (i.e., 23 percent) launched globally.[437]

Our second analysis considered the number of crypto assets that are listed/traded on secondary crypto asset markets. The creators of those crypto assets have presumably sold the assets to acquirers and are working to develop, or have completed or abandoned development of, the associated blockchain network or application. Using data from CoinMarketCap,[438] we have identified 9,746 crypto assets that are currently listed or traded on various crypto asset exchanges globally. Assuming that each crypto asset is developed by a unique creator, there would be 9,746 creators of crypto assets from 2013 through 2024. Figure 1 lists the number of crypto assets that listed or started trading on one or more exchanges in any given calendar year from 2013 through 2024. As Figure 1 shows, the number of crypto assets that are added for listing or trading on a secondary exchange has dramatically increased over time, peaking in 2021 and then again in 2024. This data does not identify how many of these crypto assets have U.S.-based development teams, which means that the numbers in Figure 1 could overstate the number of issuers that may use the fundraising exemption. The data also does not indicate how many crypto assets were removed from secondary exchanges each year, thus introducing potential downward selection bias. Because of this potential selection bias, the total number of 9,746 crypto assets likely

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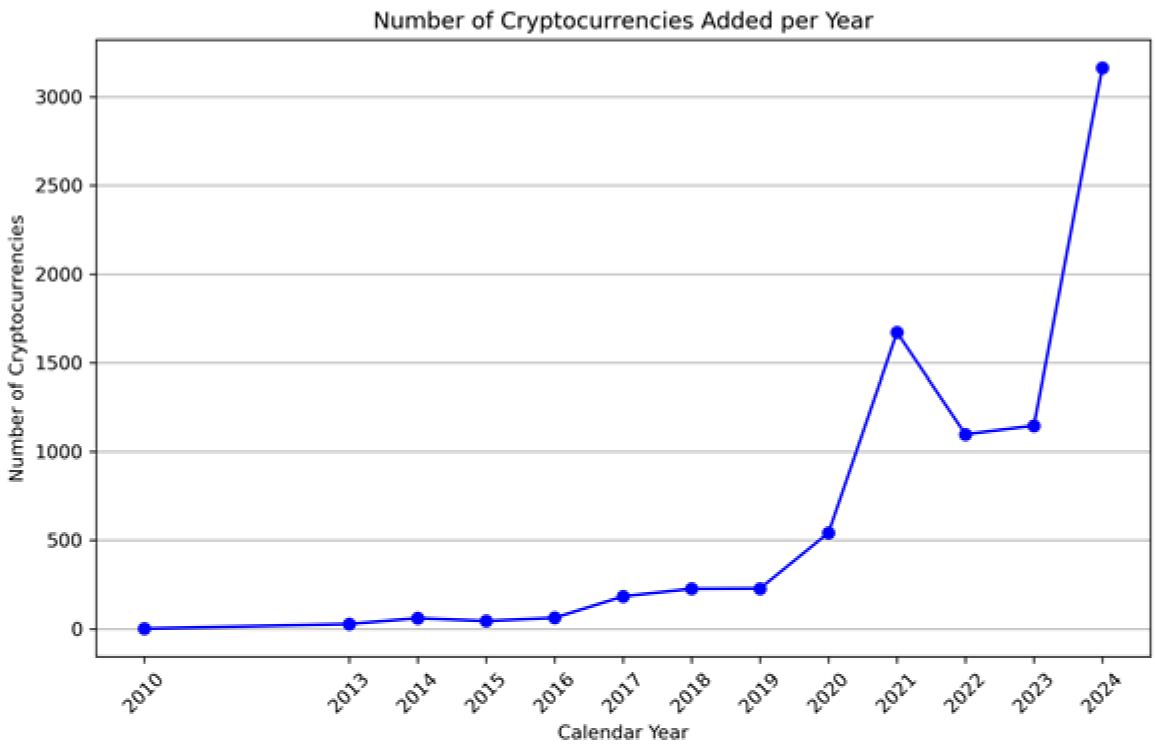
which are kept in the sample. Also, classification of ICOs in this study may not align identically with the issuer eligibility requirements in the fundraising exemption (that the issuer is an entity organized in the United States and with a majority of its executive officers or directors being U.S. citizens or residents, more than 50 percent of its assets located in the United States, and its business is administered principally in the United States).

[437] Barry Elad & Kathleen Kinder, *ICO Market Statistics 2025: Funding, Failures & Future Outlook*, CoinLaw (July 11, 2025), *available at* https://coinlaw.io/ico-market-statistics/.

[438] *Crypto Market Overview*, CoinMarketCap, *available at* https://coinmarketcap.com/charts/ (last visited June 6, 2025). The data are available from 2013.

understates the true number of crypto assets that were listed/traded across the world on secondary trading platforms ("crypto exchanges") from 2010 through 2024.

Figure 1. Number of New Crypto Assets Listed on a Secondary Market by Year, 2010-2024



Lastly, we analyzed available data on the potential number of issuers that conducted crypto asset-related offerings under Regulation D, Regulation A,[439] or Regulation Crowdfunding offerings. This analysis is subject to limitations and assumptions, as we explain in detail below. Our findings suggest that, for the period from 2016 to 2024, 581 issuers made crypto asset-

[439] Issuers conducting crypto asset-related offerings under Regulation A were identified based on issuances where the offering circular and/or exhibits reference terms in Form 1-A filings that connect to the crypto assets market. The securities that the issuers were offering and selling, therefore, were not necessarily covered investment contracts. Even though issuers are not able to offer or sell covered investment contracts pursuant to Regulation A, it is still informative to identify issuers that have crypto asset-related characteristics and therefore may be more inclined to offer and sell covered investment contracts under a different exemption (e.g., the proposed startup exemption or fundraising exemption).

related offerings under Regulation D, 14 issuers made crypto asset-related offerings under Regulation A, and 41 issuers made crypto asset-related offerings under Regulation Crowdfunding. Thus, the data suggest that a total of 636 issuers made crypto asset-related offerings in the United States using at least one of the existing offering exemptions and thus would be potentially affected parties.

a. Issuers Conducting Crypto Asset-Related Offerings under Regulation D

We analyzed Form D and Form D/A filings from 2009 through 2024 using certain criteria to identify likely issuers of crypto asset-related offerings.[440] Over this period, 581 issuers undertook 682 of crypto asset-related offerings under Regulation D, with the first offerings appearing in 2017. Figure 2 shows annual data on the number of crypto asset-related offerings under Regulation D from 2017 through 2024.[441] The number of offerings was highest in 2018 (282 offerings), subsequently declined, and has trended upward in recent years, with 75 offerings conducted in 2024 as compared to 51 in 2023.

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440 We identify crypto asset-related offerings by checking if in Form D the issuer checked the "Other" box under Item 9 ("Type(s) of Securities Offered") and mentioned the word "Token" and variations of it (e.g., tokens, tokenization, etc.) or the word "Crypto" and variations of it (e.g., cryptocurrency, cryptoasset, etc.). This analysis includes Regulation D offerings for all issuers, including pooled investment funds. Data are obtained from Form D filings. The amount raised is based on "Total amount sold" in initial and amended Form D filings. Incremental proceeds reported in amended filings are recorded in the year of the amended filing. We believe reported data is likely an underestimate of the amount raised because (1) Rule 503 of Regulation D requires issuers to file a Form D no later than 15 days after the first sale of securities, but a failure to do so does not invalidate the exemption; so, some Regulation D issuers may fail to file a Form, and (2) there is no requirement to file a Form D at completion of the offering, or to file an amendment to reflect additional amounts offered if the aggregate offering amount does not exceed the original offering size by more than ten percent (so, amounts reported may be lower than total amounts sold). While failure to file Form D does not affect the exempt offering, it could have other consequences, including, under Rule 507, the potential loss of ability to rely upon Regulation D in the future.

441 The first Regulation D offerings by crypto asset issuers appear in 2017, hence the period of coverage in Figure 2.

Figure 2. Number of Crypto Asset-Related Offerings Under Regulation D, 2017-2024

Table 2 provides some summary statistics of issuers that conducted crypto asset-related offerings under Regulation D. These issuers raised approximately $4.7 billion from 2017 through 2024. Unlike Regulation D offerings by non-crypto asset issuers, issuers conducting crypto asset-related offerings tend to rely more frequently on Rule 506(c) rather than Rule 506(b).[442] The average offering raised approximately $7.4 million, with the median amount much smaller ($1.2 million). Additionally, the crypto asset-related offerings involved approximately 67 investors on average, and almost no non-accredited investors. The general absence of non-accredited investors is not surprising given the primary reliance on Rule 506(c) which allows sales only to accredited investors, while Rule 506(b) allows for up to 30 non-accredited investors.

442 *See* Scott Bauguess et al., *Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings*, *2009-2017* (SEC, DERA White Paper, August 2018), *available at* https://www.sec.gov/files/dera-white-paper_regulation-d_082018.pdf.

Table 2. Summary Statistics for Crypto Asset-Related Offerings Under Regulation D, 2017-2024

Number of offerings	682
Exemption used	Rule 504 – 2.6 percent Rule 506(b) – 40.2 percent Rule 506(c) – 57.2 percent
Number of unique issuers	581
Number of offerings that reported raised capital	394419
Total amount raised	\$4.7 bln
Average (median) amount raised	\$11.2 mln (\$1.2 mln)
Average (median) total number of investors per offering	67 (10)
Average (median) number of non-accredited investors per offering	(0)

b. Issuers Conducting Crypto Asset-Related Offerings under Regulation A

We analyzed Form 1-A filings over the period from June 19, 2015 to December 31, 2024 using certain criteria to identify likely issuers of crypto asset-related offerings under Regulation A (i.e., issuances where the offering circular and/or exhibits reference terms connected to the crypto asset market).[443] From 2015 through 2024, there were 14 issuers that conducted qualified

443 The sample starts on June 19, 2015, the date when the 2015 Regulation A amendments went into effect. "Crypto asset-related" offerings are identified based on keyword searches ("token(s)", "coin(s)", "crypto(s)",

crypto asset-related offerings under Regulation A. As seen in Table 3, these issuers sought to raise a total of $546 million during the period under consideration. The average amount sought was approximately $34 million, and most of the offerings were Tier 2 offerings.

Table 3. Financing Sought in Crypto Asset-Related Offerings Under Regulation A During June 19, 2015 - December 31, 2024[444]

Filed	Total	Tier 1	Tier 2
Aggregate dollar amount sought, $ mln	$575.7	$64.0	$511.7
Mean dollar amount sought, $ mln	$33.9	$16.0	$39.4
Median dollar amount sought, $ mln	$25.0	$20.0	$40.0
Number of offerings	17	4	13
Number of issuers	15	3	12
Qualified	**Total**	**Tier 1**	**Tier 2**
Aggregate dollar amount sought, $ mln	$545.7	$64.0	$481.7
Mean dollar amount sought, $ mln	$34.1	$16.0	40.1
Median dollar amount sought, $ mln	$22.5	$20.0	45
Number of offerings	16	4	12
Number of issuers	14	3	11

Table 4 reports the actual amounts raised for the qualified crypto asset-related offerings under Regulation A. There were nine issuers that raised a total of $119 million across 10 offerings,

"blockchain(s)", "cryptocurrency", and "digital assets") of issuer legal names on EDGAR and full text of offering circular filings and exhibits in data provided by Intelligize, as well as assignment to the Division of Corporation Finance's Office of Crypto Assets disclosure review subject to hand-checks to eliminate false matches. Note that many of the offerings do not necessarily involve issuance of crypto assets that are subject to an investment contract or are themselves digital securities (as discussed in the 2026 Interpretation), but the offering circular may, for example, reference blockchain, mining, utility tokens, or other digital asset/crypto ecosystem activities as part of the issuer's business.

444 The data period is from June 19, 2015 to Dec. 31, 2024. Capital reported raised is based on information disclosed by companies in Forms 1-Z, 1-K, 1-SA, 1-U, and other filings, and presented as of that reporting date. Estimates represent a lower bound on the amounts raised and are affected by the timing of proceeds reporting by the issuer. As most offerings are conducted on a continuous basis, some time may elapse between offering initiation and completion or termination. After that issuers have 30 days to file Form 1-Z (however, Tier 2 issuers may instead report sales in their first annual report after termination or completion of an offering). Tier 2 issuers may report proceeds in ongoing offerings in periodic reports. Such proceeds are likely to be reported at a future date. Issuers that report proceeds of zero are excluded from the count. If an issuer reports proceeds both from a Tier 1 and a Tier 2 offering, that issuer is counted twice (once under Tier 1 and once under Tier 2). Information collection is also affected by variance across filers in disclosure and tagging practices with respect to proceeds reporting.

with an average amount raised per offering of about $11.9 million. This is almost the same as the average amount raised per offering across all Regulation A offerings, which is $11.5 million.[445]

Table 4. Financing Reported Raised in Crypto Asset-Related Offerings Under Regulation A During June 19, 2015 - December 31, 2024[446]

	All	Tier 1	Tier 2
Aggregate dollar amount of reported proceeds, $ mln	$119.0	$2.3	$116.8
Mean dollar amount of reported proceeds, $ mln	$11.9	$0.8	$16.7
Median dollar amount of reported proceeds, $ mln	$4.5	$0.5	$7.5
Number of offerings	10	3	7
Number of issuers	9	3	6

Table 5 provides some characteristics of the issuers of qualified crypto asset-related offerings under Regulation A. The average crypto asset issuer using Regulation A was small, with average total assets of approximately $4.8 million and an average of 13 employees. However, compared to the average Regulation A issuer over the same period, crypto asset issuers relying on Regulation A had larger revenues ($4.9 million vs. $1.9 million), were more established (10.1 years vs. 6.7 years since incorporation), and were more likely to have generated some revenue at the time they made the Regulation A offering.

Table 5. Issuer and Offering Characteristics in Qualified Crypto Asset-Related Offerings Under Regulation A as of December 31, 2024[447]

	Mean	Median

445 *See supra* note 288.

446 Capital reported raised is based on information disclosed by companies in Forms 1-Z, 1-K, 1-SA, 1-U, and other filings for the period from June 19, 2015, to Dec. 31, 2024. Estimates represent a lower bound on the amounts raised and are affected by the timing of proceeds reporting by the issuer. Instances of zero proceeds are excluded. Information collection is affected by variance across filers in disclosure and tagging practices with respect to proceeds reporting.

447 Statistics in this table are based on offerings qualified as of Dec. 31, 2024. The information on offering and issuer characteristics is based on Part I of Form 1-A of Regulation A offering statements or the latest amendment qualified during the sample period. For ease of interpretation, in the case of variables that take on a value of 0 or 1, medians are not reported and the mean column shows the percentage of the offerings that take on the value of 1.

Total assets ($ mln)	$4.8	$0.5
Employees	12.9	3.5
Age (years since incorporation)	10.1	7.0
Revenue ($ mln)	$4.9	$0.0
% revenue >0	56%	
Net income ($ mln)	$0.0	-$0.1
% net income >0	19%	
Cash and cash equivalents ($ mln)	$2.3	$0.0
Property, plants, and equipment ($ mln)	$0.1	$0.0
Long-term debt ($ mln)	$0.3	$0.0
% testing the waters[a]	31%	
% offerings with affiliate selling security holders	25%	
States of solicitation (U.S.)	39	51
% equity offerings[b]	81%	
% offerings with an intermediary	38%	

a. "% testing the waters" refers to oral or written communication from an issuer, or any person authorized to act on behalf of an issuer, to determine whether there is any interest in a contemplated offering of securities exempt from registration under the Securities Act. The data is collected based on information provided by issuers in Form 1-A. Such communications are deemed to be an offer of a security for sale for purposes of the antifraud provisions of the Federal securities laws. *See* 17 CFR 230.241.

b. "% equity offerings" refers to the percentage of offerings of equity securities among all qualified offerings. In instances where security type was tagged as "other," we examined the description of securities referencing equity or debt, respectively (e.g., offerings where security type was listed as "other" but the securities description was listed as "LLC interests," "preferred stock," "common shares," "limited partner interests," or "units of LLC membership interests" were reclassified as "equity").

c. Issuers Conducting Crypto Asset-Related Offerings under Regulation Crowdfunding

For Regulation Crowdfunding, we analyzed reported offering proceeds (i.e., aggregate amount, average amount, median amount, and number of offerings) based on data available in reports on Form C-U from 2016 through 2024. From 2016 through 2024, 41 issuers conducted 42 crypto asset-related offerings under Regulation Crowdfunding.[448] The total amount raised was approximately $13.6 million, and the average amount raised per offering was $545,300.

[448] Data comes from the XML portion of Forms C and C-U and amendments to them filed through Dec. 31, 2024. When we refer to offerings, we refer to initiated offerings that have not been withdrawn, unless specified otherwise. When discussing proceeds, we refer to offerings that have reported proceeds on Form C-U. Offerings with Forms C-U without proceeds information are treated as not having proceeds. We identify crypto offerings by checking if in Form C the issuer described the securities issued in the "Security Other Description" field as "SAFT" or "Token."

Table 6. Summary Statistics for Crypto Asset-Related Offerings Under Regulation Crowdfunding, 2016-2024

	Aggregate ($ mlns)	Average ($ 000s)	Median ($ 000s)	Number of offerings
Target (minimum) amount	1.3	30.7	10.0	42
Maximum amount	58.7	1,398.4	1,070.0	42
Reported proceeds	13.6	545.3	80.1	25[a]

a. The information on reported offering proceeds (i.e., aggregate amount, average amount, median amount, and number of offerings) is based on data available to us in reports on Form C-U. Due to some cases where an offering closed successfully, but a Form C-U was not filed or lacked details of proceeds, our totals likely represent a lower bound estimate; industry reports sourcing information on investor commitments from platform websites directly tend to show higher total funding levels. The data on proceeds exclude Form C-U filings that did not contain identifiable proceeds information (e.g., reports noting "end of offering" without indicating a dollar amount of proceeds). For purposes of calculating the aggregate reported proceeds, for issuers with multiple filings of proceeds per offering, the latest filing is used to avoid duplication.

Table 7 presents some characteristics of the issuers that conducted crypto asset-related offerings under Regulation Crowdfunding. Compared to the average Regulation Crowdfunding issuer, the issuers in crypto asset-related offerings tend to be much younger (1.3 years vs. 3.7 years) and much smaller in terms of assets ($407,000 vs. $736,000) and revenues ($21,000 vs. $740,000).[449] They also had less cash on hand and have raised less debt financing.

Table 7. Characteristics and Financials of Issuers Conducting Crypto Asset-Related Offerings Under Regulation Crowdfunding

	Mean	Median
Issuer age (years since formation)	1.3	0.5
%: Issuer age is ≤3 years	90%	
%: Issuer formed in DE	74%	
%: Issuer located in CA	31%	
Employees	5.5	4.0
% Issuer has assets	45%	

449 *See* Angela Huang & Vladimir Ivanov, *Analysis of Crowdfunding Under the JOBS Act* (SEC, DERA White Paper, May 2025), *available at* https://www.sec.gov/files/dera-reg-cf-2505.pdf.

Assets ($000s)	407.1	0.0
%: Issuer has revenue	21%	
Revenue ($000s)	21.2	0.0
%: Issuer has a positive net income	2%	
Net income or loss ($000s)	-115.0	0.0
Cash and Cash Equivalents ($000s)	56.3	0.0
%: Issuer has debt	36%	
Debt ($000s)	216.8	0.0
Long-term debt ($000s)	171.1	0.0
%: Legal status is corporation	83%	

As an important caveat, due to limitations of the data, we are not able to determine which of the offerings relying on the existing exemptions would have involved securities that met the specific definition of covered investment contracts in the proposed rules.

3. Disclosures Provided by Current Issuers of Crypto Asset-Related Offerings

Historically, most ICOs included a whitepaper that provided certain information to potential investors. One study found that the items commonly disclosed in the whitepapers were similar to typical disclosure topics in IPO prospectuses, such as business, management, incentive structure and governance, and offering-related information.[450] Using an international sample of 2,113 ICOs from March 2014 through October 2018, the study found that almost all whitepapers provided at least some narrative description of the venture's primary business purpose; 81 percent also disclosed a roadmap or timeline for the development of the product or service, 71

[450] *See* Thomas Bourveau et al., *The Role of Disclosure and Information Intermediaries in an Unregulated Capital Market: Evidence from Initial Coin Offerings*, 60 J. ACCT. RSCH. 129 (2022). The authors state "[d]espite a rigorous collection efforts process for both successful and failed ICOs," they "could only collect white papers for approximately 70 percent of the attempted ICOs," and that "[d]ue to the difficulties [they] encountered in locating a white paper that could be downloaded even when one was referenced in various data sources, [they] are certain that many more white papers were released than [they] were able to collect []" in their sample.

percent provided information on the identities and professional biographies of team members, and 66 percent disclosed information on their incentive structure (i.e., allocation of tokens to insiders). Another study also found that blockchain application was the most discussed topic in ICO whitepapers, followed by information on the network's development and discussions regarding data management and the application of artificial intelligence tools.[451] Apart from the emphasis on blockchain technology, this study observed that ICO whitepapers distinctly entailed substantial discussions on decentralization and network building. Topics related to legal disclaimers, risk management, and risk disclosures received comparatively less discussion.

Some ICO ventures also employ governance and incentive alignment practices, such as vesting and lock-ups for insiders' tokens, similar to those in the IPO market. The first study referenced above[452] found that 26 percent of those whitepapers contained information on the vesting of insiders' tokens, with vesting periods ranging from three to 12 months after the ICO and 65 percent of whitepapers contained information about the expected use of proceeds from the ICO. Additionally, the study found that only four percent of whitepapers mentioned venture-specific risk factors, and less than two percent provided any financial information or projections. According to the study, this could be partly because ICO ventures are smaller and at an earlier stage than, for example, companies that pursue IPOs. Finally, the study found that six percent of whitepapers were purely technical documents that contained no marketing information.

ICO ventures also disclosed information through sources other than whitepapers. The same study found that 53 percent of the ICO ventures in the sample released the technical source

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[451] *See* James Thewissen et al., *Unpacking the Black Box of ICO White Papers: A Topic Modeling Approach*, 75 J. CORP. FIN. 1 (2022).

[452] *See supra* note 450.

code for their software product or token smart contract through online code repositories (e.g., GitHub), which allowed investors and customers to conduct technical due diligence and assess competitive differentiation; 63 percent released a video marketing presentation; and 97 percent were active on social media platforms, such as Facebook, X, and Medium. The videos typically presented the ICO venture's main business proposition. The social media platforms often were used to disseminate real-time information about the ICO's progress, communicate with potential investors, or to self-publish articles.

4. Affected Financial Intermediaries

The proposed rulemaking may also affect financial intermediaries that are involved or may become involved in the placement and quotation of crypto assets subject to the covered investment contracts. Currently, there are many crypto exchanges that quote and allow for trading of various crypto assets. For example, based on data from CoinMarketCap, there are 255 crypto asset exchanges providing such quotes and trades. Further, financial intermediaries involved in the offers and sales of covered investment contracts (as opposed to those "making" the market on crypto asset exchanges) may be affected by the rulemaking. We do not have a reliable estimate of how many current offerings of covered investment contracts involve financial intermediaries. From the 682 crypto asset-related offerings that were conducted under Regulation D from 2017 through 2024, 56 (approximately eight percent) reported using the services of placement agents and/or finders.[453]

Additionally, financial intermediaries are used in certain of the other types of offerings, including registered offerings and certain exempt offerings. To the extent that the proposed rules

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[453] The statistics on Regulation D offerings by crypto asset issuers are based on analysis of Form D and Form D/A filings during 2017-2024. To identify the presence of an intermediary in an offering, we identify those offerings that report paying a commission and/or finder's fee.

would impact the number and overall amount of capital raised in other types of offerings, financial intermediaries participating in such offerings may be affected. For example, in registered offerings, underwriters are frequently used to identify potential investors and are primarily responsible for facilitating a successful distribution of the securities offered. While intermediaries are used less frequently in Regulation D offerings, they play a role in some offerings. For example, from 2009 through 2017 approximately 20 percent of Regulation D offerings by non-fund issuers used an intermediary.[454] Similarly, from 2015 through 2024 approximately 51 percent of Regulation A offerings involved the use of intermediaries.[455] Regulation Crowdfunding offerings involve intermediaries by statutory requirement. We do not have information on whether and how often any of the other exempt offerings use intermediaries.

B. Economic Effects of Individual Provisions

The proposed rules would likely generate economic effects for issuers and investors.[456] We discuss below broad economic considerations associated with the proposed rules and analyze in the subsequent sections the benefits and costs of the proposed rules, including their effects on efficiency, competition, and capital formation.

The proposed rules would create new exemptions for covered investment contracts under the Federal securities laws. Issuers' ability to broadly and timely disseminate crypto assets and

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454 *See supra* note 442.

455 *See supra* note 288.

456 For purposes of measuring the effects of the proposed rules, this analysis assumes that market participants are compliant with existing applicable Commission rules. To the extent that some entities engaged in activities involving offerings of covered investment contracts are not, but should be, compliant with existing offering frameworks, they may derive benefits from coming into compliance with and incur additional costs to comply with existing rules and registration obligations that are not discussed in this analysis and are distinct from the benefits and costs associated with the proposed rules. For such entities, we expect the benefits and costs specifically associated with the proposed rules to be the same as those described below as applicable. Effects on efficiency, competition, and capital formation may differ from the discussion in this analysis to the extent impacted entities do not currently comply with existing applicable Commission rules.

raise capital to finance economic incentives are critical for the development of their crypto networks or applications. Studies have shown that developers of crypto projects significantly benefit from making their products/services available to those who naturally engage with new technologies at an early stage of development, also known as early adopters.[457] Delays that discourage use by early adopters tend to undermine broader diffusion among later adopters. Facilitating the ability of developers to raise capital and grow the functionality and user adoption of their crypto projects can enhance their ability to innovate, succeed, and deliver value to their users and investors. The proposed startup exemption would exempt from Securities Act registration requirements smaller offerings of covered investment contracts that may incentivize user activity and support the growth, functionality, and usage of the associated crypto network or associated crypto application. Issuers needing larger amounts of capital would have the option to rely on the proposed fundraising exemption to raise up to $75 million in a 12-month period. Further, the proposed investment contract safe harbor could provide issuers and investors with greater certainty as to when a crypto asset is no longer subject to an investment contract.

The impact of the proposed rules would, in part, depend on whether issuers elect to rely on the proposed exemptions for capital formation, either in place of other capital raising methods or where they cannot raise capital otherwise. The startup exemption and the fundraising exemption would be tailored to covered investment contracts and have different benefits and costs than other capital-raising methods. We note some differences here and analyze them in the sections below. Compared to a registered offering which has no limitation on the aggregate offering amount and can offer a degree of liquidity that is generally not available for securities

[457] *See* Christian Catalini & Catherine Tucker, *When Early Adopters Don't Adopt*, 357 SCI. 135 (July 2017).

issued in exempt offerings, the proposed exemptions should allow issuers to raise capital, up to certain limits, at a lower cost.[458] Compared to Rule 506(b) and Rule 506(c) of Regulation D,[459] the proposed exemptions would have offering amount limits and, in some cases, more extensive disclosure requirements, but issuers would be able to sell securities to an unlimited number of non-accredited investors,[460] and the securities sold under the proposed exemptions would not be restricted securities for purposes of the Federal securities laws. Also, compared to Regulation Crowdfunding, the proposed exemptions would not require the use of an intermediary, would allow for the offer and sale of larger amounts under the fundraising exemption, and the securities sold under the proposed exemptions would not be subject to restrictions on resale. Accordingly, an issuer's ability under the proposed exemptions to broadly solicit investors at a lower cost and offer and sell covered investment contracts not subject to restrictions on resale should enhance its ability to raise capital as well as the liquidity of its securities. This could in turn facilitate broad participation in a secondary market for these securities and help boost the adoption and use of the issuer's subject crypto asset, including as a medium of exchange or consumption.[461]

Also, the impact of the proposed rules would depend on the extent to which new investor

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458 Issuance costs associated with small registered public offerings are generally a significant percentage of proceeds, and issuers in registered offerings must bear the costs arising from ongoing disclosure requirements under the Exchange Act. *See supra* section IV.A.1.

459 As we explained in section IV.A above, available data suggest that crypto asset issuers have frequently relied on Rule 506(c) of Regulation D for capital raising, and such offerings are limited to accredited investors. Rule 506(b) offerings permit non-accredited investors so long as the information disclosure requirements are satisfied.

460 Under the proposed fundraising exemption, if the purchaser is not an accredited investor as defined in Rule 501 of Regulation D, the aggregate purchase price to be paid by the purchaser cannot exceed 10 percent of the greater of the purchaser's annual income or net worth (or in the case of non-natural persons, the greater of revenue or net assets for the most recently completed fiscal year). *See* proposed 17 CFR 228.300(c)(2)(i)(C).

461 *See* Christian Catalini & Joshua S. Gans, *Financing Ventures with Fungible Tokens*, (working paper June 25, 2025), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3137213 (retrieved from SSRN Elsevier database) (stating that "early users who receive or purchase [crypto assets] obtain both consumption value and a stake in future network growth, generating demand-side externalities").

capital is attracted to covered investment contracts or investors reallocate existing capital among various types of offerings. The demand for covered investment contracts offered under the proposed rules would depend on the characteristics of these contracts, such as the utility of the subject crypto asset, its liquidity and security, and possibly its expected risk and return, including relative to what buyers could obtain from other investment opportunities. For example, some buyers of covered investment contracts may also want to hold a token to be used in a particular ecosystem, an option that may not be available in a traditional securities offering of equity or debt. It is also possible that covered investment contracts may attract investors that are interested in holding covered investment contracts for diversification purposes, as these contracts may provide exposure to economic risks that differ from traditional securities. Because they involve various types of non-security crypto assets, covered investment contracts may have different risk-return profiles than more traditional securities like equity and debt.[462]

We estimate the annualized monetized costs of the proposed rules for all affected issuers would be approximately $42,766,883 per year over 10 years, using real discount rates of both three percent and seven percent.[463] This annualized cost estimate includes only those monetized costs estimated below and thus does not encompass all of the proposed rules' costs. In addition, the annualized monetized cost estimate assumes a fixed number of offerings each year, based on

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[462] There is some empirical evidence from ICOs that at least some ICO investors view investments in underlying crypto assets as speculative investments. For example, the Fahlenbrach study finds that the typical ICO investor "sells a substantial fraction of his tokes shortly following the ICO, when the product of the company is not yet developed, indicating that he is more interested in financial gain than the underlying product." See *supra* note 430.

[463] We estimate annualized monetized costs consistent with the requirements of Executive Order 12866. *See infra* note 571 and accompanying text. For each discount rate, the annualized monetized costs represent the constant annual stream of costs whose present value over a 10-year horizon equates to the corresponding present value of monetized costs for all affected issuers over the same horizon. For detailed explanations and calculations, *see infra* section VI.

the estimates provided in section V, which are likely to change over time.[464] The estimate would correspondingly increase or decrease with the changes in the number of offerings under Regulation Crypto Assets each year. Due to lack of data, we are unable to estimate annualized monetized benefits associated with the proposed rules.

We analyze below the likely benefits and costs of the individual provisions of the proposed rules for investors and the issuers that elect to rely upon them. The estimates of monetized costs below are not discounted.

1. Benefits and Costs of Proposed Regulation Crypto Assets

As mentioned above[465], covered investment contracts have unique features that are difficult to accommodate within the existing exempt offering framework. Because of the nature of the technology, it is typically impractical to limit the sale of the underlying crypto assets to accredited investors or to persons in one geographic location, making it difficult to meet investor-based eligibility requirements. Such contracts often arise in the context of developers distributing crypto assets and raising capital to fund the development of the associated crypto networks or applications. Additionally, the tradability and liquidity of the covered investment contracts, and thus of the subject crypto assets, are often important for providing incentives for the purchasers of these contracts to participate and provide services that bolster the development of the associated crypto networks or applications.

The proposed rules would address the shortcomings of the existing exempt offerings with respect to these unique features of covered investment contracts. The proposed rules, by allowing

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464 For an explanation of the basis for the estimate of the number of annual offerings used in this analysis, *see infra* section V.B. For explanation of additional assumptions and calculations, *see infra* sections V & VI.

465 *See* discussion in section I.A.

an unlimited number of non-accredited investors to participate in offerings of covered investment contracts and preempting the State registration and qualification requirements, would enable issuers to broaden their participant base, thus making it easier to achieve network effects. The proposed rules would also allow for the issue and distribution of unrestricted covered investment contracts, thus improving their liquidity and, as a result, the liquidity of the subject crypto assets. This would allow for faster diffusion of the subject crypto assets across potential users and network participants, thereby bolstering an issuer's ability to achieve network effects. Also, the proposed rules, by allowing issuers to raise capital via the sale of covered investment contracts, would allow issuers to use this capital to provide incentives to the various participants in their associated crypto networks or associated crypto applications, thus incentivizing the development and utilization of these networks or applications.

The proposed Regulation Crypto Assets would provide important benefits to issuers and investors. The tailored principles-based disclosure requirements that issuers would be required to satisfy under the startup exemption and the fundraising exemption would reduce information asymmetries between issuers and investors, thus improving investor decision-making and allowing issuers to raise capital at lower cost. The proposed disqualification provision could help reduce potential fraud and thus strengthen investor protection. The proposed startup and fundraising exemptions would also allow issuers to offer and sell unrestricted covered investment contracts to potential investors, which could improve the liquidity of these securities and make them more attractive to potential investors. At the same time, however, the proposed Regulation Crypto Assets would generate costs for issuers and investors. For example, we expect issuers to incur direct and indirect disclosure costs. We discuss the benefits and costs of each provision of the proposed Regulation Crypto Assets in turn.

a. General Provisions

The general provisions of Regulation Crypto Assets would provide some important benefits to issuers and investors. Proposed Rule 101 streamlines compliance for crypto asset issuers by allowing the use of multiple exemptions, clarifying when offerings must be integrated, and requiring efficient electronic filings. It protects issuers from losing exemptions due to minor, good-faith errors, and standardizes how to count and price crypto asset units. Together, these provisions increase regulatory flexibility, reduce administrative burdens, and provide greater clarity and certainty for both issuers and investors.

Proposed Rule 101(a) would be beneficial to issuers because it ensures that they can utilize the exemptions in Regulation Crypto Assets without being restricted from using other exemptions.

Proposed Rule 101(b) would provide that issuers should refer to Rule 152 to determine whether offers and sales should be integrated. We also are proposing conforming amendments to Rules 152(c) and (d) to clarify when an offering under an exemption in Regulation Crypto Assets has commenced and terminated or completed, consistent with Rule 152's treatment of existing exemptions (including offerings under Regulation Crowdfunding and Regulation D). The proposed rule and conforming amendments would benefit issuers by helping them ensure compliance and prevent them from running afoul of the integration doctrine with respect to other exempt offerings conducted before, or close in time with, Regulation Crypto Assets offerings. This certainty may be particularly beneficial for smaller issuers whose capital needs, and thus preferred capital raising methods, may change frequently.

Proposed Rule 101(c) would require documents filed or otherwise provided to the Commission pursuant to Regulation Crypto Assets to be submitted in electronic format on

EDGAR. This rule would benefit investors by allowing them to access issuer information to more efficiently aggregate and analyze information across issuers relying on Regulation Crypto Assets. This could improve their investment decisions. Electronic filing on EDGAR could also benefit issuers by providing them with an efficient way to disseminate the disclosures required under the proposed rules and hence supply important information to investors. Electronic filing on EDGAR could also allow issuers of covered investment contracts to more efficiently collect and analyze relevant information from issuers relying on Regulation Crypto Assets, including their competitors, which could provide them with valuable insights into the market for covered investment contracts.

At the same time, some of the general provisions of proposed Regulation Crypto Assets would result in certain costs for issuers and investors. For example, the electronic filing requirement in proposed Rule 101(c) would impose compliance costs on issuers, particularly those issuers that have not previously used EDGAR, which include submitting Form ID[466]and making filings on EDGAR. Such compliance costs associated with electronic filing requirement would be similar to those under existing exemptions such as Regulation D and Regulation Crowdfunding. We estimate compliance costs per issuer associated with Form ID to be $381.[467]

Proposed Rule 101(d) would provide, among other matters, that failure to comply with a term, condition, or requirement of Regulation Crypto Assets would not result in the loss of any

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[466] Form ID, the application for EDGAR access, must be submitted and approved by SEC staff in order to make filings on EDGAR. *See Prepare and Submit My Form ID Application for EDGAR Access*, U.S. Securities and Exchange Commission (last reviewed or updated Dec. 22, 2025), https://www.sec.gov/submit-filings/filer-support-resources/how-do-i-guides/prepare-submit-my-form-id-application.

[467] The $381 estimate is based on the following calculation: 0.6 burden hours per response x $635 per hour. *See infra* section V.c.4 (PRA analysis). Throughout this economic analysis, we have estimated certain costs based on our analysis of the collection of information burdens of the proposed rules for purposes of the Paperwork Reduction Act of 1995 ("PRA"). As discussed in more detail in section V.C.1.a., our PRA estimates represent the average burden for all respondents, both large and small, and the burdens will likely vary among individual respondents based on a number of factors, including the size and complexity of their business.

exemption under Regulation Crypto Assets for any offer or sale to a particular individual or entity under certain conditions. Proposed Rule 101(d) is consistent with similar provisions in existing offering exemptions (e.g., 17 CFR 227.502 of Regulation Crowdfunding and 17 CFR 230.508 of Regulation D). This proposed rule would benefit issuers and investors as it allows for certain errors that can occur in the offering process without causing the issuer to lose the exemption and incur certain related negative consequences. These consequences may affect the issuer itself (e.g., by increasing compliance costs when trying to correct such errors and/or not being able to raise capital in a timely manner because of the loss of the exemption) as well as investors (e.g., by forgoing valuable investment opportunities when an issuer loses the exemption). Proposed Rules 101(d)(2) and 101(d)(3) would provide that failure to comply with the exemption is actionable by the Commission under Securities Act section 20 and could result in Commission enforcement action, helping to ensure that investors remain protected from misstatements in the offering process. Proposed Rule 101(d) could impose costs on investors to the extent that issuers lessen the vigor with which they develop and implement systems and controls to achieve compliance with the requirements of the proposed exemptions, which may result in a decrease in investor protection. Accordingly, we have designed the conditions for the reliance on this rule to lessen the potential impact on investor protection—specifically, the issuer would be required to establish that: (i) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; (ii) the failure to comply was insignificant with respect to the offering as a whole; and (iii) a good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of Regulation Crypto Assets.

