The SEC Draws a New Map for U.S. Crypto Issuers - and Narrows the Shoreline for Off-shore Foundations: Inside the SEC's "Regulation Crypto Assets"

Why the SEC's Regulation Crypto Assets Proposing Release marks a major development in the regulation of Crypto Assets.

On August 18, 2026, the Securities and Exchange Commission released a proposed rule titled "Regulation Crypto Assets" (the "Proposing Release"). [1] This proposed rule substantially expands upon the Commission's prior release issued in March 2026 (the "March Release") which served as interpretive guidance on the application of the federal securities laws to crypto assets. [2]

Regulation Crypto Assets would establish a new regulatory framework for certain offerings involving covered investment contracts, including a proposed startup exemption, a proposed fundraising exemption, and a proposed investment contract safe harbor. The proposed framework would supplement, rather than replace, the guidance in the March Release.

In particular, the proposed exemptions would provide specified pathways for offerings that might otherwise require registration, while the proposed "investment contract safe harbor" ("Proposed Rule 400") would establish a conditional safe harbor addressing when a crypto asset is no longer considered subject to an investment contract. The underlying Howey analysis remains relevant even where an issuer does not satisfy the proposed safe harbor.

There are several key takeaways from the Regulation Crypto Assets Proposing Release. The proposed regulation:

- **Creates a tailored offering regime** for "covered investment contracts" (an investment contract tied to a crypto asset that is not itself a security) rather than forcing crypto fundraising into rules built for stocks and bonds.
- **Includes two new exemptions from Securities Act registration:** a *startup exemption* (up to $5 million over four years) and a Regulation A-style *fundraising exemption* (up to $75 million in 12 months, with tiered disclosure and, for Tier 2, audited financials); and

- **Establishes a conditional safe harbor (Proposed Rule 400)** that lets a crypto asset exit "investment contract" status once the issuer has completed or permanently ceased its promised essential managerial efforts and files a certifying transition report on newly created Form TR.
- **Shifts SEC guidance from interpretation to rulemaking.** It builds on, and does not replace, the March 2026 interpretive framework and the underlying Howey analysis; issuers using the exemptions must still meet specific eligibility, disclosure, and filing conditions.
- **Keeps Investor protections in place,** including principles-based disclosure and a 10% investment cap for non-accredited investors that applies to both fundraising tiers.
- **Narrows the path for offshore foundations.** The fundraising exemption is limited to U.S.-organized and U.S.-controlled issuers; the startup exemption's filing and certification demands are hard for decentralized foundations to meet; and neither exemption addresses Regulation S nor cross-border offerings.

Inside the Proposal: Breaking Down Regulation Crypto Assets

Five Subparts, One Framework

The Proposing Release represents a fundamental shift from interpretive guidance to proposed rulemaking. Rather than simply clarifying the Commission’s views on existing law, the Proposing Release proposes new exemptions and a safe harbor with specific conditions and requirements.

The proposed rules would be set forth in a new regulation titled “Regulation Crypto Assets” comprising five subparts:

Subpart A: General rules applicable to the entire regulation, including definitions, general provisions, inflation adjustment mechanisms, disclosure requirements, and disqualification provisions.

Subpart B: A “startup exemption” permitting offerings of up to $5 million during a four-year period, designed to provide issuers with temporary relief from Securities Act registration requirements while they work toward fulfilling essential managerial efforts.

Subpart C: A “fundraising exemption” modeled on Regulation A, permitting offerings of up to $75 million during each 12-month period through a two-tier structure with distinct offering limits and disclosure requirements.

Subpart D: An “investment contract safe harbor” under Proposed Rule 400 that provides specified conditions where 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 be subject to such investment contract.

Subpart E: Preemption of state securities law registration and qualification requirements for covered investment contracts issued pursuant to Regulation Crypto Assets exemptions.

The Proposing Release Definitions That Do the Heavy Lifting:

***Covered Investment Contract*:** is defined as a contract, transaction, or scheme that constitutes an investment contract, provided that: (1) a crypto asset is subject to the investment contract; (2) such crypto asset is not itself a security; and (3) no asset other than such crypto asset is subject to the investment contract.

***Crypto Asset*:** is “any digital representation of value that is recorded on a cryptographically-secured distributed ledger.”

***Associated Crypto Network and Application*:**

- “associated crypto network” is defined as the blockchain or similar distributed ledger technology network on which a crypto asset is generated.
- “associated crypto application” is defined as the smart contract or executable software program deployed to a network within which the crypto asset may be used.

