BDO BULLETIN

SEC PROPOSES REGULATION CRYPTO ASSETS

AUGUST 2026

SUMMARY

The SEC proposed Regulation Crypto Assets, a new regulatory framework that would establish a tailored offering regime for certain investment contracts involving crypto assets (“covered investment contracts”). For covered investment contracts, the proposed rules would:

- Provide two exemptions from the registration requirements of the Securities Act of 1933 (“Securities Act”), including:
  - A one-time “startup exemption” for offerings of up to $5 million during a four-year period.
  - A “fundraising exemption” for offerings of up to $75 million during each 12-month period.
- Include a conditional safe harbor from the “investment contract” term in the definitions of a “security” in the Securities Exchange Act of 1934 (“Exchange Act”) and the Securities Act.
- Newly define a “qualified purchaser” under the Securities Act, which would preempt certain state securities law requirements.

The proposed rules are intended to complement the SEC’s March 2026 interpretive release,[1] and facilitate capital formation and innovation in the crypto asset market while maintaining investor protections.

[1] The SEC’s interpretive release, *Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets*, addressed how the definition of a “security” under the federal securities laws applies to certain crypto assets and transactions involving crypto assets and clarified when a non-security crypto asset may become subject to, and subsequently cease to be subject to, an investment contract.

STARTUP EXEMPTION

The one-time startup exemption from Securities Act registration requirements would allow eligible issuers to conduct offerings of covered investment contracts of up to $5 million during a period of up to four years. Issuers relying on this exemption would be required to disclose material information about the covered investment contract, crypto asset, and offering using a principles-based framework. This information would be required on a website accessible to the public and free of charge. Under the proposed rules, issuers would file a notice of reliance on this exemption on new Form NOR, which would be subsequently amended for any material changes to the information or material misstatement of facts or errors. Issuers would also be required to file a transition report on new Form TR no later than four years after the issuer filed Form NOR to notify investors and others that they are no longer relying on the startup exemption.

FUNDRAISING EXEMPTION

The fundraising exemption is a two-tier exemption from Securities Act registration requirements that would allow eligible issuers to conduct offerings of covered investment contracts of up to $75 million during each 12-month period. Among other criteria, only entities organized in the United States would be eligible to rely on the fundraising exemption. “Tier 1” would permit offerings of up to $20 million during a 12-month period, including up to $6 million by affiliated selling securityholders. “Tier 2” would permit offerings of up to $75 million during a 12-month period, including up to $22.5 million by affiliated selling securityholders.

Issuers relying on the fundraising exemption would conduct their offerings by filing a new Form 1-CRYPTO (the “offering statement”). The offering statement would include principles-based narrative disclosures, a discussion of the issuer’s financial condition, and the issuer’s financial statements, prepared in accordance with U.S. Generally Accepted Accounting Principles (U.S. GAAP) as follows:

- Annual financial statements for the two most recent fiscal year-ends required, including balance sheets, statements of comprehensive income, cash flows, and changes in stockholders’ equity.
- Interim financial statements for the most recent interim and corresponding prior interim period required. Interim financial statements would cover the first six months of the fiscal year and may be condensed consistent with Rule 8-03(a) of Regulation S-X.

Financial statements included in the offering statement would be required to be no more than nine months old. As such, annual financial statements for the most recent fiscal year-end would be required when the offering is more than three months after fiscal year-end, and interim financial statements would be required when the offering is more than nine months after fiscal year-end.

Issuers would be permitted to submit draft offering statements for non-public review and would be required to publicly file the offering statement at least 15 calendar days prior to qualification. Additionally, the proposed rules would allow issuers to elect an extended transition period to adopt new or revised U.S. GAAP accounting standards. Issuers that elect the extended transition period would be able to defer adoption until the date such standards become effective for private companies, provided the standards also apply to non-issuer entities. An election not to use the extended transition period would be irrevocable.

Issuers with a qualified offering statement would be required to file periodic reports, including:

- Annual reports on new Form 1-KC within 120 calendar days of fiscal year-end.
- Semiannual reports on new Form 1-SC within 90 calendar days of the end of the semiannual period.
- Current reports on new Form 1-UC within four business days after the occurrence specified events (unless previously reported on Form 1-KC or Form 1-SC).

Aside from the offering limitations, a key difference between Tier 1 and Tier 2 offerings under the fundraising exemption is the financial statement assurance requirements. A Tier 2 offering would require annual financial statements included in the offering statement and in subsequent annual reports to be audited in accordance with either U.S. Generally Accepted Auditing Standards (U.S. GAAS) or the Public Company Accounting Oversight Board (PCAOB) standards. The report and qualifications of the independent accountant would also be required to comply with Article 2 of Regulation S-X. The financial statements would be subject to the requirements of Article 8 of Regulation S-X.

Annual financial statements included in Tier 1 offering statements and annual reports would not be required to be audited or comply with Regulation S-X. Unaudited financial statements would be labeled as such. However, if an issuer conducting a Tier 1 offering or filing an annual report has obtained an audit of the financial statements by an independent public accountant in accordance with U.S. GAAS or the standards of the PCAOB, the issuer would be required to file the audited financial statements and report.

For both Tier 1 and Tier 2 offerings, interim financial statements included in the offering statement and semiannual reports would not be subject to any assurance requirements.

Issuers eligible to terminate their ongoing reporting under the fundraising exemption would do so on new Form TR.

SAFE HARBOR

The proposed rules would establish a conditional safe harbor from the term “investment contract” in the definitions of a “security” under the Securities Act and the Exchange Act. As proposed, a covered investment contract would effectively cease to exist, and the underlying crypto assets would not meet the definition of a “security” if the following conditions are met:

- The issuer must have completed or permanently ceased all essential managerial efforts previously promised under the investment contract and must not make or intend to make any new commitments to undertake such efforts with respect to the crypto asset.
- The issuer must file a transition report on Form TR.

PREEMPTION OF STATE REGISTRATION AND QUALIFICATION REQUIREMENTS

The proposed rules would preempt state registration and qualification requirements by adding a new definition of “qualified purchaser” under the Securities Act with respect to offers and sales of certain covered investment contracts. The preemption would apply to:

- Primary offers and sales of covered investment contracts conducted pursuant to an exemption under proposed rules.
- Secondary market transactions in those covered investment contracts by persons other than the issuer, underwriter, or dealer.

REQUEST FOR COMMENT

Comments on the proposal are due October 20, 2026.

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Link to the SEC’s proposal and related fact sheet.

Link to submit public comment.

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