Finally, Rule 101(e) would specify how to determine the number of units of covered investment contracts and the price per unit of a covered investment contract. That rule would provide that, for purposes of determining the number of units of covered investment contracts as required by any rule or form in Regulation Crypto Assets, one unit of a covered investment contract would be equivalent to one unit of the subject crypto asset. Similarly, the price per unit of a covered investment contract as required by any rule or form in Regulation Crypto Assets should be determined by reference to the price per unit of the subject crypto asset. As noted above, we included this provision because we believe that specifying how to measure the number of units of covered investment contracts and determine the price per unit of a covered investment contract would provide clarity and consistency to market participants.

b. Offering Limits and Inflation Adjustment for Offering Limits

Both the proposed startup exemption and the proposed fundraising exemption have offering limits, combined with required disclosures that are designed to provide appropriate investor protections while also helping facilitate issuers' ability to issue covered investment contracts to facilitate the distribution of the subject crypto asset and raise capital to fund the development of their associated crypto network or associated crypto application. The startup exemption would allow issuers to raise up to $5 million in total for the four-year duration of the exemption. The size of the offering limit combined with the tailored (and, in some cases, less burdensome) disclosures should allow issuers, especially those in early stages of development, to raise capital at a lower cost compared to some of the existing exemptions. For example, an issuer that decides to raise $5 million via Regulation Crowdfunding would have to provide financial statements (which would not be required under the startup exemption) and also would be required to use an intermediary which usually charges a fee. The average and median intermediary fee for Regulation Crowdfunding offerings is approximately 6.6 percent and six percent, respectively.[468] Also, under the proposed rule, the amount of capital raised by affiliates would count towards the offering limit of $5 million. This provision would strengthen investor protection by preventing issuers from raising an amount of capital substantially larger than $5 million through affiliates without providing appropriate disclosures.

As explained above, the proposed fundraising exemption would include scaled regulatory requirements based on offering size, which should give issuers more flexibility in raising capital under the fundraising exemption while providing appropriately tailored protections for investors in each tier. Issuers seeking to raise a larger amount of capital would be able to take advantage of the larger maximum offering size in Tier 2 (up to $75 million in a 12-month period) and also would be subject to additional disclosures and other provisions. Covered investment contract issuers seeking to raise a smaller amount of capital could conduct Tier 1 offerings with a lower offering size limit (up to $20 million in a 12-month period) and without being required to obtain an audit of their financial statements.

Notwithstanding the foregoing, offering limits could constrain the ability of issuers of covered investment contracts to achieve significant diffusion of the subject crypto asset across various parties participating in the associated crypto network or associated crypto application to obtain the benefits of network effects. Offering limits also could limit the ability of issuers to raise sufficient capital to grow and develop their associated crypto network or associated crypto application. This cost of the offering limits could be mitigated to a certain extent if issuers who

[468] *See supra* note 449.

would need larger amounts of capital would in addition rely on Rule 506(b) or Rule 506(c) of Regulation D, which include no offering limits.

During the peak ICO period from 2016 to 2017, the average amount raised in ICOs was approximately $20 million.[469] This number both tracks the limit that an issuer of covered investment contracts could raise in a Tier 1 offering under the proposed fundraising exemption, and it is well within the limit proposed for a Tier 2 offering. However, the standard deviation of the amount raised was reported to be approximately $177 million, suggesting a wide variety of amounts raised. Based on this evidence, it is possible that some potential issuers of covered investment contracts may be aiming to raise much more than $20 million. Nevertheless, issuers of covered investment contracts may be able to use the startup exemption in combination with the fundraising exemption and/or other current offering exemptions, assuming that such issuer does not run afoul of the integration doctrine.[470] This ability to combine exemptions could provide issuers of covered investment contracts, especially the larger ones, with valuable flexibility and significant access to capital.

Moreover, data on the use of existing offering exemptions by issuers of covered investment contracts suggests that the offering limits in the proposed rules would not constrain the ability of issuers to raise capital. Based on the analysis of crypto asset-related Regulation D offerings in Table 2, such issuers raised on average $11.2 million per offering, which is much lower than what an issuer could raise in a Tier 1 or Tier 2 offering under the proposed fundraising exemption.

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469 *See* Howell, et al., *supra* note 401. The Davydiuk Study, *supra* note 430, also presents evidence that the average amount raised was approximately $17 million.

470 *See supra* note 130.

Small and early-stage issuers of covered investment contracts, on the other hand, may prefer the proposed startup exemption if they do not need large amounts of capital and may want to avoid the higher compliance costs associated with the proposed fundraising exemption. For those types of issuers, the comparison to capital raising under Regulation Crowdfunding may be more apt. The average amount raised by crypto asset-related Regulation Crowdfunding offerings ($545,300 per Table 6) is smaller than the offering limit of the startup exemption. However, Regulation Crowdfunding also requires financial statement disclosures and involves an intermediary, both of which would result in higher offering costs, compared to the proposed startup exemption.

Rule 102 of proposed Regulation Crypto Assets would require an inflation adjustment for the offering limits of both the startup and fundraising exemptions periodically, but not less than once every five years, to reflect any changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. Such an adjustment would benefit issuers by ensuring that the offering limits do not decrease over time when measured in constant dollars (because they would be adjusted over time to account for inflation).

c. Disqualification

Proposed Rule 104 would provide that the exemptions in Regulation Crypto Assets are not available if the issuer or any associated person or entity (as listed in Rule 262(a)) would be subject to disqualification under Rule 262.

We expect that the disqualification provision could help reduce potential fraud and thus strengthen investor protection compared with not including a bad actor disqualification provision. If disqualification standards lower the risk premium associated with the risk of fraud due to the presence of bad actors in covered investment contract offerings, they could also reduce the cost of capital for issuers that rely on the startup exemption or the fundraising exemption. In addition, the requirement that issuers determine whether any covered persons are subject to disqualification might reduce the need for investors to do their own investigations (including any associated costs) and could therefore increase efficiency.

Under proposed Rule 104, the issuer could still undertake a covered investment contract offering if the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under Rule 262(a). This would decrease issuer compliance costs, because by relying on a reasonable care standard, the issuer would avoid the potentially large costs of having to do a more comprehensive investigation to determine that no disqualification exemption exists.

Under proposed Rule 104, the disqualification provisions would not apply to any disqualification event that occurred prior to the effective date of these proposed rules. This provision would benefit issuers because it would allow them to engage in covered investment contract offerings without the risk of the proposed rules being applied retroactively.

Nevertheless, proposed Rule 104 would require the issuer to include in an offering circular—or otherwise furnish to each purchaser, at a reasonable time prior to sale—a description in writing of any matters that would have triggered disqualification under Rule 104 but occurred before the effective date of the final rules, if adopted. We estimate compliance costs associated with the proposed disqualification disclosure requirements per issuer to be $1,270 per offering.[471] Despite a potential compliance cost for issuers, this would benefit investors because

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[471] The $1,270 estimate is based on the following calculations: (2 burden hours per response x $635 per hour. *See infra* section V.C.1.a.

the issuer would still provide disclosures of relevant matters that would have triggered disqualification, thus allowing investors to make better informed investment decisions.

Issuers that are disqualified from using the startup or the fundraising exemption might experience an increased cost of capital or a reduced availability of capital. In addition, issuers might incur costs related to seeking disqualification waivers from the Commission and replacing personnel or avoiding the participation of persons who are subject to disqualifying events. Also, most existing offering exemptions that are available to covered investment contract issuers include disqualification provisions as well (e.g., Regulation D and Regulation Crowdfunding).

d. Disclosures

As mentioned in section II, the proposed startup exemption, fundraising exemption, and investment contract safe harbor would require issuers of covered investment contracts to provide certain disclosures. The frequency and the breadth of disclosures would differ across the proposed rules. For example, the disclosures under the fundraising exemption are more extensive than those under the startup exemption and the investment contract safe harbor. The proposed disclosure requirements would be tailored to provide information that is material to investors in covered investment contract offerings so that they can make informed investment decisions.[472]

Both the benefits and the costs of the various proposed disclosure requirements would be limited to the extent that issuers already provide the required information voluntarily or have such information readily available. For example, as mentioned in section IV.A.3 above, studies have shown that past ICO issuers provided some of the information that the proposed rules would require (e.g., the issuer's primary business purpose, the blockchain application, a timeline

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[472] *See supra* section 2.A.4. See also *supra* notes 89 and 90 for a discussion of commenters who suggested that the Commission's existing disclosure requirements for the exempt offering regimes are unfit for application to covered investment contracts.

for the development of the product or service, and material information about the issuer's management). This would limit the costs to issuers when providing such disclosures, while also limiting the benefit to investors from these proposed disclosures.

When information about an issuer is difficult to obtain or the quality of the information is uncertain, investors are at risk of making poorly informed investment decisions about that issuer. Such information asymmetries may be especially severe for issuers of covered investment contracts because they are more likely to be small and at an early stage of their lifecycle and thus may have significant risk factors such as high information asymmetries, few and intangible assets, high failure rates, and difficulty in accessing capital markets. Additionally, developers are often not legally bound to their project, operating with limited funding and frequently no formal legal organizational structure (such as corporation) at the start, the latter being permitted under the startup exemption. Crypto creators may have relatively low exit costs because participants in their crypto networks or applications typically have no ownership stakes and limited or no legally enforceable rights. These considerations may give rise to adverse selection and moral hazard concerns. If investors in offerings of covered investment contracts have limited information about issuers or a limited ability to monitor them, they may seek higher compensation for their investment or choose to withdraw from the offering market altogether, both of which would increase the cost of capital to issuers.

Issuers of covered investment contracts would be able to raise a larger amount of capital (up to $75 million during a 12-month period) under the proposed fundraising exemption. Accordingly, the proposed rules seek to reduce information asymmetries between issuers and potential investors by requiring issuers of covered investment contracts to file specified disclosures with the Commission, which would require financial statements.

These disclosure provisions should improve investor decision-making and could ultimately benefit issuers by improving price efficiency in the market for covered investment contracts. The proposed disclosure requirements would enhance the ability of issuers of covered investment contracts relying on the proposed rules to raise capital, while enabling investors to make informed investment decisions. The ongoing reporting requirements, in particular, would provide a liquidity benefit for secondary sales of covered investment contracts issued under the proposed rules and make the prices of such securities more informationally efficient, should a secondary market develop.

i. Rule 103

Proposed Rule 103 would set forth principles-based disclosure requirements with respect to offerings of covered investment contracts under the proposed startup exemption and the proposed fundraising exemption. Rule 103 would include disclosure requirements organized into the following topics: (1) covered investment contract; (2) offering; (3) subject crypto asset; (4) management, related persons, and conflicts of interest; (5) associated crypto network/application; plan of development; (6) security; source code; (7) subject crypto asset economics and allocations; (8) governance; (9) subject crypto asset ecosystem; and (10) risk factors. The disclosures required under this proposed rule are tailored to offerings of covered investment contracts and as a result may be less costly for issuers to provide than the disclosures required under some of the other existing exemptions.

The proposed principles-based disclosure requirements for the startup exemption and the fundraising exemption under Regulation Crypto Assets 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. This ability to tailor disclosures could in turn help reduce an issuer's compliance costs compared to a more prescriptive disclosure requirements regime. The principles-based disclosure requirements would also benefit issuers in the form of lower cost of capital. A number of studies show that increased disclosure and improvements in disclosure quality lead to lower cost of capital for issuers.[473] There is also evidence of a positive link between capital-raising activities and disclosure quantity and quality.[474]

The proposed disclosure requirements in Rule 103 could also benefit investors, to the extent that such requirements result in information that is more tailored to the specific circumstances and the needs of investors in covered investment contract offerings. Relatedly, principles-based requirements are less likely to lead to disclosure that is outdated or is less applicable to the particular offering. At the same time, to the extent issuers make incorrect judgments about the materiality of potentially responsive information, the proposed principles-based disclosure approach (as compared to a more prescriptive approach) could result in potentially less precise, incomplete disclosures from the viewpoint of investors. This limitation could reduce the benefits to investors from the disclosure. Another potential cost associated with the principles-based disclosure approach is that it could reduce comparability across issuers and transactions to the extent that issuers report similar information using different metrics,

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473 *See, e.g.*, Christine Botosan, *Disclosure Level and the Cost of Equity Capital*, 72 ACCT. REV. 323 (1997); Christian Leuz & Robert Verrecchia, *The Economic Consequences of Increased Disclosure*, 38 J. ACCT. RSCH. 91 (2000); Robert Verrecchia, *Essays on Disclosure*, 32 J. ACCT. & ECON. 97 (2001).

474 *See, e.g.*, Paul Healy, et al., *Stock Performance and Intermediation Changes Surrounding Sustained Increases in Disclosure*, 16 CONTEMP. ACCT. RSCH. 485 (1999); Mark Lang & Russell Lundholm, *Voluntary Disclosure and Equity Offerings: Reducing Information Asymmetry or Hyping the Stock?*, 17 CONTEMP. ACCT. RSCH. 623 (2000); and Nemit Shroff, et al., *Voluntary Disclosure and Information Asymmetry: Evidence from the 2005 Securities Offering Reform*, 51 J. ACCT. RSCH. 1299 (2013).

procedures, or mechanisms.[475] Retail investors who may not have the resources or ability to obtain information from alternative sources could be more affected than more sophisticated investors as a result.

Some of these potential costs could be mitigated to the extent the Commission's staff reviews certain filings made under the proposed fundraising exemption pursuant to the qualification process. Issuers would also remain subject to the antifraud provisions of the securities laws for omission of information material to an investment decision.[476] There also may be incentives for issuers to voluntarily disclose additional information if the benefits to issuers of such additional disclosure for investors (e.g., investors requiring a lower discount as compensation for adverse selection, which would reduce issuers' cost of financing) exceed the costs associated with such additional disclosure.

Issuers of covered investment contracts that provide the required disclosures could incur an indirect cost in the form of disclosure of potentially sensitive information to competitors. To the extent that such information could be used by competitors, issuers of covered investment contracts, especially early-stage and high-growth issuers, could potentially lose a competitive or intellectual property advantage. The fact that the disclosure requirements are principles-based could help lessen some of this cost. Further, disclosure costs (both direct and indirect) would be mitigated to the extent that issuers already voluntarily disclose required information (e.g., through whitepapers), and, in the case of the proposed fundraising exemption, by the option to request confidential treatment for certain information, as well as the option to submit a draft

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[475] *See, e.g.*, Mark W. Nelson, *Behavioral Evidence on the Effects of Principles-and Rules-Based Standards*, 17 ACCT. HORIZONS 91 (2003); Katherine Schipper, *Principles-Based Accounting Standards*, 17 ACCT. HORIZONS 61 (2003). These articles note potential advantages of rules-based accounting standards, including increased comparability among firms, increased verifiability for auditors, and reduced litigation for firms.

[476] *See, e.g.*, 17 CFR 240.10b-5(b).

offering statement for non-public staff review (although the offering statements must be publicly filed before sales can occur).

Issuers utilizing the startup exemption would be required to make the information required in proposed Rule 103 available on a publicly accessible website, free of charge, at the website address specified in the notice of reliance at or prior to the time that the notice of reliance is filed.[477] Additionally, issuers of covered investment contracts that rely on the proposed startup exemption would be required to ensure that the information remains accessible for the entirety of the period the issuer relies on the startup exemption.[478] Requiring this information for the entirety of the period the issuer relies on the startup exemption would strengthen investor protection by preventing a situation in which an issuer technically complies with Rule 200(d)(1) by providing the information at or prior to filing the notice of reliance but removes that information shortly (or immediately) after filing the notice of reliance.

Giving issuers the flexibility to provide this information on a website of their choice may mitigate some financial and administrative burdens associated with filing on EDGAR. This would also make it easier and less costly for an investor to access the information and make informed investment decisions, compared to a situation where the information is not required to be publicly accessible, or is accessible for a fee. This proposed rule also could generate costs for issuers relying on the exemption. For example, issuers may incur costs in maintaining the website address on which the information will be housed and periodically amending that information to reflect any material changes in the information previously reported. If an issuer already is relying on the other proposed exemption, or otherwise already has this information,

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477 *See* proposed 17 CFR 228.200(d)(1).

478 *See* proposed 17 CFR 228.200(d)(2).

such costs would be minimal. Also, this proposed rule could generate costs for investors in such offerings. For example, it may make it more difficult for investors to identify what has changed if an amendment is made to reflect a material change, or to refer to a prior iteration of the disclosure. Additionally, investors may incur search costs if trying to compare disclosures across multiple issuers if they have to collect information on different websites that store and present this information in various formats.

The startup exemption would also require the issuer to amend the information disclosed annually if there are any material changes in the information previously disclosed.[479] These requirements would benefit investors by providing access to material changes to information previously disclosed by an issuer relying on the startup exemption, which would aid them in their investment decision-making. We estimate compliance costs associated with providing the initial disclosures under Rule 200(d) and the burdens per issuer associated with keeping that information publicly accessible and periodically amending that information to reflect material changes to be $31,750,[480] which assumes the issuer does not already have the information otherwise available such as in the form of a whitepaper.

ii. Form NOR

Issuers relying on the startup exemption would be required to file a notice of reliance with the Commission containing the information required by Form NOR, including certain information about the issuer (e.g., name and contact information) and the name of the subject crypto asset, as well as the website address at which the issuer will make the information

[479] *See* proposed 17 CFR 228.200(d)(3).

[480] The $31,750 estimate is based on the following calculations: 50 burden hours per response x $635 per hour. *See infra* section V.C.1.c (PRA analysis).

described in proposed Rule 103 publicly accessible, free of charge, prior to the commencement of any covered transaction.[481] Issuers would also have to file amendments to Form NOR in certain circumstances.[482] The disclosure requirements in Form NOR would have associated limitations and costs, including the costs of preparation, certification, and dissemination via EDGAR and posting the disclosures on the issuer website. We estimate annual compliance costs per issuer associated with the proposed Form NOR to be $2,540.[483]

iii. Form TR

Issuers relying on the proposed startup exemption or the proposed investment contract safe harbor, and some issuers relying on the proposed fundraising exemption, would be required to file a transition report with the Commission containing the information required by Form TR.[484] Form TR's disclosure requirements would depend on the rule pursuant to which it was filed and could include, for example, certain information about the issuer, certain information about the covered investment contract, and an analysis as to whether the issuer completed or otherwise permanently ceased all essential managerial efforts that it promised or represented it would engage in under the covered investment contract.[485] The disclosure requirements in Form TR would have associated limitations and costs, including the costs of preparation, certification, and dissemination via EDGAR. Compliance costs for issuers relying on the proposed investment contract safe harbor would include costs associated with ensuring the accuracy of their

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481 *See* proposed 17 CFR 228.200(e).

482 *See* proposed 17 CFR 228.200(c)(3).

483 The $2,540 estimate is based on the following calculations: 4 burden hours per response x $635 per hour. *See infra* section V.C.1.b (PRA analysis).

484 *See* proposed 17 CFR 228.200(c).

485 *See* proposed 17 CFR 228.200(e) (startup exemption); proposed 17 CFR 228.305(c) and (d) (fundraising exemption); proposed 17 CFR 228.400(b) (investment contract safe harbor).

certification and analysis supporting such certification. There would be no incremental costs from this requirement for issuers that already filed Form TR under the startup exemption or the fundraising exemption (to the extent that they had filed a single Form TR to satisfy their transition reporting obligations under the relevant exemption as well as the investment contract safe harbor).

The compliance cost per issuer would vary depending on the circumstances under which an issuer is filing Form TR. We estimate compliance per issuer costs associated with the proposed Form TR under the startup exemption to be $12,700.[486] We estimate annual compliance costs per issuer associated with the proposed Form TR under the fundraising exemption to be $13,652.50.[487] We estimate annual compliance costs per issuer associated with the proposed Form TR under the investment contract safe harbor to be $19,050.[488]

iv. Offering Statement; Periodic and Current Reporting Requirements

The proposed fundraising exemption would require more extensive disclosures than the other proposed rules in the form of an offering statement, an offering circular, and periodic reports (on an annual, semiannual, and current basis). The disclosure requirements for the proposed fundraising exemption would also be more extensive than those required under some

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[486] The $12,700 estimate is based on the following calculations: 20 burden hours per response x $635 per hour. *See infra* section V.C.3.a (PRA analysis).

[487] The $13,652.50 estimate is based on the following calculations: 21.5 burden hours per response x $635 per hour. *See infra* section V.C.3.b (PRA analysis).

[488] The $19,050 estimate is based on the following calculations: 30 burden hours per response x $635 per hour. *See infra* section V.C.3.c (PRA analysis).

other existing exemptions from registration,[489] and offerings under the fundraising exemption must be qualified before sales are made, both of which are expected to enhance investor protection.

The disclosure requirements in the fundraising exemption would benefit investors by providing them with information that would enable them to more accurately value the covered investment contracts at the time of the offering. The proposed periodic disclosures also would allow investors to evaluate how the issuer is performing over time and when the issuer may terminate its ongoing reporting obligations. Additionally, disclosure by one issuer of covered investment contracts could provide important information to investors when evaluating other issuers of covered investment contracts (e.g., about the prospects of those other issuers) to the extent that the issuers are in similar markets or developing similar products. Also, the disclosures proposed under the fundraising exemption would likely have a positive effect on secondary market liquidity for covered investment contracts.[490]

The proposed fundraising exemption would require issuers to prepare an offering statement using Form 1-CRYPTO. Issuers would have two ways to file Part I of proposed Form

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[489] For example, Regulation D offerings under Rules 504 and 506(c) and offerings relying on an exemption under Securities Act section 3(a)(11) or section 4(a)(2) do not require one-time or ongoing disclosure and do not undergo qualification by the Commission. However, of those offerings, only offerings under Rule 506(c) have preemption from state law registration or qualification requirements, thus it is possible that other offering types may have disclosure requirements mandated by the states where offers and sales are made. Regulation D offerings under Rule 506(b) require issuers to provide a disclosure document to non-accredited investors with financial statements, but these documents are not filed with the Commission and there are no periodic reporting requirements under Rule 506(b).

[490] There is a large volume of literature that finds a positive association between increased disclosure and liquidity. *See, e.g.*, Paul Healy, et al., *Stock Performance and Intermediation Changes Surrounding Sustained Increases in Disclosure*, 16 CONTEMP. ACCT. RSCH. 485 (1999); Christian Leuz & Robert Verrecchia, *The Economic Consequences of Increased Disclosure*, J. ACCT. RSCH. 91 (2000); Frank Heflin, et al., *Disclosure Policy and Market Liquidity: Impact of Depth Quotes and Order Sizes*, 22 CONTEMP. ACCT. RSCH. 829 (2005); Stephen Brown & Stephen Hillegeist, *How Disclosure Quality Affects the Level of Information Asymmetry*, 12 REV. ACCT STUD. 433 (2007).

1-CRYPTO with the Commission. An issuer could use a fillable web form provided by EDGAR to input Part I of proposed Form 1-CRYPTO disclosures that EDGAR will convert to proposed Form 1-CRYPTO-specific XML, or alternatively, use its own software tool to file Part I of proposed Form 1-CRYPTO to EDGAR directly in proposed Form 1-CRYPTO-specific XML. Requiring issuers to file Part I of Form 1-CRYPTO on EDGAR in form-specific XML would allow Commission staff to more efficiently process, aggregate, and analyze the reported information about the issuers and offerings prior to qualification of the offering statement, which could increase the efficiency of the Commission's ability to qualify issuer's offering statements.[491] We also expect that filing Part I of Form 1-CRYPTO using form-specific XML will make it easier for markets and investors, as applicable, to access, compile, and analyze the disclosed information, which could facilitate comparisons of issuers or observations regarding the impacts of secondary sales over time.

There are costs associated with filing proposed Form 1-CRYPTO. Requiring issuers to use a form-specific XML for Part I of Form 1-CRYPTO could impose additional compliance costs. Issuers who elect to use the fillable web form described above for their filing are not expected to incur additional software or filing agent costs to prepare the XML submission (beyond the costs of preparing the underlying disclosure). Other issuers may choose to encode their disclosures in XML in accordance with the EDGAR Filer Manual and will submit the XML disclosures to EDGAR directly rather than manually completing fillable web forms to be converted into XML documents. These issuers might incur implementation costs associated with integrating any new or updated XML schemas into their existing data systems; however, it might

[491] See *supra* note 512 and accompanying discussion regarding potential cost to issuers waiting for offerings to be qualified.

be beneficial for them because it allows for greater automation (e.g., calculating and prepopulating certain disclosures) in the process of submitting data that is already structured directly to EDGAR. It also removes the need to manually type into fillable web fields.

The fundraising exemption would require that financial statements provided in Form 1-CRYPTO be prepared in accordance with U.S. GAAP. This proposed provision would lead to more standardized financial statements across issuers of covered investment contracts relying on the fundraising exemption, thus improving investors' ability to analyze and compare issuers. This would in turn help decrease the level of information asymmetry between issuers and potential investors, thus lowering the discount that investors require as compensation for adverse selection and also reducing issuers' cost of financing.[492] Evidence from past ICO transactions provides support for some of these issuer benefits. For example, ICOs tend to be more successful when their whitepapers are more informative.[493] The benefits resulting from the proposed disclosure may be limited to the extent that some of that information is already voluntarily disclosed by issuers.

For Tier 2 offerings under the fundraising exemption, the financial statements included in the offering statement would be required to be audited in accordance with either U.S. GAAS or the standards of the PCAOB—by an auditor that is independent under the independence standards of Rule 2-01 of Regulation S-X—and the report and qualifications of the independent accountant would be required to comply with the requirements of Article 2 of Regulation S-X.

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[492] *See, e.g.*, Christian Leuz & Peter D. Wysocki, *The Economics of Disclosure and Financial Reporting Regulation: Evidence and Suggestions for Future Research*, 54 J. ACCT. RSCH. 525 (Feb. 2016). This article surveys the empirical literature on the economic consequences of disclosure. The authors discuss potential capital-market benefits from disclosure and reporting, such as improved market liquidity and decreased cost of capital.

[493] *See* Evgeny Lyandres, et al., *ICO Success and Post-ICO Performance* (working paper, July 17, 2020), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3287583 (retrieved from SSRN Elsevier database).

Audited financial statements could lower the cost of capital or increase the supply of capital because of potentially higher investor confidence in the quality of financial statements that are audited by an independent public accountant. One important direct cost for issuers relying on the proposed fundraising exemption would be the compliance costs associated with the preparation and distribution of the offering circular, offering statement, and periodic filings. The financial information required under the fundraising exemption would be more extensive than the information required under several existing exemptions, such as Rule 506(c) and section 4(a)(2) of the Securities Act.[494] These requirements are also much more extensive than what issuers in prior ICOs provided.[495] On the other hand, these disclosures are similar to those required under larger Regulation Crowdfunding offerings. Thus, when deciding whether to raise capital via the proposed fundraising exemption or some of the existing exemptions, issuers of covered investment contracts would weigh, among other things, the benefits and costs of these disclosure requirements.

The requirement of audited financial statements could also impose significant costs on issuers of covered investment contracts, and the costs of an audit could discourage the use of Tier 2 offerings in the fundraising exemption. Audit costs could have a fixed component, which would make them costlier for smaller issuers. As mentioned earlier, issuers of covered investment contracts are likely to be small and early-stage. For such issuers, audit costs could be relatively large, especially because of the fixed costs component. Based on data from registered IPOs with proceeds under $75 million from 2014 through 2024 by issuers that would have been potentially eligible for the fundraising exemption, the average (median) total accounting fees

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494 *See supra* section IV.A.1.

495 *See supra* section IV.A.3.

amounted to 1.9 percent (0.9 percent) of gross offering proceeds, where reported separately.[496] That said, the proposed flexibility for issuers of covered investment contracts to choose between having financial statements audited in accordance with either U.S. GAAS or the standards of the PCAOB, may help contain some of the issuer compliance costs relative to only permitting audits that are in accordance with the standards of the PCAOB.

We estimate compliance costs per issuer associated with Form 1-CRYPTO to be $455,531.22 for both Tier 1 and Tier 2 offerings (including audit costs).[497] We estimate compliance costs per issuer associated with Form 1-KC to be $381,000 for both Tier 1 and Tier 2 offerings.[498] We estimate compliance costs per issuer associated with Form 1-SC to be $119,405.40 for both Tier 1 and Tier 2 offerings.[499] We estimate compliance costs per issuer associated with Form 1-UC to be $3,175 for both Tier 1 and Tier 2 offerings.[500]

e. Unrestricted Covered Investment Contracts

The proposed startup and fundraising exemptions would allow issuers to offer and sell unrestricted covered investment contracts to potential purchasers. This could improve the liquidity of these contracts, and that of the subject crypto assets, and make them more attractive

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[496] This estimate is based on London Stock Exchange Group's Securities Data Company data on IPOs with issue dates in 2014 through 2024, excluding offerings from non-US issuers, blank check companies, and investment companies. Offerings with proceeds below $1,000 are excluded to minimize measurement error. Accounting fees include the cost of preparing accounting statements, in addition to the cost of an audit. We also note that costs incurred by issuers in registered IPOs may not be representative of costs incurred by issuers in Tier 2 offerings.

[497] The $455,531.22 estimate is based on the following calculations: 717.372 burden hours per response x $635 per hour. *See infra* section V.C.2.a (PRA analysis).

[498] The $381,000 estimate is based on the following calculations: 600 burden hours per response x $635 per hour. *See infra* section V.C.2.b (PRA analysis).

[499] The $119,405.40 estimate is based on the following calculations: 188.04 burden hours per response x $635 per hour. *See infra* section V.C.2.c (PRA analysis).

[500] The $3,175 estimate is based on the following calculations: 5 burden hours per response x $635 per hour. *See infra* section V.C.2.d (PRA analysis).

to potential purchasers compared to a scenario where the covered investment contracts were restricted securities. As mentioned above, the ability of issuers to provide freely tradable and liquid underlying crypto assets is key for incentivizing participation in the crypto networks/applications that support the ability of those networks/applications to develop and achieve network effects. The ability, because of the proposed rules, of issuers to offer and sell unrestricted covered investment contracts would likely enhance the tradability and liquidity of the subject crypto assets, thereby attracting more participants and facilitating the scaling of the associated crypto network or associated crypto application to obtain the benefits of network effects. It would also allow issuers to raise capital to fund economic incentives at the early stages of the network/application, which could be important for keeping it secure, useful, and active. The ability of issuers to offer and sell unrestricted covered investment contracts would also lower investor trading costs.

Issuers of covered investment contracts could benefit in two main ways: (1) increased capital raising, and (2) better pricing, in terms of lower discounts to be offered to investors. The ability to purchase unrestricted covered investment contracts could make more investors interested in an offering under the proposed exemptions, as compared to an offering pursuant to which they receive restricted securities, thus allowing an issuer to raise more capital, more quickly and efficiently. Additionally, if investors in an offering were to obtain illiquid securities, then they would likely require a discount to the fair market price of these securities to compensate them for their limited ability to trade in these securities. The ability to purchase unrestricted covered investment contracts under the proposed rules would reduce potential investors' need for such an illiquidity discount at the time of initial purchase and further lower the issuers' cost of capital raising. In addition, to the extent that this results in active secondary trading, it would promote enhanced price discovery and greater informational efficiency of covered investment contract prices.

Quantifying the benefit for issuers of potentially lower illiquidity discounts on covered investment contracts offerings, as a result of the proposed rules, is difficult. Academic studies have tried to estimate the magnitude of the illiquidity discount using various types of transactions, including private or public companies. One study examined the discount between unrestricted and restricted shares of the same public issuer. It found that such illiquidity (also called "marketability") discount varies between 5.2 percent and 5.6 percent.[501] Two other studies, one using data on acquisitions of similar private and public companies[502] and the other using data on privately traded companies and publicly traded companies,[503] found the illiquidity discount to be around 20 percent to 25 percent. This range of estimates is wide—from approximately five percent to 25 percent. Yet, even under a more conservative approach that assumes the potential illiquidity discount on covered investment contracts would be closer to the five percent lower bound of the estimated range, a reduction or elimination of that discount as a result of the proposed rules' requirements would provide a significant benefit to the issuers of covered investment contracts by allowing them to issue fewer covered investment contracts to raise the desired amount of capital. It is also plausible, however, that the size of the illiquidity discount for covered investment contracts would be larger. The issuers of covered investment contracts are likely to be smaller and younger than the private companies used in the analyses in

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[501] *See* Robert Comment, *Revisiting the Illiquidity Discount for Private Companies: A New (and "Skeptical") Restricted Stock Study*, 24 J. APPLIED CORP. FIN. 80 (Mar. 2012).

[502] *See* John Koeplin, et al., *The Private Company Discount*, 12 J. APPLIED CORP. FIN. 94 (2000).

[503] *See* Stanley Block, *The Liquidity Discount in Valuing Privately Owned Companies*, 17 J. APPLIED FIN. 33 (2007).

the referenced studies, which makes the likelihood of a liquid post-offering market for covered investment contracts developing more uncertain. Additionally, because of their unique features, trading in covered investment contracts may be different and newer than that in more traditional securities, which also makes the liquid post-offering market more uncertain. Hence, potential investors in covered investment contracts may require illiquidity discounts that are larger than 25 percent. If that were the case, the potential benefit of the proposed rules could be much larger.

The magnitude of the potential benefits associated with unrestricted covered investment contracts would depend on the degree to which a liquid secondary market for covered investment contracts develops after an initial offering. If such a market does not develop, or takes time to develop, the magnitude of the benefits associated with unrestricted covered investment contracts may be fairly small.

2. Benefits and Costs of the Proposed Startup Exemption

The 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. Proposed Rule 200(b)(1) would require the covered transaction to occur during the period beginning after the issuer has filed a notice of reliance and ending on the date that is the earlier of (i) four years after the date of such filing or (ii) the date on which the issuer files a transition report pursuant to proposed Rule 200(e). The four-year maximum period specified by the proposed rule would benefit issuers by providing them with a reasonable amount of time to fulfill their representations or promises to engage in essential managerial efforts under covered investment contracts. Issuers relying on the exemption would be able to perform the tasks needed to develop, test, and launch their projects with requirements that are tailored to covered investment contracts and their issuers for the duration of the exemption. It could also generate costs for issuers for which four years is not enough to fulfill such representations or promises. Such issuers may need to rely on other, potentially more expensive, exemptions to raise capital needed to fulfill such representations or promises.

The four-year maximum period specified by the proposed rule could also benefit investors in covered investment contracts by providing them with a better understanding of the potential “outside date” within which the issuer likely would seek to fulfill its representations or promises under the covered investment contract. For example, this would allow investors who prefer to hold covered investment contracts, or generally prefer to hold securities instead of non-security crypto assets, to sell such covered investment contracts within this four-year period as they may not fit their investment strategies/horizons anymore. If such investors have to liquidate their positions in a short period of time, this could put downward pressure on the value of covered investment contracts and thus may generate losses for investors in those contracts.

Proposed Rule 200(b)(2) would state that the issuer may be an entity, an individual, or a group of individuals or entities. This provision would be beneficial to issuers since it would allow an issuer that is in the early stages of a project, as well as a developer or development team that may not have consulted legal counsel or spent the time and money to form a legal entity through which to conduct their business, to be able to use the exemption and raise capital. Also, proposed Rule 200(b)(2) would require that if the issuer is composed of a group of individuals/entities, each member of the group must satisfy the conditions and provide the required certifications. This requirement would strengthen investor protection by preventing potential evasion of the proposed rules through organizational structuring.

Proposed Rule 200(b)(3) would require that the issuer and its affiliates have not previously relied on the startup exemption for the subject crypto asset, or a substantially similar crypto asset, other than with respect to covered transactions that occurred during the period set forth in Rule 200(b)(1). This requirement would strengthen investor protection by preventing a single issuer from circumventing the offering size limitation by permitting multiple affiliates of an issuer, using the subject crypto asset, or a substantially similar crypto asset, to raise collectively more than $5 million without providing more disclosures or being subject to additional requirements commensurate with the larger amount of capital being raised. This rule could also impose costs on issuers that have multiple affiliates engaged in developing associated crypto networks or associated crypto applications, to the extent that those applications and networks use the same or a substantially similar subject crypto asset.

We estimate compliance costs per issuer associated with the startup exemption to be $48,641.[504] These costs include burdens associated with several proposed rules that are relevant to the startup exemption, and are described in more detail above.

