View on our website.

GIBSON DUNN

Securities Regulation & Corporate Governance | Fintech & Digital Assets Update

August 26, 2026

SEC Proposes New Crypto Exempt Offering Framework

Now, at a time when the global cryptocurrency market is valued at well over $2 trillion, the SEC's proposed rule is intended to facilitate capital raising involving crypto assets within the U.S. capital markets.

Introduction

On August 18, 2026, the U.S. Securities and Exchange Commission issued a long-anticipated proposed rule outlining a new exempt offering framework, titled Regulation Crypto Assets, that would be available for and tailored to the offer and sale of investment contracts involving crypto assets.[1] The Commission first set forth its views on how the federal securities laws, and in particular, the definition of "investment contract," apply to a specific crypto asset in 2017, with the issuance of the DAO Report.[2] Under the federal securities laws, if a crypto asset can be a security, then its offer and sale in the U.S. must either be registered with the SEC or qualify for an exemption from registration, or such offer and sale are illegal. Because the SEC's requirements for registered and exempt offerings were not developed for crypto assets subject to investment contracts – and as the SEC acknowledges, the existing requirements "could complicate an issuer's transaction planning and, in turn, impede capital formation and innovation in the crypto asset markets"[3] – many crypto asset transactions have been conducted offshore. Now, at a time when the global cryptocurrency market is valued at well over $2 trillion,[4] the SEC's proposed rule is intended to facilitate capital raising involving crypto assets within the U.S. capital markets.

Regulation Crypto Assets is both novel and familiar. Novel, because if it is adopted, it would establish the SEC's first exempt offering process tailored to crypto assets. Familiar, because it borrows significantly from Regulation A, including requiring the filing of an offering circular for SEC Staff review and qualification, which offering circular would be required to include financial statements; restrictions on the timing of offers and sales, similar to Section 5 of the Securities Act; limits on purchase amount, depending on accredited investor status; ongoing periodic and current reporting; and even bad actor disqualification. Indeed, in some respects, Regulation Crypto Assets is almost too similar to the other exempt offering regulations adopted by the SEC, and as a result, raises questions about whether it is sufficiently "fit-for-purpose."

The comment period for Regulation Crypto Assets ends on October 20, 2026.

Summary of Regulation Crypto Assets

Regulation Crypto Assets builds on the SEC's most recent interpretive guidance on the application of "investment contract" to crypto assets. As discussed in more detail in our client alert here, in March 2026, the SEC addressed its views on how non-security crypto assets become subject to, and how they cease to be subject to, an investment contract.[5] Critical to the SEC's interpretation is its emphasis on how an issuer markets and promotes a contract, transaction or scheme involving a crypto asset, which in its view is highly relevant to assessing whether the issuer is offering or selling an investment contract and thus a security. Under the March 2026 guidance, once an issuer has satisfied its representations and promises to engage in the essential managerial efforts under the investment contract, the investment contract – and "security" status – ends.

The proposed rule would:

- create two exemptions from Securities Act registration for offerings involving a "covered investment contract";
- create a safe harbor for when an investment contract is deemed to no longer exist; and
- preempt state registration and qualification requirements for these offerings as well as for certain resales.

The proposed rule defines a "covered investment contract" as an investment contract involving a crypto asset that does not itself constitute a security and where no other asset is subject to the investment contract.[6] The rule proposal defines the crypto asset underlying the investment contract as the "subject crypto asset."

A. *Startup Exemption*

The proposed Startup Exemption would permit an issuer, which may be an entity, an individual, or a group of individuals or entities, to engage in covered transactions involving a subject crypto asset for up to four years, subject to an aggregate $5 million offering limit. "Covered transactions" is defined to include offers and sales and other distributions, including airdrops and network rewards. The exemption is non-exclusive and generally could be used only once by the issuer or its affiliates for the same or a substantially similar crypto asset.

Before relying on the exemption, an issuer would be required to file a new form on EDGAR titled "Form NOR," providing the name of the issuer and crypto asset and containing a certification that the information in Form NOR is correct and that the issuer intends to fulfill the essential managerial efforts the issuer represented or promised investors it would engage in under the covered investment contract, within four years after the filing of the Form NOR.