Rethinking "Decentralization": Bellementis Managing Partner Teresa Goody Guillén Referenced in Rulemaking Record

Beneath the Proposing Release lies a key question: when is a crypto asset transaction a securities transaction, and when has it stopped being one? Much of the industry pushed the SEC to make "decentralization" the dividing line, but others in the industry pushed back. Notably, Teresa Goody Guillén, founder and managing partner of Bellementis PLLC pushed against this in her own writings to the Commission.

In a letter she submitted, Goody Guillén urged the Commission not to make decentralization the dividing line. She warned that decentralization "is not a binary state, but a subjective and often fluid continuum," thus using it for legal classification "introduces intolerable uncertainty" (Proposing Release footnote 77). Decentralization, she wrote, "is multifaceted and, in some cases, borders on illusory"; the better question is "not 'is it decentralized' but whether residual risk is reduced by design, and if not, how to address it." The SEC cites her a second time in the Proposing Release on a companion point; the Commission should focus on "regulating residual risk across three axes: agency risk, derivative risk, and market-integrity risk" rather than fixating on classification (Proposing Release footnote 85).

That reframing tracks the architecture the SEC ultimately proposed. Rather than tying security status to how "decentralized" a project looks, the Proposing Release keys the covered-investment-contract analysis and the Rule 400 safe harbor's exit condition to whether the issuer has completed or permanently ceased its promised essential managerial efforts.

March Release vs. The Proposing Release: How the Safe Harbors Have Shifted

Digital Commodity Classification

Under the March Release, an offshore foundation could avoid investment-contract classification by ensuring its token is intrinsically linked to a functional crypto system, derives value from programmatic operation and market dynamics, and carries no promises of essential managerial efforts. The Proposing Release leaves that digital-commodity interpretation intact, but its new structured exemptions are effectively unavailable to offshore foundations for offerings that may involve investment contracts during development.

The result is that the March definition still holds, yet offshore entities lose the developmental safe harbors the Proposing Release framework offers domestic issuers. The SEC itself recognizes the trade-off, noting that pushing these transactions offshore can shrink the pool of investments available to U.S. investors and expose them to markets with weaker investor protections.

Protocol Staking and Mining

The March Release established that Protocol Staking and Protocol Mining constitute administrative or ministerial activities that do not involve the offer or sale of securities. This interpretation extended to staking receipt tokens that merely evidence ownership of deposited non-security crypto assets.

The Proposing Release leaves this characterization of Protocol Staking and Mining unchanged, maintaining that these administrative or ministerial activities do not constitute securities transactions.

Airdrops

Under the March Release, airdrops of non-security crypto assets do not constitute investment contracts where recipients provide no money, goods, services, or other consideration in exchange for the tokens, regardless of the issuer's domicile.

The Proposing Release includes transactions referred to as "airdrops" within the startup exemption's definition of "covered transaction," subjecting them to the exemption's $5 million offering limit and related operational conditions. The Proposing Release clarifies that issuers conducting airdrops under the conditions set forth in the March guidance do not need to rely on the startup exemption or any other exemption.

The Game-Changers for Crypto Capital Raising

From Interpretation to Rulemaking

The March Release was interpretive guidance showcasing the Commission's view of how existing law and the Howey test already apply to crypto assets, without displacing that precedent. The Proposing Release does something different. It uses the exemptive authority under Securities Act Section 28 to propose new exemptions from Section 5 registration through notice-and-comment rulemaking. This signals a shift from principles-based guidance to a new prescriptive regime since issuers relying on the exemptions must meet specific eligibility, offering, disclosure, and filing requirements. This also raises the bar for offshore foundations, especially under the fundraising exemption, though it does not shut them out of the framework entirely.

Structured Disclosure Requirements

The March Release provided interpretive guidance but did not mandate specific disclosures for offerings of non-security crypto assets subject to investment contracts. Instead, an issuer had to follow whatever disclosure rules came with the specific exemption on which it already relied.

In contrast, proposed Rule 103 of the Proposing Release establishes principles-based disclosure requirements for covered investment contracts.

These requirements mandate disclosure regarding:

- Material terms of the covered investment contract, including the issuer’s representations or promises to engage in essential managerial efforts and progress toward fulfilling them;
- Material terms of the offering, including use of proceeds, number of units offered, and pricing;
- Subject crypto asset characteristics;
- Management, related persons, and conflicts of interest;
- Associated crypto network or application and plan of development;
- Security and source code;
- Subject crypto asset economics and allocations;
- Governance mechanisms;
- Subject crypto asset ecosystem; and
- Material risk factors.