3. Benefits and Costs of the Proposed Fundraising Exemption

The fundraising exemption would benefit issuers of covered investment contracts by providing a framework to more efficiently raise capital and would increase issuer choice when relying on external financing for capital formation. The proposed fundraising exemption would benefit investors because the conditions of the exemption would ensure that investors are adequately informed and protected. On the other hand, issuer eligibility criteria may prevent certain issuers from using the exemption, thus making them rely on costlier or more burdensome

[504] The estimate is calculated as $35,941 + $12,700. The $35,941 estimate is based on the following calculations: 56.60 burden hours per response x $635 per hour. These include the total estimated paperwork burdens of the "Rule 200 of Regulation Crypto Assets (Form NOR)" information collection attributed to Rules 104(b), 200(c), and 200(d), plus the burdens associated with filing Form ID. *See infra* section V.C.1.d (PRA analysis). The $12,700 estimate is the cost associated with the proposed Form TR attributable to Rule 200(e) under the startup exemption and is based on the following calculations: 20 burden hours per response x $635 per hour. *See infra* section V.C.3 (PRA analysis).

sources of capital. Additionally, the investment limitation may reduce the ability of some investors to invest as much as they would like in potentially beneficial investment opportunities and may limit the attractiveness of the proposed fundraising exemption to prospective issuers, thereby reducing the potential capital formation and competition benefits.

a. Issuer Eligibility Criteria

The eligibility criteria in proposed Rule 300(b) would strengthen investor protection by limiting the set of issuers that can rely on the proposed fundraising exemption.[505] The proposed fundraising exemption would not be available to: a development stage company that either has no specific business plan or purpose, or has indicated that its business plan is to merge with or acquire an unidentified company or companies;[506] an investment company registered or required to be registered under the Investment Company Act or a business development company as defined in Investment Company Act section 2(a)(48);[507] or an issuer that is or has been subject to any order of the Commission entered pursuant to Exchange Act section 12(j) within five years before the filing of the offering statement (provided, however, that this exclusion would not apply to any issuer subject to an order of the Commission entered pursuant to section 12(j) before the date on which Rule 300 becomes effective, if the rule is ultimately adopted).[508]

Investors, especially less sophisticated investors, may find it difficult and costly to determine the valuation and risk of securities of a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with or acquire an unidentified company or companies, so the exclusion of those companies from the

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505 *See supra* section II.C.2.a.ii.

506 *See* proposed 17 CFR 228.300(b)(2).

507 *See* proposed 17 CFR 228.300(b)(3).

508 *See* proposed 17 CFR 228.300(b)(4).

proposed fundraising exemption may reduce investor costs or risks. Similarly, the specialized nature of investment companies and business development companies would warrant different disclosures than what we propose in the fundraising exemption for a proper understanding of an investment in their securities. Excluding issuers of covered investment contracts that were subject to a denial, suspension, or revocation order by the Commission pursuant to Exchange Act section 12(j) within the five years preceding the filing of the offering statement may help incentivize issuers to comply with their obligations under the Exchange Act, including their ongoing reporting obligations, and will prevent issuers with a history of non-compliance from relying on the fundraising exemption after they terminate or suspend their Exchange Act reporting obligations. This would further enhance investor protection.

Additionally, an issuer seeking to raise capital via the fundraising exemption would be required to be an entity organized under, and subject to, the laws of the United States, or any State or territory of the United States or the District of Columbia; provided further that (i) a majority of the issuer's executive officers or directors must be U.S. citizens or residents, (ii) more than 50 percent 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. These conditions may facilitate the ability of investors to seek recourse against issuers in the event of fraud or other misconduct and provide domestic investors with more easily accessible investment opportunities. It would also make it easier for investors to collect and analyze information and value issuers' covered investment contracts.

To the extent that some issuers would be ineligible to rely on the proposed exemption to raise capital, they may have to rely on costlier or more burdensome sources of capital or alter their organizational structure in order to qualify for the exemption. We also recognize that excluding certain categories of issuers would affect capital formation by preventing offerings by issuers who otherwise might have utilized the fundraising exemption rather than other methods of capital raising. The negative effect on capital formation for the issuers ineligible under the proposed exemption may be mitigated if such issuers avail themselves of other exemptions.

b. Requirements Regarding Offers and Sales; Investment Limitations

The proposed fundraising exemption would allow sales to be made only after the offering statement has been qualified. Subjecting the offering statement to Commission staff review (pursuant to delegated authority from the Commission[509]) prior to the issuer being permitted to make sales would have investor protection benefits. Certain of the offering conditions of the fundraising exemption would provide benefits to issuers as well, as they would allow issuers to communicate and make offers to potential investors prior to qualification. Additionally, the proposed rules would allow for continuous or delayed offerings in some circumstances, which may offer valuable flexibility to issuers. Lastly, Rule 300(c) would provide that, other than solicitation of interest communications pursuant to Rule 304 (i.e., testing the waters), no offer of securities may be made unless an offering statement has been filed with the Commission. This proposed requirement would protect investors by ensuring that they have access to the appropriate material information in connection with any such offer.

Under the proposed rules, if the purchaser is not an accredited investor as defined in Rule 501(a) of Regulation D,[510] the aggregate purchase price to be paid by the purchaser cannot exceed 10 percent of the greater of the purchaser's annual income or net worth (or in the case of

[509] *See supra* note 340.

[510] Proposed 17 CFR 228.300(c)(2)(i)(C).

non-natural persons, the greater of revenue or net assets for the most recently completed fiscal year). An issuer may rely on a representation of the purchaser when determining compliance with this investment limitation, provided that the issuer does not know at the time of sale that the representation is untrue. This limitation would apply to both Tier 1 and Tier 2 offerings.

The purchaser limitations could lead to a more dispersed non-accredited investor base or a higher proportion of accredited investors in the investor base to the extent that the 10 percent threshold impacts investor participation. If non-accredited investors face investment limits, then issuers may need to solicit a greater number of non-accredited investors, or more accredited investors, to raise the capital they need. This could facilitate increased liquidity as there would be more potential sellers for interested purchasers, compared to a scenario without purchaser limitations.

There could be costs associated with investment limits. In particular, the investment limitation could curtail potential gains for non-accredited investors in Tier 1 and Tier 2 offerings. The investment limits may reduce the ability of some investors to invest as much as they would like in potentially beneficial investment opportunities and may limit the attractiveness of the proposed fundraising exemption to prospective issuers, thereby reducing the potential capital formation and competition benefits. The investment limitation could result in some issuers needing to solicit a greater number of investors or to solicit additional accredited investors, which could lead to additional costs for those issuers or limit capital formation if they are unable to attract additional investors.

Rule 300(c) would provide that, other than solicitation of interest communications pursuant to Rule 304 (i.e., testing the waters), no offer of securities may be made unless an offering statement has been filed with the Commission.[511] This would result in greater costs for issuers compared to some existing offering exemptions (e.g., Regulation D) which do not require issuers to abstain from making an offer until a certain form is filed with the Commission. With respect to sales, the rule would provide that no sale of securities may be made until the offering statement has been qualified,[512] which could result in issuers missing out on favorable market conditions (e.g., strong investor interest in the issuer or its securities) while waiting for the offering to be qualified.

The ability to rely on investor representations should help mitigate potential costs that issuers could otherwise incur to comply with the investment limitation provisions.

c. Continuous or Delayed Offerings

The proposed fundraising exemption would permit continuous and delayed offerings including selling securityholders, as described in Rule 300(c)(3)(i). Rule 300(c)(3)(i)(F) would allow issuers to undertake continuous offerings that may continue for a period of more than 30 calendar days from the date of initial qualification (if offered in an amount that, at the time the offering statement is qualified, is reasonably expected to be offered and sold within two years from the initial qualification date). This would benefit issuers by allowing them to offer and sell securities over time, as permitted in continuous offerings, to raise capital. The magnitude of this benefit for issuers is likely large.

Additionally, the ability to conduct continuous or delayed offerings would benefit issuers because they would allow selling securityholders to participate in offerings qualified under the fundraising exemption, subject to the limitations on offering amount in proposed Rule 300(a),

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[511] Proposed 17 CFR 228.300(c)(1).

[512] Proposed 17 CFR 228.300(c)(2)(i)(A).

thus facilitating liquidity for existing securityholders and new investors in the offering. Also, permitting selling by insiders in offerings under the proposed exemption could facilitate a more widespread distribution of the subject crypto assets, which may help issuers fulfill their representations and promises under the covered investment contract, including, for example, more efficiently meeting decentralization targets.

The ability to conduct continuous or delayed offerings under the fundraising exemption may generate costs for issuers and investors. For example, allowing selling by insiders in such offerings could diminish their incentives to work towards developing and finalizing the functionality of the associated crypto network or associated crypto application, thus creating costs for investors in terms of lower value of covered investment contracts. Some of these costs would be mitigated by the limitations placed on holders of covered investment contracts in Rule 300(a) and the principles-based disclosure requirement regarding management of the issuer, related persons of the issuer, and conflicts of interest and related person transactions involving the issuer in Rule 103(b)(4).

d. Confidential Treatment

Proposed Rule 300(d) would provide that a request for confidential treatment may be made under 17 CFR 230.406 for information required to be filed, and 17 CFR 200.83 for information not required to be filed. This proposed rule would benefit issuers by allowing them to keep potentially sensitive information from being disclosed to their competitors, which may negatively affect their competitive advantages.

e. Testing the Waters Provision

The proposed rules would allow the issuers relying on the fundraising exemption to make non-binding solicitations of interest, indications of interest, and similar communications (“testing the waters") prior to qualification of the offering statement. Allowing these communications would enable issuers of covered investment contracts to determine market interest in their securities before incurring the costs of preparing and filing an offering statement. If, after testing the waters, the issuer of covered investment contracts is not confident that it would attract sufficient investor interest, this issuer could consider alternate methods of raising capital and thereby avoid the costs of an unsubscribed or under-subscribed offering. Allowing testing the waters at any time prior to qualification of the offering statement, rather than only prior to filing of the offering statement with the Commission, may increase the likelihood that the issuer will raise the desired amount of capital. This option may be useful for smaller issuers of covered investment contracts, especially early-stage issuers, first-time issuers, and other issuers with a high degree of information asymmetry, for which an unsuccessful offering could result in being unable to raise the needed capital and incurring additional expenses.

Expanding the permissible use of testing the waters communications could also increase the type and extent of information available to investors, which could lead to more efficient prices for the offered covered investment contracts. The proposed rules would permit testing the waters for an expanded period, from the moment an issuer decides to approach investors to the offering qualification. Further, requiring issuers using testing the waters solicitations after the offering statement is publicly filed to provide the offering statement with the testing the waters materials (or provide information about where it can be accessed), and to update it and redistribute updates in the event of material changes, would allow investors to make better informed investment decisions. For example, investors could glean important information regarding the progress of the offering before and after the offering statement is publicly filed that may affect their decision of whether and how much to invest in the offering. This feature of the exempt framework has proved useful for Regulation A issuers. For example, on average 37 percent of qualified Regulation A offerings from 2015 through 2024 used testing the waters communications. There was a greater reliance (approximately 47 percent) on the provision for larger qualified offerings (i.e., those with over $1 million of proceeds).[513]

We estimate compliance costs per issuer associated with the fundraising exemption to be $973,145.12.[514] These costs include burdens associated with several proposed rules that are relevant to the fundraising exemption and are described in more detail above.

4. Benefits and Costs of the Proposed Investment Contract Safe Harbor

Under proposed Rule 400, a covered investment contract would be deemed to have ceased to exist, and the crypto asset that was subject to the covered investment contract would be deemed not to constitute or represent or to be subject to that investment contract for purposes of Securities Act section 2(a)(1)[515] and Exchange Act section 3(a)(10),[516] if certain conditions are satisfied. Rule 400 is intended to codify the Commission's view articulated in the 2026 Interpretation on when a covered investment contract ceases to exist. In addition, we are providing further clarity in this release on what types of actions would not constitute essential managerial efforts,[517] which will provide additional certainty to issuers of covered investment

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[513] *See* Angela Huang, *Analysis of the Regulation A Market: A Decade of Regulation A* (May 2025), *available at* https://www.sec.gov/files/dera-reg-2505.pdf.

[514] The $973,145.12 estimate is the sum of $959,111.62 + $14,033.50. The $959,111.62 estimate is based on the following calculations: 1,510.412 burden hours per response x $635 per hour for information collections attributable to Form 1-CRYPTO, Form 1-KC, Form 1-SC, Form 1-UC. *See infra* section V.C.2 (PRA analysis). The $14,033.50 estimate is based on the following calculations: 22.1 burden hours per response x $635 per hour for information collections attributable to Rules 305(c) and 305(d) and the burdens associated with Form ID. *See infra* section V.C.3.c (PRA analysis).

[515] 15 U.S.C. 77b(a)(1).

[516] 15 U.S.C. 78c(a)(10).

[517] *See supra* section II.A.4.b.i.

contracts who are trying to satisfy the conditions set forth in proposed Rule 400(a). The investment contract safe harbor would be available to any issuer that satisfies its conditions. Thus, the safe harbor would be available to issuers that have utilized the startup exemption or the fundraising exemption, once they have satisfied the safe harbor's conditions. The safe harbor also would be available to issuers that have not utilized these proposed exemptions.

By codifying the Commission's view articulated in the 2026 Interpretation, the investment contract safe harbor could provide greater certainty to both issuers and investors as to when a crypto asset no longer is subject to an investment contract. This would make it easier for investors to identify when covered investment contracts would cease to exist and to make better investment decisions regarding covered investment contracts in their portfolio. Another potential benefit of the safe harbor could be informing the market and investors that the issuer believes the crypto asset is no longer subject to an investment contract. There also could be related investor protection benefits associated with requiring the issuer to include its conclusions/analysis in a Commission filing. These benefits will only be realized to the extent an issuer takes advantage of the safe harbor rather than relying on the 2026 Interpretation.

For issuers that already have filed a Form TR under the startup exemption or the fundraising exemption, there would be no incremental costs from this requirement. For issuers that have not utilized these proposed exemptions, we estimate compliance costs per issuer associated with filing proposed Form TR under the investment contract safe harbor to be $19,431.[518]

[518] The $19,431 estimate is based on the following calculations: 30.6 burden hours per response x $635 per hour for the information collection attributable to Rule 400(b) and the burdens associated with Form ID. *See infra* section V.B.1.d.iii (PRA analysis).

5. Benefits and Costs of the Proposed Preemption of State Registration and Qualification Requirements

Proposed Rule 500 would set forth a new definition of "qualified purchaser." The proposed definition would provide that a "qualified purchaser" includes any person to whom securities are offered or sold pursuant to an offering under Regulation Crypto Assets or an offering pursuant to a transaction by any person other than an issuer, underwriter, or dealer with respect to a covered investment contract; provided that: (1) the issuer has satisfied the requirements of an exemption under Regulation Crypto Assets with respect to such covered investment contract; and (2) 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. Thus, the proposed rule would preempt State securities laws registration and qualification requirements with respect to the initial sales of covered investment contracts under Regulation Crypto Assets and certain resales of covered investment contracts.

The proposed preemption of State securities law registration and qualification requirements for primary offerings would eliminate the burden of responding to multiple reviews for the same offering, thus leading to a more streamlined offering process. There are several U.S. jurisdictions, comprising the 50 states, the District of Columbia, and the U.S. territories.[519] Each jurisdiction may have its own requirements, which typically include: (i) filing State administrative forms and other paperwork necessary for compliance with State registration requirements; (ii) adhering to disclosure standards; and (iii) in some states, requirements based

[519] *Uniform Securities Acts*, N. AM. SEC. ADM'RS ASSOC., *available at* https://www.nasaa.org/industry-resources/uniform-securities-acts/.

upon the merits of the offering or issuer (which may conflict with each other).[520] We do not have updated data to estimate costs of complying with Blue Sky laws, however, in a previous rulemaking the Commission received an estimate that an issuer seeking State registration in 50 states would incur $80,000 to $100,000 in legal fees.[521] Also, State filing requirements are not tailored to crypto asset projects, so it may be costly or impossible for issuers to attempt to comply with each State's rules.

As with preemption of State registration and qualification requirements for primary offerings under Regulation D and Regulation Crowdfunding, preemption of State registration and qualification requirements for primary offerings under the proposed offering exemptions would likely reduce covered investment contract issuers' time and compliance costs, thus making it cheaper to raise capital via the startup exemption as well as the fundraising exemption. A 2012 GAO report found that compliance with State securities registration and qualification requirements was one of the factors that appeared to have influenced the infrequent use of the original Regulation A by small businesses, before the Commission preempted State registration and qualification requirements for purchasers in Tier 2 Regulation A offerings in 2015.[522] Similarly, a whitepaper showed that Regulation D issuers seeking to raise up to $1 million and up to $5 million overwhelmingly rely on Rule 506(b) (pursuant to which State registration and

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[520] *See, e.g.*, Stuart R. Cohn, SECURITIES COUNSELING FOR SMALL AND EMERGING COMPANIES, MERIT REVIEW § 12:8 (2025-6) (describing merit review as "the authority of state administrators to deny, suspend or revoke an offering because the administrator believes that the offering has substantive weaknesses in structure, financial strength or fairness to investors"). Not every state has the traditional "unfair, unjust or inequitable" merit review standard, or its equivalent. Nor do states apply standards with equal rigor. *Id.*

[521] 2015 Regulation A Release at 21886.

[522] *See* U.S. Gov't Accountability Off., *Factors That May Affect Trends in Regulation A Offerings*, GAO-12-839 (July 2012), *available at* http://www.gao.gov/assets/600/592113.pdf (the "GAO Report"). The GAO Report also cites other factors that may have discouraged issuer use of the Regulation A exemption, including a comparatively low $5 million offering limitation, a slow and costly filing process associated with Commission qualification, and the availability of other exemptions under the Federal securities laws.

qualification is preempted) even though such amounts could be raised (without such preemption) under Rule 504 and (since rescinded) Rule 505 of Regulation D.[523] In particular, with respect to covered investment contracts, we anticipate that issuers would likely rely on the proposed exemptions to conduct offerings across multiple states to facilitate the development of decentralized networks across jurisdictions.[524] Complying with Blue Sky laws across 54 U.S. jurisdictions could increase costs significantly and could deter issuers from otherwise using the proposed exempt offerings.[525]

In addition, unlike Regulation D and Regulation Crowdfunding, the proposed exemptions would preempt State registration and qualification for secondary trading. Absent preemption for secondary trading, issuers of covered investment contracts would need to comply with State law registration and qualification requirements applicable to resales in every jurisdiction in which such resales occur, which could result in significant compliance costs and potentially reduce the number of jurisdictions in which secondary trading occurs.[526] As one commenter explained, without preemption, secondary trading is "subject to a patchwork of manual exemption regimes that vary state-by-state" resulting in "a fragmented and opaque system that places unnecessary burdens on issuers, investors, broker-dealers, and trading platforms."[527] Moreover, existing State

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523 *See* Scott Bauguess et al., *Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009-2017* at 2 (SEC, DERA White Paper, Aug. 2018), *available at* https://www.sec.gov/files/dera-white-paper_regulation-d_082018.pdf.

524 *See supra* section II.E.1.

525 *See* 2015 Regulation A Release at 21886.

526 Thompson Reuters, *Blue Sky Laws: Registration of Securities Transactions Exempt from Registration Under State Securities Regulations,* 50 STATE REGULATORY SURVEYS (JULY 2025). The majority of states have some form of exemption from State registration and qualification requirements for secondary trading. Some states have a Manual Exemption, others have other types of exemptions for secondary trading, and some states do not have any exemption for secondary trading. *Id.*

527 Letter from GUARDD.

law requirements for secondary trading may be outdated and ill-suited for issuers of covered investment contracts.[528] Preempting State registration and qualification requirements for secondary trading would help facilitate the unrestricted sale and purchase of covered investment contracts across jurisdictions. This in turn would facilitate the success of the associated crypto network or application, which often depends on the extent to which the crypto asset is widely held and used.[529]

Preemption of secondary sales may also lower offering costs because investors may be less likely to demand liquidity discounts. For covered investment contract issuers that decide to rely on any of the proposed exemptions and at the same time use other exemptions without preemption (such as Securities Act section 4(a)(2), Securities Act section 3(a)(11), or Rule 504 of Regulation D) to raise capital, the proposed State securities law preemption would lower the cost of those offerings as well, because secondary market transactions involving the covered investment contracts sold pursuant to those existing exemptions also would be preempted by the proposed rule if the issuer has also satisfied the requirements of an exemption under Regulation Crypto Assets, and the issuer remains subject to and current with respect to such exemption's disclosure and filing requirements and/or periodic reporting obligations. In addition, to the extent that the proposed preemption of State securities registration and qualification requirements for certain resales results in active secondary trading, it might promote enhanced price discovery and greater informational efficiency of covered investment contract prices.[530]

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528 *See* letter from CrowdCheck Law.

529 *See supra* section I.

530 *See supra* section IV.B.1.e.

The proposed preemption of State securities registration and qualification requirements could also benefit investors in covered investment contracts because the issuers' cost savings from not having to register or qualify their offerings with State regulators ultimately may be utilized to complete the issuers' essential managerial efforts. Further, by extending the preemption of State registration and qualification requirements to certain resales of covered investment contracts, the proposed rule also would benefit investors in covered investment contracts through potentially enhanced liquidity. To the extent that easier resales may draw additional investors, this may increase interest in primary offerings of covered investment contracts where the issuer satisfied the requirements of an exemption under the proposed rules, and remains subject to, and is current with, such exemption's disclosure and filing requirements and/or periodic reporting obligations. Also, the preemption of State registration and qualification requirements to resales would benefit investors because they would not have to comply with or look for an exemption from State registration/qualification requirements for resales, thus potentially lowering compliance costs for them. Finally, investors may be harmed if issuers exclude their home State due to the costs of compliance in that particular State.

We recognize that the proposed preemption of State registration and qualification requirements may remove an additional layer of investor protection provided by their review process. These may include additional investor protections arising from the resources of State regulators that may aid in detecting fraud and facilitating issuer compliance. In addition, merit-based review of offerings undertaken by some States may, in some cases, provide a level of investor protection different from the disclosure-based review undertaken by Commission staff.[531] States will, however, retain jurisdiction to bring antifraud enforcement actions.[532] Covered investment contract issuers may face a higher cost of capital if investors perceive increased investment risk as a result of preemption. These potential costs, however, could be mitigated by certain proposed investor protection requirements, including requirements for public disclosure (including ongoing, periodic reporting); investment limits; offering limits; a maximum, four-year offering duration under the startup exemption; issuer eligibility requirements; and disqualification provisions.

C. Effects on Efficiency, Competition, and Capital Formation

1. Effects on Efficiency

The proposed rules would likely lead to improvements in efficiency as they would facilitate a distribution of crypto assets in compliance with the Federal securities laws. To the extent such distribution constitutes an offer or sale of a covered investment contract, the proposed rules would provide tailored exemptions that address the key shortcomings of existing offering exemptions vis-a-vis covered investment contracts and include investor protection features. The proposed exemptions would enhance efficiency by enabling issuers of covered investment contracts to rely on and fund economic incentives that are essential for the development and functioning of their associated crypto networks or associated crypto applications. The proposed rules would allow issuers to more efficiently and quickly develop, and incentivize the development of, the functionalities of their associated crypto networks or

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531 *But see, e.g.*, Susanna Kim Ripken, *Paternalism and Securities Regulation*, 21 STANFORD J. OF L., BUS. & FIN. 1, 41 (2015) ("Merit regulation, as adopted by the states, blocks investors from purchasing securities deemed too risky by state administrators. Such paternalistic interference with investors' access to certain securities is unnecessary and inhibits capital markets.").

532 *See* 15 U.S.C. 77r(c)(1).

associated crypto applications. Additionally, the proposed rules would also enable networks to take root that otherwise would not have been able to, further enhancing efficiency.

Also, issuers of covered investment contracts may be able to optimize their financing strategy, resulting in a lower cost of capital or more timely access to financing. The proposed rules are intended to facilitate the offering process and entry into capital markets for issuers that find existing exemptions to be too costly or inadequate for their funding needs, or otherwise not fit for purpose. To the extent that those issuers raise capital at lower costs than they otherwise could, the proposed rules would generate efficiency gains for them.

In addition, if issuers' covered investment contracts represent valuable projects not found elsewhere in the capital markets, adding them to the investment choices, particularly for non-accredited investors, may result in more efficient capital allocation in investor portfolios, and more efficient matching between investors and companies seeking capital. This will allow investors with various risk preferences to invest in the offerings best suited to their risk tolerance, thus potentially improving allocative efficiency.

Requiring ongoing disclosures under the fundraising exemption, and requiring the issuers relying on the startup exemption to make certain information publicly accessible, free of charge and to periodically amend that information to reflect material changes, would provide investors with important information, allowing them to identify investment opportunities best suited for their level of risk tolerance and re-evaluate the issuer's prospects over time, resulting in better informed investment decisions and improved allocative efficiency of capital. By requiring issuers to file these disclosures on EDGAR and/or on a publicly available website, the proposed rules could make it easier for investors to collect and compare information across issuers, both within and outside of the market for covered investment contracts.

The proposed disclosure requirements also could improve informational efficiency in the market, making it easier for investors to identify a broader and more diverse range of covered investment contract offerings and allocate capital more efficiently. The net effect could be to enhance both capital formation and allocative efficiency. Additionally, the required disclosures would provide investors with a useful benchmark to evaluate other crypto asset issuers both within and outside of the covered investment contract market.[533] Also, disclosure by covered investment contract issuers relying on the proposed rules could inform financial markets more generally by providing information about new trends and products in the crypto asset industry, thus creating externalities that benefit other types of investors and issuers.

In addition, to the extent that the proposed rules result in active trading, it might promote enhanced price discovery and greater informational efficiency of covered investment contract prices.

2. Effects on Competition

If the proposed rules improve access to, or lower the cost of, capital for issuers of covered investment contracts and strengthen their ability to develop and launch their crypto projects, the proposed rules may enhance competition among issuers for developing product market applications of their crypto assets, thus spurring innovation and entrepreneurship. To the extent that more issuers of covered investment contracts use the proposed rules for capital raising, the proposed rules may also promote competition among eligible issuers in the market for investor capital. The proposed rules may also promote competition between smaller and larger issuers of covered investment contracts by lowering capital-raising costs for smaller issuers.

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[533] *See* Christian Leuz & Peter Wysocki, *Economic Consequences of Financial Reporting and Disclosure Regulation: A Review and Suggestions for Future Research* (working paper Mar. 13, 2008), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1105398 (retrieved from SSRN Elsevier database).

To the extent that more investors decide to invest in covered investment contracts as a result of a greater number of covered investment contract offerings under the proposed rules, competition among these investors could increase, potentially generating cost savings for issuers relying on the startup and fundraising exemptions. The magnitude of the effect would depend on the number of investors that would be attracted to invest in covered investment contracts that may be offered under the proposed rules, as well as the number of issuers relying on the proposed rules.

3. Effects on Capital Formation

The proposed rules would introduce new exemptions that would facilitate capital formation by issuers of covered investment contracts because they are tailored to accommodate covered investment contracts. For example, the exemptions available under the proposed rules are intended to reduce certain burdens identified by commenters and others with respect to covered investment contract offerings under existing exemptions. The proposed rules also would set forth exemptions with various offering amount limits and tailored disclosure requirements. Thus, the availability of the new exemptions under the proposed rules could attract new issuers of covered investment contracts to the capital markets.

Additionally, the availability of the proposed exemptions could result in issuers of covered investment contracts switching from existing exemptions to the proposed exemptions. These issuers may be able to raise more capital under the proposed exemptions as compared to what they could raise under the existing exemptions. The proposed rules, therefore, would likely increase capital formation. By facilitating capital raising by issuers of covered investment contracts, the proposed rules would further enable these issuers to, among other things, finance the development of their crypto projects and the delivery of their products and services to potential users, as well as pursue projects that would have been forgone due to a lack of capital.

The impact of the proposed rules on an issuer's ability to raise capital will depend on whether new investor capital is attracted to the crypto asset markets and on whether investors reallocate existing capital among various types of offerings. Investor demand for covered investment contracts would depend on the expected risk, return, and liquidity of the offered securities and, in particular, on how these characteristics compare to what investors can obtain from securities in other exempt offerings and in registered offerings. Investor demand also would depend on whether the disclosure requirements in the proposed rules are sufficient to enable investors to evaluate the characteristics of offerings involving covered investment contracts.

Increased secondary market liquidity resulting from some of the features of the proposed rules (e.g., the ability of issuers to sell unrestricted securities) could make covered investment contracts more attractive to prospective investors and encourage them to invest in such securities, thus promoting capital formation. As previously explained in section IV.B.1, there also may be significant benefits for capital formation from the ongoing reporting requirements of the fundraising exemption which could generate sufficient information for secondary markets to provide the intended liquidity benefits.

If, on the other hand, some issuers that are currently relying on existing exemptions decide that the proposed rules are advantageous ways for them to raise capital (e.g., with respect to cost and/or access to potential investors), they could structure some or all of their offerings to involve covered investment contracts and thus take advantage of the proposed rules. This could lead to issuers switching from some existing offering exemptions to the proposed startup and fundraising exemptions included in the proposed rules. Such switches could still enhance capital formation since they could allow issuers to raise more capital, or achieve a lower cost of capital, than they could under the existing exemptions they were using. It is also possible that such issuers would continue to use some of the existing exemptions (e.g., to fund their non-crypto asset businesses) and decide to use the exemptions under the proposed rules to raise additional capital at potentially lower cost and/or from a different pool of investors. This could lead to an increase in capital formation.

D. Reasonable Alternatives

1. General Rules

a. Use More Prescriptive Disclosure Requirements

Proposed Rule 103 would set forth principles-based disclosure requirements with respect to offerings of covered investment contracts. We could have proposed more prescriptive disclosure requirements instead. One benefit of a more prescriptive disclosure approach for investors is that it could result in potentially more precise and complete disclosures for investors, since such an approach usually relies on bright lines to determine whether and what type of disclosure is required. Another potential benefit associated with the prescriptive disclosure approach is that it could improve comparability across issuers and transactions because issuers would be required to report similar information using the same metrics, procedures, or mechanisms. This could be especially beneficial to retail investors who may not have the resources or ability to evaluate information based on different metrics or on alternative sources, which could be the case under the proposed principles-based disclosure. A more prescriptive approach could also benefit issuers by potentially reducing the cost to provide the required disclosures. Specifically, an issuer could look to the bright line requirements when determining whether disclosure is necessary and may not need to spend the time and resources involved in applying judgment as to the materiality of particular information in the context of the issuer's overall business and financial circumstances.

However, a more prescriptive disclosure regime would also have costs. In particular, it would provide issuers of covered investment contracts with less flexibility to more directly tailor their disclosure to provide the information that is more likely to be material to an investment decision than the principles-based disclosure we propose. Additionally, a prescriptive approach may result in disclosure of immaterial information that is not useful to investors in covered investment contract offerings as compared to a principles-based approach.

b. Restricted Securities

The proposed startup and fundraising exemptions would allow issuers to offer and sell unrestricted covered investment contracts. Alternatively, we could have proposed that covered investment contracts offered and sold under these exemptions would be restricted securities. One benefit from this alternative would be potentially stronger investor protection: categorizing securities as restricted securities is intended to protect investors from situations where the reseller may be participating in an unregistered distribution on behalf of the issuer and the subsequent investors would not have the protections of a registered offering. Such an alternative, however, could present some significant costs for issuers and investors. First, restrictions on resale would make it more difficult for investors as well as potential users of the crypto asset to obtain the subject crypto asset, thus slowing down or limiting potential network effects, which are key for the completion of an issuer's associated crypto network and associated crypto application. Second, it would significantly decrease the liquidity of these securities and make them less attractive to potential investors. Purchasing restricted covered investment contracts could lead to fewer investors interested in an offering under this alternative, as compared to an offering pursuant to which they receive unrestricted securities. Third, if investors in an offering were to obtain illiquid securities, then they would likely require a discount to the fair price of these securities to compensate them for their limited ability to trade in these securities. Such an illiquidity discount at the time of initial purchase would increase the issuers' cost of capital raising, thus making it more costly and time-consuming to raise the needed amount of capital.

c. Related Person Holdings

Proposed Rule 103(b)(4) would require the issuer to disclose, among other things, whether related persons are subject to any transfer or resale restriction(s) with respect to the covered investment contract or subject crypto asset and, if so, to provide a description of the material terms of such restriction(s). Alternatively, we could have proposed, as a condition to an issuer relying on the startup exemption or the fundraising exemption, that the issuer implement policies and procedures reasonably designed to ensure that a minimum period (e.g., one year) elapses between the date on which a related person acquires a subject crypto asset from the issuer, or from an affiliate of the issuer, and any resale of the subject crypto asset by such related person.

Such an alternative could benefit potential investors by strengthening investor protection. There are typically two primary concerns associated with sales by insiders. One is in connection with the information asymmetry between an insider and outside investors. In particular, a selling insider is likely to have an informational advantage over outside investors.[534] The other concern is the alignment of incentives. With respect to insiders, it is often argued that the incentives of company management are better aligned with other shareholders when managers hold a

[534] *See* David Easley & Maureen O'Hara, *Information and the Cost of Capital*, 59 J. FIN. 1553 (Aug. 2004).

significant equity interest in the company.[535] Thus, insiders retaining a stake in the covered investment contracts can signal an alignment of incentives with outside investors.[536] This alignment serves as a commitment mechanism that indicates to investors that insiders are committed to the success of the company. With respect to ICO offerings, prior economic studies find that ICOs are more successful—have lower failure rates and/or higher future employment—when the insiders have a lockup/vesting period for the sale of their tokens.[537] A divestiture of the ownership stake by an insider may, therefore, exacerbate agency conflicts, which suggests that large insider sales can be detrimental to current and future investors.

We recognize, however, that there are benefits to be realized from permitting insiders, such as company founders and employees, flexibility regarding resales of covered investment contracts. Because most insiders typically consider available exit options before participating in a new venture, not restricting secondary sales increases their incentives to make the original investment, which may promote innovation and business formation.[538] Not restricting related person sales could also facilitate efficient reallocation of capital and talents of entrepreneurs to new ventures.[539] Additionally, an exit of a large insider could potentially result in a broader base of investors.

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535 *See* Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (Oct. 1976).

536 *See* John E. Core, et al., *Corporate Governance, Chief Executive Officer Compensation, and Firm Performance*, 51 J. FIN. ECON. 371 (Mar. 1999); Hamid Mehran, *Executive Compensation Structure, Ownership, and Firm Performance*, 38 J. FIN. ECON. 163 (June 1995).

537 *See* Howell, et al., *supra* note 401; Davydiuk Study *supra* note 430.

538 *See* Douglas J. Cumming & Jeffrey G. MacIntosh, *Venture-Capital Exits in Canada and the United States*, 53 U. TORO. L. J. 101 (2003).

539 *See* Junfu Zhang, *The Advantage of Experienced Start-Up Founders in Venture Capital Acquisition: Evidence from Serial Entrepreneurs*, 36 SMALL BUS. ECON. 187 (2011). *See also* Paul Gompers, et al., *Skill vs. Luck in Entrepreneurship and Venture Capital: Evidence from Serial Entrepreneurs*, (Nat'l Bureau of Econ. Rsch., Working Paper No. 12592, Oct. 2006), *available at* https://www.nber.org/system/files/working_papers/w12592/w12592.pdf.

Thus, the proposed disclosure requirement regarding related person resale or transfer restrictions is intended to address concerns associated with sales by insiders by giving investors the information they need to determine whether there are risks associated with the issuer's related persons and, if so, whether the issuer has taken appropriate steps to mitigate those risks. Instead of requiring a holding period or imposing transfer restrictions, the proposed approach would allow issuers the flexibility to decide whether to adopt any policies and procedures to address the potential risks associated with sales by related persons. This could reduce compliance costs.

d. Disqualification Provisions

Under the proposed Rule 104, the disqualification provisions in Rule 262 would not apply with respect to any conviction, order, judgment, decree, suspension, expulsion, or bar that occurred or was issued before the date on which Rule 104 becomes effective, if the rule ultimately is adopted. Rule 104 would require, however, the issuer to include in an offering circular or otherwise furnish to each purchaser, a reasonable time prior to sale, a description in writing of any matters that would have triggered disqualification under Rule 104 but occurred before the date on which Rule 104 becomes effective.

As an alternative, we could have specified that pre-existing events are subject to the disqualification rules. This would strengthen investor protection because it would expand the list of disqualifiable events. At the same time, it would increase the compliance costs for issuers.

As another alternative, we could have narrowed the disqualification provisions. For example, rather than disqualifying an issuer if it or one of the enumerated affiliated persons had been convicted of certain misdemeanors within the preceding 10 years (or five years, with respect to issuers, their predecessors, and affiliated issuers), we could instead limit the lookback period for such conviction to the period during which any resulting penalties apply. This could diminish compliance with costs for issuers but negatively impact investor protection.

Overall, we believe that preserving consistency with the disqualification criteria of Rule 262, as we do in the proposed rules, can potentially yield compliance cost savings for issuers that would rely on the proposed rules while still maintaining appropriate investor protections. Additionally, the proposed requirement that issuers include in an offering circular or otherwise furnish to each purchaser, a description in writing of any matters that would have triggered disqualification but occurred before the date on which Rule 104 becomes effective would provide important information for investors regarding issuers' prior misconduct.

2. Startup Exemption

a. Time Period

The proposed startup exemption would be available to issuers for a period of four years. As an alternative, we could have proposed that the exemption be available without any time period attached. Such an alternative could benefit issuers by allowing them more time during which to use covered investment contracts to raise capital and finalize the development of their associated crypto networks and associated crypto applications. Eliminating the time requirement, however, may dissuade investors from participating in an offering because issuers may have less of an incentive to develop their associated crypto networks and applications because they could rely on the exemption for an unlimited amount of time.

As another alternative, we could have included a shorter period (e.g., two years or three years) for issuers to rely on the proposed startup exemption. This approach could incentivize issuers to expedite the development of their associated crypto networks and associated crypto applications. However, it may also introduce significant costs to issuers by forcing them to incur significant expenses (e.g., raising capital in short time periods, providing incentives for potential users to join the crypto network) to complete their associated crypto networks and associated crypto applications prematurely to meet the requirements of the proposed exemption.

