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Memorandum

The SEC's Proposed "Regulation Crypto Assets" Offers Clarity and Options to Crypto Issuers

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On August 18, 2026, the Securities and Exchange Commission (the "SEC") released its "Regulation Crypto Assets" framework aimed at providing regulatory clarity for issuers of crypto assets. If finalized in its current form, the new rules would create two exemptions from the registration requirements of Section 5 of the Securities Act of 1933 (the "Securities Act") for offerings involving crypto assets that are "investment contracts" under the federal securities laws. The rules would also establish a conditional safe harbor under which a crypto asset that is considered a "security" under the federal securities laws because it is the subject of an investment contract would no longer be considered as such. Assets that do not qualify as "securities" are not generally subject to the SEC's registration or disclosure requirements.

The proposal represents the latest regulatory development to emerge from the SEC's Crypto Task Force and reflects the Commission's continued focus on cryptocurrency-related rulemaking. Since the establishment of the task force in January 2025, the SEC has published interpretive guidance classifying crypto assets into five categories—digital commodities, digital collectibles, digital tools, stablecoins, and digital securities—and has clarified under what circumstances crypto assets may cease to be subject to investment contracts for purposes of securities law. Each of these steps has aimed to reconcile existing securities laws with the unique technological characteristics of crypto assets and to design "fit-for-purpose" rules and regulations.

The Key Components of Regulation Crypto Assets

STARTUP EXEMPTION

The primary purpose of the startup exemption is to provide issuers with a one-time exemption for small offerings. The startup exemption would exempt offers, sales, and other distributions of covered investment contracts from Section 5 of the Securities Act during a period of up to four years, subject to a $5 million aggregate offering limit. The exemption is limited to one-time use such that the issuer and its affiliates may not rely on the exemption again for the same or substantially similar crypto asset. Subject to satisfaction of certain conditions, the new exemption permits issuers to conduct offerings of covered investment contracts to retail investors, so long as the issuers file a Form NOR (Notice of Reliance) with the Commission before any covered transaction and file a Form TR (Transition Report) no later than four years thereafter. Issuers must also make certain principles-based narrative disclosures (such as regarding material managerial participants, associated crypto applications and networks, and the crypto asset's economics and ecosystem, among others) publicly accessible within 30 days after each calendar year-end if material changes have occurred. Issuers are not required to provide financial statements. Issuers remain subject to federal securities antifraud and antimanipulation laws regardless of which exemption is relied upon and an issuer may be an entity, an individual, or a group of individuals or entities.

FUNDRAISING EXEMPTION

The fundraising exemption is intended to facilitate larger capital raising transactions, up to $75 million in certain cases, in exchange for additional disclosure requirements (notably, financial statement requirements) and ongoing reporting obligations. There are two tiers with distinct offering limits. Tier 1 permits issuers to conduct offerings of up to $20 million in a 12-month period (including no more than $6 million (or 30%) offered by affiliated selling securityholders), while Tier 2 allows offerings of up to $75 million in a 12-month period (including no more than $22.5 million (or 30%) offered by affiliated selling securityholders). Under this proposed system, modeled in part on Regulation A, issuers in both tiers are obligated to file an offering statement on Form 1-CRYPTO with the SEC containing principles-based narrative disclosures (such as the disclosure required under the startup exemption, plus a plan of development, source code, and governance, among others), a discussion of the issuer's financial condition, and financial statements. For Tier 1 offerings, the financial statements need not be audited or prepared in accordance with Regulation S-X. For Tier 2 offerings, the financial statements must be audited and prepared in accordance with Regulation S-X. Similar to issuers relying on the startup exemption, those utilizing the fundraising exemption also remain subject to all federal securities antifraud and antimanipulation laws. And, in contrast to the startup exemption, the issuer must be an entity and must be organized in the United States with (i) a majority of the issuer's executive officers or directors qualifying as U.S. citizens or residents, (ii) more than 50 percent of its assets located in the United States, and (iii) its business administered principally in the United States.

The exemption also introduces a periodic filing regime modeled after the corresponding forms under Regulation A. Form 1-KC, Form 1-SC, and Form 1-UC will be used for annual, semiannual and current events reports, respectively.

INVESTMENT CONTRACT SAFE HARBOR

Under the safe harbor, a crypto asset that is the subject of an investment contract, and thus a "security," would no longer be considered a security, and would thus exit the federal securities regulatory framework altogether. This would be achieved by determining that the investment contract ceases to exist.

For this determination to occur, an issuer must have: (1) completed or otherwise permanently ceased all essential managerial efforts that it represented or promised it would engage in under the covered investment contract with respect to the crypto asset; and (2) filed a transition report with the Commission certifying that it has satisfied the conditions of the safe harbor and providing an analysis supporting that certification. This safe harbor is consistent with the principles articulated in the SEC's March 2026 Interpretation, which outlined when a non-security crypto asset ceases to be subject to an investment contract.

ADDITIONAL PROVISIONS

Aside from the exemptions and safe harbor, which are particularly significant for potential issuers, the proposed rules also include several other notable provisions. Regulation Crypto Assets would preempt state securities law registration and qualification requirements with respect to offers and sales of covered investment contracts by establishing a definition of "qualified purchaser" under the Securities Act. The proposed rules would also preempt state securities law registration and qualification requirements for certain secondary market transactions by persons other than the issuer, an underwriter, or a dealer.

The proposal also defines key terms, including "crypto asset" (any digital representation of value recorded on a cryptographically-secured distributed ledger), "covered investment contract" (a contract, transaction, or scheme involving a crypto asset that constitutes an investment contract, provided that (1) a crypto asset is subject to the investment contract, (2) such crypto asset is not a security, and (3) no asset other than such crypto asset (including any security or non-security asset) is subject to the investment contract), and "associated crypto network" (the blockchain or similar distributed ledger technology network on which such crypto asset is generated, minted, or mined).

Implications

If adopted, Regulation Crypto Assets would establish the first SEC exemption framework for small-scale crypto asset offerings, providing a clearer regulatory path for token issuers and blockchain project developers. Additionally, it would provide all issuers the ability to terminate or suspend duties under the securities rules when the issuer has completed or ceased "managerial effort" under an investment contract.

In addition, by preempting state securities law registration and qualification requirements, the regulations would centralize certain aspects of crypto policy at the federal level.

What's Next

A sixty-day public comment period began upon publication of the rules in the Federal Register on August 21, 2026. At the end of the comment period, the SEC will consider the responses and further refine the proposed regulations.

Although this action is significant and is likely to provide enhanced capital-raising opportunities for small issuers, it does not address many larger questions. For example, the proposal does not create a new framework for trading platforms, market intermediaries, or tokenized securities, nor create accounting policies for crypto assets. The SEC's efforts on these and other crypto policies remain ongoing.

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