Additionally, the fundraising exemption requires financial statements (audited for Tier 2 offerings) and a discussion of the issuer’s financial condition, filed as part of the newly-proposed Form 1-CRYPTO offering statement.

While these requirements enhance investor protection by targeting information specific to crypto assets, they assume an identifiable issuer entity capable of producing financial statements and disclosing managerial structures. Although the Proposing Release acknowledges that “each issuer would be required to tailor its disclosure based on its own facts and circumstances,” the framework seemingly relies on the existence of a traditional organizational model, presenting potential alignment challenges for decentralized foundations.

A Time-Limited Regulatory Runway with Transition Requirements

The March Release provided interpretive guidance on when a non-security crypto asset subject to an investment contract would separate from that investment contract, but it imposed no time limits or mandatory transition reporting.

Meanwhile, the startup exemption under the Proposing Release provides a four-year maximum duration, requiring the issuer to certify in its initial filing that it “intends to fulfill, within four years after the date of filing, the essential managerial efforts the issuer represented or promised investors it would engage in under the covered investment contract.” At the end of the four-year period (or earlier if the issuer completes its essential managerial efforts), the issuer must file a transition report on Form TR describing either (i) satisfaction of the investment contract safe harbor conditions (demonstrating completion of essential managerial efforts); or (ii) current status of the covered investment contract, subject crypto asset, and associated network or application, along with plans for these items.

This structured timeline and mandatory reporting creates accountability and investor protection but assumes an issuer willing and able to make U.S. regulatory filings over a multi-year period. The transition report requirement is designed to “make investors, the Commission, and other members of the public aware that the issuer has ceased relying on the startup exemption” and to document the covered investment contract’s status. Offshore foundations unwilling to submit to ongoing U.S. regulatory oversight cannot utilize this framework.

Investment Limitations and Investor Protection Measures

The March Release set no limits on how much investors could buy, but the Proposing Release does. Under the fundraising exemption, a non-accredited investor can't spend more than 10% of the greater of their annual income or net worth on an offering. This cap applies to both Tier 1 and Tier 2 deals. Issuers also have to give certain buyers a preliminary offering circular at least 48 hours before a sale, plus follow set rules for delivering the final version.

These are familiar safeguards, borrowed from Regulation A and Regulation Crowdfunding, and the SEC says they should help protect non-accredited investors from large losses. This may cut against how many crypto projects work since a 10% cap on retail buyers limits the widespread token distribution that crypto networks often need to function.

State-Law Preemption Limited to Qualified Purchasers

While the March Release did not address state securities law preemption, the Proposing Release does cover state securities law preemption. Proposed Rule 500 defines "qualified purchaser" under Securities Act Section 18(b)(3), and that definition is the key that unlocks federal preemption of state registration and qualification requirements. That preemption covers two kinds of transactions: first, offers and sales of covered investment contracts made to qualified purchasers under a Regulation Crypto Assets exemption; and second, later resales of those contracts on the secondary market by anyone other than the issuer.

Under the proposal, a “qualified purchaser” is defined as any person to whom covered investment contracts are offered or sold if, at the time of sale, the issuer is current with all required filings under the applicable exemption.

This preemption provision facilitates secondary market liquidity for covered investment contracts issued under the proposed exemptions.

What Regulation Crypto Assets May Mean for You

Startups and Domestic Issuers Now Have a Fundraising Runway Built for Crypto

For the first time, U.S. crypto projects would get exemptions designed for how they actually operate, not retrofitted from rules written for stocks and bonds.

- **The startup exemption is a genuine "regulatory runway."** An issuer can raise up to $5 million over a four-year window, with the clock starting when it files a notice of reliance on Form NOR. Critically, the tokens are not restricted securities, general solicitation is allowed, and sales to retail investors are permitted, meaning there is no accredited-investor gate.
- **Ordinary network activity can count as a covered transaction.** Airdrops, gas-fee transfers, testing rewards, and similar distributions may fall within the exemption. This is a practical acknowledgment of how tokens actually move.
- **The fundraising exemption scales up, Regulation A-style.** Tier 1 allows up to $20 million in 12 months (no more than $6 million from affiliate sellers) with no financial-statement audit; Tier 2 allows up to $75 million (no more than $22.5 million from affiliates) but requires audited financials.
- **There is a cost advantage over the alternatives.** The SEC notes that raising $5 million through Regulation Crowdfunding would force financial statements and a paid intermediary — averaging roughly 6.6% in fees — neither of which the startup exemption requires.
- **A national market, not fifty state markets.** By defining "qualified purchaser" under Securities Act Section 18(b)(3), the proposal would preempt state registration and qualification requirements for both primary sales and secondary trading so long as the issuer stays current on its disclosure and reporting.