As another alternative, we could have included a longer period (e.g., five years) for issuers to rely on the proposed startup exemption. This alternative would allow issuers more time during which to use covered investment contracts to raise capital and finalize the development of their associated crypto networks and associated crypto applications. A potential cost of this alternative, however, may be decreased interest because issuers could take more time to develop their associated crypto networks and associated crypto applications.

b. Offering Limits

The proposed startup exemption would allow issuers to raise up to $5 million for the duration of the four-year period by issuing covered investment contracts without registration under the Securities Act. As an alternative to the proposed offering limit, we could have made the offering limit larger, such as $10 million. This would be commensurate with what is provided for by other exempt offerings geared toward smaller issuers, such as Rule 504 of Regulation D. A larger offering limit could make capital raising under the startup exemption more cost effective and attractive to issuers, resulting in potential favorable effects on capital formation and competition. The increase in the maximum offering size could also make the startup exemption attractive to a broader range of issuers, including larger issuers. This could provide investors with a broader range of investment opportunities in the market for covered investment contracts and potentially result in a more efficient allocation of investor capital. A potential cost of such an alternative may be erosion of investor protection if issuers were allowed to raise significantly more capital without providing additional disclosures like in the proposed fundraising exemption. As mentioned above, the startup exemption would provide issuers with temporary relief from Securities Act registration requirements—during which time they may work towards fulfilling the essential managerial efforts they represented or promised investors they would engage in under the covered investment contract—while, at the same time, ensuring that investors remain sufficiently protected and informed. Issuers seeking to raise larger amounts of capital may avail themselves of the fundraising exemption.

As another alternative, we could have proposed a smaller offering limit, such as $1 million. A potential benefit of such an alternative may be enhancement of investor protection to the extent that issuers would be allowed to raise less capital if they do not provide additional disclosures like in the proposed fundraising exemption. A smaller offering limit could make capital raising under the startup exemption more costly to issuers, resulting in negative effects on capital formation and competition. The lower maximum offering size could also make the startup exemption less attractive to a broader range of issuers, including larger issuers.

c. No Capital Raising

As an alternative, we could have proposed the startup exemption without the possibility of raising capital. Such an alternative would be beneficial to issuers because it would allow issuers relying on the exemption to perform the tasks needed to develop, test, and launch their projects with increased certainty about the application of the registration requirements of section 5 of the Securities Act to their projects and with requirements that are tailored to covered investment contracts and their issuers. Issuers that need capital to develop, test, and launch their projects would be able to rely on the proposed fundraising exemption or existing offering exemptions. Additionally, issuers could rely on such an alternative to engage in offerings of covered investment contracts in exchange for, in recognition of, or as incentive for past or future use of an associated crypto network or associated crypto application, or as a reward or incentive for conducting activities primarily related to operating, governing, or securing an associated crypto network or associated crypto application. Such an alternative, however, would generate costs for issuers because it would not allow them to raise, when needed, a modest amount of capital ($5 million) at a lower cost compared to raising the same amount by relying on the proposed fundraising exemption or existing offering exemptions.

3. Fundraising Exemption

a. Levels of Periodic Reporting for Tier 1 Offerings versus Tier 2 Offerings

Under the proposed fundraising exemption, issuers who have qualified Tier 1 offerings would be subject to ongoing reporting requirements. Alternatively, we could have proposed ongoing reporting only for issuers who raise capital via Tier 2 offerings (as in Regulation A). Such an alternative would have decreased compliance costs as well as other costs associated with providing ongoing disclosures for Tier 1 issuers. That would be especially beneficial to smaller issuers, which are more likely to rely on Tier 1 offerings for capital raising. We believe, however, that requiring ongoing and periodic reporting for all issuers under the proposed fundraising exemption is appropriate given that an 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. Further, and unlike the rationale for excepting Tier 1 issuers under Regulation A from ongoing reporting, we do not anticipate that Tier 1 issuers using the proposed rule will be conducting offerings that are more local in nature than Tier 2 offerings, and we do anticipate that there may be secondary markets for the securities issued in Tier 1 offerings. Lastly, the proposed preemption of State registration and qualification requirements would apply to Tier 1 offerings as well, which supports providing investors with ongoing disclosures. One of the benefits of ongoing disclosure is that it provides relevant information to investors that they in turn use when deciding to trade in secondary markets. We do not believe that requiring ongoing reporting for Tier 1 issuers would impose undue costs, as these issuers would benefit from tailored disclosure.

b. Offering Limits

Rule 300(a) would permit Tier 2 offerings of up to $75 million in a 12-month period without registration under the Securities Act. Alternatively, we could have set a lower or higher offering limit for Tier 2 offerings. For example, we could have proposed a $50 million offering limit. A lower offering limit of $50 million may offer enhanced investor protection benefits—it would increase the overall amount of securities being offered to the general public that are subject to initial and ongoing disclosure requirements that are more extensive than the requirements for some existing offering exemptions. A potential cost of this alternative would be the inability of some crypto asset issuers to raise enough capital needed for the development of their associated crypto networks or associated crypto applications. We believe a higher offering limit is appropriate with respect to offerings of covered investment contracts. Limiting the fundraising exemption to offerings of covered investment contracts coupled with the other issuer eligibility criteria discussed above sufficiently mitigates investor risks.

Alternatively, we could have proposed a higher offering limit (e.g., $150 million). Such an alternative would benefit issuers of covered investment contracts since it would allow them to raise significant amounts of capital at lower cost compared to some other offering exemptions. They could use this capital for the development of their subject crypto asset, associated crypto networks, and associated crypto applications. Such an alternative, however, may have implications for investor protections given that the proposed disclosure is similar to that in Regulation A, which allows issuers to raise up to $75 million.

4. Investment Contract Safe Harbor

a. Time Limit

The proposed investment contract safe harbor does not impose a time limit on when an issuer must complete or otherwise permanently cease all essential managerial efforts that it represented or promised to be eligible for the safe harbor. As an alternative, the Commission could propose a time limit from the date of issuance, such as that used in the proposed startup exemption. A benefit of such a time period is that it could incentivize issuers to complete the essential managerial efforts that they represented or promised they would engage in before the expiration of that period. Such an alternative would also create significant costs for issuers. For example, it could force them to rush to complete their essential managerial efforts to be able to use the safe harbor and achieve separation of the covered investment contract and the subject crypto asset, incurring significant costs in the process. There could also be costs to investors if the deadline creates incentives for issuers to rush their efforts or take on more risk in attempting to complete them.

b. Network Decentralization and Functionality Requirements

The proposed investment contract safe harbor would require that the issuer of the covered investment contract has completed or otherwise permanently ceased all essential managerial efforts that it represented or promised it would engage in under the covered investment contract and 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. As an alternative, we could have proposed, as a condition in Rule 400(a), a requirement that the subject crypto asset has sufficient functionality and the associated crypto network or associated crypto application has become sufficiently decentralized (according to specified criteria regarding functionality and decentralization) in order for the issuer to rely on the safe harbor. The essential managerial efforts of issuers often are focused on efforts to create a mature crypto asset and application. Accordingly, Form TR could require the issuer to: (1) provide a statement that the crypto asset has achieved the required functionality and that the associated crypto network or associated crypto application has achieved the required decentralization; and (2) provide an analysis demonstrating how such functionality and decentralization was achieved. Such requirements might benefit issuers by providing them with criteria that might be less costly to demonstrate than those in Form TR, while still providing a similar benefit of apprising investors, the Commission, and other members of the public as to the status of a subject crypto asset under the Federal securities laws as well as the basis on which the issuer reached its conclusion. Such an alternative, however, could result in higher costs for issuers of covered investment contracts relative to those under the proposed investment contract safe harbor. Because the disclosure requirements would be different than those in Form TR, issuers availing themselves of the startup exemption or fundraising exemption would incur the additional costs of documenting their satisfaction of these other conditions. In addition, even though it could be relatively less costly for some issuers to document their satisfaction of this alternative as compared to the proposed investment contract safe harbor, it could also be relatively more costly for others without a corresponding increase in relative benefits to issuers or investors. For example, it could be difficult for issuers to determine when a subject crypto asset has sufficient utility or control of the associated blockchain network or when the application is sufficiently dispersed such that it no longer falls within the purview of the Federal securities laws. Issuers may have to incur costs to achieve certainty that they meet the requirements of the safe harbor—for example, they may need to retain the services of legal and technical professionals to verify that they meet the conditions of the safe harbor.

5. Preemption of State Registration

The proposed rules would preempt State securities laws registration and qualification requirements applicable to the initial sales and resales of covered investment contracts under Regulation Crypto Assets, and certain other resales of covered investment contracts. Instead, we could have proposed that the initial sales and resales of covered investment contracts not be exempt from State securities laws registration and qualification requirements. State registration and qualification requirements may offer an additional layer of investor protection provided by the State review process. In addition, merit-based reviews of offerings undertaken by some States may, in some cases, limit participation by investors in certain offerings. Investors in States with merit review may have access to fewer opportunities than their counterparts in other States. This disparity would be evident in offerings of covered investment contracts which generally are not localized offerings. If investors are willing to accept lower returns because of a perceived decrease in investment risk resulting from state review, covered investment contract issuers may face a lower cost of capital. Such an alternative, however, may introduce significant costs for issuers. For example, it could increase the burden of responding to multiple reviews for the same offering, thus leading to a more complicated and costly offering process. This would likely increase covered investment contract issuers' time and compliance costs, thus making it more costly to raise capital via the proposed exemptions. Absence of State preemption would also limit the liquidity of covered investment contracts in the secondary market, making it more difficult for issuers to widely distribute the covered investment contract to investors and users, thus limiting potential valuable network effects. Also, another cost of this alternative would be the limited ability of covered investment contract issuers to broaden their search for investors across a larger number of States and thus have access to a larger pool of investors, compared to a situation without preemption.

As another alternative, we could have proposed preemption of State securities laws registration and qualification requirements only for the initial sales or only the resales of covered investment contracts under Regulation Crypto Assets. This alternative could enhance investor protection because, as mentioned above, State registration and qualification requirements, as well as merit-based reviews of offerings undertaken by some States, may offer an additional layer of investor protection provided by their review process. That layer of protection comes with costs in the form of reduced opportunities for investors in States with merit review. It also could have lowered costs for issuers and investors compared to a scenario in which both the initial sales and resales of covered investment contracts are not exempt from State securities laws registration and qualification requirements. Such an alternative, however, would generate costs for issuers and investors compared to a scenario without preemption. As mentioned above, absence of State preemption for initial sales would likely increase covered investment contract issuers' time and compliance costs, thus making it more costly to raise capital via the proposed exemptions. Absence of State preemption for resales could also limit the liquidity of covered investment contracts in the secondary market, making it more difficult for issuers to widely distribute the covered investment contract to investors and users, thus limiting potential valuable network effects.

E. Request for Comment

145. What types of companies (e.g., in terms of size, industry, age, etc.) would most likely

rely on Regulation Crypto Assets? Would they use it for capital raising, or would they rely mainly on the investment contract safe harbor?

146. How likely are the startup exemption or the fundraising exemption to attract companies that are considering offerings relying on Regulation D, Regulation A, Regulation Crowdfunding, or other offering exemptions? What would be the costs and benefits from relying on the startup exemption or the fundraising exemption versus existing exemptions? Please provide estimates where possible.

147. What would be the costs and benefits for an issuer of using the startup exemption? Please provide estimates where possible.

148. What would be the costs and benefits for an issuer of using the fundraising exemption? Please provide estimates where possible.

149. What would be the costs and benefits for an issuer of using the investment contract safe harbor? Please provide estimates where possible.

150. Would the proposed disclosure requirements help ensure that investors have a reasonable understanding of the risks and costs of investing in covered investment contracts? If not, what additional requirements would further mitigate the associated risks? How would the costs and benefits compare to other exempt offering methods? Please provide estimates where possible.

151. How would the proposed preemption of State registration and qualification requirements affect the costs and benefits of offerings done under the startup exemption and the fundraising exemption? Please provide estimates where possible, including any information of costs associated with complying with State Blue Sky laws that would be preempted under the proposed rules. Would the proposed preemption affect investor

protection and capital formation in the market for covered investment contracts?

152. What is the economic effect of the proposed investment limitations? What types of issuers and investors are most likely to be affected by this restriction? Would this restriction enhance investor protection or undermine it by limiting investor choice?

153. How would investors who purchase covered investment contracts under the proposed rules exit their investment? What is the likelihood that there would be a ready market for covered investment contracts issued in reliance on the proposed rules? What entities or investors are likely to supply the liquidity, and what discounts, if any, are investors likely to face when exiting their investments?

154. The Commission is interested in receiving comments, views, estimates and data concerning the following:

   a. Expected size of the market for covered investment contracts (e.g., number of offerings, number of issuers, size of offerings, number of investors, etc., as well as information comparing these estimates to the current baseline);

   b. Overall economic impact of the proposed rules; and

   c. Any other aspect of the economic analysis.

   d. What would be the economic impact of the policy alternatives discussed in the proposed rules?

V. PAPERWORK REDUCTION ACT

A. Background

Certain provisions of the proposed rules contain "collection of information" requirements within the meaning of the PRA.[540] We are submitting the proposal to OMB for review in accordance with the PRA.[541] The hours and costs associated with preparing and filing these collections constitute reporting and cost burdens imposed by each collection of information. The titles for the collections of information are:

- "Rule 200 of Regulation Crypto Assets (Form NOR)" (a proposed new collection of information);
- "Form 1-CRYPTO" (a proposed new collection of information);
- "Form 1-KC" (a proposed new collection of information);
- "Form 1-SC" (a proposed new collection of information);
- "Form 1-UC" (a proposed new collection of information);
- "Form TR" (a proposed new collection of information); and
- "Form ID" (OMB Control Number 3235-0328).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We are applying for OMB control numbers for the proposed new collections of information in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13, and OMB has not yet assigned a control number to each new collection. Responses to these collections of information would be mandatory.

B. Estimate of Issuers

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540 *See supra* note 471.

541 44 U.S.C. 3507(d); 5 CFR 1320.11.

The number, type, and size of the issuers that would conduct offerings of covered investment contracts under Regulation Crypto Assets is uncertain, but data regarding current market practices may help identify the number and characteristics of those potential issuers.[542] While it is not possible to precisely predict the number of future offerings made in reliance on Regulation Crypto Assets, for purposes of this analysis, we estimate that there would be 130 offerings per year.[543] Notwithstanding the fact that each of the proposed exemptions in Regulation Crypto Assets would be non-exclusive,[544] for purposes of this PRA analysis, we assume that each of those 130 offerings would be conducted pursuant to either the startup exemption or the fundraising exemption as discussed in more detail in sections V.B.1 and V.B.2 below. We also discuss in section V.B.3 below the estimated number of issuers that would rely on the investment contract safe harbor annually.

1. Startup Exemption

We estimate that 99 of the total 130 offerings estimated to be conducted annually under Regulation Crypto Assets would be conducted under the startup exemption (by 99 different issuers). We base this estimate on the 99 offerings involving crypto assets in the Regulation D and Regulation Crowdfunding markets that raised $5 million or less in 2024. We assume that each issuer would conduct one offering per year under the startup exemption. The burdens associated with the startup exemption would be reflected in the "Rule 200 of Regulation Crypto

542 *See* section IV above for a discussion of the data regarding current market practices.

543 We base this estimate on the sum of the 99 offerings involving crypto assets in the Regulation D and Regulation Crowdfunding markets that raised $5 million or less in 2024 and the 31 offerings involving crypto assets in the Regulation D, Regulation A, and Regulation Crowdfunding markets that raised more than $5 million but no more than $75 million in 2024.

544 *See* proposed 17 CFR 228.101(a).

Assets (Form NOR)" information collection. Burdens associated with the startup exemption also would be reflected in the "Form TR" information collection.

2. Fundraising Exemption

We estimate that 31 of the total 130 offerings estimated to be conducted annually under Regulation Crypto Assets would be conducted under the fundraising exemption (by 31 different issuers). We base this estimate on the 31 offerings involving crypto assets in the Regulation D, Regulation A, and Regulation Crowdfunding markets that raised more than $5 million but no more than $75 million in 2024. We assume that each issuer would conduct one offering per year under the fundraising exemption.

The burdens associated with the fundraising exemption would be reflected in the "Form 1-CRYPTO," "Form 1-KC," "Form 1-SC," and "Form 1-UC," information collections. Burdens associated with the fundraising exemption also would be reflected in the "Form TR" information collection.

3. Investment Contract Safe Harbor

We also estimate that 475 issuers would rely on the investment contract safe harbor annually.[545] We assume that each issuer would rely on the investment contract safe harbor once per year. For purposes of this PRA analysis, we estimate the number of issuers that would rely on the investment contract safe harbor annually by assuming that 15 percent of the estimated 3,165 crypto projects that were launched in 2024 would seek to rely on the investment contract safe harbor, once adopted. The burdens associated with the investment contract safe harbor would be reflected in the "Form TR" information collection.

[545] This reflects our estimate of those issuers that would rely on the investment contract safe harbor without also offering covered investment contracts under the startup exemption or the fundraising exemption.

C. Estimate of Issuer Burdens

Below we estimate the incremental and aggregate increase in paperwork burden as a result of the proposed rules. These estimates represent the average burden for all respondents, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual respondents and from year to year based on a number of factors, including the nature of their business.

1. Startup Exemption

As noted in section V.B.1 above, issuers' burdens associated with the startup exemption would be reflected in two different information collections: "Rule 200 of Regulation Crypto Assets (Form NOR)" and "Form TR." This section discusses the burden estimates for the "Rule 200 of Regulation Crypto Assets (Form NOR)" information collection. The burden estimates for the "Form TR" information collection are discussed in section V.C.3 below.

The "Rule 200 of Regulation Crypto Assets (Form NOR)" information collection would reflect burdens associated with proposed Rules 104(b), 200(c), and 200(d). We discuss our burden estimates for each of those rules below. Based on the sum of the burden estimates for each of those rules as well as the 99 estimated number of annual responses, we estimate a total annual burden of 3,960 hours and $1,005,840 for the "Rule 200 of Regulation Crypto Assets (Form NOR)" information collection.

a. Rule 104(b)

Rule 104(b) would require an issuer to include in an offering circular or otherwise furnish to each purchaser, a reasonable time prior to sale, a description in writing of any matters that would have triggered disqualification under Rule 104 but occurred before the date on which Rule

104 becomes effective.[546] Issuers relying on the startup exemption would be required to comply with this requirement.[547] This requirement is substantially similar to the requirement in Rule 506(e) of Regulation D.[548] In the adopting release for Rule 506(e), the Commission estimated that all issuers relying on an exemption in Rule 506 would expend one internal burden hour to comply with the rule and that approximately one percent those issuers would expend another 10 internal burden hours and require three hours of outside professional services in order to comply with the rule (i.e., because those issuers would, under Rule 506(e), be required to prepare a disclosure statement describing matters that would have triggered disqualification under Rule 506(d)(1) of Regulation D had they occurred on or after the effective date of the rule).[549]

For purposes of this PRA analysis, we assume that Rule 104(b) would require each issuer relying on the startup exemption to expend 1.5 internal burden hours and require 0.5 hours of outside professional services (at a rate of $635 per hour[550]) in order to comply with the rule. This

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546 *See* proposed 17 CFR 228.104(b).

547 *See* proposed 17 CFR 228.200(b)(6).

548 *See* 17 CFR 230.506(e).

549 *Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings*, Release No. 33-9414 (July 10, 2013) [78 FR 44729, 44751 (July 24, 2013)].

550 The $635 per hour rate reflects our current estimate of the blended hourly rate for lawyers ($744), accountants and auditors ($348), financial managers ($731), and information technology managers ($608). We expect that the types of professionals, the rates that those professionals would charge, and the proportion of services provided to issuers by each type of professional (relative to other types of professionals) would vary among issuers and would differ depending on the Regulation Crypto Assets information collection to which an issuer is responding. Nonetheless, for purposes of this PRA analysis, we believe the $635 per hour rate is a reasonable estimate of the hourly cost of professionals that would provide services to an issuer responding to an information collection under Regulation Crypto Assets. To calculate the occupational hourly rates used in this release, the Commission uses occupational mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for "Securities, Commodity Contracts, and Other Financial Investments and Related Activities" (NAICS 523). *See Occupational Employment and Wage Statistics*, U.S. BUREAU OF LAB. STATS., https://www.bls.gov/oes/; *see also Standard Occupational Classification*, U.S. BUREAU OF LAB. STATS., https://www.bls.gov/soc/ (describing occupational classification system used by BLS); EXEC. OFF. OF THE PRESIDENT, OFF. OF MGMT. & BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (2022), *available at*

estimate is intended to incorporate the one internal burden hour that the Commission assumed every issuer relying on an exemption in Rule 506 to expend in connection with Rule 506(e), as well as another 0.5 internal burden hours and 0.5 hours of outside professional services to account for any issuers that would have to provide disclosures under Rule 104(b). Although this effectively assumes that a larger percentage of issuers relying on the startup exemption would have to provide such disclosure (as compared to the Commission's estimate with respect to Rule 506(e)), we believe it is appropriate to take a more conservative approach that potentially overestimates the burdens associated with Rule 104(b) than an alternative approach that could underestimate such burdens, in part, because we expect that many of the issuers complying with the rule may be early-stage issuers that are less familiar with the Federal securities laws.

Based on the 99 estimated number of annual responses to the "Rule 200 of Regulation Crypto Assets (Form NOR)" information collection, we estimate a total annual burden of 148.5 hours (1.5 internal burden hours per response x 99 responses annually) and $31,432.50 (0.5 hours of outside professional services per response x $635 per hour x 99 responses annually) associated with Rule 104(b), which would be attributed to the "Rule 200 of Regulation Crypto Assets (Form NOR)" information collection.

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https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf (describing the industry classification system used by BLS and other agencies). The mean hourly wage for each occupation is adjusted for changes in the seasonally adjusted employment cost index for private wages and salaries between the data reference period and when the data are released by BLS. *See Employment Cost Index*, U.S. BUREAU OF LAB. STATS., https://www.bls.gov/eci/. The adjusted mean hourly wage is then multiplied by a factor that accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as an average over the 10 most recently available years of data of the ratio of the Bureau of Economic Analysis's annual gross output data for NAICS 523 to total annual wages across all occupations for NAICS 523 in the OEWS data. *See Gross Output by Industry*, U.S. BUREAU OF ECON. ANALYSIS, https://www.bea.gov/data/industries/gross-output-by-industry; *Occupational Employment and Wage Statistics*, U.S. BUREAU OF LAB. STATS., https://www.bls.gov/oes/. The final product is the occupational hourly rate. *See generally* UPDATED METHODOLOGY FOR CALCULATING OCCUPATIONAL HOURLY RATES (Dec. 19, 2025), *available at* https://www.sec.gov/files/method-occupational-hourly-rates.pdf.

The below table summarizes the estimated paperwork burdens associated with Rule 104(b) attributable to the "Rule 200 of Regulation Crypto Assets (Form NOR)" collection of information.

PRA Table 1. Calculation of the Burden Estimates for "Rule 200 of Regulation Crypto Assets (Form NOR)" Attributable to Rule 104(b).

Collection of Information	Estimated Number of Annual Responses (A)	Burden Hour per Response (B)	Total Annual Burden Hours (C) [(A) x (B)]	Company Hours (D) [(C) x 0.75]	Professional Hours (E) [(C) x 0.25]	Professional Costs (F) [(E) x $635]
Rule 104(b)	99	2	198	148.5	49.5	$31,432.50

b. Rule 200(c)

Rule 200(c) would require the issuer to file (and, in certain circumstances, amend a previously filed) Form NOR with the Commission in order to rely on the startup exemption.[551] Form NOR, in turn, would require the issuer to provide certain information regarding the issuer and the subject crypto asset, where to locate disclosures required to be made under Rule 200(d) (as discussed in section V.C.1.c below), and certain certifications regarding the information provided in the Form NOR as well as the issuer's intentions regarding the offering.[552]

The information that would be required to be included in a Form NOR is relatively limited, with even fewer disclosure requirements than Form D. Further, the circumstances under which an issuer would be required to amend a Form NOR generally are consistent with the amendment obligations with respect to a Form D. We believe it is appropriate, therefore, to assume that the burden associated with Rule 200(c) will be the same as the burden associated

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551 *See* proposed 17 CFR 200.200(c).

552 *See* proposed 17 CFR 239.605.

with Form D, which we estimate to be a total of four hours per response annually.[553] Consistent with our estimates for Form D, we further estimate that 25 percent of those four hours (one hour) will be performed internally by the issuer and that 75 percent of those four hours (three hours) will be performed externally be outside professionals (at a rate of $635 per hour).

Based on the 99 estimated number of annual responses to the "Rule 200 of Regulation Crypto Assets (Form NOR)" information collection, we estimate a total annual burden of 99 hours (one internal burden hour per response x 99 responses annually) and $188,595 (three hours of outside professional services per response x $635 per hour x 99 responses annually) associated with Rule 200(c), which would be attributed to the "Rule 200 of Regulation Crypto Assets (Form NOR)" information collection.

The below table summarizes the estimated paperwork burdens associated with Rule 200(c) attributable to the "Rule 200 of Regulation Crypto Assets (Form NOR)" collection of information.

PRA Table 2. Calculation of the Burden Estimates for "Rule 200 of Regulation Crypto Assets (Form NOR)" Attributable to Rule 200(c).

Collection of Information	Estimated Number of Annual Responses (A)	Burden Hour per Response (B)	Total Annual Burden Hours (C) [(A) x (B)]	Company Hours (D) [(C) x 0.25]	Professional Hours (E) [(C) x 0.75]	Professional Costs (F) [(E) x $635]
Rule 200(c)	99	4	396	99	297	$188,595

c. Rule 200(d)

553 These four hours reflect both the initial burdens associated with filing a Form NOR as well as the subsequent burdens associated with any amendments the issuer would be required to make to such Form NOR.

Rule 200(d) would require an issuer relying on the startup exemption to make the information described in Rule 103 publicly accessible, free of charge, at the website address specified in the notice of reliance at or prior to the time that the notice of reliance is filed with the Commission in accordance with Rule 200(c)(1).[554] Rule 200(d) also would require an issuer to keep that information publicly accessible and free of charge at the website address specified in the notice of reliance and periodically amend that information to reflect material changes.[555]

Because of the principles-based nature of the disclosure requirements set forth in proposed Rule 103, the burdens associated with Rule 200(d) may differ significantly from one issuer to another. Depending on their particular facts and circumstances, some issuers may be required to make extensive disclosures, while other issuers may be required to make relatively limited disclosures.

In order to derive the estimate for Rule 200(d), we note that, in adopting Regulation Crowdfunding, the Commission "estimate[d] that the average total burden to prepare and file the Form C, including any amendment to disclose any material change, will be approximately 100 hours."[556] The Commission further noted that, at that time, "the average burden per response for preparing and filing a Form 1-A [was estimated] to be approximately 750 hours."[557]

We recognize that there are several differences between the proposed disclosure requirements under Rule 200(d) (the substance of which would be set forth in Rule 103) and the information required to be provided by Form C and Form 1-A. Among other things, the proposed

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554 *See* proposed 17 CFR 228.200(d).

555 *Id.*

556 Crowdfunding Adopting Release at 71524.

557 *Id.* at 71523, n.1633. Our current total annual burden estimates for Form C and Form 1-A are 101 hours and 717.372 hours, respectively.

disclosure requirements are intended to elicit information that is unique to covered investment contracts and crypto assets. The proposed disclosure requirements also do not require a discussion of an issuer's financial condition or any financial statements or information, which could comprise a significant portion of the burden estimates for Form C and Form 1-A. Further, Rule 200(d) requires that the information be made publicly accessible and free of charge on a website of the issuer's choosing rather than filed on EDGAR. These differences suggest that an issuer may incur relatively lower burdens under Rule 200(d) than it would in connection with filing a Form C or Form 1-A.

In light of these differences between the requirements of Rule 200(d) and Forms C and 1-A, we estimate that Rule 200(d) would require each issuer relying on the startup exemption to expend 50 total burden hours in order to comply with the rule (i.e., half of the Commission's initial burden estimate for Form C).[558] That estimate reflects both the burdens associated with providing the initial disclosures under Rule 200(d), as well as the burdens associated with keeping that information publicly accessible and periodically amending that information to reflect material changes. In addition, we assume that 75 percent of those 50 total burden hours (37.5 hours) will be performed internally by the issuer and 25 percent of those 50 total burden hours (12.5 hours) will be performed externally by outside professionals (at a rate of $635 per hour).

Based on the 99 estimated number of annual responses to the "Rule 200 of Regulation Crypto Assets (Form NOR)" information collection, we estimate a total annual burden of 3,712.5 hours (37.5 internal burden hours per response x 99 responses annually) and $785,812.50 (12.5

[558] We base our estimated burden for Rule 200(d) on Form C rather than Form 1-A in part because the offering limit under the startup exemption ($5 million) corresponds to the offering limit under Regulation Crowdfunding ($5 million) than Regulation A ($75 million).

hours of outside professional services per response x $635 per hour x 99 responses annually) associated with Rule 200(d), which would be attributed to the "Rule 200 of Regulation Crypto Assets (Form NOR)" information collection. The below table summarizes the paperwork burdens associated with Rule 200(d) attributed to the "Rule 200 of Regulation Crypto Assets (Form NOR)" collection of information.

PRA Table 3. Calculation of the Burden Estimates for "Rule 200 of Regulation Crypto Assets (Form NOR)" Attributable to Rule 200(d).

Collection of Information	Estimated Number of Annual Responses (A)	Burden Hour per Response (B)	Total Annual Burden Hours (C) [(A) x (B)]	Company Hours (D) [(C) x 0.75]	Professional Hours (E) [(C) x 0.25]	Professional Costs (F) [(E) x $635]
Rule 200(d)	99	50	4,950	3,712.5	1,237.5	$785,812.50

d. Total "Rule 200 of Regulation Crypto Assets (Form NOR)" information collection

The below table summarizes the total estimated paperwork burdens of the "Rule 200 of Regulation Crypto Assets (Form NOR)" information collection attributed to Rules 104(b), 200(c), and 200(d).

PRA Table 4. Calculation of the Total Burden Estimates for "Rule 200 of Regulation Crypto Assets (Form NOR)."

Collection of Information	Estimated Number of Annual Responses (A)	Burden Hour per Response (B)	Total Annual Burden Hours (C) [(A) x (B)]	Company Hours (D) [(C) x 0.75 or 0.25]	Professional Hours (E) [(C) x 0.25 or 0.75]	Professional Costs (F) [(E) x $635]
Rule 104(b)	99	2	198	148.5	49.5	$31,432.50
Rule 200(c)	99	4	396	99	297	$188,595
Rule 200(d)	99	50	4,950	3,712.5	1,237.5	$785,812.50
Rule 200 of Regulation Crypto Assets (Form	***99***			***3,960***		***$1,005,840***

NOR)[a]					

[a] We present only the total estimated number of annual responses, internal burden hours, and professional costs in this row because these are the three values that would be reflected in the OMB inventory in connection with the proposed new "Rule 200 of Regulation Crypto Assets (Form NOR)" information collection.

2. Fundraising Exemption

As noted in section V.B.2 above, issuers' burdens associated with the fundraising exemption would be reflected in five different information collections: "Form 1-CRYPTO," "Form 1-KC," "Form 1-SC," "Form 1-UC," and "Form TR." This section discusses the burden estimates for all those information collections except for Form TR, which is discussed in section V.C.3 below.

As discussed in section II.C.2.a.i above, the fundraising exemption is modeled on Regulation A. Similarly, each of the forms that an issuer is required to file under the fundraising exemption is modeled on the corresponding form that is required to be filed under Regulation A. Nonetheless, there are several differences between the fundraising exemption, Regulation A, and the two sets of forms. For example, as with the startup exemption, the vast majority of the non-financial information requirements under the fundraising exemption (i.e., the disclosure requirements set forth in Rule 103) are intended to elicit information that is unique to covered investment contracts and crypto assets.

In addition, the Part I information requirements under Form 1-CRYPTO and Form 1-KC are more streamlined and simplified than the Part I information requirements under Form 1-A and Form 1-K. Further, although the proposed financial statements requirements are substantially similar to the corresponding requirements under Form 1-A, the discussion of financial condition required under Forms 1-CRYPTO, 1-KC, and 1-SC is based on the corresponding requirement in Regulation Crowdfunding rather than the discussion of financial condition required under

Regulation A. These differences may suggest that an issuer may incur relatively lower burdens under the fundraising exemption than it would under Regulation A.

Notwithstanding these differences, it is difficult to determine with certainty whether an issuer's burdens would be significantly lower under the fundraising exemption than under Regulation A. We do not expect the burdens would be higher than under Regulation A. Accordingly, we estimate that the fundraising exemption would require the same burdens as Regulation A. Thus, for each of the proposed forms that an issuer would be required to file under the proposed fundraising exemption, our burden estimate is the same as our current burden estimate for the corresponding form required to be filed under Regulation A. We discuss each form in turn below.

a. Form 1-CRYPTO

Offering statements filed under Regulation Crypto Assets would use new Form 1-CRYPTO. Consistent with the current burden estimate for Form 1-A, we estimate that Form 1-CRYPTO would require approximately 717.372 annual burden hours per filing.[559] We further estimate that 75 percent of those 717.372 total burden hours (538.029 hours) will be performed internally by the issuer and 25 percent of those 717.372 total burden hours (179.343 hours) will be performed externally by outside professionals (at a rate of $635 per hour).

Based on the 31 estimated number of offerings annually under the fundraising exemption, we estimate a total annual burden of 16,678.899 hours (538.029 internal burden hours per response x 31 responses annually) and $3,530,366.955 (179.343 hours of outside professional

[559] For accuracy of the calculations in this section, we did not round the preliminary figures to the nearest whole number. However, we did round the final calculations of the change in burden estimates of new responses resulting from the proposed rules. *See supra* note 568.

services per response x $635 per hour x 31 responses annually) associated with the "Form 1-CRYPTO" information collection.

The below table summarizes the estimated paperwork burdens attributable to the "Form 1-CRYPTO" information collection.

PRA Table 5. Calculation of the Total Burden Estimates for "Form 1-CRYPTO."

Collection of Information	Estimated Number of Annual Responses (A)	Burden Hour per Response (B)	Total Annual Burden Hours (C) [(A) x (B)]	Company Hours (D) [(C) x 0.75]	Professional Hours (E) [(C) x 0.25]	Professional Costs (F) [(E) x $635]
Form 1-CRYPTO	31	717.372	22,238.532	16,678.899	5,559.633	$3,530,366.955

b. Form 1-KC

Form 1-KC would be used for annual reports under Rule 305(a)(1) of Regulation Crypto Assets. Consistent with the current burden estimate for Form 1-K, we estimate that Form 1-KC would require approximately 600 annual burden hours per filing. We further estimate that 75 percent of those 600 total burden hours (450 hours) will be performed internally by the issuer and 25 percent of those 600 total burden hours (150 hours) will be performed externally by outside professionals (at a rate of $635 per hour).

Based on the 31 estimated number of offerings annually under the fundraising exemption,[560] we estimate a total annual burden of 13,950 hours (450 internal burden hours per response x 31 responses annually) and $2,952,750 (150 hours of outside professional services per response x $635 per hour x 31 responses annually) associated with the "Form 1-KC" information collection.

560 Although Form 1-K is only required to be filed by issuers conducting Tier 2 offerings under Regulation A, Form 1-KC would be required to be filed by issuers conducting either Tier 1 or Tier 2 offerings under the fundraising exemption.

The below table summarizes paperwork burdens attributable to the "Form 1-KC" information collection.

PRA Table 6. Calculation of the Total Burden Estimates for "Form 1-KC."

Collection of Information	Estimated Number of Annual Responses (A)	Burden Hour per Response (B)	Total Annual Burden Hours (C) [(A) x (B)]	Company Hours (D) [(C) x 0.75]	Professional Hours (E) [(C) x 0.25]	Professional Costs (F) [(E) x $635]
Form 1-KC	31	600	18,600	13,950	4,650	$2,952,750

c. Form 1-SC

Form 1-SC would be used for semiannual reports under Rule 305(a)(3) of Regulation Crypto Assets. Consistent with the current burden estimate for Form 1-SA, we estimate that Form 1-SC would require approximately 188.04 annual burden hours per filing. We further estimate that 85 percent of those 188.04 total burden hours (159.834 hours) will be performed internally by the issuer and 15 percent of those 188.04 total burden hours (28.206 hours) will be performed externally by outside professionals (at a rate of $635 per hour).

Based on the 31 estimated number of offerings annually under the fundraising exemption,[561] we estimate a total annual burden of 4,954.854 hours (159.834 internal burden hours per response x 31 responses annually) and $555,235.11 (28.206 hours of outside professional services per response x $635 per hour x 31 responses annually) associated with the "Form 1-SC" information collection.

The below table summarizes the paperwork burdens attributable to the "Form 1-SC" information collection.

[561] Although Form 1-SA is only required to be filed by issuers conducting Tier 2 offerings under Regulation A, Form 1-SC would be required to be filed by issuers conducting either Tier 1 or Tier 2 offerings under the fundraising exemption.

PRA Table 7. Calculation of the Total Burden Estimates for "Form 1-SC."

Collection of Information	Estimated Number of Annual Responses (A)	Burden Hour per Response (B)	Total Annual Burden Hours (C) [(A) x (B)]	Company Hours (D) [(C) x 0.85]	Professional Hours (E) [(C) x 0.15]	Professional Costs (F) [(E) x $635]
Form 1-SC	31	188.04	5,829.24	4,954.854	874.386	$555,235.11

d. Form 1-UC

Form 1-UC would be used for current reports under Rule 305(a)(4) of Regulation Crypto Assets. Consistent with the current burden estimate for Form 1-U, we estimate that Form 1-UC would require approximately five annual burden hours per filing. We further estimate that 85 percent of those five total burden hours (4.25 hours) will be performed internally by the issuer and 15 percent of those five total burden hours (0.75 hours) will be performed externally by outside professionals (at a rate of $635 per hour).

Based on the estimated 31 offerings annually under the fundraising exemption,[562] we estimate a total annual burden of 131.75 hours (4.25 internal burden hours per response x 31 responses annually) and $14,763.75 (0.75 hours of outside professional services per response x $635 per hour x 31 responses annually) associated with the "Form 1-UC" information collection.

The below table summarizes the estimated paperwork burdens attributable to the "Form 1-UC" information collection.

PRA Table 8. Calculation of the Total Burden Estimates for "Form 1-UC."

