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Regulation Crypto Assets: A New Offering Framework and Safe Harbor

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The Securities and Exchange Commission (SEC) has proposed a new regulation, "Regulation Crypto Assets," that would create a tailored federal regulatory framework for certain investment contracts involving crypto assets. After years of testing applications of the Supreme Court's Howey test to determine if crypto assets are securities, the SEC formed the Crypto Task Force in 2025 and published the March 2026 interpretive release alongside the CFTC. Regulation Crypto Assets would codify aspects of the March interpretive release and build an offering regime from it.

This article will discuss the four main parts of the proposal: the startup exemption, the fundraising exemption, the safe harbor, and state-law preemption.

STARTUP EXEMPTION: RULE 200

The startup exemption is intended to provide a limited regulatory runway for development-stage crypto projects. A "covered transaction" (an offering or other distribution of covered investment contracts) would be exempt from Section 5 of the Securities Act of 1933 ("Securities Act") if the issuer satisfies the conditions in proposed Rule 200.

- Four-year period. The exemption begins after the issuer files its notice of reliance (Form NOR) and ends on the earlier of four years after that filing or the filing of a transition report (Form TR).
- Broad issuer eligibility. The issuer may be an entity, an individual, or a group of individuals or entities, with members of a group jointly responsible for satisfying the exemption.
- One-time use. The issuer and its affiliates generally may not restart the exemption for the same or a substantially similar crypto asset after the permitted period.
- $5 million cap. Aggregate offering price plus gross proceeds from covered transactions may not exceed $5 million during the permitted period.
- Notice, website disclosure, and transition report. The issuer must file Form NOR before any covered transaction, make the Rule 103 disclosures (narrative disclosures on numerous topics, including the material terms of the covered investment contract and the issuer's representations or promises to engage in essential managerial efforts) publicly available on a free website, update material changes annually within 30 days after calendar year-end, and file Form TR no later than four years after the Form NOR filing.

The startup exemption is deliberately less burdensome than the proposed fundraising exemption: it would not require audited financial statements or the same periodic reporting regime; the covered investment contracts issued under the startup exemption would not be restricted securities; there would be no accredited-investor limitation; and general solicitation would be permitted. The SEC is intentionally trying to avoid impeding the broad distribution and participation in crypto projects that can be important to network effects.

FUNDRAISING EXEMPTION: RULES 300 THROUGH 307

For larger offerings, the SEC proposes a two-tier fundraising exemption that borrows heavily from Regulation A while substituting crypto-specific disclosure and transition mechanics.

- Tier 1. Raise up to $20 million in a 12-month period, including no more than $6 million offered by affiliated selling securityholders.
- Tier 2. Raise up to $75 million in a 12-month period, including no more than $22.5 million offered by affiliated selling securityholders.
- First-year secondary sales. During the issuer's first Regulation Crypto Assets offering, and during the 12 months following the qualification of that first offering, no more than 30 percent of the Regulation Crypto Assets offering can consist of securities being sold by existing securityholders.
- Domestic nexus. The issuer must be a U.S.-organized entity, a majority of its executive officers or directors must

be U.S. citizens or residents, more than 50 percent of its assets must be located in the United States, and its business must be administered principally in the United States.

- Investor limits. A non-accredited investor generally may invest no more than 10 percent of the greater of annual income or net worth, or for a non-natural person, revenue or net assets. Unlike Regulation A, that limitation would apply to both Tier 1 and Tier 2 offerings and would not include a national-exchange listing carveout.
- Qualification and communications. Sales could not occur until the SEC qualifies the offering statement, while proposed Rule 304 would permit pre-qualification "testing the waters" communications on terms closely modeled on Regulation A.
- Form 1-CRYPTO and ongoing reports. The offering statement would be filed on Form 1-CRYPTO. Both Tier 1 and Tier 2 issuers would file annual reports on Form 1-KC, semiannual reports on Form 1-SC, and specified current reports on Form 1-UC.