The Price of Admission is Ongoing Compliance

The exemptions in this proposed rule come with real, recurring obligations. This is the trade-off issuers must plan for.

- **Continuous reporting for every fundraising-exemption issuer.** Unlike Regulation A, even Tier 1 issuers face ongoing reporting, because the SEC views the issuer's development efforts as directly tied to the token's value. That means an annual report on Form 1-KC (within 120 days of fiscal year-end), a semiannual report on Form 1-SC (within 90 days), and current reports on Form 1-UC (within four business days of a triggering event).
- **Tier 2 means audited financials**. These are to be filed with an audit opinion complying with Regulation S-X.
- **A retail investment cap.** Non-accredited investors can't spend more than 10% of the greater of their annual income or net worth, and, unlike Regulation A, this cap applies to both tiers.
- **Bad-actor disqualification applies.** Proposed Rule 104 pulls in Regulation A's Rule 262(a), so a disqualifying event affecting the issuer or covered persons (directors, officers, 20%+ owners, promoters, paid solicitors) can put the exemptions off-limits.
- **What the proposal does not give you**. It offers no relief from the Exchange Act's "exchange," "broker," and "dealer" definitions — reliance here is no defense to an unregistered-intermediary claim. On the other side, the SEC states its view that covered investment contracts are not equity securities and therefore fall outside Section 12(g) registration.

For Protocol Operators, Validators, and Stakers it is Business as Usual

If you run infrastructure rather than raise capital, there are few changes. The proposal leaves intact the March Release's position that Protocol Mining and Protocol Staking are administrative or ministerial activities that do not involve securities transactions. This means that validators and node operators can keep relying on that guidance. The same holds for staking receipt tokens that merely evidence ownership of deposited, non-security crypto assets not subject to an investment contract.

Offshore Foundations Have a Narrower Shoreline

The framework contained in the Proposing Release is built around U.S. issuers, which leaves foreign foundations with fewer usable paths onshore. Offshore foundations can't use the fundraising exemption because it is open only to issuers organized in the United States. On top of that threshold requirement, the issuer must also be U.S.-controlled meaning that most of its officers or directors, most of its assets, and its principal operations must in the U.S. The startup exemption is technically open but heavy on filing and certification demands, and the proposal offers no guidance on Regulation S or cross-border offerings. Practical alternatives include structuring offerings to avoid investment-contract classification under the

March Release, offering offshore under Regulation S, standing up a qualifying U.S. entity, limiting U.S. sales to accredited investors under Regulation D, or pressing these points during the comment period.

The Bottom Line

The Proposing Release is an important milestone: it moves the SEC from interpretive guidance to concrete rulemaking, offering U.S. crypto projects tailored exemptions, a Regulation A-style capital-raising path, and a defined route to exit "investment contract" status. For domestic issuers it promises real clarity and a national market; for offshore foundations, the U.S.-centric eligibility rules leave a narrower path. But this is still only a proposal; the Commission itself acknowledges that heavy requirements "could complicate an issuer's transaction planning and, in turn, impede capital formation and innovation in the crypto asset markets," and it is inviting comment on exactly these trade-offs. What the final rules look like will depend on who weighs in and with what input.

As these emerging regulatory requirements continue to develop, our firm is prepared to help existing and prospective clients assess their potential impact, plan practical compliance responses, and engage effectively with the evolving framework. The proposing release’s reference to our founder, Teresa Goody Guillen, reflects the firm’s established perspective in this area and further positions our team to provide informed, business-focused counsel as the rules take shape.

Act Now, Before the Comment Window Closes

The SEC issued the proposal on August 18, 2026 (File No. S7-2026-27); comments are due 60 days after publication in the Federal Register. The Proposing Release explicitly solicits public input on numerous aspects of the framework, including issuer eligibility requirements.

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SOURCES

1. Regulation Crypto Assets, Release Nos. 33-11434; 34-106150 (Aug. 18, 2026).
2. Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Release Nos. 33-11412; 34-105020 (Mar. 17, 2026).