Collection of Information	Estimated Number of Annual Responses (A)	Burden Hour per Response (B)	Total Annual Burden Hours (C) [(A) x (B)]	Company Hours (D) [(C) x 0.85]	Professional Hours (E) [(C) x 0.15]	Professional Costs (F) [(E) x $635]

562 Although Form 1-U is only required to be filed by issuers conducting Tier 2 offerings under Regulation A, Form 1-UC would be required to be filed by issuers conducting either Tier 1 or Tier 2 offerings under the fundraising exemption.

Form 1-UC	31	5	155	131.75	23.25	$14,763.75

3. Form TR

As noted in section V.B above, an issuer may file a transition report on Form TR pursuant to the startup exemption (under proposed Rule 200(e)), the fundraising exemption (under proposed Rule 305(c) and (d)), or the investment contract safe harbor (under Rule 400(b)).

The "Form TR" information collection would reflect burdens associated with proposed Rules 200(e), 305(c) and (d), and 400(b). We discuss our burden estimates for each of those rules below. Based on the sum of the burden estimates for each of those rules as well as the estimated number of annual responses, we estimate a total annual burden of 11,179.65 hours and $2,365,375 for the "Form TR" information collection.

a. Rule 200(e)

Rule 200(e) would require an issuer relying on the startup exemption to file a transition report containing the information required by Form TR no later than four years after the date on which the issuer filed a notice of reliance in accordance with Rule 200(c)(1).[563] Form TR, in turn, would require an issuer making a filing pursuant to Rule 200(e) to disclose certain fundamental information (e.g., its name, jurisdiction of incorporation or formation, and contact information) as well certain other information that would depend on whether the issuer had, as of the time of the filing, satisfied the condition in Rule 400(a).[564]

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563 *See* proposed 17 CFR 228.200(e).

564 *See* proposed 17 CFR 239.604. If the issuer had satisfied the condition in Rule 400(a), then Form TR would require the issuer to provide the following: (1) a brief description of the crypto asset and associated crypto network or associated crypto application sufficient for a reasonable investor to identify the crypto asset and

Because the Form TR disclosure requirements would differ depending on whether an issuer has satisfied the condition in Rule 400(a), the burdens associated with Rule 200(e) also would differ from one issuer to another. Depending on their particular facts and circumstances, some issuers may be required to make extensive disclosures, while other issuers may be required to make relatively limited disclosures (e.g., if they had not satisfied the condition in Rule 400(a) and the crypto asset had not separated from the issuer's representations or promises). For purposes of this PRA analysis, we assume that each issuer filing a Form TR pursuant to Rule 200(e) would incur 20 total burden hours, with 75 percent of those 20 total burden hours (15 hours) being performed internally by the issuer and 25 percent of those 20 total burden hours (5 hours) being performed externally by outside professionals (at a rate of $635 per hour).

We assume that 25 percent of the issuers relying on the startup exemption would make a Form TR filing pursuant to Rule 200(e) each year. As such, based on the estimated 99 annual responses to the "Rule 200 of Regulation Crypto Assets (Form NOR)" information collection, we assume there would be 24.75 Form TR filings pursuant to Rule 200(e). Further, we estimate a total annual burden of 371.25 hours (15 internal burden hours per response x 24.75 responses annually) and $78,581.25 (five hours of outside professional services per response x $635 per

associated crypto network or associated crypto application to which the Form TR relates; (2) a certification that the issuer is not engaging in, and is not planning to and has not promised or represented that it will engage in, essential managerial efforts that primarily determine the value of the crypto asset; and (3) an analysis supporting that certification. If the issuer had not satisfied the condition in Rule 400(a), then Form TR would require the issuer to provide the following: (1) a brief description of the covered investment contract sufficient for a reasonable investor to identify the covered investment contract to which this Form TR relates; (2) a description of the current status of the covered investment contract, the subject crypto asset, and the associated crypto network or associated crypto application and the issuer's plans with respect to such covered investment contract, subject crypto asset, and associated crypto network or associated crypto application; and (3) if the issuer indicated that the crypto asset had separated from the issuer's representations or promises subject crypto asset and ceased to exist, an analysis supporting that determination.

hour x 24.75 responses annually) associated with Rule 200(e), which would be attributed to the "Form TR" information collection.

The below table summarizes the estimated paperwork burdens associated with Rule 200(e) for issuers relying on the startup exemption.

PRA Table 9. Calculation of the Burden Estimates for "Form TR" Attributable to Rule 200(e).

Collection of Information	Estimated Number of Annual Responses (A)	Burden Hour per Response (B)	Total Annual Burden Hours (C) [(A) x (B)]	Company Hours (D) [(C) x 0.75]	Professional Hours (E) [(C) x 0.25]	Professional Costs (F) [(E) x $635]
Rule 200(e)	24.75	20	495	371.25	123.75	$78,581.25

b. Rules 305(c) and (d)

Rule 305(c) and (d) would set forth transition reporting provisions that would apply equally to issuers in Tier 1 and Tier 2 offerings and set forth pathways to suspend or terminate ongoing reporting obligations under the fundraising exemption.[565]

Under Rule 305(c)(1), the duty to file reports under Rule 305(a) with respect to a class of securities held of record (as defined in 17 CFR 240.12g5-1) by less than 300 persons would be suspended for such class of securities immediately upon filing with the Commission a transition report on Form TR if the issuer of such class has filed all reports required to be filed under Rule 305 before the date of such Form TR filing for the shorter of: (i) the period since the issuer became subject to such reporting obligation; or (ii) its most recent three fiscal years and the portion of the current year preceding the date of filing Form TR. This proposed rule substantially mirrors Rule 257(d) of Regulation A.

565 *See* proposed 17 CFR 228.305(c) and (d).

The information that an issuer seeking to suspend its duty to report under Rule 305(c) would be required to provide under Form TR is substantially identical to the information required by Form 1-Z for an issuer seeking to suspend its duty to report under Rule 257(d). Thus, consistent with the current burden estimate for Form 1-Z, we estimate that a Form TR filed pursuant to Rule 305(c) would require approximately 1.5 annual burden hours per filing. We further estimate that 100 percent of those 1.5 total burden hours will be performed internally by the issuer. We assume that ten percent of the issuers relying on the fundraising exemption would make a Form TR filing pursuant to Rule 305(c) each year. As such, based on the estimated 31 issuers relying on the fundraising exemption annually, we assume there would be 3.1 Form TR filings pursuant to Rule 305(c) and a total annual burden of 4.65 hours (1.5 burden hours per response x 3.1 responses annually) associated with Rule 305(c), which would be attributed to the "Form TR" information collection.

The below table summarizes the estimated paperwork burdens attributable to Rule 305(c) for issuers relying on the fundraising exemption.

PRA Table 10. Calculation of the Burden Estimates for "Form TR" Attributed to Rule 305(c).

Collection of Information	Estimated Number of Annual Responses (A)	Burden Hour per Response (B)	Total Annual Burden Hours (C) [(A) x (B)]	Company Hours (D) [(C) x 1.00]	Professional Hours (E)	Professional Costs (F)
Rule 305(c)	3.1	1.5	4.65	4.65	0	$0

Under Rule 305(d)(2), if an issuer satisfies the condition in Rule 400(a) (i.e., the investment contract safe harbor) or the covered investment contract otherwise separates from the subject crypto asset and ceases to exist during the period in which the issuer is required to file reports under Rule 305(a), the issuer's obligation to file reports under Rule 305(a) will terminate immediately upon filing with the Commission a transition report on Form TR.

Form TR's information requirements for an issuer filing under Rule 305(d) are the same as those for an issuer filing under Rule 200(e). Thus, consistent with the burden estimates for Rule 200(e), we assume that each issuer filing a Form TR pursuant to Rule 305(d) would incur 20 total burden hours, with 75 percent of those 20 total burden hours (15 hours) being performed internally by the issuer and 25 percent of those 20 total burden hours (5 hours) being performed externally by outside professionals (at a rate of $635 per hour).

As noted in section V.B.2 above, we estimate that issuers would conduct 31 offerings annually under the fundraising exemption. For purposes of this PRA analysis, we assume that 25 percent of those issuers would terminate their duty to report under Rule 305(d) annually. Thus, we estimate a total of 7.75 Form TR filings pursuant to Rule 305(d) annually, with an annual burden of 116.25 hours (15 internal burden hours per response x 7.75 responses annually) and an annual cost burden of $24,606.25 (five hours of outside professional services per response x $635 per hour x 7.75 responses annually), each of which would be attributed to the "Form TR" information collection.

The below table summarizes the estimated paperwork burdens attributable to Rule 305(d) for issuers relying on the fundraising exemption.

PRA Table 11. Calculation of the Burden Estimates for "Form TR" Attributed to Rule 305(d).

Collection of Information	Estimated Number of Annual Responses (A)	Burden Hour per Response (B)	Total Annual Burden Hours (C) [(A) x (B)]	Company Hours (D) [(C) x 0.75]	Professional Hours (E) [(C) x 0.25]	Professional Costs (F) [(E) x $635]
Rule 305(d)	7.75	20	155	116.25	38.75	$24,606.25

c. Rule 400(b)

Rule 400 would provide that a covered investment contract will be deemed to have ceased to exist, and the crypto asset that was subject to the covered investment contract will be deemed not to constitute or represent or to 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, if the conditions set forth in Rule 400(a) and (b) are satisfied. Rule 400(a) would require that the issuer of the covered investment contract has completed or otherwise permanently ceased all essential managerial efforts that it represented or promised it would engage in under the covered investment contract and 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. Rule 400(b) would require the issuer of the covered investment contract to file a transition report on Form TR. Form TR, in turn, would require the issuer to disclose certain fundamental information (e.g., its name, jurisdiction of incorporation or formation, and contact information) as well as the same information that an issuer would be required to disclose if it were filing a Form TR under Rule 200(e) or 305(d) and it had satisfied the condition in Rule 400(a).

As noted in sections V.C.3.a and b above, we estimate that issuers filing a Form TR pursuant to Rule 200(e) or Rule 305(d) would incur 20 total burden hours per filing. The burden hours for those filings, however, may be more variable than the burden hours for an issuer filing a Form TR pursuant to Rule 400(b) because the Form TR disclosure requirements for an issuer filing pursuant to Rule 200(e) or 305(d) would differ depending on whether the issuer has satisfied the condition in Rule 400(a). By contrast, because all issuers filing a Form TR pursuant to Rule 400(b) must have satisfied the condition in Rule 400(a) in order to fit within the investment contract safe harbor, we assume that issuers filing a Form TR pursuant to Rule 400(b) will, on average, incur more burden hours than an issuer filing a Form TR pursuant to Rule 200(e) or 305(d). Thus, for purposes of this PRA analysis, we assume that each issuer filing a Form TR pursuant to Rule 400(b) would incur 30 total burden hours, with 75 percent of those 30 total burden hours (22.5 hours) being performed internally by the issuer and 25 percent of those 30 total burden hours (7.5 hours) being performed externally by outside professionals (at a rate of $635 per hour).

We assume that each of the 475 issuers that we estimate would rely on the investment contract safe harbor annually would file a Form TR pursuant to Rule 400(b). Thus, we estimate a total of 475 Form TR filings pursuant to Rule 400(b) annually, with an annual burden of 10,687.5 hours (22.5 internal burden hours per response x 475 responses annually) and an annual cost burden of $2,262,187.50 (7.5 hours of outside professional services per response x $635 per hour x 475 responses annually), each of which would be attributed to the "Form TR" information collection.

The below table summarizes the estimated paperwork burdens associated with Rule 400(b).

PRA Table 12. Calculation of the Burden Estimates for "Form TR" Attributable to Rule 400(b).

Collection of Information	Estimated Number of Annual Responses (A)	Burden Hour per Response (B)	Total Annual Burden Hours (C) [(A) x (B)]	Company Hours (D) [(C) x 0.75]	Professional Hours (E) [(C) x 0.25]	Professional Costs (F) [(E) x $635]
Rule 400(b)	475	30	14,250	10,687.5	3,562.5	$2,262,187.50

The below table summarizes the total estimated paperwork burdens of the "Form TR" information collection attributable to Rules 200(e), 305(c), 305(d), and 400(b).

PRA Table 13. Calculation of the Total Burden Estimates for "Form TR."

Collection of Information	Estimated Number of Annual Responses (A)	Burden Hour per Response (B)	Total Annual Burden Hours (C) [(A) x (B)]	Company Hours (D) [(C) x 0.75 or 1.00]	Professional Hours (E) [(C) x 0.25 or 0.00]	Professional Costs (F) [(E) x $635]
Rule 200(e)	24.75	20	495	371.25	123.75	$78,581.25
Rule 305(c)	3.1	1.5	4.65	4.65	0	$0
Rule 305(d)	7.75	20	155	116.25	38.75	$24,606.25
Rule 400(b)	475	30	14,250	10,687.5	3,562.5	$2,262,187.5
Form TR[a]	***510.6***			***11,179.65***		***$2,365,375***

[a] We present only the total estimated number of annual responses, internal burden hours, and professional costs in this row because these are the three values that would be reflected in the OMB inventory in connection with the proposed new "Form TR" information collection.

4. Form ID

Under the proposed rules, an issuer would be required to file specified disclosures with us on EDGAR. We anticipate that many issuers relying on Regulation Crypto Assets for the first time would not previously have filed an electronic submission with us and, therefore, would need to complete and submit Form ID, the application for access to file on EDGAR. The proposed rules would not change the form itself, but we anticipate that the number of Form ID filings would increase due to new issuers seeking to rely on Regulation Crypto Assets.

For purposes of this PRA analysis, we assume that all the issuers that would seek to offer and sell securities in reliance on the startup exemption (99 issuers) and the fundraising exemption (31 issuers) would not have filed an electronic submission with us previously and, therefore, would be required to file a Form ID.[566] In total, this would correspond to 130

[566] Conversely, we assume that all of the issuers that would rely on the investment contract safe harbor would have filed an electronic submission with us previously and, therefore, would not be required to submit a Form ID. That is, we assume that such issuers either would have relied on an existing exemption (if they offered or sold covered investment contracts before the proposed rules are adopted) or they would rely on either the startup exemption or the fundraising exemption before satisfying the investment contract safe harbor. *See supra* note 456 (noting that our economic analysis assumes that market participants are compliant with existing applicable Commission rules). For those issuers that have relied on an existing exemption to offer and sell covered investment contracts, we recognize that some existing exemptions on which they may rely do not require an

additional Form ID filings and a total annual burden of 78 hours for the "Form ID" information collection (130 filings x 0.6 hours/filing).[567]

Additionally, for purposes of this PRA analysis, we assume that each issuer filing a Form ID would incur 0.6 total burden hours, with 100 percent of those hours being handled internally by the issuer. The below table summarizes the estimated incremental paperwork burdens associated with Form ID.

PRA Table 14. Calculation of the Incremental Burden Estimates for "Form ID."

Collection of Information	Estimated Number of New Annual Responses (A)	Burden Hour per Response (B)	Incremental Change in Annual Burden Hours (C) [(A) x (B)]	Incremental Change in Company Hours (D) [(C) x 1.00]	Incremental Change in Professional Hours (E)	Incremental Change in Professional Costs (F)
Form ID	130	0.60	78	78	0	$0

The table below illustrates the estimated annual compliance burden of new information collections as a result of the proposed rules' estimated effect on the paperwork burden per response.

PRA Table 15. Calculation of the Change in Burden Estimates of New Responses Resulting from the Proposed Rules.[568]

New Collection of Information	Requested New Annual Responses (A)	Requested New Burden Hours (B)	Requested New Cost Burden (C)

electronic submission and, therefore, those issuers may not have been required to submit a Form ID. *See, e.g.*, 17 CFR 230.147. Therefore, to the extent those issuers would rely on the investment contract safe harbor, they would also be required to submit a Form ID. Because we cannot estimate the number of such issuers with precision, however, we have not accounted for them in the burden estimate for Form ID.

567 We do not estimate any cost burden associated with the additional Form ID submissions because we assume that 100 percent of the burden associated with a Form ID submission is performed internally by the issuer.

568 For purposes of the PRA, each of the requested new annual responses (column A) and the requested new burden hours (column B) are rounded to the nearest whole number and the requested new cost burden (column C) is rounded to the nearest dollar.

Rule 200 of Regulation Crypto Assets (From NOR)	99	3,960	$1,005,840
Form 1-CRYPTO	31	16,679	$3,530,367
Form 1-KC	31	13,950	$2,952,750
Form 1-SC	31	4,955	$555,235
Form 1-UC	31	132	$14,764
Form TR	511	11,180	$2,365,375

The table below illustrates the estimated change in annual compliance burdens of existing information collections as a result of the proposed rules' estimated effect on the paperwork burden per response.

PRA Table 16. Calculation of the Change in Burden Estimates of Current Responses Resulting from the Proposed Rules.

	Current Burden			**Program Change**			**Requested Change in Burden**		
Form	Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Change in Number of Responses (D)	Change in Company Hours (E)	Change in Professional Costs (F)	Annual Responses (G) [(A) + (D)]	Burden Hours (H) [(B) + (E)]	Cost Burden (I)
Form ID	82,483	49,490	$0	130	78	$0	82,613	49,568	$0

D. Collections of Information are Mandatory

The collections of information required under Regulation Crypto Assets would be mandatory for all issuers.

E. Confidentiality

The collections of information required under Regulation Crypto Assets would not be confidential, although issuers may request confidential treatment for certain information filed or materials submitted in conjunction with the filings.[569] A Form 1-CRYPTO that is non-publicly submitted by an issuer and later abandoned before being publicly filed with the Commission,

569 *See* 17 CFR 200.83; 17 CFR 230.406.

however, remains non-public, absent a request for such information under the Freedom of Information Act.[570]

F. Retention Period of Recordkeeping Requirements

Issuers would not be subject to recordkeeping requirements under Regulation Crypto Assets.

G. Request for Comment

We invite comment on all of the above estimates. In particular, we request comment on the assumptions and estimates described above with respect to how issuers would comply with the proposed information collection requests. Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to: (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) evaluate the accuracy of our estimate of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (4) evaluate whether there are ways to minimize the burden of the proposed collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and (5) evaluate whether the proposed rules would have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments about the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct them to the OMB Desk Officer for

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[570] 5 U.S.C. 552. The Commission's regulations that implement the Freedom of Information Act are at 17 CFR 200.80 *et seq*.

the Securities and Exchange Commission, MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov, and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, using any of the methods in the ADDRESSES section, with reference to File No. S7-2026-27. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-2026-27, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. PRESENT VALUES AND ANNUALIZED VALUES OF MONETIZED BENEFITS AND COSTS

In addition to discussing the benefits, costs, and reasonable alternatives in the economic analysis in section IV, consistent with the requirements of Executive Order 12866, and estimating burdens under the PRA in section V, the Commission reports estimated total monetized benefits and costs for all affected entities in two ways specified in OMB Circular A-4.[571] These additional analyses include only benefits and costs that are monetized in the economic analysis and thus do not encompass all of the proposed rules' benefits and costs. The two presentations are intended to address the fact that the various benefits and costs of the

[571] *See* Exec. Order No. 12866 (Sept. 30, 1993), 58 FR 51735, 51741 (Oct. 4, 1993) (requiring agencies to provide an analysis of benefits, costs, and regulatory alternatives to OIRA for significant regulatory actions); OMB, CIRCULAR A-4, at 31-34, 45 (Sept. 17, 2003) (providing guidance to agencies regarding compliance with Executive Order 12866); *see also* Exec. Order No. 14215 (Feb. 18, 2025), 90 FR 10447, 10448 (Feb. 24, 2025) (requiring independent agencies to comply with Exec. Order No. 12866). In addition, Executive Order 14192 requires agencies to provide their best approximation of the total costs or savings associated with each new regulation or repealed regulation consistent with the analyses required by Executive Order 12866. *See* Exec. Order No. 14192 (Jan. 31, 2025), 90 FR 9065, 9066 (Feb. 6, 2025).

proposed rules would not accrue at the same point in time; rather, benefits and costs that accrue sooner are generally more valuable than those that occur later in time.[572]

We report below (1) the present values of expected benefits and costs that are monetized in our economic analysis over a 10-year time horizon, starting in 2026, as well as (2) the annualized values over the same time horizon that are derived from the present values. This 10-year time horizon represents the period over which the principal benefits and costs that are monetized in the economic analysis are expected to accrue.[573] The present values and annualized values account for the timing of benefits and costs through discounting, which is a procedure that accounts for the time value of money.[574] The present values and annualized values are computed for total monetized benefits and costs, combining one-time and recurring monetized benefits and costs, across all affected entities over the time horizon.

Table 8 reports the present values of monetized benefits and costs using annual real discount rates of three percent and seven percent over a 10-year time horizon, starting in 2026.[575] It is important to note that the compliance costs for each exemption of the proposed rules are

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572 *See* CIRCULAR A-4, at 32.

573 *See* CIRCULAR A-4, at 31 (stating that "[t]he ending point should be far enough in the future to encompass all the significant benefits and costs likely to result from the rule"). For the purposes of this analysis, we assume the effective date of the proposed rule, as well as the start year for the analysis's 10-year time horizon, is the present year. The analysis uses calendar years and also accounts for the compliance periods included in the release (*see* note b in Table 8).

574 *See id.* at 32 ("The Rationale for Discounting") & 45 ("Treatment of Benefits and Costs over Time"); *see also* OIRA, REGULATORY IMPACT ANALYSIS: A PRIMER, at 11 (Aug. 15, 2011), *available at* https://www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf ("To provide an accurate assessment of benefits and costs that occur at different points in time or over different time horizons, an agency should use discounting. Agencies should provide benefit and cost estimates using both 3 percent and 7 percent annual discount rates expressed as a present value as well as annualized."); HARVEY S. ROSEN & TED GAYER, PUBLIC FINANCE 151 (8th ed. 2008) (defining present value as "the value today of a given amount of money to be paid or received in the future").

575 This approach is consistent with OMB Circular A-4. *See* CIRCULAR A-4, at 31-34 (stating that, "[f]or regulatory analysis, [agencies] should provide estimates of net benefits using both 3 percent and 7 percent" discount rates and discussing why those rates are reasonable default rates).

incurred only if issuers choose to avail themselves of the exemption. The proposed rules provide issuers of covered investment contracts with additional capital raising options to choose from. Issuers of covered investment contracts would have no obligation to rely upon provisions of the proposed rules. Therefore, they likely will only choose to rely upon provisions of the proposed rules to raise capital when doing so is more beneficial to them than the next best alternative. The analysis in Table 8 assumes a certain number of offerings under each exemption each year, based on the estimates provided in section V.[576] The monetized costs and benefits are based on the total number of annual offerings estimated and would increase or decrease depending on whether more issuers or fewer issuers make offerings under Regulation Crypto Assets.

Table 8: Present Value of Monetized Benefits and Costs over 10 years from 2026 to 2035 (2025 Dollars)[a]

Estimated Effects[b]	3% real discount rate	7% real discount rate
Benefits	n/a	n/a
Costs	\$370,241,903	\$310,712,064

Notes:

[a] This Table includes only benefits and costs that are monetized. As discussed in the economic analysis in section IV, there are other benefits and costs that we are not able to monetize. The analysis presented in this Table assumes a fixed number of offerings under each exemption each year, based on the estimates provided above in section V.B.

[b] For each discount rate, the present value calculations are based on the assumption that all one-time monetized costs accrue in the year in which affect entities choose to rely upon provisions of the proposed rules. The analysis presented in this Table assumes a fixed number of offerings under each exemption each year, based on the estimates provided above in section V.B. We assume that under the startup exemption there would be 99 issuers per year, each incurring 56 burden hours (*see supra* PRA Table 4), which translates into a total annual cost of \$3,520,440 (99 * 56 * \$635). We assume that under the fundraising exemption there would be 31 issuers per year, each incurring 1,510.412 burden hours (*see supra* PRA Tables 5, 6, 7, and 8), which translates into a total annual cost of \$29,732,460 (31 * 1,510.412 * \$635). We assume that for Form TR there would be 511 issuers per year, each incurring on average 71.5 burden hours (*see supra* PRA Table 13), which translates into a total annual cost of \$9,464,453 (14,904.65 * \$635). We assume that for Form ID there would be 130 issuers per year, each incurring 0.6 burden hours (*see supra* PRA Table 14), which translates into a total annual cost of \$49,530 (130 * 0.6 * \$635). Thus, our estimate of the annual cost for the proposed rules is \$42,766,883 (\$3,520,440 + \$29,732,460 + \$9,464,453 + \$49,530). The monetized costs and benefits are based on the total number of annual offerings estimated and would increase or decrease depending on whether more issuers or fewer issuers make offerings under Regulation Crypto Assets. We assume that monetized benefits and costs occur in a steady stream, and we use a mid-year discount rate.

[576] For an explanation of the basis for the estimate of the number of annual offerings used in this analysis, *see supra* section V.B.

Table 9 reports annualized monetized benefits and costs using real discount rates of three percent and seven percent over a 10-year horizon.[577] The lump sum present values of monetized benefits and costs reported in Table 8 are converted in Table 9 into a constant stream of annualized benefits and costs over a 10-year time horizon, starting in 2026.[578] Annualized benefits and costs may differ from the recurring monetized annual benefits and costs discussed earlier in this economic analysis because they incorporate the timing of benefits and costs, through discounting, and combine one-time and recurring benefits and costs.[579]

Table 9: Annualized Monetized Benefits and Costs over 10 years from 2026 to 2035 (2025 Dollars)[a]

Estimated Effects[b]	3% real discount rate	7% real discount rate
Benefits	n/a	n/a
Costs	$42,766,883	$42,766,883

Notes:

[a] This Table includes only benefits and costs that are monetized. As discussed in the economic analysis in section IV, there are other benefits and costs that we are not able to monetize. The analysis presented in this Table assumes a fixed number of offerings under each exemption each year, based on the estimates provided above in section V.B.

[b] For each discount rate, the annualized values are calculated by dividing the corresponding present values in Table 8 by the sum of discount factors over the time horizon. The discount factor in year *t* of the time horizon is equal to $1/(1 + discount\ rate)^{(t-0.5)}$.

In sum, Tables 8 and 9 report in two alternative ways expected total benefits and costs, across all affected entities, which are monetized in our economic analysis, using real discount rates of three percent and seven percent over a 10-year time horizon.

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577 This approach is consistent with the recommended treatment of benefits and costs over time in Circular A-4. *See* CIRCULAR A-4, at 45 ("You should present annualized benefits and costs using real discount rates of 3 and 7 percent.").

578 For each discount rate, the annualized monetized benefits (costs, respectively) in Table 9 represent the constant annual stream of benefits (costs, respectively) whose present value over the 10-year horizon equates the corresponding present value in Table 8. *See* note b, Table 9 for additional calculation details.

579 The annualized benefits and costs present these values over the 10-year time horizon, starting in the present year.

VII. CONGRESSIONAL REVIEW ACT

For purposes of Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act),[580] the Commission must seek OMB's determination as to whether a final regulation constitutes a "major rule." Under the Congressional Review Act, a rule is considered "major" when, if adopted, it results or is likely to result in: (1) an annual effect on the U.S. economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment, or innovation.[581]

To help inform OMB's determination as to whether any final rule that results from the proposal would be a "major rule," we solicit comment and data on: (1) the potential effect of the proposed rules on the U.S. economy on an annual basis; (2) any potential increase in costs or prices for consumers or individual industries; and (3) any potential adverse effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views, to the extent possible, to inform OMB's determination regarding whether any final rule following this proposal is likely to be a "major rule" for the purposes of the Congressional Review Act.

VIII. INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act ("RFA")[582] requires the agency to prepare and make available for public comment an Initial Regulatory Flexibility Analysis ("IRFA") that will describe the impact of the proposed rules on small

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580 *See* 5 U.S.C. chapter 8.

581 *See* 5 U.S.C. 804(2) (defining "major rule").

582 5 U.S.C. 601 *et seq*.

entities.[583] We have prepared, and made available for public comment, the following IRFA, in accordance with the RFA. This IRFA relates to proposed Regulation Crypto Assets, which is described in section II above.

A. Reasons for, and Objectives of, the Proposed Action

The proposed rules are intended to create a tailored offering regime for covered investment contracts to facilitate capital formation and accommodate innovation within the crypto asset markets while ensuring that investors are adequately protected and provided with the information they need to make informed investment decisions. The proposed rules would be set forth in a new regulation titled "Regulation Crypto Assets" and would include two exemptions from the registration requirements of section 5 of the Securities Act:

- The startup exemption, which would permit offerings of up to $5 million during a four-year period; and
- The fundraising exemption, which would permit offerings of up to $75 million during each 12-month period.

Under both exemptions, issuers would be required to make certain principles-based narrative disclosures available to their investors. In addition, issuers using the fundraising exemption would be required to provide financial statements and be subject to ongoing reporting requirements. The proposed rules also would include a conditional safe harbor from the term "investment contract" in the definitions of "security" in the Securities Act and the Exchange Act. If the conditions of that proposed safe harbor are satisfied, a crypto asset would be deemed not to be subject to an investment contract for purposes of those definitions of "security." The reasons

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[583] 5 U.S.C. 603(a).

for, and objectives of, the proposed rules are discussed in more detail in section II above.

B. Legal Basis

The rules contained in this release are being proposed under the authority set forth in the Securities Act, particularly sections 3(b), 18, 19(a), and 28 thereof, and the Exchange Act, particularly sections 3(b), 12, 13, 15, 23(a), and 36 thereof.

C. Small Entities Subject to the Proposed Rules

The proposed rules would affect some issuers that are small entities. The RFA defines "small entity" to mean "small business," "small organization," or "small governmental jurisdiction."[584] For purposes of the RFA, under 17 CFR 230.157 and 17 CFR 240.0-10(a), an issuer, other than an investment company, is a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities not exceeding $5 million.

It is difficult to predict the number of small businesses that would use proposed Regulation Crypto Assets that would qualify as a "small entity" due to the lack of reliable data or information that would allow us to estimate the number of issuers that would be able to rely on the proposed rules or that are likely to use them in the future. Nevertheless, we believe that the proposed rules will be used by many issuers that are considered small entities because the proposed rules would create an offering and disclosure framework specifically tailored to covered investment contracts, which would allow issuers to avoid undue costs. Particularly, the startup exemption, through its offering limit and tailored disclosure requirements, is designed to allow small entities in early stages of development that may not find it practical to do a

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[584] 5 U.S.C. 601(6).

traditional public offering to raise capital at a lower cost compared to some of the existing exemptions. Moreover, because the startup exemption would be available to entities, individuals, or a group of individuals or entities, it would be especially useful for smaller or early-stage issuers that may not have formed a legal entity.

As discussed above, we analyzed data available on the potential number of issuers that made crypto asset-related offerings under Regulation D, Regulation A, or Regulation Crowdfunding.[585] Based on this analysis, and for the reasons discussed above, we believe that at least 89 small entities will conduct offerings under the proposed rules per year.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

If adopted, the proposed rules would require the filing of new forms along with tailored disclosures (and, for one of the new forms, the use of XML), which would add to the compliance costs for issuers under the new offering regime for covered investment contracts. In addition, compliance with the proposed rules may require the use of professional skills, such as lawyers, accountants and auditors, financial managers, and information technology managers.[586] The proposed rules are discussed in detail in section II above. The economic impact, including the estimated compliance costs and paperwork burdens, of the proposed rules are discussed in detail in section IV and section V above.

The proposed rules would apply to small entities to the same extent as other entities, irrespective of size. We expect that the nature of any benefits and costs associated with the proposed rules to be generally similar for large and small entities. We also anticipate that the economic benefits and costs of the proposed rules likely could vary widely among all entities,

[585] *See supra* section IV.A.

[586] *See supra* note 550.

including small entities, primarily based on whether they conduct offerings of covered investment contracts and how frequently they do so.

As noted in section IV.A.1 above, we acknowledge that the proposed rules' compliance costs may be proportionally higher for smaller issuers than for larger issuers. We are unable to quantify or estimate with any degree of certainty the costs that a particular issuer may incur under the proposed rules. As noted in section V.C above, however, the estimated burdens associated with the proposed rules represent the average burden for all issuers, both large and small, and we recognize that those burdens likely will vary among individual issuers and from year to year based on a number of factors, including the nature of their business.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We do not believe the proposed rules would duplicate, overlap, or conflict with other existing Federal rules.

F. Significant Alternatives

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed rules, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and

- Exempting small entities from all or part of the requirements. [587]

The proposed rules are intended to create a tailored offering regime for covered investment contracts to facilitate capital formation and accommodate innovation within the crypto asset markets while ensuring that investors are adequately protected and provided with the information they need to make informed investment decisions. The disclosure, some of which would be provided in a machine-readable format, should permit investors to more quickly and efficiently evaluate information relating to offerings of covered investment contracts, on a more timely basis.

While we acknowledge that small entities are more likely to be affected by the costs of additional disclosure, we note that smaller entities may benefit significantly from the Commission's proposed exemptions because they would provide those entities with greater access to capital.[588] In addition, we note that the proposed exemptions could also promote competition between small and larger issuers of covered investment contracts because smaller issuers may be able to raise capital more easily given the likely decreased costs.[589]

Moreover, because small entities are more likely to have relatively high information asymmetries, we believe that investors in small entities will have a particular need for the information required by the proposed rules in a timely manner, and we have determined small entities should not be exempt from all or part of these requirements or be permitted delayed compliance. We note, however, that various aspects of the proposed rules are intended to minimize issuers' compliance costs. For example, we have proposed principles-based disclosure

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[587] *See supra* section IV.D.

[588] *See supra* section IV.A.

[589] *See supra* section IV.C.

requirements in Rule 103, applicable to both the startup exemption and the fundraising exemption, which may reduce compliance costs relative to a more prescriptive disclosure requirement. In addition, proposed Rule 200(d)(1) would require the issuer to make the information described in Rule 103 publicly accessible, free of charge, at the website address specified in the notice of reliance at or prior to the time that the notice of reliance is filed with the Commission. This proposed requirement is consistent with our understanding of current practice in many ICOs (in which the project's whitepaper is posted on the developer's public website) and is intended to be compatible with this existing practice in order to limit issuers' compliance costs, especially in view of the fact that many of these issuers are smaller and may not be familiar with EDGAR. These aspects of the proposed rules that are intended to reduce issuers' compliance costs may be particularly beneficial to small entities and, therefore, balance the objectives of the proposed rules with the needs of small entities for additional flexibilities that will mitigate compliance costs.

We have used design rather than performance standards in connection with the proposed rules because we are seeking specific information relating to an issuer's offering of covered investment contracts with the goal of enabling investors to better analyze those offerings. Thus, the objectives of the proposed rules are unlikely to be met using a performance standard.

G. Request for Comment

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposed rules;
- The existence or nature of the potential impact of the proposed rules on small entities discussed in the analysis;

- How the proposed rules could further lower the burden on small entities; and
- How to quantify the impact of the proposed rules.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules themselves.

STATUTORY AUTHORITY

The rules and forms contained in this document are being proposed under the authority set forth in the Securities Act, particularly, sections 3(b), 18, 19(a), and 28 thereof, 15 U.S.C. 77a *et seq*., and the Exchange Act, particularly, sections 3(b), 12, 13, 23(a) and 36 thereof, 15 U.S.C. 78a *et seq*.

List of Subjects

17 CFR Part 200 and 201

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Parts 228, 230, and 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Administrative practice and procedure, Electronic filing, Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

For the reasons stated in the preamble, the Commission is proposing to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 200 – ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, and 557; 11 U.S.C. 901 and 1109(a); 15 U.S.C. 77c, 77e, 77f, 77g, 77h, 77j, 77*o,* 77q, 77s, 77u, 77z-3, 77ggg(a), 77hhh, 77sss, 77uuu, 78b, 78c(b), 78d, 78d-1, 78d-2, 78e, 78f, 78g, 78h, 78i, 78k, 78k-1, 78*l,* 78m, 78n, 78*o,* 78*o*-4, 78q, 78q-1, 78t-1, 78u, 78w, 78*ll*(d), 78mm, 78eee, 80a-8, 80a-20, 80a-24, 80a-29, 80a-37, 80a-41, 80a-44(a), 80a-44(b), 80b-3, 80b-4, 80b-5, 80b-9, 80b-10(a), 80b-11, 7202, and 7211 *et seq.;* 29 U.S.C. 794; 44 U.S.C. 3506 and 3507; Reorganization Plan No. 10 of 1950 (15 U.S.C. 78d); sec. 8G, Pub. L. 95-452, 92 Stat. 1101 (5 U.S.C. App.); sec. 913, Pub. L. 111-203, 124 Stat. 1376, 1827; sec. 3(a), Pub. L. 114-185, 130 Stat. 538; E.O. 11222, 30 FR 6469, 3 CFR, 1964-1965 Comp., p. 36; E.O. 12356, 47 FR 14874, 3 CFR, 1982 Comp., p. 166; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Information Security Oversight Office Directive No. 1, 47 FR 27836; and 5 CFR 735.104 and 5 CFR parts 2634 and 2635, unless otherwise noted.

2. Amend § 200.30-1 by adding paragraph (n) to read as follows:

§ 200.30-1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(n) With respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq*.) and Regulation Crypto Assets (17 CFR part 228):

(1) To authorize the granting of applications under § 228.104 of this chapter upon a showing of good cause that it is not necessary under the circumstances that an exemption under Regulation Crypto Assets be denied;

(2) To determine the date and time of qualification for offering statements and amendments to offering statements pursuant to § 228.302(e) of this chapter;

(3) To consent to the withdrawal of an offering statement or to declare an offering statement abandoned pursuant to § 228.307 of this chapter; and

(4) To deny a transition report filing pursuant to § 228.307 of this chapter.

PART 201—RULES OF PRACTICE

Subpart D—Rules of Practice

3. The authority citation for Part 201, Subpart D, continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h-1, 77j, 77s, 77u, 77sss, 78c(b), 78d-1, 78d-2, 78*l,* 78m, 78n, 78*o*(d), 78*o*-3, 78*o*-10(b)(6), 78s, 78u-2, 78u-3, 78v, 78w, 80a-8, 80a-9, 80a-37, 80a-38, 80a-39, 80a-40, 80a-41, 80a-44, 80b-3, 80b-9, 80b-11, 80b-12, 7202, 7215, and 7217.