Form NOR would specify the issuer's website address where the issuer would make the required specified disclosures freely accessible. These disclosures would include, among other matters:

- The material terms of the covered investment contract, including the issuer's representations or promises to engage in the essential managerial efforts and its progress in meeting these representations or promises, the purchaser's obligations under the investment contract, and any conditions to such contract;
- The material terms of the offering;
- The material aspects of the subject crypto asset;
- The material aspects of the issuer's management and related persons, related person transactions and conflicts of interest, and any transfer restrictions to which they are subject;
- The material aspects of the associated crypto network or application and the issuer's plan of development, including its progress on such plan;
- The material aspects of the security (i.e., the integrity) of the subject crypto asset and associated crypto network or application, and, to the extent the issuer has made it publicly available, the website address at which the code underlying the network or application is accessible;
- The material aspects of the subject crypto asset's economics and allocations, including supply, pricing, lockups, distribution methods, and the mechanisms for generating and destroying subject crypto assets;
- The material aspects of the network's or application's governance mechanisms, smart contract governance mechanisms and permissions;
- The material aspects of the subject crypto asset's current and anticipated ecosystem, including information about the technology infrastructure, types of participants, and other parties and systems using the subject crypto asset and associated network or application; and
- The material risks that make an investment in the offering speculative or risky to investors.

These disclosures would need to be updated within 30 calendar days after the end of each calendar year if there are any material changes. Financial statements would not be required.

The obligation to update the information under Form NOR would continue until the earlier of (i) the end of the four-year period after the issuer files the initial notice of reliance at which point a transition report on Form TR would become due or (ii) the date on which the issuer elects to file a Form TR, signaling to the market that the issuer is no longer relying on the exemption.

The Startup Exemption would permit general solicitation, would not limit participation to accredited investors and would not impose individual investment limits. Securities sold pursuant to the exemption would not be treated as restricted securities or subject to rule-based resale restrictions, so purchasers could resell immediately absent a contractual holding period. The Startup Exemption would not be available to bad actors, as defined in Rule 262(a) of Regulation A under the Securities Act.

B. *Fundraising Exemption*

The proposed Fundraising Exemption would establish two tiers generally modeled on Regulation A. Tier 1 would permit offerings of up to $20 million in a 12-month period, of which no more than $6 million could be offered by selling securityholders who are affiliates of the issuer. Tier 2 would permit offerings of up to $75 million in a 12-month period, of which no more than $22.5 million could be offered by selling securityholders who are affiliates of the issuer.

To rely on either tier, an issuer would need to be organized and principally based in the United States and satisfy specified eligibility requirements. In this regard, the Fundraising Exemption differs from the Startup Exemption, which has no U.S. nexus requirement, as well as from Regulation A, which can used by both U.S. and Canadian issuers. The issuer would be required to file a new form with the SEC, titled “Form 1-CRYPTO,” which would include an offering circular containing the same narrative crypto asset disclosures required under the Startup Exemption, in addition to a discussion of the issuer’s financial condition and financial statements. U.S. GAAP financial statements would also be required, but Tier 1 offerings would not need audited financial statements. Similar to Regulation A offerings, this offering circular, which could first be submitted confidentially, would be subject to SEC Staff review and would need to be qualified before sales could be made. The Fundraising Exemption would permit testing-the-waters communications and would permit general solicitation following qualification.

For both Tier 1 and Tier 2 offerings, investors that are not accredited investors as defined under Rule 501 of Regulation D generally could purchase no more than 10% of the greater of their annual income or net worth if they are natural persons, or 10% of the greater of their annual revenue or net assets if they are legal entities. Accredited investors would not be subject to this limitation.

Issuers completing offerings under either tier would be subject to ongoing reporting requirements, including the new proposed forms for annual reports on Form 1-KC, semiannual reports on Form 1-SC and current reports on Form 1-UC for specified events. Issuers that rely on either the Startup Exemption or the Fundraising Exemption would remain subject to the antifraud and antimanipulation provisions of the federal securities laws.

As with the Startup Exemption and similar to Regulation A offerings, securities sold pursuant to the Fundraising Exemption would not be treated as restricted securities, and the Fundraising Exemption would not be available to bad actors.

C. ***Investment Contract Safe Harbor***

The rule proposal would establish a non-exclusive safe harbor under which a covered investment contract would be deemed to have ceased to constitute an investment contract once the issuer has completed or permanently ceased the essential managerial efforts it represented or promised to undertake and does not intend to make new promises to undertake such efforts.

An issuer relying on the safe harbor would be required to file a Form TR, including a certification and supporting analysis demonstrating that the conditions of the safe harbor have been satisfied. Although the safe harbor is intended to reduce uncertainty about when an issuer's promised efforts are complete and the covered investment contract falls away, the Form TR filing does not preclude the Commission from later challenging whether the issuer has "misrepresented, either intentionally or otherwise,"[7] that the conditions were in fact satisfied. Nor would the safe harbor bar private lawsuits premised on the theory that the transactions in the subject crypto asset violate federal or state securities laws.