REGULATION CRYPTO ASSETS COMPARED WITH REGULATION A

Topic	Regulation A	Proposed Regulation Crypto Assets
Eligible Instrument	Public offers and sales of "eligible securities": equity, debt, and securities convertible or exchangeable into equity interests, subject to Rule 261(c)	Limited to "covered investment contracts" involving a non-security crypto asset
Offering Limits	Tier 1: $20 million Tier 2: $75 million	Same $20 million / $75 million tier structure for the fundraising exemption
Tier 1 Ongoing Reporting	Tier 1 generally files a Form 1-Z exit report rather than ongoing annual, semiannual, and current reports	Both Tier 1 and Tier 2 fundraising issuers would file annual, semiannual, and current reports
Disclosure Focus	Form 1-A and Regulation A disclosures are principally issuer and traditional-security focused	Rule 103 and Form 1-CRYPTO emphasize the investment contract, promised managerial efforts, token economics and allocation, network/application development, source code and security, governance, ecosystem, and crypto-specific risks
State Registration Preemption	Rule 256 defines purchasers in Tier 2 offerings as "qualified purchasers" for Securities Act §18(b)(3) purposes. Tier 1 does not receive the same Regulation A preemption	Proposed Rule 500 would cover all Regulation Crypto Assets offerings and specified secondary-market transactions, subject to issuer compliance and current-status conditions
Exit/Transition	Tier 1 uses Form 1-Z; Tier 2 reporting can be suspended or terminated under Rule 257 based on specified reporting and holder conditions	Form TR would be used for transition reporting. Reporting can terminate when the covered investment contract ceases, including through Rule 400.

THE INVESTMENT CONTRACT SAFE HARBOR: RULE 400

Proposed Rule 400 is a non-exclusive safe harbor from the term "investment contract" in the Securities Act and the Securities Exchange Act of 1934 ("Exchange Act") definitions of "security." There are two conditions to satisfy the safe harbor: 1) the issuer has completed or permanently ceased all essential managerial efforts it promised under the covered investment contract and is not making (and does not intend to make) new promises; and 2) the issuer files a transition report (Form TR) certifying satisfaction of that condition and providing a supporting analysis. Those conditions turn entirely on the issuer's own promises. Since Rule 103 disclosures must track the issuer's public statements and whitepapers, an issuer's initial marketing effectively becomes the basis for its own eventual exit analysis.

Critically, the SEC may challenge whether an issuer actually satisfied the conditions, including the accuracy of the Form TR analysis. Since the safe harbor is non-exclusive, an asset can separate from an investment contract under *Howey* without using Rule 400, and conversely a private party remains free to argue the asset is still a security even where Rule 400 was used.

Two points deserve particular attention for advisers and fund sponsors. First, Rule 400 addresses only the "investment contract" prong of the Securities Act and Exchange Act definitions of "security," but does not extend to the Investment Company Act of 1940 ("Investment Company Act") or the Investment Advisers Act of 1940 ("Advisers Act"), so satisfying Rule 400 alone will not resolve classification under every federal securities statute. Second, the SEC acknowledges in the proposal that issuers may hesitate to file Form TR if doing so reads as a tacit admission that an investment contract previously existed. This could shape how often issuers use the safe harbor.

STATE LAW PREEMPTION AND SECONDARY-MARKET IMPLICATIONS

Proposed Rule 500 would define "qualified purchaser" (for purposes of Section 18(b)(3) of the Securities Act) to include anyone offered or sold securities in a Regulation Crypto Assets offering, and, subject to conditions, certain secondary-market purchasers. This would treat covered investment contracts as covered securities and preempt state registration and qualification requirements. For secondary transactions by non-issuers, underwriters, or dealers, that preemption would hold only so long as the issuer remains current on its applicable disclosure and reporting obligations, which is materially broader than Regulation A's Rule 256. The practical challenge is that secondary-market participants will need a reliable way to confirm an issuer is still current, something the SEC itself has asked for comment on, including whether unaffiliated participants can even make that determination.

WHAT MARKET PARTICIPANTS SHOULD WATCH

Because the proposal is still at the comment stage, several provisions could change materially before the regulations are finalized. For issuers, advisers, funds, exchanges, intermediaries, and other market participants evaluating the proposal, the following issues are likely to be particularly important:

- Whether the definition of "covered investment contract" is broad enough to capture common financing and token-distribution structures without unintentionally covering arrangements involving other securities or assets
- How the SEC will evaluate "essential managerial efforts," and whether the final rule will provide more objective criteria for satisfying the safe harbor
- Whether Rule 400 will be expanded to the Investment Company Act and Investment Advisers Act definitions of "security"
- How issuers will maintain Rule 103 disclosure consistency with whitepapers, websites, and official social media to protect future reliance on the Rule 400 safe harbor
- How the Clarity Act (a proposed bill that would further allocate jurisdiction of crypto assets between the SEC and the CFTC) may modify Regulation Crypto Assets.

HOW WE CAN HELP

The Investment Funds team at Wick Phillips can help fund sponsors, investment advisers, issuers, and other market participants evaluate the proposed Regulation Crypto Assets framework and its interaction with existing private and public offering exemptions. We can assist with structuring analyses under the proposed startup and fundraising exemptions, reviewing offering and token-distribution materials against proposed Rule 103, assessing the Rule 400 safe harbor pathway, and evaluating related Investment Company Act, Investment Advisers Act, and state securities-law considerations.

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