4. Amend § 201.431 by revising paragraph (e)(3)to read as follows:

§ 201.431 Commission consideration of actions made pursuant to delegated authority.

* * * * *

(e) * * *

(3) To determine the effectiveness of a registration statement, or a post-effective amendment thereto, or the qualification of an offering statement, or a post-qualification amendment hereto, as authorized by 17 CFR 200.30-1(a)(1), 200.30-1(a)(5), 200.30-1(b)(2), 200.30-1(f)(1), 200.30-1(f)(6), and 200.30-1(n)(2), or 17 CFR 200.30-5(b), 200.30-5(c)(3), 200.30-5(c)(4), and 200.30-5(c)(6).

* * * * *

5. Add part 228 to read as follows:

PART 228 – REGULATION CRYPTO ASSETS

Authority: 15 U.S.C. 77c, 77r(b)(3), 77s, 77z-3, 78c(b), 78w, and 78mm.

Subpart A – General

§ 228.100 Definitions of terms used in Regulation Crypto Assets.

As used in this Regulation Crypto Assets (17 CFR Part 228) and in Form 1-CRYPTO, Form 1-KC, Form 1-SC, Form 1-UC, Form TR, and Form NOR (§§ 239.600 through 605 of this chapter), all terms have the same meanings as in Rule 405 (§ 230.405 of this chapter), except that all references to *registrant* in those definitions shall refer to the issuer of the securities to be offered and sold under Regulation Crypto Assets. In addition, the following definitions apply unless the context otherwise requires:

Aggregate offering price and aggregate sales. “Aggregate offering price” means the sum of all cash and other consideration to be received for the covered investment contracts being offered. “Aggregate sales” means the gross proceeds for all securities sold pursuant to other offering statements under Regulation Crypto Assets within the 12 months before the start of, and during, the current offering of securities. Where a mixture of cash and non-cash consideration is to be received, the aggregate offering price must be based on the price at which the covered investment contracts are offered for cash. Any portion of the aggregate offering price or aggregate sales attributable to cash received in a foreign currency must be translated into United States currency at a currency exchange rate in effect on, or at a reasonable time before, the date of the sale of the covered investment contracts. If covered investment contracts are not offered for cash, the aggregate offering price or aggregate sales must be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Valuations of non-cash consideration must be reasonable at the time made.

Associated crypto application. "Associated crypto application" means, with respect to a crypto asset, the smart contract or similar executable software program that is deployed to an associated crypto network and within which such crypto asset may be used for the transmission or storage of value or for which the crypto asset facilitates access or participation.

Associated crypto network. "Associated crypto network" means, with respect to a crypto asset, the blockchain or similar distributed ledger technology network on which such crypto asset is generated, minted, or mined.

Business day. "Business day" means any day except Saturdays, Sundays, or Federal holidays.

Covered investment contract. "Covered investment contract" means a contract, transaction, or scheme involving a crypto asset that constitutes an investment contract; *provided* that the investment contract must meet the following requirements: (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.

Covered transaction. "Covered transaction" means an offer, sale, or other distribution of a covered investment contract in reliance on the startup exemption, including, but not limited to:

(1) Any public or private offering, including a distribution, of a covered investment contract in one or a series of capital raising transactions; or

(2) Any public or private offering, including a distribution and transactions referred to as "airdrops," of a covered investment contract in one or a series of transactions in exchange for, in recognition of, as or incentive for past or future use of an associated crypto network or associated

crypto application, or as a reward or incentive for conducting activities primarily related to operating, governing, or securing an associated crypto network or associated crypto application.

Crypto asset. "Crypto asset" means any digital representation of value that is recorded on a cryptographically-secured distributed ledger.

Final offering circular. "Final offering circular" means:

(1) If the issuer is not relying on Rule 302(b) ((§ 228.302(b)), the more recent of:

(i) The current offering circular contained in a qualified offering statement; and

(ii) Any offering circular filed pursuant to Rule 302(f) (§ 228.302(f)).

(2) If the issuer is relying on Rule 302(b) ((§ 228.302(b)), the more recent of:

(i) The offering circular filed pursuant to Rule 302(f)(1) or (3) (§ 228.302(f)(1) or (3)); and

(ii) Any subsequent offering circular filed pursuant to Rule 302(f) (§ 228.302(f)).

Related person. "Related person" means, 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.

Subject crypto asset. "Subject crypto asset" means a crypto asset that is subject to a covered investment contract.

§ 228.101 General provisions.

(a) *Non-exclusive*. Attempted compliance with any exemption or safe harbor in this Regulation Crypto Assets does not act as an exclusive election; an issuer also may claim the availability of any other applicable exemption or safe harbor for which it meets the requirements.

(b) *Integration*. To determine whether offers and sales should be integrated, see § 230.152.

(c) *Electronic filing*. Documents filed or otherwise provided to the Commission pursuant to this Regulation Crypto Assets must be submitted in electronic format by means of EDGAR in accordance with the electronic filing rules set forth in Regulation S-T (part 232 of this chapter).

(d) *Insignificant deviations*.

(1) A failure to comply with a term, condition, or requirement of this Regulation Crypto Assets will not result in the loss of any exemption under this Regulation Crypto Assets from the requirements of section 5 of the Securities Act for any offer or sale to a particular individual or entity, if the person relying on the exemption establishes that:

(i) The failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity;

(ii) The failure to comply was insignificant with respect to the offering as a whole; and

(iii) A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of this Regulation Crypto Assets.

(2) A transaction made in reliance upon an exemption under Regulation Crypto Assets must comply with all applicable terms, conditions, and requirements of the regulation. Where an exemption is established only through reliance upon paragraph (1) of this section, the failure to comply is nonetheless actionable by the Commission under section 20 of the Securities Act.

(3) Paragraph (d)(1) of this section will not preclude the Commission from bringing an enforcement action seeking any appropriate relief or a proceeding under § 228.306 for an issuer’s failure to comply with all applicable terms, conditions, and requirements of this Regulation Crypto Assets.

(e) *Number of units and price per unit*.

(1) For purposes of determining the number of units of covered investment contracts as

required by any rule or form in Regulation Crypto Assets, one unit of a covered investment contract is equivalent to one unit of the subject crypto asset.

(2) For purposes of determining the price per unit of a covered investment contract as required by any rule or form in Regulation Crypto Assets, such price should be determined by reference to the price per unit of the subject crypto asset.

Note to paragraph (e). For example, if an issuer sells a covered investment contract to an investor for $100, and the covered investment contract contemplates that the issuer will distribute 10 units of the subject crypto asset to the investor, then at the time of the sale of the covered investment contract, the investor is deemed to have purchased 10 units of the covered investment contract at a price of $10 per unit of covered investment contract.

§ 228.102 Inflation adjustment for offering limits.

The Commission periodically, but not less than once every five years, must adjust the offering amount limitations in § 228.200 and subpart C of this Regulation Crypto Assets to reflect any changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

§ 228.103 Disclosure requirements.

(a) *General disclosure principles*. Information provided under Regulation Crypto Assets should be tailored to the issuer, the subject crypto asset, and the associated crypto network or associated crypto application and should be presented in clear, concise, and understandable language, without overly relying on technical terminology or jargon. Each issuer should consider its own facts and circumstances when preparing this information. Information provided should address the current stage of development of the issuer, the subject crypto asset, and the associated crypto network or associated crypto application and should clearly delineate any forward-looking or future plans of development. Information provided should 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) relating to material aspects of the issuer, the subject crypto asset, and the associated crypto network or associated crypto application. Issuers should note 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.

(b) *Disclosure to be provided*. An issuer that is relying on § 228.200 or subpart C of this Regulation Crypto Assets must disclose the following information in accordance with the requirements set forth in those exemptions:

(1) *Covered investment contract*. A description of the material terms of the covered investment contract, including the issuer's representations or promises to engage in essential managerial efforts under the covered investment contract and its progress with respect to such representations or promises, a purchaser's obligations under the covered investment contract, any conditions to the covered investment contract, and any other material terms.

(2) *Offering*. A description of the material terms of the offering, including:

(i) The number of units of covered investment contracts to be offered, the purchase price per unit (or how the purchase price per unit will be determined), the duration of the offering period, and any qualifications for or restrictions on purchasers in the offering;

(ii) Any material agreements in furtherance of the distribution of covered investment contracts in the offering;

(iii) The estimated net offering sale proceeds and expenses to be paid with the offering proceeds;

(iv) The intended use of proceeds from any sales in the offering; and

(v) The website address at which any whitepapers or other offering materials that the issuer prepared and distributed, either publicly or to prospective purchasers in connection with the offering, are publicly accessible, free of charge.

(3) *Subject crypto asset*. A description of the material aspects of the subject crypto asset.

(4) *Management, related persons, and conflicts of interest*. A description of:

(i) The material aspects of the issuer's management and related persons;

(ii) The material aspects of any conflicts of interest or related person transactions involving the issuer; and

(iii) Whether related persons are subject to any transfer or resale restriction(s) with respect to the covered investment contract or subject crypto asset and, if so, the material terms of such restriction(s).

(5) *Associated crypto network/application; plan of development*. A description of the material aspects of the associated crypto network or associated crypto application and the issuer's plan of development with respect to the associated crypto network or associated crypto application, including the issuer's progress with respect to its plan of development.

(6) *Security; source code*. 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 code underlying the associated crypto network or associated crypto application (also referred to as "source code") is accessible.

(7) *Subject crypto asset economics and allocations*. A description of the material aspects of the subject crypto asset's economics and allocations, including the subject crypto asset's

supply, pricing, lockups, distribution methods, holdings by related persons, and release schedules, the associated crypto network or associated crypto application's mechanisms for generating and destroying subject crypto assets, and methods to verify the subject crypto asset's transaction history.

(8) *Governance*. A description of the material aspects of the subject crypto asset's and associated crypto network's or associated crypto application's governance mechanisms, smart contract governance mechanisms, and permissions.

(9) *Subject crypto asset ecosystem*. A description of the material aspects of the subject crypto asset's current and anticipated ecosystem (i.e., 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), "onchain" and "offchain," including information regarding the technology infrastructure, types of participants, and other parties and systems using the subject crypto asset and the associated crypto network or associated crypto application.

(10) *Risk factors.* A description, in short, concise statements, of the material factors that make an investment in the offering speculative or risky, including risks related to the covered investment contract, the issuer, the subject crypto asset, and the associated crypto network or associated crypto application. This 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.

§ 228.104 Disqualification.

(a) *Disqualification events*. No exemption under Regulation Crypto Assets is available for a sale of securities if the issuer or any type of person listed in § 230.262(a) of this chapter would be subject to disqualification under § 230.262 of this chapter; *provided*, *however*, that such disqualification shall not apply with respect to any conviction, order, judgment, decree, suspension, expulsion, or bar that occurred or was issued before [INSERT EFFECTIVE DATE OF FINAL RULE, IF ADOPTED].

Instruction to paragraph (a). References to “§§ 230.251 through 230.263” or “Regulation A” in § 230.262(a) should, for purposes of this paragraph, be read as references to “§§ 228.100 through 228.500” or “Regulation Crypto Assets,” as appropriate.

(b) *Disclosure of prior “bad actor” events.* The issuer must include in the offering circular, or otherwise furnish to each purchaser, a reasonable time prior to sale, a description in writing of any matters that would have triggered disqualification under paragraph (a) of this section but occurred before [INSERT EFFECTIVE DATE OF FINAL RULE, IF ADOPTED]. The failure to provide such information will not prevent an issuer from relying on an exemption in this Regulation Crypto Assets if the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known of the existence of the undisclosed matter or matters.

Instruction to paragraph (b). An issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the required factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

Subpart B – Startup exemption

§ 228.200 Startup exemption.

(a) *Exemption*. A covered transaction is exempt from the registration requirements of section 5 of the Securities Act if the conditions in paragraph (b) of this section are satisfied.

(b) *Conditions*.

(1) *Four-year duration*. The covered transaction must occur during the period beginning after the issuer has filed a notice of reliance in accordance with paragraph (c)(1) of this section and ending on the date that is the earlier of:

(i) Four years after the date of such filing; and

(ii) The date on which the issuer files a transition report pursuant to paragraph (e) of this section.

(2) *Issuer eligibility*. The issuer may 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 (or an authorized person of such member) must sign the notice of reliance and transition report (as discussed in paragraphs (c) and (e) of this section, respectively) and provide the certifications thereunder, and each member of the group individually, and the group collectively, must satisfy each condition in this paragraph (b).

(3) *One-time use*. The issuer and its affiliates must not have previously relied on the exemption in this section with respect to the same subject crypto asset, or a substantially similar crypto asset, other than with respect to covered transactions that occurred during the period set forth in paragraph (b)(1) of this section.

(4) *Offering limit*. 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 current covered transaction must not exceed $5,000,000.

(5) *Disclosure and filing requirements*. The issuer must satisfy the disclosure and filing requirements set forth in paragraphs (c), (d), and (e) of this section.

(6) *General conditions.* The issuer must satisfy the applicable requirements set forth in subpart A of this Regulation Crypto Assets.

(c) *Notice of reliance.*

(1) The issuer must file with the Commission a notice of reliance containing the information required by Form NOR (§ 239.605) prior to the commencement of any covered transaction.

(2) The issuer may file an amendment to a previously filed notice of reliance on Form NOR at any time.

(3) During the period described in paragraph (b)(1) of this section, the issuer must file an amendment to a previously filed notice of reliance on Form NOR:

(i) To correct a material mistake of fact or error in the previously filed notice of reliance, as soon as practicable after discovery of the mistake or error; or

(ii) To reflect a material change in the information provided in the previously filed notice of reliance, as soon as practicable after the change.

(d) *Disclosure requirements*.

(1) The issuer must make the information described in § 228.103 publicly accessible, free of charge, at the website address specified in the notice of reliance at or prior to the time that the notice of reliance is filed with the Commission in accordance with paragraph (c)(1) of this section.

(2) The issuer must ensure that the information disclosed under paragraph (d)(1) of this section remains publicly accessible, free of charge, at the website address specified in the notice of reliance for the duration of the period described in paragraph (b)(1) of this section.

(3) During the period described in paragraph (b)(1) of this section, the issuer must amend the information disclosed under paragraph (d)(1) of this section 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.

(e) *Transition report*. The issuer must file with the Commission a transition report containing the information required by Form TR (§ 239.604) no later than four years after the date on which the issuer filed a notice of reliance in accordance with paragraph (c)(1) of this section.

Subpart C – Fundraising Exemption

§ 228.300 Scope of exemption.

(a) *Tier 1 and Tier 2*. A public offer or sale of covered investment contracts (for the purposes of this subpart, "securities" or "eligible securities") under this subpart is exempt from the registration requirements of section 5 of the Securities Act.

(1) *Tier 1*. Offerings under this subpart in which the sum of the aggregate offering price and aggregate sales by the issuer and its affiliates does not exceed $20,000,000, including not more than $6,000,000 offered by all selling securityholders that are affiliates of the issuer ("Tier 1 offerings").

(2) *Tier 2*. Offerings under this subpart in which the sum of the aggregate offering price and aggregate sales by the issuer and its affiliates does not exceed $75,000,000, including not more than $22,500,000 offered by all selling securityholders that are affiliates of the issuer ("Tier 2 offerings").

(3) *Additional limitation on secondary sales in first year*. The portion of the aggregate offering price attributable to the securities of selling securityholders shall not exceed 30 percent of the aggregate offering price of a particular offering in:

(i) The issuer's first offering under this section; or

(ii) Any subsequent offering under this section that is qualified within one year of the qualification date of the issuer's first offering.

(b) *Issuer*. The issuer of the securities:

(1) Is an entity organized under, and subject to, the laws of the United States, or any State or territory of the United States or the District of Columbia; *provided* further that (i) a majority of the issuer's executive officers or directors must be U.S. citizens or residents, (ii) more than 50 percent 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;

(2) Is not a development stage company that either has no specific business plan or purpose, or has indicated that its business plan is to merge with or acquire an unidentified company or companies;

(3) Is not an investment company registered or required to be registered under the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a-1 *et seq*.) or a business development company as defined in section 2(a)(48) of the Investment Company Act (15 U.S.C. 80a-2(a)(48));

(4) Is not, and has not been, subject to any order of the Commission entered pursuant to section 12(j) (15 U.S.C. 78l(j)) of the Exchange Act within five years before the filing of the offering statement; *provided, however*, that this exclusion will not apply to any issuer subject to any order of the Commission entered pursuant to section 12(j) (15 U.S.C. 78l(j)) of the Exchange Act before [INSERT EFFECTIVE DATE OF FINAL RULE, IF ADOPTED].

(5) Has filed with the Commission all reports required to be filed, if any, pursuant to § 228.305 or pursuant to section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 15 U.S.C.

78o) during the two years before the filing of the offering statement (or for such shorter period that the issuer was required to file such reports); and

(6) Has satisfied the applicable requirements set forth in subpart A of this Regulation Crypto Assets.

(c) *Offering conditions* —

(1) *Offers*.

(i) Except as allowed by § 228.304, no offer of securities may be made unless an offering statement has been filed with the Commission.

(ii) After the offering statement has been filed, but before it is qualified:

(A) Oral offers may be made;

(B) Written offers pursuant to § 228.303 may be made; and

(C) Solicitations of interest and other communications pursuant to § 228.304 may be made.

(iii) Offers may be made after the offering statement has been qualified, but any written offers must be accompanied with or preceded by the most recent offering circular filed with the Commission for such offering.

(2) *Sales*.

(i) No sale of securities may be made:

(A) Until the offering statement has been qualified;

(B) By issuers that are not currently subject to the reporting requirements of § 228.305(a), until a Preliminary Offering Circular is delivered at least 48 hours before the sale to any person that before qualification of the offering statement had indicated an interest in purchasing securities in the offering, including those persons that responded to an issuer's solicitation of interest materials; and

(C) Unless the purchaser is either an accredited investor (as defined in § 230.501 of this chapter) or the aggregate purchase price to be paid by the purchaser for the securities is no more than 10 percent of the greater of that purchaser's:

(1) Annual income or net worth if a natural person (with annual income and net worth for such natural person purchaser determined as provided in § 230.501 of this chapter); or

(2) Revenue or net assets for such purchaser's most recently completed fiscal year end if a non-natural person.

(D) The issuer may rely on a representation of the purchaser when determining compliance with the 10 percent investment limitation in paragraph (c)(2)(i)(C), provided that the issuer does not know at the time of sale that any such representation is untrue.

(ii) In a transaction that represents a sale by the issuer or an underwriter, or a sale by a dealer within 90 calendar days after qualification of the offering statement, each underwriter or dealer selling in such transaction must deliver to each purchaser from it, not later than two business days following the completion of such sale, a copy of the Final Offering Circular, subject to the following provisions:

(A) If the sale was by the issuer and was not effected by or through an underwriter or dealer, the issuer is responsible for delivering the Final Offering Circular as if the issuer were an underwriter;

(B) For continuous or delayed offerings under paragraph (c)(3) of this section, the 90-calendar day period for dealers shall commence on the day of the first bona fide offering of securities under such offering statement;

(C) If the security is listed on a registered national securities exchange, no offering circular need be delivered by a dealer more than 25 calendar days after the later of the qualification date of the offering statement or the first date on which the security was bona fide offered to the public;

(D) No offering circular need be delivered by a dealer if the issuer is subject, immediately prior to the time of the filing of the offering statement, to the reporting requirements of § 228.305(a); and

(E) The Final Offering Circular delivery requirements set forth in paragraph (c)(2)(ii) of this section may be satisfied by delivering a notice to the effect that the sale was made pursuant to a qualified offering statement that includes the uniform resource locator ("URL"), which, in the case of an electronic-only offering, must be an active hyperlink, where the Final Offering Circular, or the offering statement of which such Final Offering Circular is part, may be obtained on EDGAR and contact information sufficient to notify a purchaser where a request for a Final Offering Circular can be sent and received in response.

(3) *Continuous or delayed offerings*.

(i) Continuous or delayed offerings may be made under this Regulation Crypto Assets, so long as the offering statement pertains only to:

(A) Securities that are to be offered or sold solely by or on behalf of a person or persons other than the issuer, a subsidiary of the issuer, or a person of which the issuer is a subsidiary;

(B) Securities that are to be offered and sold pursuant to an employee benefit plan of the issuer;

(C) Securities that are to be issued upon the exercise of outstanding options, warrants, or rights;

(D) Securities that are to be issued upon conversion of other outstanding securities;

(E) Securities that are pledged as collateral; or

(F) Securities the offering of which will be commenced within two business days after the qualification date, will be made on a continuous basis, may continue for a period in excess of 30 calendar days from the date of initial qualification, and will be offered in an amount that, at the time the offering statement is qualified, is reasonably expected to be offered and sold within two years from the initial qualification date. These securities may be offered and sold only if not more than three years have elapsed since the initial qualification date of the offering statement under which they are being offered and sold; provided, however, that if a new offering statement has been filed pursuant to this paragraph (c)(3)(i)(F), securities covered by the prior offering statement may continue to be offered and sold until the earlier of the qualification date of the new offering statement or 180 calendar days after the third anniversary of the initial qualification date of the prior offering statement. Before the end of such three-year period, an issuer may file a new offering statement covering the securities. The new offering statement must include all the information that would be required at that time in an offering statement relating to all offerings that it covers. Before the qualification date of the new offering statement, the issuer may include as part of such new offering statement any unsold securities covered by the earlier offering statement by identifying on the cover page of the new offering circular, or the latest amendment, the amount of such unsold securities being included. The offering of securities on the earlier offering statement will be deemed terminated as of the date of qualification of the new offering statement. Securities may be sold pursuant to this paragraph (c)(3)(i)(F) only if the issuer is current in its annual and semiannual filings under § 228.305(a), at the time of such sale.

(ii) At the market offerings, by or on behalf of the issuer or otherwise, are not permitted under this exemption. As used in this paragraph (c)(3)(ii), the term at the market offering means an offering of securities at other than a fixed price.

(d) *Confidential treatment*. A request for confidential treatment may be made under § 230.406 of this chapter for information required to be filed, and § 200.83 of this chapter for information not required to be filed.

§ 228.301 Offering statement.

(a) *Documents to be included*. The offering statement consists of the contents required by Form 1-CRYPTO (§ 239.600) and any other material information necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(b) *Filing fees*. No fee is payable to the Commission upon either the submission or filing of an offering statement on Form 1-CRYPTO, or any amendment to an offering statement.

(c) *Signatures*. The issuer, its principal executive officer, principal financial officer, principal accounting officer, and a majority of the members of its board of directors or other governing body, must sign the offering statement in the manner prescribed by Form 1-CRYPTO. If a signature is by a person on behalf of any other person, evidence of authority to sign must be filed, except where an executive officer signs for the issuer.

(d) *Non-public submission*. An issuer may submit a draft offering statement to the Commission for non-public review by the staff of the Commission before public filing, provided that the offering statement shall not be qualified less than 15 calendar days after the public filing with the Commission of:

(1) The initial non-public submission; and

(2) All non-public amendments.

(e) *Qualification*. An offering statement and any amendment thereto can be qualified only at such date and time as the Commission may determine.

(f) *Amendments*.

(1) General rules for amendments:

(i) Amendments to an offering statement must be signed and filed with the Commission in the same manner as the initial filing. Amendments to an offering statement must be filed under cover of Form 1-CRYPTO and must be numbered consecutively in the order in which filed.

(ii) Every amendment that includes amended audited financial statements must include the consent of the certifying accountant to the use of such accountant's certification in connection with the amended financial statements in the offering statement or offering circular and to being named as having audited such financial statements.

(iii) Amendments solely relating to Part III of Form 1-CRYPTO must comply with the requirements of paragraph (f)(1)(i) of this section, except that such amendments may be limited to Part I of Form 1-CRYPTO, an explanatory note, and all the information required by Part III of Form 1-CRYPTO.

(2) Post-qualification amendments must be filed in the following circumstances for ongoing offerings:

(i) At least every 12 months after the qualification date to include the financial statements that would be required by Form 1-CRYPTO as of such date; or

(ii) To reflect any facts or events arising after the qualification date of the offering statement (or the most recent post-qualification amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the offering statement.

§ 228.302 Offering circular.

(a) *Contents*. An offering circular must include the information required by Form 1-CRYPTO for offering circulars.

(b) *Information that may be omitted*. Notwithstanding paragraph (a) of this section, a qualified offering circular may omit information with respect to the public offering price, underwriting syndicate (including any material relationships between the issuer or selling securityholders and the unnamed underwriters, brokers, or dealers), underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, and other items dependent upon the offering price, delivery dates, and terms of the securities dependent upon the offering date; *provided* that the following conditions are met:

(1) The securities to be qualified are offered for cash.

(2) The outside front cover page of the offering circular includes a bona fide estimate of the range of the maximum offering price and the maximum number of units of eligible securities to be offered, subject to the following conditions:

(i) The range must not exceed $2 for offerings where the upper end of the range is $10 or less or 20 percent if the upper end of the price range is over $10; and

(ii) The upper end of the range must be used in determining the aggregate offering price under § 228.300(a).

(3) The offering statement does not relate to securities to be offered by competitive bidding.

(4) The volume of securities (the number of units of eligible securities) to be offered may not be omitted in reliance on this paragraph (b).

Note to paragraph (b). A decrease in the volume of securities offered or a change in the bona fide estimate of the offering price range from that indicated in the offering circular filed as part of a qualified offering statement may be disclosed in the offering circular filed with the Commission pursuant to § 228.302(f), so long as the decrease in the volume of securities offered or change in the price range would not materially change the disclosure contained in the offering statement at qualification. Notwithstanding the foregoing, any decrease in the volume of securities offered and any deviation from the low or high end of the price range may be reflected in the offering circular supplement filed with the Commission pursuant to § 228.302(f)(1) or (3) if, in the aggregate, the decrease in volume and/or change in price represent no more than a 20 percent change from the maximum aggregate offering price calculable using the information in the qualified offering statement. In no circumstances may this paragraph be used to offer securities where the maximum aggregate offering price would result in the offering exceeding the limit set forth in § 228.300(a) or if the change would result in a Tier 1 offering becoming a Tier 2 offering. An offering circular supplement may not be used to increase the volume of securities being offered. Additional securities may only be offered pursuant to a new offering statement or post-qualification amendment qualified by the Commission.

(c) *Filing of omitted information*. The information omitted from the offering circular in reliance upon paragraph (b) of this section must be contained in an offering circular filed with the Commission pursuant to paragraph (g) of this section; except that if such offering circular is not so filed by the later of 15 business days after the qualification date of the offering statement or 15 business days after the qualification of a post-qualification amendment thereto that contains an offering circular, the information omitted in reliance upon paragraph (b) of this section must be contained in a qualified post-qualification amendment to the offering statement.

(d) *Date*. An offering circular must be dated approximately as of the date it was filed with the Commission.

(e) *Cover page legend*. The cover page of every offering circular must display the following statement highlighted by prominent type or in another manner:

The United States Securities and Exchange Commission does not pass upon the merits of or give its approval to any securities offered or the terms of the offering, nor does it pass upon the accuracy or completeness of any offering circular or other solicitation materials. These securities are offered pursuant to an exemption from registration with the Commission; however, the Commission has not made an independent determination that the securities offered are exempt from registration.

(f) *Offering circular supplements*.

(1) An offering circular that discloses information previously omitted from the offering circular in reliance upon § 228.302(b) must be filed with the Commission no later than two business days following the earlier of the date of determination of the offering price or the date such offering circular is first used after qualification in connection with a public offering or sale.

(2) An offering circular that reflects information other than that covered in paragraph (f)(1) of this section that constitutes a substantive change from or addition to the information set forth in the last offering circular filed with the Commission must be filed with the Commission no later than five business days after the date it is first used after qualification in connection with a public offering or sale. If an offering circular filed pursuant to this paragraph (f)(2) consists of an offering circular supplement attached to an offering circular that previously had been filed or was not required to be filed pursuant to paragraph (f) of this section because it did not contain substantive changes from an offering circular that previously was filed, only the offering circular

supplement need be filed under paragraph (f) of this section, provided that the cover page of the offering circular supplement identifies the date(s) of the related offering circular and any offering circular supplements thereto that together constitute the offering circular with respect to the securities currently being offered or sold.

(3) An offering circular that discloses information, facts or events covered in both paragraphs (f)(1) and (2) of this section must be filed with the Commission no later than two business days following the earlier of the date of the determination of the offering price or the date it is first used after qualification in connection with a public offering or sale.

(4) An offering circular required to be filed pursuant to paragraph (f) of this section that is not filed within the time frames specified in paragraphs (f)(1) through (3) of this section, as applicable, must be filed pursuant to this paragraph (f)(4) as soon as practicable after the discovery of such failure to file.

(5) Each offering circular filed under this section must contain in the upper right corner of the cover page the paragraphs of paragraphs (f)(1) through (4) of this section under which the filing is made, and the file number of the offering statement to which the offering circular relates.

§ 228.303 Preliminary offering circular.

After the filing of an offering statement, but before its qualification, written offers of securities may be made if they meet the following requirements:

(a) *Outside front cover page*. The outside front cover page of the material bears the caption Preliminary Offering Circular, the date of issuance, and the following legend, which must be highlighted by prominent type or in another manner:

An offering statement pursuant to Regulation Crypto Assets relating to these securities has been filed with the Securities and Exchange Commission. Information contained in this

Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted before the offering statement filed with the Commission is qualified. This Preliminary Offering Circular shall not constitute an offer to sell or the solicitation of an offer to buy, nor may there be any sales of these securities in any state in which such offer, solicitation, or sale would be unlawful. We may elect to satisfy our obligation to deliver a Final Offering Circular by sending you a notice within two business days after the completion of our sale to you that contains the URL where the Final Offering Circular or the offering statement in which such Final Offering Circular was filed may be obtained.

(b) *Other contents*. The Preliminary Offering Circular contains substantially the information required to be in an offering circular by Form 1-CRYPTO (§ 239.600), except that certain information may be omitted under § 228.302(b) subject to the conditions set forth in such rule.

(c) *Filing*. The Preliminary Offering Circular is filed as a part of the offering statement.

§ 228.304 Solicitations of interest and other communications.

(a) *Solicitation of interest*. At any time before the qualification of an offering statement, including before the non-public submission or public filing of such offering statement, an issuer or any person authorized to act on behalf of the issuer may communicate orally or in writing to determine whether there is any interest in a contemplated securities offering. Such communications are deemed to be an offer of a security for sale for purposes of the antifraud provisions of the Federal securities laws. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any person is permitted until qualification of the offering statement.

(b) *Conditions*. The communications must:

(1) State that no money or other consideration is being solicited, and if sent in response, will not be accepted;

(2) State that no offer to buy the securities can be accepted and no part of the purchase price can be received until the offering statement is qualified, and any such offer may be withdrawn or revoked, without obligation or commitment of any kind, at any time before notice of its acceptance given after the qualification date;

(3) State that a person’s indication of interest involves no obligation or commitment of any kind; and

(4) After the public filing of the offering statement:

(i) State from whom a copy of the most recent version of the Preliminary Offering Circular may be obtained, including a phone number and address of such person;

(ii) Provide the URL where such Preliminary Offering Circular, or the offering statement in which such Preliminary Offering Circular was filed, may be obtained; or

(iii) Include a complete copy of the Preliminary Offering Circular.

(c) *Indications of interest*. Any written communication under this rule may include a means by which a person may indicate to the issuer that such person is interested in a potential offering. This issuer may require the name, address, telephone number, and/or email address in any response form included pursuant to this paragraph (c).

(d) *Revised solicitations of interest*. If solicitation of interest materials are used after the public filing of the offering statement and such solicitation of interest materials contain information that is inaccurate or inadequate in any material respect, revised solicitation of interest materials must be redistributed in a substantially similar manner as such materials were originally distributed. Notwithstanding the foregoing in this paragraph (d), if the only information that is inaccurate or inadequate is contained in a Preliminary Offering Circular provided with the solicitation of interest materials pursuant to paragraphs (b)(4)(i) or (ii) of this section, no such redistribution is required in the following circumstances:

(1) in the case of paragraph (b)(4)(i) of this section, the revised Preliminary Offering Circular will be provided to any persons making new inquiries and will be recirculated to any persons making any previous inquiries; or

(2) in the case of paragraph (b)(4)(ii) of this section, the URL continues to link directly to the most recent Preliminary Offering Circular or to the offering statement in which such revised Preliminary Offering Circular was filed.

§ 228.305 Periodic and current reporting; transition report.

(a) *Periodic and current reporting*. Each issuer that has filed an offering statement that has been qualified under this Regulation Crypto Assets must file with the Commission the following periodic and current reports:

(1) *Annual reports*. An annual report on Form 1-KC (§ 239.601) for the fiscal year in which the offering statement became qualified and for any fiscal year thereafter, unless the issuer's obligation to file such annual report is suspended or terminated, as applicable, under paragraph (c) or (d) of this section. Annual reports must be filed within the period specified in Form 1-KC.

(2) *Special financial report*.

(i) A special financial report on Form 1-KC or Form 1-SC (§ 239.602) if the offering statement did not contain the following:

(A) Financial statements (which are required to be audited for Tier 2) for the issuer's most recent fiscal year (or for the life of the issuer if less than a full fiscal year) preceding the fiscal year in which the issuer's offering statement became qualified; or

(B) unaudited financial statements covering the first six months of the issuer's current fiscal year if the offering statement was qualified during the last six months of that fiscal year.

(ii) The special financial report described in paragraph (a)(2)(i)(A) of this section must be filed under cover of Form 1-KC within 120 calendar days after the qualification date of the offering statement and must include audited financial statements for such fiscal year or other period specified in that paragraph, as the case may be. The special financial report described in paragraph (a)(2)(i)(B) of this section must be filed under cover of Form 1-SC within 90 calendar days after the qualification date of the offering statement and must include the semiannual financial statements for the first six months of the issuer's fiscal year, which may be unaudited.

(iii) A special financial report must be signed in accordance with the requirements of the form on which it is filed.

(3) *Semiannual report*. A semiannual report on Form 1-SC (§ 239.602) within the period specified in Form 1-SC. Semiannual reports must cover the first six months of each fiscal year of the issuer, commencing with the first six months of the fiscal year immediately following the most recent fiscal year for which financial statements were included in the offering statement, or, if the offering statement included financial statements for the first six months of the fiscal year following the most recent full fiscal year, for the first six months of the following fiscal year.

(4) *Current reports*. Current reports on Form 1-UC (§ 239.603) with respect to the matters and within the period specified in that form, unless substantially the same information

has been previously reported to the Commission by the issuer under cover of Form 1-KC or Form 1-SC.

(5) *Reporting by successor issuers*. Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets, or otherwise, securities of any issuer that is not required to file reports pursuant to paragraph (a) of this section are issued to the holders of any class of securities of another issuer that is required to file such reports, the duty to file reports pursuant to paragraph (a) of this section is deemed to have been assumed by the issuer of the class of securities so issued. The successor issuer must, after the consummation of the succession, file reports in accordance with paragraph (a) of this section, unless that issuer is exempt from filing such reports or the duty to file such reports is terminated or suspended under paragraph (c) or (d) of this section.

(6) *Exchange Act reporting requirements*. The duty to file reports under this rule shall be deemed to have been met if the issuer is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 15 U.S.C. 78o) and, as of each Form 1-KC and Form 1-SC due date, has filed all reports required to be filed by section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 15 U.S.C. 78o) during the 12 months (or such shorter period that the registrant was required to file such reports) preceding such due date.

(7) *Exemption for subsidiary issuers of guaranteed securities and subsidiary guarantors*. Any issuer of a guaranteed security, or guarantor of a security, that is permitted to omit financial statements by Item (b)(6)(i) of Part F/S of Form 1-CRYPTO (referenced in § 239.600), Item 12(d)(1) of Part II of Form 1-KC (referenced in § 239.601), and Item 5(e)(1) of Form 1-SC (referenced in § 239.602), is exempt from the requirements of this paragraph (a).

(b) *Amendments*. All amendments to the reports described in paragraph (a) of this section must be filed under cover of the form amended, marked with the letter A to designate the document as an amendment, e.g., “1-KC/A,” and in compliance with pertinent requirements applicable to such reports. Amendments filed pursuant to this paragraph (b) must set forth the complete text of each item as amended but need not include any items that were not amended. Amendments must be numbered sequentially and be filed separately for each report amended. Amendments must be signed on behalf of the issuer by a duly authorized representative of the issuer. An amendment to any report required to include certifications as specified in the applicable form must include new certifications by the appropriate persons.

(c) *Suspension of duty to file reports*.

(1) The duty to file reports under paragraph (a) of this section with respect to a class of securities “held of record” (which shall be as defined in § 240.12g5-1 for purposes of determining whether securities are “held of record” under this section) by less than 300 persons shall be suspended for such class of securities immediately upon filing with the Commission a transition report on Form TR (§ 239.604) if the issuer of such class has filed all reports required to be filed under this rule before the date of such Form TR filing for the shorter of:

(i) The period since the issuer became subject to such reporting obligation; or

(ii) Its most recent three fiscal years and the portion of the current year preceding the date of filing Form TR.

(2) For the purposes of paragraph (c)(1) of this section, the term *class* is construed to include all securities of an issuer that are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. If the Form TR is subsequently withdrawn or if it is denied because the issuer was ineligible to use the form, the issuer must,

within 60 calendar days, file with the Commission all reports which would have been required if such transition report had not been filed. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the notice must be filed by the successor issuer.

(3) The ability to suspend reporting, as described in paragraph (c)(1) of this section, is not available for any class of securities if:

(i) During that fiscal year an offering statement was qualified;

(ii) The issuer has not filed an annual report under this rule or the Exchange Act for the fiscal year in which an offering statement was qualified; or

(iii) Offers or sales of securities of that class are being made pursuant to an offering under this subpart.