D. ***State Securities Law Preemption***

The rule proposal would define purchasers in offerings conducted pursuant to Regulation Crypto Assets as "qualified purchasers" for purposes of Securities Act Section 18, which would preempt state registration and qualification requirements for these offerings. The rule proposal also would provide preemption for certain secondary transactions so long as the issuer stays current with any applicable disclosure and reporting obligations of the Regulation Crypto Assets exemption. State antifraud and enforcement authority would remain unaffected.

Submitting Comments

The adoption of the Proposing Release as a final rule will depend significantly on the comments received by the SEC. Comments are due by October 20, 2026, and commenters – particularly digital asset issuers, exchanges and other market participants in the digital asset industry – should consider commenting on whether, in fact, Regulation Crypto Assets provides the "fit-for-purpose" regulatory framework needed to accomplish the goal of accommodating innovation in the crypto assets markets.

Note that the proposed Regulation Crypto Assets does not address related securities law issues such as whether the listing standards of the national securities exchanges need to be amended to facilitate the listing of covered investment contracts, even though Regulation Crypto Assets assumes that a covered investment contract could be so listed.[8] Nor does the proposed Regulation Crypto Assets address the aspects of the federal securities laws that may apply to secondary-market transactions involving covered investment contracts, such as those applicable to exchanges, brokers and dealers.[9] The Commission simply notes that it "will continue to consider whether further action with respect to covered investment contracts beyond the proposed rules in this release is warranted."[10]

The SEC has requested input from commenters on all aspects of the proposed rule, including, for example:

- the definitional clarity of "covered investment contract" and other key definitions;
- whether to specify accounting and auditing standards applicable under Regulation Crypto Assets;
- the scope of the exemptions and safe harbor;
- the adequacy of proposed disclosures; and
- the sufficiency of proposed investor protective provisions.

[1] *Regulation Crypto Assets*, Release No. 33-11434 (Aug. 18, 2026) (the Release).

[2] *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).

[3] Release at 9.

[4] *See* https://coinmarketcap.com.

[5] *See 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).

[6] The SEC notes that the proposed rule does not apply to other crypto assets that could be classified as securities, such as "digital securities." Release at 10, n. 19.

[7] Release at 166.

[8] *See* Rule 300(c)(2)(ii)(C) of Regulation Crypto Assets.

[9] Of the ten topics that the SEC's Crypto Task Force requested comments on, six are not addressed in the Release: trading; custody; crypto lending; crypto exchange-traded products; tokenized securities; and sandbox and related international issues. *See* Release at 19-20.

[10] *See* Release at 73, n. 192.

The following Gibson Dunn lawyers prepared this update: Mellissa Duru, Matt Gregory, Nick Harper, Elizabeth Ising, Thomas Kim, Brian Lane, Jeffrey Steiner, Sara Weed, Malakeh Hijazi, and Paul Yu.

Gibson Dunn's lawyers are available to assist with any questions you may have regarding these developments. To learn more, please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any of the following leaders and members of the firm's Securities Regulation & Corporate Governance, Fintech & Digital Assets, or Administrative Law & Regulatory practice groups:

Securities Regulation & Corporate Governance:
Aaron Briggs – San Francisco, CA (+1 415-393-8297, abriggs@gibsondunn.com)
Mellissa Campbell Duru – Washington, D.C. (+1 202.955.8204, mduru@gibsondunn.com)
Elizabeth Ising – Washington, D.C. (+1 202-955-8287, eising@gibsondunn.com)
Thomas J. Kim – Washington, D.C. (+1 202-887-3550, tkim@gibsondunn.com)
Brian J. Lane – Washington, D.C. (+1 202-887-3646, blane@gibsondunn.com)
Julia Lapitskaya – New York, NY (+1 212-351-2354, jlapitskaya@gibsondunn.com)
Ronald O. Mueller – Washington, D.C. (+1 202-955-8671, rmueller@gibsondunn.com)
Michael Titera – Orange County, CA (+1 949-451-4365, mtitera@gibsondunn.com)
Geoffrey E. Walter – Washington, D.C. (+1 202-887-3749, gwalter@gibsondunn.com)
Lori Zyskowski – New York, NY (+1 212-351-2309, lzyskowski@gibsondunn.com)

Fintech & Digital Assets:
Jason J. Cabral – New York (+1 212.351.6267, jcabral@gibsondunn.com)
M. Kendall Day – Washington, D.C. (+1 202.955.8220, kday@gibsondunn.com)
Jeffrey L. Steiner – Washington, D.C. (+1 202.887.3632, jsteiner@gibsondunn.com)
Sara K. Weed – Washington, D.C. (+1 202.955.8507, sweed@gibsondunn.com)

Administrative Law & Regulatory:
Matt Gregory – Washington, D.C. (+1 202.887.3635, mgregory@gibsondunn.com)
Nick Harper – Washington, D.C. (+1 202.887.3534, nharper@gibsondunn.com)