(d) *Termination of duty to file reports*. (1) If the duty to file reports is deemed to have been met under paragraph (a)(6) of this section and such status ends because the issuer terminates or suspends its duty to file reports under the Exchange Act, the issuer's obligation to file reports under paragraph (a) of this section will:

(i) Automatically terminate if the issuer is eligible to suspend its duty to file reports under paragraphs (c)(1) and (3) of this section; or

(ii) Recommence with the report covering the most recent financial period after that included in any effective registration statement or filed Exchange Act report.

(2) If an issuer satisfies the conditions of the safe harbor in § 228.400 or the covered investment contract otherwise ceases to exist during the period in which the issuer is required to file reports under paragraph (a) of this section, the issuer's obligation to file reports under paragraph (a) of this section will terminate immediately upon filing with the Commission a transition report on Form TR.

§ 228.306 Suspension of the exemption.

(a) *Suspension*. The Commission may at any time enter an order temporarily suspending an exemption under this subpart if it has reason to believe that:

(1) No exemption is available or any of the terms, conditions, or requirements of Regulation Crypto Assets have not been complied with;

(2) The offering statement, any sales or solicitation of interest material, or any report filed under § 228.305 contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

(3) The offering is being made or would be made in violation of section 17 of the Securities Act;

(4) An event has occurred after the filing of the offering statement that would have rendered the exemption hereunder unavailable if it had occurred before such filing;

(5) Any person specified in § 230.262(a) of this chapter has been indicted for any crime or offense of the character specified in § 230.262(a)(1) of this chapter, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in § 230.262(a)(2) of this chapter, or any proceeding has been initiated for the purposes of § 230.262(a)(3) through (8) of this chapter; or

(6) The issuer or any promoter, officer, director, or underwriter has failed to cooperate, or has obstructed or refused to permit the making of an investigation by the Commission in connection with any offering made or proposed to be made in reliance on Regulation Crypto Assets.

(b) *Notice and hearing*. Upon the entry of an order under paragraph (a) of this section, the Commission will promptly give notice to the issuer, any underwriter, and any selling securityholder:

(1) That such order has been entered, together with a brief statement of the reasons for the entry of the order; and

(2) That the Commission, upon receipt of a written request within 30 calendar days after the entry of the order, will, within 20 calendar days after receiving the request, order a hearing at a place to be designated by the Commission.

(c) *Suspension order*. If no hearing is requested and none is ordered by the Commission, an order entered under paragraph (a) of this section shall become permanent on the 30th calendar day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of and opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

(d) *Permanent suspension*. The Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the exemption for any reason upon which it could have entered a temporary suspension order under paragraph (a) of this section. Any such order shall remain in effect until vacated by the Commission.

(e) *Notice procedures*. All notices required by this rule must be given by personal service, registered or certified mail to the addresses given by the issuer, any underwriter and any selling securityholder in the offering statement.

§ 228.307 Withdrawal or abandonment of offering statements.

(a) *Withdrawal*. If none of the securities that are the subject of an offering statement has been sold and such offering statement is not the subject of a proceeding under § 228.306, the offering statement may be withdrawn with the Commission's consent. The application for withdrawal must state the reason the offering statement is to be withdrawn and must be signed by an authorized representative of the issuer. Any withdrawn document will remain in the Commission's files, as well as the related request for withdrawal.

(b) *Abandonment*. When an offering statement, or a post-qualification amendment to such statement, has been on file with the Commission for nine months without amendment and has not become qualified, the Commission may, in its discretion, declare the offering statement or post-qualification amendment abandoned. If the offering statement has been amended, or if the post-qualification amendment has been amended, the nine-month period shall be computed from the date of the latest amendment.

Subpart D – Investment Contract Safe Harbor

§ 228.400 Investment Contract Safe Harbor.

A covered investment contract will be deemed to have ceased to exist, and the crypto asset that was subject to the covered investment contract will be deemed not to constitute or represent or to be subject to that investment contract for purposes of section 2(a)(1) of the Securities Act (15 U.S.C. 77b(a)(1)) and section 3(a)(10) of the Exchange Act (15 U.S.C. 78c(a)(10)), if the following conditions are satisfied:

(a) The issuer of the covered investment contract has completed or otherwise permanently ceased all essential managerial efforts that it represented or promised it would engage in under the covered investment contract and 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; and

(b) The issuer of the covered investment contract files a transition report containing the information required by Form TR (§ 239.604 of this chapter) with the Commission.

Subpart E – Definition of "Qualified Purchaser."

§ 228.500 Definition of "qualified purchaser."

For purposes of section 18(b)(3) of the Securities Act (15 U.S.C. 77r(b)(3)), a "qualified purchaser" means any person to whom securities are offered or sold pursuant to:

(a) An offering under Regulation Crypto Assets (§§ 228.100 through 228.500); or

(b) An offering pursuant to a transaction by any person other than an issuer, underwriter, or dealer with respect to a covered investment contract (as defined in § 228.100); *provided* that:

(1) The issuer has satisfied the requirements of an exemption under Regulation Crypto Assets with respect to such covered investment contract; and

(2) 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.

PART 230 – GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

6. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78*o*, 78*o*-7 note, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. 112-106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

Section 230.151 is also issued under 15 U.S.C. 77s(a).

Section 230.160 is also issued under section 104(d) of the Electronic Signatures Act.

Section 230.193 is also issued under sec. 943, Pub. L. 111-203, 124 Stat. 1376.

Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s).

Sec. 230.457 also issued under secs. 6 and 7, 15 U.S.C. 77f and 77g.

Section 230.502 is also issued under 15 U.S.C. 80a-8, 80a-29, 80a-30.

* * * * *

7. Amend § 230.152 by adding paragraphs (c)(6) and (d)(5) to read as follows:

§ 230.152 Integration.

* * * * *

(c) * * *

(6) Regulation Crypto Assets, in the case of:

(i) An offering in reliance on § 228.200, on the date the issuer first made an offer of its securities in reliance on § 228.200; or

(ii) An offering in reliance on subpart C of Regulation Crypto Assets, on the earlier of the date the issuer first made an offer soliciting interest in a contemplated securities offering in reliance on subpart C of Regulation Crypto Assets, or the public filing of a Form 1-CRYPTO offering statement.

(d) * * *

(5) Regulation Crypto Assets, in the case of:

(i) An offering in reliance on § 228.200, on the later of the date:

(A) The issuer entered into a binding commitment to sell all securities to be sold under the offering (subject only to conditions outside of the investor's control); or

(B) The issuer and its agents ceased efforts to make further offers to sell the issuer's securities under such offering;

(ii) An offering in reliance on subpart C of Regulation Crypto Assets, on:

(A) The withdrawal of an offering statement under § 228.307(a);

(B) The filing of a transition report on Form TR (§ 239.604);

(C) The declaration by the Commission that the offering statement has been abandoned under § 228.307(a); or

(D) The date, after the third anniversary of the date the offering statement was initially qualified, on which § 228.300(c)(3)(i)(F) prohibits the issuer from continuing to sell securities using the offering statement, or any earlier date on which the offering terminates by its terms;

* * * * *

8. Amend § 230.175 by revising paragraph (b)(1)(i) to read as follows:

§ 230.175 Liability for certain statements by issuers.

* * * * *

(b) * * *

(1) * * *

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a-1 or 15d-1 (§§ 239.13a-1 or 239.15d-1 of this chapter) thereunder, if applicable, to file its most recent annual report on Form 10-K, Form 20-F, or Form 40-F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Act, offering statement or solicitation of interest, written document or broadcast script under Regulation A or subpart C of Regulation Crypto Assets or pursuant to sections 12(b) or (g) of the Securities Exchange Act of 1934; and

* * * * *

PART 232 – REGULATION S-T – GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

9. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78n-1, 78*o*(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, 7201 *et seq*.; and 18 U.S.C. 1350, unless otherwise noted.

Section 232.302 is also issued under secs. 3(a) and 302, Pub.L. No. 107-204, 116 Stat. 745.

10. Amend § 232.101 by:

a. Revising paragraphs (a)(1)(xxxvii) and (xxxviii); and

b. Adding a new paragraph (xxxix).

The revision reads as follows:

(a) * * *

(1) * * *

(xxxvii) Form 1-N (§ 249.10 of this chapter);

(xxxviii) Form 15A (§ 249.801 of this chapter); and

(xxxix) Filings made pursuant to Regulation Crypto Assets (§§ 228.100 through 228.500 of this chapter).

* * * * *

PART 239 – FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

Subpart B – Forms Pertaining to Exemptions

11. The authority citation for part 239 continues to read, in part, as follows: Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78*o*(d), 78*o*-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

12. Add § 239.600 to read as follows:

§ 239.600 Form 1-CRYPTO, offering statement under Regulation Crypto Assets.

This form shall be used for filing under Regulation Crypto Assets (17 CFR part 228).

Note: Form 1-CRYPTO is attached as Appendix A to this document. Form 1-CRYPTO will not appear in the Code of Federal Regulations.

* * * * *

13. Add § 239.601 to read as follows:

§ 239.601 Form 1-KC.

This form shall be used for filing annual reports under Regulation Crypto Assets (17 CFR part 228).

Note: Form 1-KC is attached as Appendix B to this document. Form 1-KC will not appear in the Code of Federal Regulations.

14. Add § 239.602 to read as follows:

§ 239.602 Form 1-SC.

This form shall be used for filing semiannual reports under Regulation Crypto Assets (17 CFR part 228).

Note: Form 1-SC is attached as Appendix C to this document. Form 1-SC will not appear in the Code of Federal Regulations.

15. Add § 239.603 to read as follows:

§ 239.603 Form 1-UC.

This form shall be used for filing current reports under Regulation Crypto Assets (17 CFR part 228).

Note: Form 1-UC is attached as Appendix D to this document. Form 1-UC will not appear in the Code of Federal Regulations.

16. Add § 239.604 to read as follows:

§ 239.604 Form TR.

This form shall be used to file a transition report under Regulation Crypto Assets (17 CFR part 228).

Note: Form TR is attached as Appendix E to this document. Form TR will not appear in the Code of Federal Regulations.

17. Add § 239.605 to read as follows:

§ 239.605 Form NOR.

This form shall be used to file a notice of reliance under Regulation Crypto Assets (17 CFR part 228).

Note: Form NOR is attached as Appendix F to this document. Form NOR will not appear in the Code of Federal Regulations.

By the Commission.

Dated: August 18, 2026.

Vanessa A. Countryman,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Form 1-CRYPTO

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 1-CRYPTO

REGULATION CRYPTO ASSETS OFFERING STATEMENT
UNDER THE SECURITIES ACT OF 1933

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form 1-CRYPTO.

This Form is to be used for securities offerings made in reliance on the fundraising exemption in Regulation Crypto Assets (17 CFR part 228, subpart C). Careful attention should be directed to the terms, conditions, and requirements of Regulation Crypto Assets, especially Rule 300 (17 CFR 228.300), because the exemption is not available to all issuers or for every type of securities transaction. Further, the aggregate offering price and aggregate sales of securities in any 12-month period is strictly limited to $20 million for Tier 1 offerings and $75 million for Tier 2 offerings, including no more than $6 million offered by all selling securityholders that are affiliates of the issuer for Tier 1 offerings and $22.5 million by all selling securityholders that are affiliates of the issuer for Tier 2 offerings. Please refer to Rule 300 of Regulation Crypto Assets for more details.

II. Preparation, Submission, and Filing of the Offering Statement.

An offering statement must be prepared by all persons seeking exemption under the provisions of the fundraising exemption in Regulation Crypto Assets. Parts I, II, and III must be addressed by all issuers. General information regarding the preparation, format, content, and submission or filing of the offering statement is contained in Rule 301 (17 CFR 228.301). Information regarding non-public submission of the offering statement is contained in Rule 301(d). Requirements relating to the offering circular are contained in Rules 302 (17 CFR 228.302) and 303 (17 CFR 228.303). The offering statement must be submitted or filed with the Securities and Exchange Commission in electronic format by means of the Commission's Electronic Data Gathering, Analysis and Retrieval System (EDGAR) in accordance with the electronic filing rules set forth in Regulation S-T (17 CFR part 232).

III. Incorporation by Reference and Cross-Referencing.

An issuer may incorporate by reference to other documents previously submitted or filed on EDGAR. Cross-referencing within the offering statement is also encouraged to avoid repetition of information. For example, you may respond to an item of this Form by providing a cross-reference to the location of the information in the financial statements, instead of repeating such information. Incorporation by reference and cross-referencing are subject to the following additional conditions and limitations:

(a) The use of incorporation by reference and cross-referencing is prohibited for Part I and Item 1 of Part II of this Form.

(b) Descriptions of where the information incorporated by reference or cross-referenced can be found must be specific and must clearly identify the relevant document and portion thereof where such information can be found. For exhibits incorporated by reference, this description must be noted in the exhibits index for each relevant exhibit. All descriptions of where information incorporated by reference can be found must be accompanied by a hyperlink to the incorporated document on EDGAR.

(c) Reference may not be made to any document if the portion of such document containing the pertinent information includes an incorporation by reference to another document. Incorporation by reference to documents not available on EDGAR is not permitted. Incorporating information into the financial statements from elsewhere is not permitted. Information shall not be incorporated by reference or cross-referenced in any case where such incorporation would render the statement or report incomplete, unclear, or confusing.

(d) If any substantive modification has occurred in the text of any document incorporated by reference since such document was filed, the issuer must file with the reference a statement containing the text and date of such modification.

IV. Supplemental Information.

The information specified below must be furnished to the Commission as supplemental information, if applicable. Supplemental information shall not be required to be filed with or deemed part of the offering statement, unless otherwise required. The information shall be returned to the issuer upon request made in writing at the time of submission, provided that the return of such information is consistent with the protection of investors and the provisions of the Freedom of Information Act [5 U.S.C. 552] and the information was not filed in electronic format.

(a) A statement as to whether or not the amount of compensation to be allowed or paid to the underwriter has been cleared with the Financial Industry Regulatory Authority (FINRA).

(b) Any engineering, management, market, or similar report referenced in the offering circular or provided for external use by the issuer or by a principal underwriter in connection with the proposed offering. There must also be furnished at the same time a statement as to the actual or proposed use and distribution of such report or memorandum. Such statement must identify each class of persons who have received or will receive the report or memorandum, and state the number of copies distributed to each such class along with a statement as to the actual or proposed use and distribution of such report or memorandum.

(c) Such other information as requested by the staff in support of statements, representations, and other assertions contained in the offering statement or any correspondence to the staff.

Correspondence appropriately responding to any staff comments made on the offering statement must also be furnished electronically. When applicable, such correspondence must clearly indicate where changes responsive to the staff's comments may be found in the offering statement.

PART I—NOTIFICATION

The following information must be provided in the XML-based portion of Form 1-CRYPTO available through EDGAR and must be completed or updated before uploading each offering statement or amendment thereto. The format of Part I shown below may differ from the electronic version available on EDGAR. The electronic version of Part I will allow issuers to attach Part II and Part III for filing by means of EDGAR. All items must be addressed, unless otherwise indicated.

* * * * * *

☐ No changes to the information required by Part I have occurred since the last filing of this offering statement.

ITEM 1. Issuer Information

Exact name of issuer as specified in the issuer's charter: ________________________________

Jurisdiction of incorporation/organization: ____

Year of incorporation/organization: ________

CIK: ______________

Primary Standard Industrial Classification Code: ___________________________

Contact Information

Address of Principal Executive Offices (if any): ____

____

Telephone: (   ) ___________________

Provide the following information for the person the Securities and Exchange Commission's staff should call in connection with any pre-qualification review of the offering statement:

Name: ____

Address: ____

Telephone: (   ) ____________

Provide up to two e-mail addresses to which the Securities and Exchange Commission's staff may send any comment letters relating to the offering statement. After qualification of the offering statement, e-mail addresses are not required to remain active: ______________

____

____

ITEM 2. Summary Information Regarding the Offering and Other Current or Proposed Offerings

Number of securities offered: ____________________________

Number of securities of that class already outstanding: ______________

The information called for by this item below may be omitted if undetermined at the time of filing or submission, except that if a price range has been included in the offering statement, the midpoint of that range must be used to respond. Please refer to Rule 100(a) for the definition of "aggregate offering price" and "aggregate sales" as used in this item. Please leave the field blank if undetermined at this time and include a zero if a particular item is not applicable to the offering.

Price per security: $ ________________

The portion of the aggregate offering price attributable to securities being offered on behalf of the issuer:

$ __________________

The portion of the aggregate offering price attributable to securities being offered on behalf of selling securityholders:

$ __________________

The portion of aggregate sales attributable to all the securities of the issuer sold pursuant to a qualified offering statement under this exemption within the 12 months before the qualification of this offering statement:

$ __________________

The estimated portion of aggregate sales attributable to securities that may be sold pursuant to any other qualified offering statement under this exemption concurrently with securities being sold under this offering statement:

$ ______________________________

Total: $ __________________ (the sum of the aggregate offering price and aggregate sales in the four preceding paragraphs).

Estimated net proceeds to the issuer: $ ______________________________

Clarification of responses (if necessary): ____________________________

PART II — INFORMATION REQUIRED IN OFFERING CIRCULAR

(a) The general disclosure principles for information included in the offering circular are set forth in Rule 103(a) of Regulation Crypto Assets (17 CFR 228.103(a)).

(b) Financial statement requirements regardless of the applicable disclosure format are specified in Part F/S of this Form 1-CRYPTO. The narrative disclosure contents of offering circulars are specified as follows:

(1) The information required by the Offering Circular described below;

(2) The offering circular must describe any matters that would have triggered disqualification under Rule 104 of Regulation Crypto Assets (17 CFR 228.104);

(3) The legend required by Rule 302(e) of Regulation Crypto Assets (17 CFR 228.302(e)) must be included on the offering circular cover page;

(4) For preliminary offering circulars, the legend required by Rule 303(a) of Regulation Crypto Assets (17 CFR 228.303(a)) must be included on the offering circular cover page; and

(5) The offering circular cover page must include the following legend highlighted by prominent type or in another manner:

Generally, no sale may be made to you in this offering if the aggregate purchase price you pay is more than 10% of the greater of your annual income or net worth. Different rules apply to accredited investors and non-natural persons. Before making any representation that your investment does not exceed applicable thresholds, we encourage you to review Rule 300(c)(2)(i)(C) of Regulation Crypto Assets (17 CFR 228.300(c)(2)(i)(C). For general information on investing, we encourage you to refer to www.investor.gov.

(c) The Commission encourages the use of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. See Securities Act Rule 175 (17 CFR 230.175).

(d) Offering circulars need not follow the order of the items set forth in Rule 103(a) of Regulation Crypto Assets (17 CFR 228.103(a)). Such information may not, however, be set forth in such a fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. Information requested to be presented in a specified tabular format must be given in substantially the tabular format specified. For incorporation by reference, please refer to General Instruction III of this Form.

OFFERING CIRCULAR

Item 1. Cover Page of Offering Circular

The cover page of the offering circular must be limited to one page and must include the information specified in this item.

(a) Name of the issuer.

Instruction to Item 1(a):

If the issuer's name is the same as, or confusingly similar to, that of a company that is well known, include information to eliminate any possible confusion with the other company. If your name indicates a line of business in which you are not engaged or you are engaged only to a limited extent, include information to eliminate any misleading inference as to your business.

(b) Full mailing address of the issuer's principal executive offices (if any) and the issuer's telephone number (including the area code) and, if applicable, website address.

(c) Date of the offering circular.

(d) Title and amount of securities offered.

Item 2. Table of Contents

On the page immediately following the cover page of the offering circular, provide a reasonably detailed table of contents. It must show the page numbers of the various sections or subdivisions of the offering circular.

Item 3. Covered Investment Contract

Furnish the information required by Rule 103(b)(1) (17 CFR 228.103(b)(1)).

Item 4. Offering

Furnish the information required by Rule 103(b)(2) (17 CFR 228.103(b)(2)).

Item 5. Subject Crypto Asset

Furnish the information required by Rule 103(b)(3) (17 CFR 228.103(b)(3)).

Item 6. Management, Related Persons, and Conflicts of Interest

Furnish the information required by Rule 103(b)(4) (17 CFR 228.103(b)(4)).

Item 7. Associated Crypto Network/Application; Plan of Development

Furnish the information required by Rule 103(b)(5) (17 CFR 228.103(b)(5)).

Item 8. Security; Source Code

Furnish the information required by Rule 103(b)(6) (17 CFR 228.103(b)(6)).

Item 9. Subject Crypto Asset Economics and Allocations

Furnish the information required by Rule 103(b)(7) (17 CFR 228.103(b)(7)).

Item 10. Governance

Furnish the information required by Rule 103(b)(8) (17 CFR 228.103(b)(8)).

Item 11. Subject Crypto Asset Ecosystem

Furnish the information required by Rule 103(b)(9) (17 CFR 228.103(b)(9)).

Item 12. Risk Factors

Furnish the information required by Rule 103(b)(10) (17 CFR 228.103(b)(10)).

Item 13. Discussion of Financial Condition

Discuss the issuer's financial condition, including, to the extent material, changes in financial condition, liquidity, capital resources, and results of operations.

Instructions to Item 13:

1. The discussion must cover each period for which financial statements of the issuer are provided. An issuer also must include a discussion of any material changes or trends known to management in the financial condition and results of operations of the issuer subsequent to the period for which financial statements are provided.

2. For issuers with no prior operating history, the discussion should focus on financial milestones and operational, liquidity and other challenges. For issuers with an operating history, the discussion should focus on whether historical results and cash flows for the financial statement periods presented are representative of what investors should expect in the future. Issuers should take into account the proceeds of the offering and any other known or pending sources of capital. Issuers also should discuss how the proceeds from the offering will affect the issuer's liquidity, whether receiving these funds and any other additional funds is necessary to the viability of the business, and how quickly the issuer anticipates using its available cash. In *addition, issuers should describe the other available sources of capital to the business, such as lines of credit or required contributions by investors.*

3. References to the issuer in this paragraph and its instructions refer to the issuer and its predecessors, if any.

Part F/S

(a) General Rules

(1) The appropriate financial statements set forth below of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor must be filed as part of the offering statement and included in the offering circular that is distributed to investors.

(2) Financial statements must be prepared in accordance with generally accepted accounting principles in the United States (U.S. GAAP), except as permitted pursuant to paragraph (b)(6)(iii) below.

(3) The issuer may elect to delay complying with any new or revised financial accounting standard until the date that a company that is not an issuer (as defined under section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is required to comply with such new or revised accounting standard, if such standard also applies to companies that are not issuers. An issuer electing such extension of time accommodation must disclose it at the time the issuer files its offering statement and apply the election to all standards. Issuers electing not to use this accommodation must forgo this accommodation for all financial accounting standards and may not elect to rely on this accommodation in any future filings.

(b) Financial Statements for Tier 1 Offerings

(1) The financial statements prepared pursuant to this paragraph (b), including (b)(6), need not be prepared in accordance with Regulation S-X.

(2) The financial statements prepared pursuant to paragraph (b), including (b)(6), need not be audited. If the financial statements are not audited, they shall be labeled as "unaudited." However, if an audit of these financial statements is obtained for other purposes and that audit was performed in accordance with either U.S. generally accepted auditing standards or the Standards of the Public Company Accounting Oversight Board by an auditor that is independent pursuant to either the independence standards of the American Institute of Certified Public Accountants (AICPA) or Rule 2-01 of Regulation S-X, those audited financial statements must be filed, and an audit opinion complying with Rule 2-02 of Regulation S-X must be filed along with such financial statements. The auditor may, but need not, be registered with the Public Company Accounting Oversight Board.

(3) *Consolidated Balance Sheets*. Age of balance sheets at filing and at qualification:

(i) If the filing is made, or the offering statement is qualified, more than three months but no more than nine months after the most recently completed fiscal year end, include a balance sheet as of the two most recently completed fiscal year ends.

(ii) If the filing is made, or the offering statement is qualified, more than nine months after the most recently completed fiscal year end, include a balance sheet as of the two most recently completed fiscal year ends and an interim balance sheet as of a date no earlier than six months after the most recently completed fiscal year end.

(iii) If the filing is made, or the offering statement is qualified, within three months after the most recently completed fiscal year end, include a balance sheet as of the two fiscal year ends preceding the most recently completed fiscal year end and an interim balance sheet as of a date no earlier than six months after the date of the most recent fiscal year end balance sheet that is required.

(iv) If the filing is made, or the offering statement is qualified, during the period from inception until three months after reaching the annual balance sheet date for the first time, include a balance sheet as of a date within nine months of filing or qualification.

(4) Statements of comprehensive income, cash flows, and changes in stockholders' equity. File consolidated statements of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income), cash flows, and changes in stockholders' equity for each of the two fiscal years preceding the date of the most recent balance sheet being filed or such shorter period as the issuer has been in existence.

(5) Interim financial statements.

(i) If a consolidated interim balance sheet is required by (b)(3) of Part F/S, consolidated interim statements of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income) and cash flows shall be provided and must cover at least the first six months of the issuer's fiscal year and the corresponding period of the preceding fiscal year. An analysis of the changes in each caption of stockholders' equity presented in the balance sheets must be provided in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which a statement of comprehensive income is required to be filed with all significant reconciling items described by appropriate captions with contributions from and distributions to owners shown separately. Dividends per share for each class of shares shall also be provided.

(ii) Interim financial statements of issuers that report under U.S. GAAP may be condensed as described in Rule 8-03(a) of Regulation S-X.

(iii) The interim statements of comprehensive income for all issuers must be accompanied by a statement that in the opinion of management all adjustments necessary in order to make the interim financial statements not misleading have been included.

(6) *Financial Statements of and Disclosure About Other Entities*. The circumstances described below may require you to file financial statements of, or provide disclosures about, other entities in the offering statement. The financial statements of other entities must be presented for the same periods as if the other entity were the issuer as described above in paragraphs (b)(3) and (b)(4) unless a shorter period is specified by the rules below. The financial statements of other entities shall follow the same audit requirement as paragraph (b)(2) of this Part F/S:

(i) *Financial Statements of and Disclosures About Guarantors and Issuers of Guaranteed Securities*. The requirements of Rule 3-10 of Regulation S-X are applicable to financial statements of a subsidiary that issues securities guaranteed by the parent company or guarantees securities issued by the parent company. However, the reference in Rule 3-10(a) of Regulation S-X to "an issuer or guarantor of a guaranteed security that is registered or being registered is required to file financial statements required by Regulation S-X with respect to the guarantee or guaranteed security" instead refers to "an issuer or guarantor of a guaranteed security that is qualified or being qualified pursuant to Regulation Crypto Assets is required to file financial statements required by Part F/S of Form 1-CRYPTO with respect to the guarantee or guaranteed security." The definition of "parent company" is the same as in Rule 3-10(b)(1) of Regulation S-X, except that Rule 3-10(b)(1)(ii) instead reads as follows: "Is, or as a result of the subject offering statement will be, required to file reports with the Commission under Rule 305(a) of Regulation Crypto Assets (17 CFR 228.305(a)), or is an Exchange Act reporting company." The parent company must also provide the disclosures required by Rule 13-01 of Regulation S-X. The parent company may elect to provide these disclosures in a footnote to its consolidated financial statements or alternatively, in the discussion of financial condition described in Item 13 of Part II of Form 1-CRYPTO.

(ii) *Financial Statements of and Disclosures About Affiliates Whose Securities Collateralize an Issuance*. The requirements of Rules 3-16 or 13-02 of Regulation S-X are applicable if an issuer's securities that are qualified or being qualified pursuant to Regulation Crypto Assets are collateralized by the securities of the issuer's affiliates. Rule 13-02 of Regulation S-X must be followed unless Rule 3-16 of Regulation S-X applies. The issuer may elect to provide the disclosures specified in Rule 13-02 of Regulation S-X in a footnote to its consolidated financial statements or alternatively, in the discussion of financial condition described in Item 13 of Part II of Form 1-CRYPTO.

(iii) *Financial Statements of Businesses Acquired or to be Acquired*. File the financial statements required by Rule 8-04 of Regulation S-X.

(iv) *Pro Forma Financial Statements*. File pro forma financial information as described in Rule 8-05 of Regulation S-X.

(v) *Real Estate Operations Acquired or to be Acquired*. File the financial information required by Rule 8-06 of Regulation S-X.

Instructions to paragraph (b) in Part F/S:

1. *Issuers should refer to Rule 305(a)(2) (17 CFR 228.305(a)(2)) to determine whether a special financial report will be required after qualification of the offering statement.*

2. *If the last day that the financial statements included in the offering statement can be accepted, according to the age requirements of this item, falls on a Saturday, Sunday, or holiday, such offering statement may be filed on the first business day following the last day of the specified period.*

3. *As an alternative, an issuer may—but need not—elect to comply with the provisions of paragraph (c).*

(c) Financial Statement Requirements for Tier 2 Offerings

(1) In addition to the general rules in paragraph (a), provide the financial statements required by paragraph (b) of this Part F/S, except the following rules should be followed in the preparation of the financial statements:

(i) Issuers that report under U.S. GAAP and, when applicable, other entities for which financial statements are required, must comply with Article 8 of Regulation S-X, as if they were conducting a registered offering on Form S-1, except the age of financial statements may follow paragraphs (b)(3)-(4) of this Part F/S.

(ii) Audited financial statements are required for Tier 2 offerings for the issuer and, when applicable, for financial statements of other entities. However, interim financial statements may be unaudited.

(iii) The audit must be conducted in accordance with either U.S. generally accepted auditing standards or the standards of the Public Company Accounting Oversight Board (United States) and the report and qualifications of the independent accountant shall comply with the requirements of Article 2 of Regulation S-X. Accounting firms conducting audits for the financial statements included in the offering circular may, but need not, be registered with the Public Company Accounting Oversight Board.

PART III—EXHIBITS

Item 14. Index to Exhibits

(a) An exhibits index must be presented at the beginning of Part III.

(b) Each exhibit must be listed in the exhibit index according to the number assigned to it under Item 15 below.

(c) For incorporation by reference, please refer to General Instruction III of this Form.

Item 15. Description of Exhibits

As appropriate, the following documents must be filed as exhibits to the offering statement.

1. *Underwriting agreement*—Each underwriting contract or agreement with a principal underwriter or letter pursuant to which the securities are to be distributed; where the terms have yet to be finalized, proposed formats may be provided.

2. *Charter and bylaws*—The charter and bylaws of the issuer or instruments corresponding thereto as currently in effect and any amendments thereto.

3. *Instruments defining the rights of securityholders*—

> (a) All instruments defining the rights of any holder of the issuer's securities, including but not limited to (i) holders of covered investment contracts being issued (including any whitepaper or similar document published by the issuer); (ii) holders of equity or debt securities; and (iii) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) The following instruments need not be filed if the issuer agrees to file them with the Commission upon request: (i) instruments defining the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated financial statements are required to be filed if the total amount of such authorized issuance does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis; (ii) any instrument with respect to a class of securities that is to be retired or redeemed before the issuance or upon delivery of the securities being issued pursuant to this Regulation Crypto Assets offering and appropriate steps have been taken to assure such retirement or redemption; and (iii) copies of instruments evidencing scrip certificates or fractions of shares.

4. *Subscription agreement*—The form of any subscription agreement to be used in connection with the purchase of securities in this offering, including any token purchase agreement or simple agreement for future tokens.

5. *Voting trust agreement*—Any voting trust agreements and amendments.

6. *Material contracts*—Every contract: (a) not made in the ordinary course of business; (b) that is material to the issuer; and (c) that either (i) is to be performed in whole or in part at or after the filing of the offering statement or (ii) was entered into not more than two years before such filing.

7. *Plan of acquisition, reorganization, arrangement, liquidation, or succession*—Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the offering statement. Schedules (or similar attachments) to these exhibits must not be filed unless such schedules contain information that is material to an investment decision and that is not otherwise disclosed in the agreement or the offering statement. The plan filed must contain a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish supplementally a copy of any omitted schedule to the Commission upon request.

8. *Escrow agreements*—Any escrow agreement or similar arrangement which has been executed in connection with the Regulation Crypto Assets offering.

9. *Letter re change in certifying accountant*—A letter from the issuer's former independent accountant regarding its concurrence or disagreement with the statements made by the issuer in the current report concerning the resignation or dismissal as the issuer's principal accountant.

10. *Power of attorney*—If any name is signed to the offering statement pursuant to a power of attorney, signed copies of the power of attorney must be filed. Where the power of attorney is contained elsewhere in the offering statement or documents filed therewith, a reference must be made in the index to the part of the offering statement or document containing such power of attorney. In addition, if the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature must also be filed. A power of attorney that is filed with the Commission must relate to a specific filing or an amendment thereto. A power of attorney that confers general authority may not be filed with the Commission.

11. *Consents*—

(a) Experts: The written consent of

(i) any accountant, counsel, engineer, geologist, appraiser, or any persons whose profession gives authority to a statement made by that person and who is named in the offering statement as having prepared or certified any part of the document or is named as having prepared or certified a report or evaluation whether or not for use in connection with the offering statement;

(ii) the expert that authored any portion of a report quoted or summarized as such in the offering statement, expressly stating that expert's consent to the use of such quotation or summary;

(iii) any persons who are referenced as having reviewed or passed upon any information in the offering statement, and that such information is being included on the basis of their authority or in reliance upon their status as experts.

(b) All written consents must be dated and signed.

12. Opinion re legality—An opinion of counsel as to the legality of the securities covered by the offering statement, indicating whether they will be binding obligations of the issuer.

13. "Testing the waters" materials—Any written communication or broadcast script used under the authorization of Securities Act Rule 241 (17 CFR 230.241) within 30 days of the initial filing of the offering statement, and any written communication or broadcast script used under the authorization of Rule 304 of Regulation Crypto Assets (17 CFR 228.304). Materials used under the authorization of Rule 304 need not be filed if they are substantively the same as materials previously filed with the offering statement.

14. Subsidiary guarantors and issuers of guaranteed securities and affiliates whose securities collateralize securities of the issuer. List each of the entities in paragraphs (a) and (b) below under an appropriately captioned heading that identifies the associated securities. An entity need not be listed more than once so long as its role as issuer, co-issuer, or guarantor of a guaranteed security and/or as affiliate whose security is pledged as collateral for an issuer's security is clearly indicated with respect to each applicable security:

(a) For an issuer that is the parent company (as that term is defined in paragraph (b)(6)(i) of Part F/S) and subject to 17 CFR 210.13-01 as described in paragraph (b)(6)(i) of Part F/S, each of the issuer's subsidiaries that is a guarantor, issuer, or co-issuer of the guaranteed security for which the issuer is required to file reports with the Commission pursuant to Rule 305(a) of Regulation Crypto Assets, or is an Exchange Act reporting company subject to section 13(a) or section 15(d) of the Securities Exchange Act of 1934, or the offer and sale of which is qualified or being qualified pursuant to Regulation Crypto Assets; and

(b) For an issuer that is subject to 17 CFR 210.13-02 as described in paragraph (b)(6)(i) of Part F/S, each of the issuer's affiliates whose security is pledged as collateral for the issuer's security for which the issuer is required to file reports with the Commission pursuant to Rule 305(a) of Regulation Crypto Assets (17 CFR 228.305(a)), or is an Exchange Act reporting company subject to section 13(a) or section 15(d) of the Securities Exchange Act of 1934, or the offer and sale of which is qualified or being qualified under Regulation Crypto Assets. For each affiliate, also identify the security or securities pledged as collateral.

15. *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which must be so marked as to indicate clearly the subject matters to which they refer.

Instruction to Item 15:

The issuer may redact information from exhibits required to be filed by this Item if disclosure of such information would constitute a clearly unwarranted invasion of personal privacy (e.g., disclosure of bank account numbers, social security numbers, home addresses, crypto wallet addresses, and similar information). In addition, the issuer may redact specific provisions or terms of exhibits required to be filed by paragraph 6 or 7 of this Item, if the issuer customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the issuer should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and is the type that the registrant treats as private or confidential. The issuer also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the issuer must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the issuer's supplemental materials, the Commission or its staff may require the issuer to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the issuer's analyses. The issuer may request confidential treatment of the supplemental material submitted under paragraphs 6 or 7 pursuant to Rule 83 (17 CFR 200.83) while it is in the *possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it if the registrant complies with the procedures outlined in Rule 418 (17 CFR 230.418).*

SIGNATURES

Pursuant to the requirements of Regulation Crypto Assets, the issuer certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form 1-CRYPTO and has duly caused this offering statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the

City of ________________________, State of ________________, on ________ (date).

(Exact name of issuer as specified in its charter) ____

By (Signature and Title) ____

This offering statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ____

(Title) ________________________

(Date) __________________

Instructions to Signatures:

(1) The offering statement must be signed by the issuer, its principal executive officer, principal financial officer, principal accounting officer, and a majority of the members of its board of directors or other governing body. If a signature is by a person on behalf of any other person, evidence of authority to sign must be filed with the offering statement, except where an executive officer signs on behalf of the issuer.

(2) The offering statement must be signed using a typed signature. Each signatory to the filing must also manually or electronically sign a signature page or other document authenticating, acknowledging or otherwise adopting the signature that appears in the filing. Such document must be executed before or at the time the filing is made and must be retained by the issuer for a period of five years. Upon request, the issuer must furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

(3) The name and title of each person signing the offering statement must be typed beneath the signature.

Appendix B—Form 1-KC

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 1-KC

GENERAL INSTRUCTIONS

A. Rules as to Use of Form 1-KC.

(1) This Form shall be used for annual reports pursuant to Rule 305(a)(1) of Regulation Crypto Assets (17 CFR 228.305(a)(1)).

(2) Annual reports on this Form shall be filed within 120 calendar days after the end of the fiscal year covered by the report.

(3) This Form also shall be used for special financial reports filed pursuant to Rule 305(a)(2)(i)(A) of Regulation Crypto Assets (17 CFR 305(a)(2)(i)(A)). Such special financial reports shall be filed and signed in the manner set forth in this Form but otherwise need only provide Part I and the financial statements required by Rule 305(a)(2)(i)(A). Special financial reports filed using this Form shall be filed within 120 calendar days after the qualification date of the offering statement.

B. Preparation of Report.

(1) Regulation Crypto Assets (17 CFR part 228) contains certain general requirements that are applicable to reports on any form, including amendments to reports. These general requirements should be carefully read and observed in the preparation and filing of reports on this Form.

(2) This Form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report.

(3) Except where information is required to be given for the fiscal year or as of a specified date, it shall be given as of the latest date reasonably practicable.

(4) References in this Form to the items in Form 1-CRYPTO are to the items set forth in Part II and Part III of Form 1-CRYPTO, not Part I.

(5) In addition to the information expressly required to be included in this Form, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

C. Signature and Filing of Report.

(1) The report must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") in accordance with the electronic filing rules set forth in Regulation S-T (17 CFR part 232).

(2) The report must be signed by the issuer, its principal executive officer, principal financial officer, principal accounting officer, and at least a majority of the members of its board of directors or other governing body. If a signature is by a person on behalf of any other person, evidence of authority to sign must be filed with the report, except where an executive officer signs on behalf of the issuer.

(3) The report must be signed using a typed signature. Each signatory to the filing must also manually or electronically sign a signature page or other document authenticating, acknowledging or otherwise adopting the signature that appears in the filing. Such document must be executed before or at the time the filing is made and must be retained by the issuer for a period of five years. Upon request, the issuer must furnish to the Commission or its staff a copy of any or all documents retained pursuant to this paragraph.

D. Incorporation by Reference and Cross-Referencing.

(1) An issuer may incorporate by reference to other documents previously submitted or filed on EDGAR. Cross-referencing within the report is also encouraged to avoid repetition of information. For example, you may respond to an item of this Form by providing a cross-reference to the location of the information in the financial statements, instead of repeating such information. Descriptions of where the information incorporated by reference or cross-referenced can be found must be specific and must clearly identify the relevant document and portion thereof where such information can be found. For exhibits incorporated by reference, this description must be noted in the exhibits index for each relevant exhibit. All descriptions of where information incorporated by reference can be found must be accompanied by a separate hyperlink to the incorporated document on EDGAR.

(2) Reference may not be made to any document if the portion of such document containing the pertinent information includes an incorporation by reference to another document. Incorporation by reference to documents not available on EDGAR. You may not incorporate information into the financial statements from elsewhere is not permitted. Information shall not be incorporated by reference or cross-referenced in any case where such incorporation would render the statement or report incomplete, unclear, or confusing.

(3) If any substantive modification has occurred in the text of any document incorporated by reference since such document was filed, the issuer must file with the reference a statement containing the text and date of such modification.

PART I
NOTIFICATION

The following information must be provided in the XML-based portion of Form 1-KC available through EDGAR and must be completed or updated before uploading each report or amendment thereto. The format of Part I shown below may differ from the electronic version available on EDGAR. The electronic version of Part I will allow issuers to attach Part II for filing by means of EDGAR. All items must be addressed, unless otherwise indicated.

* * * * * *

This Form 1-KC is to provide an ☐ Annual Report OR ☐ Special Financial Report for the fiscal year ended ________________________________

Exact name of issuer as specified in the issuer's charter: ________________________________

Jurisdiction of incorporation/organization: ____

Address of Principal Executive Offices (if any): ____________________________________

Phone: (   ) ______________________________

Title of each class of securities issued under Rules 300-307 of Regulation Crypto Assets:_______

____

PART II
INFORMATION TO BE INCLUDED IN REPORT

Item 1. Covered Investment Contract

Furnish the information required by Rule 103(b)(1) (17 CFR 228.103(b)(1)).

Item 2. Subject Crypto Asset

Furnish the information required by Rule 103(b)(3) (17 CFR 228.103(b)(3)).

Item 3. Management, Related Persons, and Conflicts of Interest

Furnish the information required by Rule 103(b)(4) (17 CFR 228.103(b)(4)).

Item 4. Associated Crypto Network/Application; Plan of Development

Furnish the information required by Rule 103(b)(5) (17 CFR 228.103(b)(5)).

Item 5. Security; Source Code

Furnish the information required by Rule 103(b)(6) (17 CFR 228.103(b)(6)).

Item 6. Subject Crypto Asset Economics and Allocations

Furnish the information required by Rule 103(b)(7) (17 CFR 228.103(b)(7)).

Item 7. Governance

Furnish the information required by Rule 103(b)(8) (17 CFR 228.103(b)(8)).

Item 8. Subject Crypto Asset Ecosystem

Furnish the information required by Rule 103(b)(9) (17 CFR 228.103(b)(9)).

Item 9. Risk Factors

Furnish the information required by Rule 103(b)(10) (17 CFR 228.103(b)(10)).

Item 10. Discussion of Financial Condition

Furnish the information required by Item 13 of Form 1-CRYPTO for the most recent two completed fiscal years.

Item 11. Other Information

Furnish any information required to be disclosed in a report on Form 1-UC during the last six months of the fiscal year covered by this Form 1-KC, but not reported, whether or not otherwise required by this Form 1-KC. If disclosure of information is made under this item, it need not be repeated in a report on Form 1-UC that would otherwise be required to be filed with respect to that information or in a subsequent report on Form 1-UC.

Item 12. Financial Statements

The appropriate financial statements set forth below of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor must be filed as part of the Form 1-KC.

The financial statements prepared for issuers who have issued securities solely pursuant to Tier 1 of Regulation Crypto Assets need not be audited. If the financial statements are not audited, they must be labeled as "unaudited." However, if an audit of these financial statements is obtained for other purposes and that audit was performed in accordance with either U.S. generally accepted auditing standards or the Standards of the Public Company Accounting Oversight Board by an auditor that is independent under either the independence standards of the American Institute of Certified Public Accountants (AICPA) or Rule 2-01 of Regulation S-X, those audited financial statements must be filed, and an audit opinion complying with Rule 2-02 of Regulation S-X must be filed along with such financial statements. The auditor may, but need not, be registered with the Public Company Accounting Oversight Board.

Audited financial statements are required for issuers who have issued securities pursuant to Tier 2 of Regulation Crypto Assets.

Financial statements must be prepared in accordance with generally accepted accounting principles in the United States (U.S. GAAP).

Any audit of the financial statements must be conducted in accordance with either U.S. generally accepted auditing standards or the standards of the Public Company Accounting Oversight Board (United States) and the report and qualifications of the independent accountant shall comply with the requirements of Article 2 of Regulation S-X. Accounting firms conducting audits for the financial statements may, but need not, be registered with the Public Company Accounting Oversight Board.

(a) *Balance Sheet.* There shall be filed an audited consolidated balance sheet as of the end of each of the most recent two fiscal years.

(b) *Statements of comprehensive income, cash flows, and changes in stockholders' equity.* File audited consolidated statements of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income), cash flows, and changes in stockholders' equity for each of the two fiscal years preceding the date of the most recent balance sheet being filed or such shorter period as the issuer and its predecessor has been in existence.

(c) *Financial Statements of and Disclosures About Other Entities.* The circumstances described below may require you to file financial statements of, or provide disclosures about, other entities. The financial statements of other entities must be presented for the same periods as the issuer's financial statements described above in paragraphs (a) and (b) unless a shorter period is specified by the rules below.

> (1) *Financial Statements of and Disclosures About Guarantors and Issuers of Guaranteed Securities.* The requirements of Rule 3-10 of Regulation S-X are applicable to financial statements of a subsidiary that issues securities guaranteed by the parent company or guarantees securities issued by the parent company. However, the reference in Rule 3-10(a) of Regulation S-X to "an issuer or guarantor of a guaranteed security that is registered or being registered is required to file financial statements required by Regulation S-X with respect to the guarantee or guaranteed security" instead reads "an issuer or guarantor of a guaranteed security that is qualified or being qualified pursuant to Rules 300-307 of Regulation Crypto Assets is required to file financial statements required by Item 5 of Part II of Form 1-KC with respect to the guarantee or guaranteed security." The definition of "parent company" is the same as in Rule 3-10(b)(1) of Regulation S-X, except that Rule 3-10(b)(1)(ii) instead reads: "Is, or as a result of the subject offering statement will be, required to file reports with the Commission pursuant to Rule 305(a) of Regulation Crypto Assets (§§228.300–228.300), or is an Exchange Act reporting company." The parent company must also provide the disclosures required by

Rule 13-01 of Regulation S-X. The parent company may elect to provide these disclosures in a footnote to its consolidated financial statements or alternatively, in the discussion of financial condition described in Item 2 of Part II of Form 1-KC.

(2) *Financial Statements of and Disclosures About Affiliates Whose Securities Collateralize an Issuance.* The requirements of Rules 3-16 or 13-02 of Regulation S-X are applicable if an issuer's securities that are qualified or being qualified pursuant to Regulation Crypto Assets are collateralized by the securities of the issuer's affiliates. Rule 13-02 of Regulation S-X must be followed unless Rule 3-16 of Regulation S-X applies. The issuer may elect to provide the disclosures specified in Rule 13-02 of Regulation S-X in a footnote to its consolidated financial statements or alternatively, in the discussion of financial condition described in Item 10 of Part II of Form 1-KC.

Item 13. Exhibits

(a) An exhibits index must be presented immediately preceding the first signature page of the report.

(b) File, as exhibits to this Form, the exhibits required by Form 1-CRYPTO, except for the exhibits required by paragraphs 1, 12, and 13 of Item 15.

SIGNATURES

Pursuant to the requirements of Regulation Crypto Assets, the issuer has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Exact name of issuer as specified in its charter) ____

By (Signature and Title) ____

Date __________________________

Pursuant to the requirements of Regulation Crypto Assets, this report has been signed below by the following persons on behalf of the issuer and in the capacities and on the dates indicated.

By (Signature and Title) ____

Date __________________________

By (Signature and Title) ____

Date __________________________

Appendix C—Form 1-SC

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 1-SC

[ ] SEMIANNUAL REPORT PURSUANT TO REGULATION CRYPTO ASSETS

or

[ ] SPECIAL FINANCIAL REPORT PURSUANT TO REGULATION CRYPTO ASSETS

For the fiscal semiannual period ended____

____
(Exact name of issuer as specified in its charter)

____
State or other jurisdiction of incorporation or organization

____
(Full mailing address of principal executive offices (if any))

____
(Issuer's telephone number, including area code)

GENERAL INSTRUCTIONS

A. Rules as to Use of Form 1-SC.

(1) This Form is used for semiannual reports pursuant to Rule 305(a)(3) of Regulation Crypto Assets (17 CFR 228.305(a)(3)).

(2) Semiannual reports on this Form shall be filed within 90 calendar days after the end of the semiannual period covered by the report.

(3) This Form also shall be used for special financial reports filed pursuant to Rule 305(a)(2)(i)(B) of Regulation Crypto Assets (17 CFR 228.305(a)(2)(i)(B)). Special financial reports shall be filed and signed in the manner set forth in this Form but otherwise need only provide the cover page and financial statements required by Rule 305(a)(2)(i)(B). Special

financial reports filed using this Form shall be filed within 90 calendar days after the qualification date of the offering statement.

B. Preparation of Report.

(1) Regulation Crypto Assets (17 CFR part 228) contains certain general requirements that are applicable to reports on any form, including amendments to reports. Please carefully read and observe these general requirements when preparing and filing reports on this Form.

(2) This Form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report.

(3) In addition to the information expressly required to be included in this Form, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

C. Signature and Filing of Report.

(1) The report must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") in accordance with the electronic filing rules set forth in Regulation S-T (17 CFR part 232).

(2) The report must be signed by the issuer, its principal executive officer, principal financial officer, and principal accounting officer. If a signature is by a person on behalf of any other person, evidence of authority to sign must be filed with the report, except where an executive officer signs on behalf of the issuer.

(3) The report must be signed using a typed signature. Each signatory to the filing must also manually or electronically sign a signature page or other document authenticating, acknowledging or otherwise adopting the signature that appears in the filing. Such document must be executed before or at the time the filing is made and must be retained by the issuer for a period of five years. Upon request, the issuer must furnish to the Commission or its staff a copy of any or all documents retained pursuant to this paragraph.

D. Incorporation by Reference and Cross-Referencing.

(1) An issuer may incorporate by reference to other documents previously submitted or filed on EDGAR. Cross-referencing within the report is also encouraged to avoid repetition of information. For example, you may respond to an item of this Form by providing a cross-reference to the location of the information in the financial statements, instead of repeating such information. Descriptions of where the information incorporated by reference or cross-referenced can be found must be specific and must clearly identify the relevant document and portion thereof where such information can be found. For exhibits incorporated by reference, this description must be noted in the exhibits index for each relevant exhibit. All such descriptions of where information incorporated by reference can be found must be accompanied by a separate hyperlink to the incorporated document on EDGAR. A hyperlink need not remain active after the filing of the report, except that amendments to the report must update any hyperlinks referred to in the amendment that are inactive.

(2) Reference may not be made to any document if the portion of such document containing the pertinent information includes an incorporation by reference to another document. Incorporation by reference to documents not available on EDGAR is not permitted. Information shall not be incorporated by reference or cross-referenced in any case where such incorporation would render the statement or report incomplete, unclear, or confusing. Incorporating information into the financial statements from elsewhere is not permitted.

(3) If any substantive modification has occurred in the text of any document incorporated by reference since such document was filed, the issuer must file with the reference a statement containing the text and date of such modification.

INFORMATION TO BE INCLUDED IN REPORT

Item 1. Covered Investment Contract

Furnish the information required by Rule 103(b)(1) (17 CFR 228.103(b)(1)).

Item 2. Associated Crypto Network/Application; Plan of Development

Furnish the information required by Rule 103(b)(5) (17 CFR 228.103(b)(5)).

Item 3. Discussion of Financial Condition

Set forth the information required by Item 13 of Form 1-CRYPTO for the interim period for which financial statements are required by Item 4 below.

Item 4. Other Information

Set forth any information required to be disclosed in a report on Form 1-UC during the semiannual period covered by this Form 1-SC, but not reported, whether or not otherwise required by this Form 1-SC. If disclosure of information is made under this item, it need not be repeated in a report on Form 1-UC that would otherwise be required to be filed with respect to such information or in a subsequent report on Form 1-UC.

Item 5. Financial Statements

The appropriate financial statements set forth below of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor must be filed as part of the Form 1-SC.

Financial statements must be prepared on a consolidated basis in accordance with generally accepted accounting principles in the United States (US GAAP).

The financial statements included pursuant to this item may be condensed, unaudited, and are not required to be reviewed. For additional guidance on presentation of the financial statements, issuers should refer to Rule 8-03(a) of Regulation S-X. The financial statements for all issuers must include the following:

(a) An interim consolidated balance sheet as of the end of the six-month period covered by this report and a balance sheet as of the end of the preceding fiscal year. An interim balance sheet as of the end of the corresponding six-month interim period of the preceding fiscal year need not be provided unless necessary for an understanding of the impact of seasonal fluctuations on the issuer's financial condition.

(b) Interim consolidated statements of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income) must be provided for the six-month interim period covered by this report and for the corresponding period of the preceding fiscal year. Statements of comprehensive income must be accompanied by a statement that in the opinion of management all adjustments necessary in order to make the interim financial statements not misleading have been included.

(c) Interim statements of cash flows must be provided for the six-month interim period covered by this report and for the corresponding period of the preceding fiscal year.

(d) An analysis of the changes in each caption of stockholders' equity presented in the balance sheets must be provided in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which a statement of comprehensive income is required to be filed with all significant reconciling items described by appropriate captions with contributions from and distributions to owners shown separately. Dividends per share for each class of shares shall also be presented.

(e) Financial Statements of and Disclosures About Other Entities. The circumstances described below may require you to file financial statements of, or provide disclosures about, other entities. These financial statements and disclosures may be unaudited.

1) *Financial Statements of and Disclosures About Guarantors and Issuers of Guaranteed Securities*. The requirements of Rule 3-10 of Regulation S-X are applicable to financial statements of a subsidiary that issues securities guaranteed by the parent company or guarantees securities issued by the parent company. However, the reference in Rule 3-10(a) of Regulation S-X to "an issuer or guarantor of a guaranteed security that is registered or being registered is required to file financial statements required by Regulation S-X with respect to the guarantee or guaranteed security" instead refers to "an issuer or guarantor of a guaranteed security that is qualified or being qualified pursuant to the fundraising exemption in Regulation Crypto Assets (17 CFR 228, subpart C) is required to file financial statements required by Item 3 of Form 1-SA with respect to the guarantee or guaranteed security." The definition of "parent company" is the same as in Rule 3-10(b)(1) of Regulation S-X, except that Rule 3-10(b)(1)(ii) instead reads as follows: "Is, or as a result of the subject offering statement will be, required to file reports with the Commission pursuant to Rule 305(a) of Regulation Crypto Assets (17 CFR 228.305(a)), or is an Exchange Act reporting company." The parent company must also provide the disclosures required by Rule 13-01 of Regulation S-X. The parent company may elect to provide these disclosures in a footnote to its consolidated financial statements or alternatively, in the discussion of financial condition described in Item 2 of Form 1-SC.

2) *Disclosures About Affiliates Whose Securities Collateralize an Issuance*. Disclosures about an issuer's affiliates whose securities collateralize any class of securities being offered must be provided as required by Rule 13-02 of Regulation S-X. The issuer may elect to provide these disclosures in a footnote to its consolidated financial statements or alternatively, in the discussion of financial condition described in Item 3 of Form 1-SC.

Item 4. Exhibits

A. An exhibits index must be presented immediately preceding the first signature page of the report.

B. File, as exhibits to this Form, the exhibits required by Form 1-CRYPTO, except for the exhibits required by paragraphs 1, 11, and 12 of Item 15.

SIGNATURES

Pursuant to the requirements of Regulation Crypto Assets, the issuer has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Exact name of issuer as specified in its charter) ____

By (Signature and Title) ____

Date ________________________

Pursuant to the requirements of Regulation Crypto Assets, this report has been signed below by the following persons on behalf of the issuer and in the capacities and on the dates indicated.

By (Signature and Title) ____

Date ________________________

By (Signature and Title)____

Date ________________________

Appendix D—Form 1-UC

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 1-UC

CURRENT REPORT PURSUANT TO REGULATION CRYPTO ASSETS

Date of Report (Date of earliest event reported) ____________________________

____
(Exact name of issuer as specified in its charter)

____
State or other jurisdiction of incorporation or organization

____
(Full mailing address of principal executive offices (if any))

____
(Issuer's telephone number, including area code)

Title of each class of securities issued pursuant to Regulation Crypto Assets: _________________

____

GENERAL INSTRUCTIONS

A. Rules as to Use of Form 1-UC.

(1) This Form shall be used for current reports pursuant to Rule 305(a)(4) of Regulation Crypto Assets (17 CFR 228.305(a)(4)).

(2) A report on this Form is required to be filed, as applicable, upon the occurrence of any one or more of the events specified in Items 1 through 8 of this Form. Unless otherwise specified, a report is to be filed within four business days after occurrence of the event. If the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the four-business day period shall begin to run on, and include, the first business day thereafter.

(3) If the issuer previously has provided substantially the same information as required by this Form in a report required by Rule 305(a) of Regulation Crypto Assets, the issuer need not make an additional report of the information on this Form. To the extent that an item calls for disclosure of developments concerning a previously reported event or transaction, any information required in the new report or amendment about the previously reported event or transaction may be provided by incorporation by reference to the previously filed report, if a hyperlink to such report as filed with the Commission is included.

(4) Copies of agreements, amendments or other documents or instruments are not required to be filed as exhibits to the Form 1-UC unless specifically required by the applicable item. This instruction does not affect the requirement to otherwise file such agreements, amendments or other documents or instruments, including as exhibits to offering statements and periodic reports pursuant to the requirements of the fundraising exemption in Regulation Crypto Assets (17 CFR 228, subpart C).

B. Preparation of Report.

(1) Rules 300-307 of Regulation Crypto Assets contain certain general requirements which are applicable to reports on any form, including amendments to reports. These general requirements should be carefully read and observed in the preparation and filing of reports on this Form.

(2) This Form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report. Nevertheless, the report shall contain the number and caption of each applicable item, but the text of such item may be omitted. All items that are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

(3) In addition to the information expressly required to be included in this Form, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

C. Signature and Filing of Report.

(1) The report must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") in accordance with the electronic filing rules set forth in Regulation S-T (17 CFR part 232).

(2) The report must be signed by an officer duly authorized to sign on behalf of the issuer. The report must be signed using a typed signature. The signatory to the filing must also manually or electronically sign a signature page or other document authenticating, acknowledging or otherwise adopting the signature that appears in the filing. Such document must be executed before or at the time the filing is made and must be retained by the issuer for a period of five years. Upon request, the issuer must furnish to the Commission or its staff a copy of any or all documents retained pursuant to this paragraph.

D. Incorporation by Reference and Cross-Referencing.

(1) An issuer may incorporate by reference to other documents previously submitted or filed on EDGAR. Cross-referencing within the report is also encouraged to avoid repetition of information. For example, you may respond to an item of this Form by providing a cross-reference to the location of the information in another item, instead of repeating such information. Descriptions of where the information incorporated by reference or cross-referenced can be found must be specific and must clearly identify the relevant document and portion thereof where such information can be found. For exhibits incorporated by reference, this description must be noted in the exhibits index for each relevant exhibit. All such descriptions of where information incorporated by reference can be found must be accompanied by a separate hyperlink to the incorporated document on EDGAR. A hyperlink need not remain active after the filing of the report, except that amendments to the report must update any hyperlinks referred to in the amendment that are inactive.

(2) Reference may not be made to any document if the portion of such document containing the pertinent information includes an incorporation by reference to another document. Incorporation by reference to documents not available on EDGAR is not permitted. Information shall not be incorporated by reference or cross-referenced in any case where such incorporation would render the statement or report incomplete, unclear, or confusing. Incorporating information into any financial statements from elsewhere is not permitted.

(3) If any substantive modification has occurred in the text of any document incorporated by reference since such document was filed, the issuer must file with the reference a statement containing the text and date of such modification.

INFORMATION TO BE INCLUDED IN THE REPORT

Item 1. Fundamental Changes

(a) If the issuer has entered into or terminated a material definitive agreement that has resulted in or would reasonably be expected to result in a fundamental change to the nature of its business or the plan of development, disclose the following information to the extent applicable:

(1) the date on which the agreement was entered into, amended, or terminated, the identity of the parties to the agreement or amendment, and a brief description of any material relationship between the issuer or its affiliates and any of the parties (other than the relationship created by the material definitive agreement or amendment);

(2) a brief description of the material terms and conditions of the agreement;

(3) a brief description of the material circumstances surrounding the termination; and

(4) any material early termination penalties incurred by the issuer.

(b) For purposes of this item, a material definitive agreement means an agreement that provides for obligations that are material to and enforceable against the issuer, or rights that are material to the issuer and enforceable by the issuer against one or more other parties to the agreement, in each case whether or not subject to conditions.

(c) File any material definitive agreement disclosed pursuant to this item as an exhibit to the report on this Form.

Instructions to Item 1:

1. A material definitive agreement that is not made in the ordinary course of business is not necessarily required to be disclosed under this item if it does not result in, and would not reasonably be expected to result in, a fundamental change to the nature of the issuer's business or the plan of development.

2. Without limiting the generality of the foregoing and solely for the purposes of this Item 1, a material definitive agreement is deemed to result in a fundamental change if it involves any of the following:

a. An acquisition transaction for which the purchase price, as defined by U.S. GAAP, exceeds fifty-percent of the total consolidated assets of the issuer as of the end of the most recently completed fiscal year. If the acquirer transferred assets to the acquiree than the carrying value of those assets should be excluded from the purchase price;

b. A merger, consolidation, acquisition or similar transaction that requires approval by the issuer's securityholders; or

c. Any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase *the major part of the issuer's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which the issuer's business is substantially dependent.*

3. An issuer must provide disclosure under this item if the issuer succeeds as a party to the agreement or amendment to the agreement by assumption or assignment (other than in connection with a merger or acquisition or similar transaction that is otherwise reported pursuant to this item).

4. No disclosure under this item is required regarding the termination of a material definitive agreement if:

a. The agreement terminated on its stated termination date, or as a result of all parties completing their obligations under such agreement.

b. Only negotiations or discussions regarding termination of a material definitive agreement are being conducted and the agreement has not been terminated.

c. The issuer believes in good faith that the material definitive agreement has not been terminated, unless the issuer has received a notice of termination pursuant to the terms of agreement.

Item 2. Bankruptcy or Receivership

(a) If a receiver, fiscal agent, or similar officer has been appointed for an issuer or its parent, in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under State or Federal laws, in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the issuer or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental authority, disclose the following information:

(1) the name or other identification of the proceeding;

(2) the identity of the court or governmental authority;

(3) the date that jurisdiction was assumed; and

(4) the identity of the receiver, fiscal agent, or similar officer and the date of his or her appointment.

(b) If an order confirming a plan of reorganization, arrangement, or liquidation has been entered by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the issuer or its parent, disclose the following:

(1) the identity of the court or governmental authority;

(2) the date that the order confirming the plan was entered by the court or governmental authority;

(3) a summary of the material features of the plan;

(4) the number of shares or other units of the issuer or its parent issued and outstanding, the number reserved for future issuance in respect of claims and interests filed and allowed under the plan, and the aggregate total of such numbers; and

(5) information as to the assets and liabilities of the issuer or its parent as of the date that the order confirming the plan was entered, or a date as close thereto as practicable.

Instruction to Item 2:

The information called for in paragraph (b)(5) of this item may be presented in the form in which it was furnished to the court or governmental authority.

Item 3. Material Modification to Rights of Securityholders

(a) If the constituent instruments defining the rights of the holders of any class of securities of the issuer that were issued pursuant to Rule 300–Rule 307 of Regulation Crypto Assets have been materially modified, disclose the date of the modification, the title of the class of securities involved and briefly describe the general effect of such modification upon the rights of holders of such securities.

(b) If the rights or benefits evidenced by any class of securities issued pursuant to Regulation Crypto Assets have been materially limited or qualified by the issuance or modification of any other class of securities by the issuer, briefly disclose the date of the issuance or modification, the general effect of the issuance or modification of such other class of securities upon the rights or benefits of the holders of the securities issued pursuant to Regulation Crypto Assets.

Item 4. Changes in Issuer's Certifying Accountant

(a) If an independent accountant who was previously engaged as the principal accountant to audit the issuer's financial statements, or an independent accountant upon whom the principal accountant expressed reliance in its report regarding a significant subsidiary, resigns (or indicates that it declines to stand for re-appointment after completion of the current audit) or is dismissed, disclose the information that would be required under Item 304(a)(1) of Regulation S-K (17 CFR 229.304(a)(1)), including compliance with Item 304(a)(3) of Regulation S-K (17 CFR 229.304(a)(3)) if the issuer were a "registrant."

(b) If a new independent accountant has been engaged as either the principal accountant to audit the issuer's financial statements or as an independent accountant on whom the principal accountant is expected to express reliance in its report regarding a significant subsidiary, the issuer must disclose the information that would be required by Item 304(a)(2) of Regulation S-K (17 CFR 229.304(a)(2)) if the issuer were a "registrant."

Instructions to Item 4:

1. Information under this Item 4 is only required if the issuer's most recent qualified offering statement on Form 1-CRYPTO or report on Form 1-KC, whichever is most recent, contains audited financial statements.

2. The resignation or dismissal of an independent accountant, or its refusal to stand for re-appointment, is a reportable event separate from the engagement of a new independent accountant. On some occasions, two reports on Form 1-UC are required for a single change in accountants: the first on the resignation (or refusal to stand for re-appointment) or dismissal of the former accountant and the second when the new accountant is engaged. Information required in the second Form 1-UC filing to the extent that it has been reported previously in the first Form 1-UC filing.

Item 5. Non-reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review

(a) If the issuer's board of directors, a committee of the board of directors or the officer or officers of the issuer authorized to take such action if board action is not required, concludes that any previously issued financial statements, covering one or more years or interim periods for which the issuer is required to provide financial statements under Rule 300–Rule 307 of Regulation Crypto Assets, including Form 1-CRYPTO, should no longer be relied upon because of an error in such financial statements as addressed in FASB Accounting Standards Codification Topic 250, or, if applicable, IAS 8, as may be modified, supplemented or succeeded, disclose the following information:

(1) the date of the conclusion regarding the non-reliance and an identification of the financial statements and years or periods covered that should no longer be relied upon;

(2) a brief description of the facts underlying the conclusion to the extent known to the issuer at the time of filing; and

(3) a statement of whether the audit committee, or the board of directors in the absence of an audit committee, or authorized officer or officers, discussed with the issuer's independent accountant the matters disclosed in the filing made pursuant to this paragraph (a).

(b) If the issuer is advised by, or receives notice from, its independent accountant that disclosure should be made or action should be taken to prevent future reliance on a previously issued audit report or completed interim review related to previously issued financial statements, disclose the following information:

(1) the date on which the issuer was so advised or notified;

(2) identification of the financial statements that should no longer be relied upon;

(3) a brief description of the information provided by the accountant; and

(4) a statement of whether the audit committee, or the board of directors in the absence of an audit committee, or authorized officer or officers, discussed with the independent accountant the matters disclosed in the filing pursuant to paragraph (b) of this item.

(c) If the issuer receives advisement or notice from its independent accountant requiring disclosure under paragraph (b) of this item, the issuer must:

(1) provide the independent accountant with a copy of the disclosures the issuer is making in response to this item and the independent accountant shall receive a copy no later than the day that the disclosures are filed with the Commission;

(2) request the independent accountant to furnish to the issuer as promptly as possible a letter addressed to the Commission stating whether the independent accountant agrees with the statements made by the issuer in response to this item and, if not, stating the respects in which it does not agree; and

(3) amend the issuer's previously filed Form 1-UC by filing the independent accountant's letter as an exhibit to the filed Form 1-UC no later than two business days after the issuer's receipt of the letter.

Item 6. Changes in Control of Issuer

(a) If, to the knowledge of the issuer's board of directors, a committee of the board of directors, governing body similar to a board of directors, or authorized officer or officers of the issuer, a change in control of the issuer has occurred, furnish the following information:

(1) the identity of the persons who acquired such control;

(2) the date and a description of the transactions which resulted in the change in control;

(3) the basis of the control, including the percentage of voting securities of the issuer now beneficially owned directly or indirectly by the persons who acquired control;

(4) the amount of the consideration used by such persons;

(5) the sources of funds used by the persons, unless all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Securities Exchange Act of 1934;

(6) the identity of the persons from whom control was assumed; and

(7) any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters.

(b) Describe any arrangements known to the issuer, including any pledge by any person of securities of the issuer or any of its parents, the operation of which may at a subsequent date result in a change in control of the issuer. It is not necessary to describe ordinary default provisions contained in the charter, trust indentures, or other governing instruments relating to securities of the issuer in response to this paragraph.

Item 7. Departure of Certain Officers

If the issuer's principal executive officer, principal financial officer, principal accounting officer, or any person performing similar functions, retires, resigns or is terminated from that position, disclose the fact that the event has occurred and the date of the event.

Instruction to Item 7:

The disclosure requirements of this item do not apply to an issuer that is a wholly-owned subsidiary of an issuer with a class of securities registered under section 12 of the Exchange Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or under Rule 300–Rule 307 of Regulation Crypto Assets.

Item 8. Other Events

The issuer may, at its option, disclose under this item any events or information, the disclosure of which is not otherwise called for by this Form, that the issuer deems of importance to securityholders.

SIGNATURES

Pursuant to the requirements of Regulation Crypto Assets, the issuer has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Exact name of issuer as specified in its charter) ____

By (Signature and Title) ____

Date ________________________________

Appendix E—Form TR

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM TR

TRANSITION REPORT UNDER REGULATION CRYPTO ASSETS

* * * * * *

PRELIMINARY INFORMATION

Exact name of entity(ies) as specified in the charter(s) that comprise the issuer and/or full name(s) of natural person(s) who comprise the issuer: ________________________________

Address of Issuer's Principal Executive Offices (if any): ______________________________

____

Jurisdiction(s) of incorporation/organization of entity(ies) that comprise the issuer, if applicable: ____________

Phone: (   ) __________________________

Issuer E-mail Address: __

Name of Crypto Asset: __

If the issuer is filing this Form TR pursuant to 17 CFR 228.200(e), check the following box. ☐

If the issuer is filing this Form TR pursuant to 17 CFR 228.305(c), check the following box. ☐

If the issuer is filing this Form TR pursuant to 17 CFR 228.305(d), check the following box. ☐

If this Form TR is being filed pursuant to 17 CFR 228.400(b), check the following box. ☐

GENERAL INSTRUCTIONS

(a) If you are filing this Form TR pursuant to 17 CFR 228.200(e) or 17 CFR 228.305(d) and you have satisfied the condition in 17 CFR 228.400(a), provide the information required by Part I.

(b) If you are filing this Form TR pursuant to 17 CFR 228.200(e) or 17 CFR 228.305(d) and you have not satisfied the condition in 17 CFR 228.400(a), provide the information required by Part II.

(c) If you are filing this Form TR pursuant to 17 CFR 228.305(c), provide the information required by Part III.

(d) If you are filing this Form TR pursuant to 17 CFR 228.400(b), provide the information required by Part I.

(e) This Form TR must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") in accordance with the electronic filing rules set forth in Regulation S-T (17 CFR part 232).

PART I

Item 1. Description of Covered Investment Contract and Crypto Asset. Provide a brief description of the covered investment contract and crypto asset sufficient for a reasonable investor to identify the security and crypto asset to which this Form TR relates.

Item 2. Certification Regarding Essential Managerial Efforts. Check the following box to provide the following certification:

☐ By checking this box, I certify that I have completed or otherwise permanently ceased all essential managerial efforts in which I promised or represented I would engage under the covered investment contract identified in Item 1 above, and I am not making and do not intend to make any new representations or promises to engage in essential managerial efforts with respect to the crypto asset identified in Item 1 above.

Item 3. Supporting Analysis. Provide an analysis supporting your certification under Item 2 above.

PART II

Item 4. Description of Covered Investment Contract. Provide a brief description of the covered investment contract sufficient for a reasonable investor to identify the covered investment contract to which this Form TR relates.

Item 5. Description of Current Status. Provide a description of the current status of the covered investment contract, the subject crypto asset, and the associated crypto network or associated crypto application and the issuer's plans with respect to such covered investment contract, subject crypto asset, and associated crypto network or associated crypto application.

Item 6. Analysis Supporting Current Status. If you indicated under Item 5 above that the covered investment contract has ceased to exist, provide an analysis supporting that determination.

PART III

Certification of Suspension of Duty to File Reports

Title of each class of securities covered by this Form ________________________

Commission File Number(s)____

Approximate number of holders of record as of the certification date:___________

Pursuant to the requirements of Regulation Crypto Assets, __________ (Name of issuer as specified in charter) certifies that it meets all of the conditions for termination of Regulation Crypto Assets reporting specified in Rule 305(c) (17 CFR 228.305(c)) and that there are no classes of securities other than those that are the subject of this Form TR regarding which the issuer has Regulation Crypto Assets reporting obligations. __________ (Name of issuer as specified in charter) has caused this certification to be signed on its behalf by the undersigned duly authorized person(s).

Instruction to Signature: If the issuer is composed of a group of individuals or entities, each such person that is a member of that group (or that person's duly authorized representative) must sign this Form TR and provide the below certification. An officer of the issuer (or each member of the group, as applicable) or any other duly authorized person(s) may sign, and must do so by typed signature. The name and title of the person(s) signing the Form must be typed under the signature. The signatory(ies) to the filing must also manually or electronically sign a signature page or other document authenticating, acknowledging or otherwise adopting the signature that appears in the filing. This document must be executed before or at the time the filing is made and must be retained by the issuer for a period of five years. Upon request, the issuer must furnish to the Commission or its staff a copy of any or all documents retained under this instruction.

Signature. By signing below, I certify, after reasonable inquiry and to the best of my knowledge and belief, that the information set forth in this Form TR is true, complete, and correct.

Signature:

Title:

Date:

Appendix F—Form NOR

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM NOR

NOTICE OF RELIANCE UNDER REGULATION CRYPTO ASSETS

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PRELIMINARY INFORMATION

Exact name of entity(ies) as specified in the charter(s) that comprise the issuer and/or full name(s) of natural person(s) who comprise the issuer: ____________________________________

Jurisdiction(s) of incorporation/organization of entity(ies) that compose the issuer, if applicable: _

Address of Issuer's Principal Executive Offices (if any): ________________________________

____

Issuer's Phone: ( ) ________________________

Issuer E-mail Address: _____________________

Name of Subject Crypto Asset: ______________

Provide the website address at which you will make the information required by Rule 103 of Regulation Crypto Assets (17 CFR 228.103) publicly accessible, free of charge pursuant to Rule 200(d)(1) of Regulation Crypto Assets (17 CFR 228.200(d)(1)).

Note: This Form NOR must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") in accordance with the electronic filing rules set forth in Regulation S-T (17 CFR part 232).

Instruction to Signature: If the issuer is composed of a group of individuals or entities, each such person that is a member of that group (or that person's duly authorized representative) must sign this Form NOR and provide the below certification. An officer of the issuer (or each member of the group, as applicable) or any other duly authorized person(s) may sign, and must do so by typed signature. The name and title of the person(s) signing the Form must be typed under the signature. The signatory(ies) to the filing must also manually or electronically sign a signature page or other document authenticating, acknowledging or otherwise adopting the signature that appears in the filing. This document must be executed before or at the time the filing is made and must be retained by the issuer for a period of five years. Upon request, the issuer must furnish to the Commission or its staff a copy of any or all documents retained under this instruction.

Signature. By signing below, I certify, after reasonable inquiry and to the best of my knowledge and belief, that (1) the information set forth in this Form NOR is true, complete, and correct and (2) I intend to fulfill, within four years after the date of filing this Form NOR, the essential managerial efforts in which I represented or promised investors I would engage under the covered investment contract.

Signature:

Title:

Date: