

VIA Electronic Submission

October 20, 2026

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Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: Proposed Rule Regarding Regulation Crypto Assets ([Release Nos. 33-11434;
34-106150; File No. S7-2026-27]; RIN 3235-AN38)**

I. Introduction & Overview

The Crypto Council for Innovation (“CCI”) appreciates the opportunity to provide feedback on the Securities and Exchange Commission’s (the “Commission” or “SEC”) proposed rule regarding Regulation Crypto Assets (the “Proposed Rule”).¹

CCI is a global alliance of industry leaders within the digital assets industry committed to promoting the advantages of digital assets while showcasing their potential for transformation. CCI’s members represent a wide array of businesses from across the digital asset ecosystem, united by a shared objective of advocating for the responsible global regulation of digital assets to unlock economic opportunities, enhance quality of life, promote financial inclusivity, safeguard national security, and counter illicit activities. CCI firmly believes that achieving these goals necessitates well-informed, evidence-driven policies achieved through collaborative participation with regulators in the United States and globally.

Proposed Regulation Crypto Assets represents a critical step toward promoting capital formation and accommodating innovation in the crypto asset market, while ensuring investors are adequately protected. The global crypto asset market has grown to over three trillion dollars since the advent of Bitcoin in 2008, and more than 67 million American adults, about one in four Americans, own crypto assets.² Yet innovators and entrepreneurs have remained without a clear, workable pathway under the Federal securities laws to raise capital by offering or selling crypto assets to U.S. investors. Even in the limited instances

¹ Regulation Crypto Assets, Release No. 33-11434 (Aug. 18, 2026)[91 FR 54510, 54525] (Aug. 21, 2026), <https://www.federalregister.gov/documents/2026/08/21/2026-17183/regulation-crypto-assets>.

² Nat’l Cryptocurrency Ass’n, 2026 State of Crypto Holders Report 1 (2026), <https://nca.org/2026%20Annual%20State%20of%20Crypto%20Holders%20Report.pdf>.

where registered offerings were possible, or an exemption applied, existing requirements have failed to provide investors with the information most important to investments in projects built on blockchain technology and where an asset's value becomes increasingly determined by market forces rather than the essential managerial efforts of an issuer over time. At the same time, disclosure requirements that are in place have required issuers to produce information that is inapplicable or unhelpful to a crypto asset investment decision. The absence of a clear, purpose-fit framework for crypto asset securities offerings has resulted in significant adverse policy outcomes, including driving capital offshore, stifling innovation, and persisting information asymmetries between insiders of the crypto project team and public investors.³

In light of these challenges, CCI commends the Commission for its thoughtful approach to adapting its rulebook to address the unique aspects of crypto asset offerings to facilitate capital formation and protect investors. The Proposed Rule's startup and fundraising exemptions offer a clear pathway for issuers to offer covered investment contracts up to a defined threshold, subject to investor protection conditions, including making publicly available principles-based disclosures covering information most relevant to investors. This purpose-fit disclosure framework will ensure investors can make the most informed investment decisions by eliciting information covering the issuer's plan for development, the subject crypto asset's supply, lockup periods, distribution, and release schedules, token allocations and holdings by related persons, its related network's governance mechanisms and permissions, source code and security, and project-specific risk factors.

CCI also supports the Commission's objective of establishing a safe harbor to provide issuers and investors greater clarity regarding when an investment contract involving a crypto asset ceases to exist. CCI urges the Commission to ensure this safe harbor takes a substance-over-form approach and is grounded in sound legal precedent. Absent that approach, issuers that rely on the safe harbor will likely remain exposed to private claims that a crypto asset continues to be subject to an investment contract, and the safe harbor may provide limited protection in practice.

CCI also applauds the Proposed Rule's new definition of "qualified purchaser." This proposed framework will protect issuers from state-by-state registration and qualification requirements, which would otherwise prove prohibitive, given the inherently interstate and global nature of crypto asset offerings. It will also ensure investors are subject to a uniform, national framework of protections.

To ensure the Proposed Rule fully carries out these objectives, CCI offers important

³ Proposed Rule at 54536.

recommendations to improve the workability of the rule, clarify operative provisions, align it with securities law precedent, and further enshrine investor protections. Importantly, CCI urges the Commission to ensure subject crypto assets, which the Commission itself recognizes are not securities, are able to trade on the secondary market outside of registered securities trading venues. While the Proposed Rule stands poised to unlock investment through clear primary offering pathways, the ultimate utility of Regulation Crypto Assets will be significantly hamstrung until investors and market participants have clarity regarding the ability to resell assets purchased or received under the proposed exemptions. CCI thus strongly urges the Commission to provide further clarity, and where necessary, codify exemptive relief from the requirements of the Securities Exchange Act of 1934 (“Exchange Act”) to remove existing regulatory obstacles and facilitate the secondary market trading of crypto assets in the U.S.

CCI also recognizes the Proposed Rule relies heavily on the Commission’s interpretation issued earlier this year on the application of Federal securities laws to certain crypto assets and transactions (“2026 Interpretation”).⁴ Given the importance of the 2026 Interpretation in the context of the Proposed Rule, CCI urges the Commission to clarify key aspects and codify certain interpretations in the final rule, including treatment regarding covered airdrops and certain automated, programmatic distributions.

CCI also encourages the Commission to clarify the non-exclusive nature of the Regulation Crypto Assets offering exemptions, including by clarifying application of integration rules to fungible crypto assets. While CCI supports the startup and fundraising exemptions frameworks as a general matter, we offer targeted recommendations to improve their utility, including by: increasing fundraising limits under each exemption, providing a clearly defined timeframe for the Commission to qualify a fundraising exemption offering statement, and allowing secondary market participants to help issuers satisfy public availability requirements for required disclosures. The Commission should also ensure Proposed Rule 400’s safe harbor applies a substance-over-form approach in determining whether a covered investment contract has ceased to exist. The Commission should also clarify that engaging in certain activities relating to maintaining a blockchain network does not constitute essential managerial efforts, and allow issuers to request confidential treatment of the legal analysis submitted in support of a Form TR certification.

CCI also urges the Commission to affirm Proposed Rule section 500 in the final rule to ensure the preemption of State securities laws with respect to both primary offerings and

⁴ Interpretation; Guidance, Securities and Exchange Commission and Commodity Futures Trading Commission, Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets (Mar. 17, 2026), 91 Fed. Reg. 13,714 (Mar. 23, 2026), <https://www.sec.gov/files/rules/interp/2026/33-11412.pdf>.

qualifying secondary-market transactions. Without clear preemptive relief, state-by-state registration and qualification requirements would impose unworkable burdens on issuers, significantly undermining the practical value of the startup and fundraising exemptions and the Commission’s objective of establishing a uniform, national framework for crypto asset offerings. CCI provides further explanation and analysis regarding its proposed recommendations in section II below.

II. CCI Offers Recommendations to the Proposed Rule

Definitions

Decentralized Unincorporated Nonprofit Association

CCI appreciates the Commission recognizing that crypto systems can be governed by novel organizational structures, such as decentralized unincorporated nonprofit associations, in the Proposed Rule.⁵ Indeed, Wyoming, West Virginia, and Alabama have already enacted state laws recognizing and defining decentralized unincorporated nonprofit associations.⁶ CCI urges the Commission to define “decentralized unincorporated nonprofit association” as “an association formed under a state statute providing for decentralized unincorporated nonprofit associations” in the final rule. Having a clear definition will help ensure that organizations designed to govern a decentralized crypto system are able to utilize the Regulation Crypto Assets exemptions.

Digital Commodity

The Proposed Rule uses the term “digital commodity” but does not define it, relying instead on the 2026 Interpretation’s definition by reference. Because Commission-level interpretive guidance may be modified or withdrawn at any time without notice and comment, CCI urges the Commission to define “digital commodity” in Rule 100 of the final rule, using the 2026 Interpretation’s formulation: “a crypto asset that is intrinsically linked to and derives its value from the programmatic operation of a crypto system that is ‘functional,’ as well as supply and demand dynamics, rather than from the expectation of profits from the essential managerial efforts of others.”⁷ Formally incorporating this definition into the final rules would make actionable the substance-over-form approach described below, and a defined term in the rule text is what market participants and their counsel will rely on.

⁵ See, e.g., Proposed Rule Questions 60, 72, 97, and 121.

⁶ See, e.g., Wyoming Decentralized Unincorporated Nonprofit Association Act, Wyo. Stat. Ann. §§ 17-32-101, 129 (2024).

⁷ 2026 Interpretation at 13718.

Related Persons

Under the Proposed Rule, a “related person” would mean with respect to an issuer: founders, promoters, employees, affiliates, and any person that is a director, officer, trustee, consultant, contractor, or advisor to the issuer, in each case together with any immediate family members.⁸

The Commission should refine the definition of related person so that it captures those persons in a position to influence a project or to possess asymmetric information about it, and does not encompass persons beyond that scope. According to the Proposed Rule, this definition is intended to include any person that may be viewed as an “insider” of the issuer to ensure that investors are adequately protected and informed about those who are in the best position to influence the outcome of the project.⁹ This definition is important because issuers relying on the startup or fundraising exemption must disclose information relating to related persons, including who they are, whether they are subject to transfer or resale restrictions on the covered investment contract or subject crypto asset, and their holdings of the subject crypto asset.

As written, the definition risks sweeping in persons beyond the proposed definition’s intended scope, such as third parties to the issuer who may lack any meaningful ability to influence the project’s outcome. While CCI recognizes that certain advisors or employees who receive token grants from the issuer should be captured so the public has clear disclosures about certain related persons’ holdings, the Commission should also consider establishing a *de minimis* threshold of holdings to narrow the definition’s scope such that it captures only persons who receive meaningful token allocations or have a meaningful ability to influence the project. The Commission may also consider more closely aligning the definition with persons considered to be insiders under existing Federal securities laws. For example, section 16 of the Exchange Act sets forth the disclosure requirements of certain transactions and holdings by a reporting company’s insiders. These reporting requirements only apply to a company’s directors and officers, as well as shareholders who own more than ten percent of a class of the company’s equity securities registered under

⁸ Proposed Rule § 228.101.

⁹ Proposed Rule at 54520; See Proposed Rule Question 11 (asking does the proposed definition of “related person” cover the appropriate scope of persons that may be viewed as insiders of the issuer and therefore should be subject to the relevant disclosure requirements).

the Exchange Act.¹⁰

At the same time, the Commission should ensure the definition does not exclude persons who retain control over a crypto system or who hold positions large enough to create information asymmetries. CCI therefore encourages the Commission to look to the definition of “related person” in the September 13, 2026 version of the Digital Asset Market Clarity Act, which, in addition to the categories enumerated in the Proposed Rule, reaches founders who beneficially own not less than four percent of the outstanding units of the associated crypto asset; executive officers, directors, trustees, general partners, and owners of more than ten percent of any class of equity shares of the issuer; and any person, or group of persons under common control, that beneficially owns ten percent or more of the outstanding units of the crypto asset, in each case subject to a lookback period.¹¹

Clarifying Additional Terms & Scope

As a general matter, CCI appreciates the Commission’s 2026 Interpretation, which provided helpful guidance regarding the application of Federal securities laws to certain crypto assets and transactions. In particular, the 2026 Interpretation clarified the Commission’s views on important issues underlying Regulation Crypto Assets, including when a crypto asset is subject to an investment contract, and confirmed that certain programmatic distributions, such as airdrops and rewards from protocol staking and mining, are not securities transactions.

The 2026 Interpretation carries important implications for Regulation Crypto Assets. To the extent a distribution of a crypto asset does not constitute a securities transaction, it would not need to rely on the proposed startup exemption or fundraising exemption in the first instance. More broadly, as an interpretive release, the 2026 Interpretation may be modified or withdrawn at any time without notice and comment rulemaking. CCI thus urges the Commission to clarify key aspects contained in the 2026 Interpretation as part of the Regulation Crypto Assets final rule to provide greater and more durable regulatory certainty. Specifically, CCI asks the Commission to provide further clarity regarding the non-security status of certain airdrops, programmatic distributions, and vault architectures. This clarity will ensure that issuers and developers can conduct and

¹⁰ See Exchange Act § 16(a), 15 U.S.C. § 78p(a) (“Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to section 12, or who is a director or an officer of the issuer of such security (including, solely for the purposes of this subsection, every person who is a director or an officer of a foreign private issuer, as that term is defined in section 240.3b-4 of title 17, Code of Federal Regulations, or any successor regulation), shall file the statements required by this subsection with the Commission.”).

¹¹ Clarity Act § 10001(14).

structure these activities with confidence regarding their regulatory obligations, and crypto asset holders understand the regulatory treatment of their holdings and activities.

Airdrops

CCI urges the Commission to further clarify the regulatory treatment of airdrops in its final rule. First, the Commission's 2026 Interpretation helpfully clarified that certain airdrops do not constitute investment contract securities because they do not involve an investment of money ("Covered Airdrops").¹² Building on this approach, the Commission should codify in the Regulation Crypto Assets final rule text that airdrop distributions that serve as a reward for a user's own efforts or contributions to such network and do not involve capital raising transactions do not constitute an "investment of money" for purposes of the *Howey* analysis and are therefore not investment contract securities. This approach is consistent with Supreme Court precedent declining to find an investment where a participant gives no specific consideration in exchange for the interest received.¹³ A user who receives tokens in recognition of its own use of, or contributions to, a functioning network has not entrusted capital to anyone. The final rule should also make clear that distributions falling outside these criteria are not, for that reason alone, presumed to be securities transactions.

Second, the Commission should resolve persisting ambiguity about the scope of Covered Airdrops under the 2026 Interpretation in the Regulation Crypto Assets final rule text. Specifically, footnote 141 of the 2026 Interpretation provides that if "recipients would have to fulfill *further conditions* subsequent to the announcement of the airdrop, such as buying a specific crypto asset, buying a good or service (whether or not related to a crypto asset), or performing a specific task (whether or not related to a crypto asset), the 2026 Interpretation would not pertain to such airdrop."¹⁴ CCI urges the Commission to clarify in the final rule that post-announcement administrative, ministerial, or compliance driven steps (such as connecting a wallet, signing a claim transaction, accepting terms of use, and completing sanctions or geographic screening) are neither "consideration" nor "further conditions" for purposes of the Commission's evaluation of whether a given airdrop is a Covered Airdrop.

Third, the Commission should make explicit in the final rule text that in the absence of an investment of money in a Covered Airdrop (or any other distribution), no investment contract is formed because a necessary element under *Howey* is not present. Accordingly,

¹² 2026 Interpretation Part VII.

¹³ See *Int'l Bhd. of Teamsters v. Daniel*, 439 U.S. 551 (1979).

¹⁴ 2026 Interpretation fn. 141 (emphasis added).

no Regulation Crypto Assets exemption or safe harbor would be necessary. This clarity is especially important in the context of the startup exemption, which applies to “covered transactions.” The Proposed Rule defines a covered transaction to include “a distribution and transactions referred to as ‘airdrops,’ of a covered investment contract in one or a series of transactions in exchange for, in recognition of, [or as incentive for] past or future use of an associated crypto network or associated crypto application, or as a reward or incentive for conducting activities primarily related to operating, governing, or securing an associated crypto network or associated crypto application.”¹⁵ CCI understands this definition to reach only “covered investment contracts”, which presupposes that an investment contract exists. Because a Covered Airdrop involves no investment of money, it is not a distribution of a covered investment contract and falls outside the definition. CCI requests the final rule confirm expressly that Covered Airdrops are not “covered transactions,” so that market participants can rely on that result without concern that a Covered Airdrop may require compliance with the startup exemption’s conditions.

The Commission should also exclude from the definition of “covered transaction” any distribution in which the issuer receives no consideration, or receives only network activity such as services, testing, security, governance participation, or use. Absent an express issuer promise made in connection with the distribution, such a distribution should not create a new covered investment contract, count against the offering limits under the startup or fundraising exemption, or require a filing under Regulation Crypto Assets.

Programmatic & Automated Distributions

CCI also encourages the Commission to clarify the non-security treatment of certain programmatic and automated distributions. For example, the final rule should clarify that the creation or distribution of crypto assets effected automatically by the pre-programmed rules of a crypto network as compensation for verifiable network services, like validation, storage, or computation, where the issuer does not select recipients or set amounts outside the pre-programmed rule, are not offers or sales by any person and therefore are not investment contract securities offerings. Further, the Commission should clarify that a person solely engaged in providing administrative or ministerial services related to protocol mining or staking activities is not engaged in essential managerial efforts, and therefore such activities are not considered part of investment contract offerings. This approach would be consistent with the Commission’s 2026 Interpretation¹⁶ and recently

¹⁵ Proposed Rule 100 (defining covered transaction).

¹⁶ See e.g., 2026 Interpretation fn. 42 (explaining that Federal courts have stated that administrative and ministerial activities are not managerial efforts that satisfy *Howey*’s “efforts of others” requirement (citing *First Fin. Fed. Sav. & Loan v. E.F. Hutton Mortgage*, 834 F.2d 685 (8th Cir. 1987) (activities performed were merely administrative and ministerial in nature and therefore did not constitute the managerial efforts of others)).

issued staff guidance,¹⁷ while ensuring this clarity stands on firmer regulatory ground. Such relief would also be consistent with the latest market structure legislation, including the Clarity Act that passed the Senate Banking Committee with bipartisan support. Specifically, section 10102 of the Clarity Act provides that a “gratuitous distribution,” by itself, shall be presumed to not constitute an offer, sale, or distribution of a security under Federal securities laws or functionally equivalent State law.¹⁸ The Clarity Act defines a gratuitous distribution to include a distribution of a network token for no more than nominal value in a broad, equitable, and non-discretionary manner, and it includes self-staking, self-custodial staking with a third party, liquid staking, custodial and ancillary staking services that are exclusively administrative or ministerial, and automated, programmatic, rules-based distributions, as well as technology-neutral mechanisms that meet the same standard.¹⁹

As currently drafted, the proposed definition of “covered transaction” departs from the Clarity Act’s approach as it reaches distributions made “[...] as a reward or incentive for conducting activities primarily related to operating, governing, or securing an associated crypto network or associated crypto application.”²⁰ As a result, this language risks sweeping in programmatic distributions integral to decentralized consensus mechanisms. To resolve this ambiguity, the final rule should explicitly affirm that programmatic, protocol-level distributions effected by the autonomous operation of a network, including block rewards for validation, storage, or computation, are not offers or sales by any person, and should be expressly excluded from the definition of the term “covered transaction.” Such distributions should also be excluded from the definition of “aggregate offering price” and not count towards the offering limits under either the startup or fundraising exemption.

Vaults

CCI also encourages the Commission to provide further clarity regarding the treatment of vaults. CCI appreciates the Commission’s attention and interest in providing market

¹⁷ Div. of Corp. Fin., U.S. Sec. & Exch. Comm’n, *Frequently Asked Questions on the Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets* (updated Sept. 28, 2026),

<https://www.sec.gov/about/divisions-offices/division-corporation-finance/faqs-crypto-assets> (explaining “Under the circumstances described in the Interpretive Release, a Staking Receipt Token that is a receipt for a digital commodity that is not subject to an investment contract is itself a digital tool because it is a receipt that serves a practical function of evidencing the holder’s ownership of the underlying digital commodity. However, a Staking Receipt Token also may be classified as a digital commodity if it is issued by a protocol-based Liquid Staking Provider. In these cases, the Staking Receipt Token is intrinsically linked to and derives its value from the programmatic operation of a crypto system that is functional, as well as supply and demand dynamics”).

¹⁸ Clarity Act § 10102.

¹⁹ *Id.*

²⁰ Proposed Rule at 54520.

participants regulatory clarity regarding the treatment of vaults.²¹ As Former Commissioner Peirce’s statement on vaults explained, vaults “fall along a spectrum from programmatic allocations determined solely by immutable smart contracts, to allocations at the sole discretion of another person or group of persons.”²² Accordingly, the extent to which certain vault structures may implicate Federal securities laws is facts-and-circumstances intensive.

To help guide the Commission’s analysis of the varying architectures in the market, CCI respectfully submits that the Federal securities laws primarily exist to address a specific economic problem: the agency costs that arise when one person entrusts capital to another who possesses superior information and exercises discretion over its deployment. The greater the informational asymmetry between agent and principal, and the broader the agent’s discretion, the larger these costs become, as does the structural opportunity for self-dealing, misallocation, and concealment. Accordingly, CCI does not suggest that all vault architectures fall outside the securities laws. Rather, CCI encourages the Commission to recognize that where vault architecture materially reduces the agency problem, the doctrinal tests (*e.g.* the investment contract test under *Howey*, and note test under *Reves*) should, and generally do, tend to support a non-security result. Conversely, where vault architecture preserves substantial discretionary authority, the doctrinal tests may warrant a closer analysis. CCI looks forward to working with the Commission to provide further clarity on the circumstances in which certain vault architectures fall outside the remit of the Federal securities laws.

General Provisions

Retaining Non-Exclusivity of Regulation Crypto Assets Exemptions

Under Proposed Rule 101(a), an issuer who relies on a Regulation Crypto Assets exemption would not be precluded from claiming the availability of any other exemption from section 5 of the Securities Act of 1933 (“Securities Act”) or another safe harbor. Proposed Rule 101(b)

²¹ See, *e.g.*, Paul S. Atkins, Chairman, U.S. Sec. & Exch. Comm’n, Remarks on AI Innovation, Capital Markets, and Regulatory Flexibility, Special Competitive Studies Project AI+ Expo (May 8, 2026), <https://corpgov.law.harvard.edu/2026/05/09/remarks-by-chairman-atkins-on-ai-innovation-capital-markets-and-regulatory-flexibility/> (stating “I think we should consider ways to provide clarity surrounding what are commonly referred to as ‘crypto vaults’ particularly regarding Securities Act and Advisers Act touch-points. Crypto vaults are onchain software applications that are often designed to allow users to earn yield passively through the deployment of their assets into yield-generating opportunities onchain.”).

²² Hester M. Peirce, Comm’r, U.S. Sec. & Exch. Comm’n, *Headstands and Summervaults: A Statement on Crypto Vaults and Lending Strategies* (July 22, 2026), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-crypto-vaults-lending-strategies-072226>.

would provide that issuers should refer to 17 CFR 230.152 (“Rule 152”) to determine whether offers and sales should be integrated.

Recommendations

CCI supports Proposed Rule 101(a)’s confirmation that reliance on Regulation Crypto Assets would not preclude an issuer from relying on another exemption or safe harbor. CCI urges the Commission to adopt this approach in the final rule.

To ensure issuers are able to take advantage of this non-exclusivity, CCI encourages the Commission to provide additional guidance regarding the use of Regulation Crypto Assets alongside other offering pathways. For example, while Proposed Rule 101(b) directs issuers to look to Rule 152 for guidance on integration, the Commission should provide further guidance clarifying how issuers who conduct concurrent offerings of fungible crypto assets under Regulation Crypto Assets alongside Regulation D, Regulation S, or other exemptive pathways, may do so in a compliant manner. In this guidance, the Commission could address, among other items, whether and under what circumstances the offerings will be treated separately; how offering limits and other exemption-specific conditions apply to each offering; how communications relating to one offering may affect compliance with another offering pathway; and how issuers should distinguish among fungible units distributed pursuant to different exemptions or safe harbors.

The Commission should also expressly confirm that concurrent offshore offers and sales made in compliance with Regulation S will not be integrated with an offering under Regulation Crypto Assets, consistent with Rule 152(b)(2). Relatedly, the Commission should clarify how issuers may comply with Regulation S’s resale restrictions intended to prevent securities sold offshore from flowing back into the United States in the context of globally fungible crypto assets.

Principles-Based Disclosure Requirements

Proposed Rule 103 establishes principles-based disclosure requirements with respect to offerings of covered investment contracts under the startup exemption or fundraising exemption. These disclosures cover non-financial information related to the covered investment contract offering, including: (1) the covered investment contract; (2) offering; (3) subject crypto asset; (4) management, related persons, and conflicts of interest; (5) associated crypto network/application; plan of development; (6) security and source code; (7) subject crypto asset economics and allocation; (8) governance; (9) the subject crypto asset ecosystem; and (10) risk factors.²³

Recommendations

Content of Disclosures

CCI strongly supports Proposed Rule 103's objective of eliciting information most helpful for investors to make informed investment decisions regarding covered investment contracts and their subject crypto assets. As the Commission notes, existing disclosure frameworks fail to capture a number of topics that are relevant to investors "including the technical, governance, and economic characteristics of crypto assets; description of the project; crypto asset allocations, liquidity, and tradability; crypto asset and network security; and unique technological, market, and redemption risks."²⁴

CCI also supports Regulation Crypto Assets' approach of ensuring issuers tailor their disclosures based on the offering's own facts and circumstances. A flexible, principles-based approach will not only improve the quality of disclosures given the diversity of crypto asset types, but will also help future-proof disclosures to account for innovations relating to crypto asset design, network architecture, and governance models. In particular, the Commission should ensure principles-based disclosures provide sufficient flexibility for issuers that are early stage companies with limited resources to be able to comply.

CCI also appreciates the Commission recognizing the importance of requiring issuers to disclose information regarding any transfer restrictions on a covered investment contract, such as lockup periods, particularly when tokens are issued to related persons.²⁵ This information is important to ensuring the public understands when related persons may be

²³ Proposed Rule at 54523.

²⁴ *Id.*

²⁵ See e.g., Proposed Rule § 103(b)(4).

able to sell their holdings, which can affect token supply, market liquidity, and the alignment of incentives between insiders and retail purchasers.

Making Disclosures Publicly Available

CCI also supports Proposed Rule 200(d)(1)'s approach of requiring issuers relying on the startup exemption to make the information described in Proposed Rule 103 publicly accessible, free of charge, at the website address specified in the notice of reliance, without requiring the issuer to file Rule 103 disclosures on EDGAR.²⁶ The Commission should allow issuers relying on the fundraising exemption to similarly satisfy disclosure requirements by making them publicly available through an easily accessible website, rather than requiring the issuer to file an additional submission on EDGAR.²⁷

The SEC should also permit secondary market trading platforms, such as exchanges, to help issuers satisfy their public availability disclosure obligations by allowing such platforms to host the issuer's required disclosures. Many investors access information about crypto assets through the trading platforms on which those assets are listed, rather than through an issuer's website. Permitting secondary market platforms to host or link to required disclosures would thus likely improve investor access to material information, while reducing burdens on issuers relying on a Regulation Crypto Assets exemption.

Resale Restrictions

In the Proposed Rule, the Commission recognizes that tokens granted to related persons may lead to information asymmetries and misaligned incentives between the general public and insiders of the issuer.²⁸ The Commission primarily addresses these concerns through disclosures regarding related persons' holdings of covered investment contracts and subject crypto assets, as well as disclosures relating to any related person resale or transfer restrictions.

²⁶ See Proposed Rule at 54534 ("Rule 200(d)(1) does not require that the issuer include the information required by Rule 103 in its Form NOR, which is filed on EDGAR. Instead, the rule allows the issuer the flexibility to determine the location and manner of presentation of such information, so long as it meets the requirements of Rule 103 and is publicly accessible and free of charge at the website address specified in the notice of reliance.").

²⁷ This approach would be consistent with the European Union's Markets in Crypto-Assets ("MiCA") framework, under which issuers publish their crypto-asset white papers on their own websites, and the competent authority of the issuer's home Member State communicates the white papers to the European Securities and Markets Authority, which makes them publicly available. Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets, arts. 8, 109, 2023 O.J. (L 150) 40.

²⁸ See Proposed Rule at 54526 ("The proposed disclosure requirement regarding related person resale or transfer restrictions is intended to address these concerns by giving investors the information they need to determine whether there are risks associated with the issuer's related persons and, if so, whether the issuer has taken steps to mitigate those risks.").

Recommendations

CCI appreciates the Commission's interest in protecting investors through disclosures and potential holding periods related to a project reaching certain milestones.²⁹

CCI urges the Commission to adopt the Proposed Rule's contemplated approach of addressing concerns related to informational advantages by insiders primarily through clear disclosures, rather than establishing prescriptive holding periods. This approach allows the market to set lockup periods, without imposing overly restrictive requirements that may limit market liquidity or distort prices by restricting available float.³⁰ At the same time, CCI encourages the Commission to ensure Proposed Rule 103's principles-based disclosures provide investors with a clear understanding of when any lockup periods expire. This will ensure investors remain informed on when to expect related persons' tokens to enter the market. CCI also notes that the proposed offering caps in the fundraising exemption already limit how much affiliated related persons may sell in any 12-month period, providing a further check on insider sales alongside the related-person disclosures.³¹

Relatedly, Proposed Rule 300(a)(3) provides an additional limitation on secondary sales in the first year of reliance on the fundraising exemption, but this restriction is not tied to related persons or affiliates. Specifically, selling securityholders as a group may not sell more than 30 percent of the aggregate offering price in the issuer's first offering, or in any later offering qualified within one year of the first qualification.³² CCI encourages the Commission to eliminate this restriction because it is untethered from the policy objective of addressing insider-related risks, and would limit broad token distribution during the integral early stages of a project's lifecycle, when wide and diverse ownership is critical to scaling and achieving decentralization objectives.

²⁹ See e.g., Question 35 (asking "Rather than a time-based holding period, should we base any holding period on the achievement of certain development milestones with respect to the associated crypto network or associated crypto application? Are there other resale or transfer restrictions that we should apply with respect to related persons as conditions to the proposed exemptions in Regulation Crypto Assets?").

³⁰ To the extent the Commission nonetheless decides to impose resale restrictions on related persons, CCI respectfully submits that it will be all the more important that the Commission carefully define "related person" to capture only persons who are likely to have access to material non-public information or exercise meaningful influence over the project.

³¹ Under Tier 1, offerings are capped at \$20 million in a 12-month period, of which no more than \$6 million may come from selling securityholders who are affiliates of the issuer. Under Tier 2, total offerings capped at \$75 million in a 12-month period, of which no more than \$22.5 million may come from affiliate selling securityholders.

³² Proposed Rule § 300(a)(3).

Startup Exemption

The Proposed Rule's startup exemption offers an important opportunity for early stage crypto projects who aim to decentralize to raise capital in an efficient manner. Specifically, Subpart B of Regulation Crypto Assets would exempt "covered transactions"³³ from section 5 of the Securities Act, subject to a four-year duration, issuer eligibility requirements, one-time use, a five million dollar offering limit, Proposed Rule 103's principles-based disclosure requirements, and the filing of a notice of reliance (Form NOR).³⁴

Recommendations

CCI strongly supports the Commission's approach to the startup exemption of providing a clear, workable pathway for early stage startups to raise capital and perform the tasks needed to develop, test, and launch their projects with increased regulatory certainty.³⁵ CCI appreciates the SEC's recognition that existing registration requirements may prove impracticable for early-stage issuers who often need to distribute crypto assets to the public, particularly where the project aims to build a functional and decentralized network.³⁶ To further improve the impact of this exemption, the Commission should consider raising the five million dollar aggregate offering limit. Projects relying on the startup exemption may quickly exhaust the cap given costs related to development, security audits, infrastructure, and legal and compliance. Even a modest increase would make it more likely that issuers can complete their project roadmaps within the contemplated four-year period.

³³ A "covered transaction" is defined as an offer, sale, or other distribution of a covered investment contract in reliance on the startup exemption, including, but not limited to: (1) any public or private offering, including a distribution, of a covered investment contract in one or a series of capital raising transactions; or (2) any public or private offering, including a distribution and transactions referred to as "airdrops" of a covered investment contract in one or a series of transactions in exchange for, in recognition of, or as incentive for past or future use of an associated crypto network or associated crypto application, or as a reward or incentive for conducting activities primarily related to operating, governing, or securing an associated crypto network or associated crypto application.

³⁴ Proposed Rule § 200. Form NOR would include information regarding the issuer, name of subject crypto asset, website where principles-based disclosures are located, and certification that the information in the Form NOR is true, complete, and correct and that the issuer intends to fulfill, within four years after the date of the filing of the Form NOR, the essential managerial efforts the issuer represented or promised investors it would engage in under the covered investment contract.

³⁵ Proposed Rule at 54530.

³⁶ Proposed Rule at 54529 (describing how (i) disclosure requirements, when applied to covered investment contract offerings, can impose undue compliance costs on issuers while failing to provide investors with information important to their investment decisions and (ii) subject crypto assets may eventually separate from the issuer's representations or promises to engage in essential managerial efforts, and, as a result, the covered investment contract may cease to exist).

Fundraising Exemption

The Proposed Rule's proposed fundraising exemption also provides an important pathway for issuers to raise capital for blockchain-based projects, subject to investor protection conditions. Specifically, subpart C of Regulation Crypto Assets would set forth an exemption from the registration requirements of section 5 of the Securities Act for offerings of up to \$75 million of covered investment contracts in a 12-month period. Issuers relying on this exemption would be required to file offering statements on EDGAR consisting of: (1) the same principles-based narrative disclosure topics as required for issuers relying on the proposed startup exemption; (2) a discussion of the issuer's financial condition; and (3) financial statements of the issuer. Further, under Proposed Rule 300(b), the fundraising exemption would be available only for an issuer that is an entity organized in the United States and: (i) a majority of the issuer's executive officers or directors must be U.S. citizens or residents; (ii) more than 50 percent of the issuer's assets must be located in the United States; and (iii) the issuer's business must be administered principally in the United States.

Recommendations

Fundraising Limit

CCI encourages the Commission to consider raising the fundraising limit beyond \$75 million per 12-month period. As the very premise of Regulation Crypto Assets recognizes, alternative fundraising pathways under existing securities laws do not adequately serve issuers or investors. Increasing the fundraising limit would thus allow more capital to be raised for crypto asset projects subject to the purpose-fit framework and tailored investor protections under Regulation Crypto Assets. It would also further the Commission's objective of facilitating capital formation here in the U.S. and onshoring innovation.

Rule 300(b) - Eligibility Criteria

CCI encourages the Commission to consider expanding the universe of eligible entities that may qualify for the fundraising exemption. While CCI appreciates the SEC's objective of onshoring capital formation and ensuring the Commission and investors may adequately seek recourse against issuers engaged in unlawful conduct, CCI respectfully submits the Commission may meet these goals while still broadening the scope of eligible entities. Specifically, requiring a majority of the issuer's executive officers or directors to be U.S. citizens or residents may preclude many project teams, even if they have a U.S. nexus or have members who want to come to the U.S. but are unable to do so. In addition, in

decentralized projects where contributors are geographically dispersed, the issuer's business may not have a principal place of business, and thus be unable to satisfy Proposed Rule 300(b)'s eligibility requirement. Further, requiring more than 50 percent of the issuer's assets to be located in the United States raises significant workability concerns for issuers seeking to hold their treasury onchain, as an onchain treasury has no location. Modifying these eligibility requirements to be more accommodating of geographically diverse teams and onchain infrastructure while still requiring a U.S. nexus would allow more projects to qualify for the exemption, and thus better advance the Commission's goal of bringing capital formation within the U.S. regulatory perimeter.

Investment Limitations

Offerings conducted under the fundraising exemption after qualification would be public offerings with no prohibition on general solicitation. If the purchaser is not an accredited investor as defined in Rule 501 of Regulation D, however, the purchaser may not pay an aggregate purchase price exceeding ten percent of the greater of its annual income or net worth. An issuer may rely on a purchaser's representation of compliance with this limit, unless it knows at the time of sale that the representation is untrue.

CCI encourages the Commission to clarify that the ten percent limit applies separately to each offering of a distinct subject crypto asset, and does not aggregate a purchaser's investments across unrelated offerings. CCI also encourages the Commission to confirm in the final rule that an issuer may rely on a purchaser's self-certification that it meets Rule 501's definition of an accredited investor, subject to the same actual-knowledge standard.

Delivery of Offering Materials

Under Proposed Rule 300(c)(2)(ii), when a covered transaction constitutes a sale by the issuer or an underwriter, or a dealer sale within 90 calendar days after qualification, the seller generally must deliver the final offering circular to each purchaser no later than two business days after completing the sale. Proposed Rule 300(c)(2)(ii)(E) would allow the seller to satisfy this requirement by sending the purchaser a notice that states the sale was made pursuant to a qualified offering statement, includes a link to the final offering circular or offering statement on EDGAR, and provides contact information through which the purchaser may request a copy.

The Commission should modify the Proposed Rule such that the timely filing and public availability of the final offering circular on EDGAR, without a separate purchaser-specific notice, satisfies the final offering-circular delivery requirement under Proposed Rule

300(c)(2)(ii). Once the final offering circular is publicly accessible on EDGAR, requiring a separate notice containing an EDGAR link would add administrative expense without materially improving the availability of information.

Offering Statement

An issuer relying on the fundraising exemption would be required to file an offering statement on proposed Form 1-CRYPTO and obtain SEC qualification before completing any sales. Form 1-CRYPTO is modeled on Form 1-A under Regulation A, but tailored for covered investment contracts. It would consist of three parts, all filed electronically through EDGAR: Part I would be an XML-based form containing basic information about the issuer and offering; Part II would be the offering circular including a cover page, table of contents, and the Rule 103 disclosures; a narrative discussion of the issuer's financial condition and financial statements; and Part III would include exhibits, including, among other items, an opinion regarding legality.

CCI strongly encourages the Commission to modify the qualification requirement by establishing a clearly defined, limited review period. Specifically, this review period should provide a fixed number of days for the SEC to review, but no longer than 20 days, while preserving the Commission's stop-order authority, consistent with the process for registered offerings. As the Commission itself recognizes, not allowing the sale of securities until the offering statement has been qualified, "could result in issuers missing out on favorable market conditions (e.g., strong investor interest in the issuer or its securities) while waiting for the offering to be qualified."³⁷ A clearly defined backstop with automatic effectiveness would mitigate these risks, while also preventing indefinite bottlenecks and reducing uncertainty for both issuers and investors. Indeed, Regulation A's qualification requirement has served as a practical obstacle for crypto projects, significantly hampering its utility. The SEC should avoid replicating that burden here.

CCI also encourages the Commission to modify Form 1-CRYPTO in at least two ways. First, the Commission should eliminate the requirement for an issuer to file a legal opinion.³⁸ Second, the Commission should also eliminate the mandatory audited financial statements for Tier 2 offerings. Both of these requirements would impose substantial cost and delay, particularly where the issuer's financial statements are not the primary source of information relevant to the covered investment contract. To the extent either of these

³⁷ Proposed Rule at 54583.

³⁸ To the extent the Commission retains a requirement that an issuer include a legal opinion as an exhibit, the opinion should be limited to the issuer's corporate power and due authorization. It should expressly exclude the existence, terms, characterization, or enforceability of the covered investment contract.

requirements remain in the final rule, the Commission should increase the offering caps so that the compliance cost is proportionate to the capital that may be raised.

Payment Stablecoin Consideration in Startup and Fundraising Offerings

CCI appreciates the Commission recognizing in the Proposed Rule that issuers may seek to offer covered investment contracts in exchange for permitted payment stablecoins.³⁹ The Commission should make clear that payment stablecoins received in consideration for offers and sales of covered investment contracts under a Regulation Crypto Assets exemption must be compliant with the Guiding and Establishing National Innovation for U.S. Stablecoins Act (the “GENIUS Act”). Congress enacted the GENIUS Act to facilitate responsible payment stablecoin adoption by providing a comprehensive framework for ensuring that payment stablecoins issued and made available in the U.S. meet important consumer protection, financial stability, and countering-illicit finance safeguards. For example, the GENIUS Act requires payment stablecoin issuers to back payment stablecoins with highly-liquid reserve assets on a 1:1 basis, not rehypothecate reserve assets, timely redeem payment stablecoins, and adhere to capital, liquidity, and risk-management rules currently being finalized by payment stablecoin regulators. Ensuring payment stablecoins received as consideration for tokens issued under a Regulation Crypto Assets exemption are GENIUS-compliant will help further the GENIUS Act’s objectives, ensure issuers and investors benefit from the GENIUS Act’s protections, and further Federal and State regulators’ efforts to ensure payment stablecoin issuers adhere to the GENIUS Act’s applicable regulatory frameworks. In turn, this approach will help facilitate the use of payment stablecoins in capital formation.

Investment Contract Safe Harbor & Form TR

The Proposed Rule would also establish a non-exclusive safe harbor from the term “investment contract” as used in the definitions of “security” under Securities Act section 2(a)(1) and Exchange Act section 3(a)(10).

An issuer seeking to rely on the safe harbor would file Form TR under Proposed Rule 400, which would require: (i) issuer identification and contact information; (ii) a brief description sufficient to identify the covered investment contract and the associated crypto asset; (iii) a certification that the issuer has satisfied the conditions of Proposed Rule 400(a); and (iv) an analysis supporting that certification, that must be sufficiently clear and detailed for a reasonable investor to understand the basis for the issuer’s conclusion. The

³⁹ See Proposed Rule fn. 114 (“The aggregate offering price or aggregate sales would include, for example, permitted payment stablecoins received for the covered investment contracts being offered.”).

Proposed Rule 400(a) certification requires an issuer to certify that it (1) has completed or otherwise permanently ceased all essential managerial efforts that it represented or promised it would engage in under the covered investment contract, and (2) is not making, and does not intend to make, any new representations or promises to engage in essential managerial efforts with respect to the crypto asset. To support its certification, an issuer that previously relied on a Regulation Crypto Assets exemption would be expected to refer to its Rule 103 disclosures describing the essential managerial efforts it represented or promised it would undertake and its progress toward fulfilling those commitments.

If an issuer has satisfied the safe harbor's conditions, the Commission would take the position in its administration of the Federal securities laws that the reporting, registration, and other requirements of the Federal securities laws no longer apply from the point in time at which the issuer satisfied the safe harbor and thereafter.⁴⁰ Importantly, the Proposed Rule would not prohibit private parties from asserting that a crypto asset is subject to an investment contract (or is otherwise a security).⁴¹ Further, the Commission would not be precluded from challenging whether the conditions were, in fact, satisfied after a filing has been made.

Recommendations

Adopting a Substance over Form Approach

CCI urges the Commission to align the Rule 400 safe harbor with *Howey's* substance-over-form approach, and ensure that an issuer is not able to effectively circumvent the application of securities laws by limiting its promises to negligible or economically insignificant efforts, such as merely promising to file a Form TR, as a means to more readily take advantage of the safe harbor.⁴² The Commission should also consider requiring Form TR to disclose any powers retained by the issuer and its related persons over the subject crypto asset and its associated network, as well as the tokens they hold. This would help ensure that investors are able to evaluate any potential risks that may arise from an issuer and related persons retaining control over the network on which a crypto asset's value may still depend.

CCI recognizes that a substance-driven standard may be less predictable to administer than a formalistic one, but the Commission can address that concern by providing further

⁴⁰ Proposed Rule at 54554.

⁴¹ Proposed Rule at 54555.

⁴² CCI notes that this concern is less likely in the case of an issuer who has issued crypto assets prior to the Proposed Rule because those issuers made their representations and promises without knowledge of the safe harbor's conditions.

clarity for how the safe harbor may be satisfied or not satisfied.⁴³ For example, the Commission could provide that where the subject crypto asset carries an economic interest in a business enterprise, a rebuttable presumption exists that the investment contract has not ceased to exist.⁴⁴ As a general matter, the Commission's approach to whether an investment contract has ceased to exist should align firmly with existing legal precedent to promote market certainty and deter private litigants from undermining the value of the safe harbor through legal challenges in court following a Form TR filing. An "investment contract" is a statutory term construed by the Supreme Court, and a reviewing court owes the Commission's construction no deference beyond its power to persuade. Accordingly, a safe harbor that tracks existing precedent is more likely to withstand judicial review, and market participants will be more likely to utilize it.

Clarifying Treatment of Functional Networks & Certain Blockchain Maintenance Services

CCI appreciates the Commission explaining in the Proposed Release that once a crypto asset network or application is functional, services to secure, maintain, improve, or enhance that network, whether through sponsoring or funding development projects or other similar activities, would not constitute essential managerial efforts.⁴⁵ The Commission's recent FAQ also reiterated this approach, recognizing that "[s]oftware is often in a constant state of development because of ongoing maintenance and upgrades."⁴⁶

⁴³ CCI recognizes and appreciates that the Commission considered, but did not propose, conditioning the safe harbor on a requirement that the subject crypto asset has sufficient functionality and the associated crypto network or associated crypto application has become sufficiently decentralized. Proposed Rule at 54590. To the extent the Commission departs from this approach and decides to instead adopt a decentralization requirement, the Commission may consider providing that a subject crypto asset must be a digital commodity (as defined in the 2026 Interpretation) for the safe harbor to apply, and a covered investment contract involving a digital commodity conclusively ceases to exist once (i) its associated crypto system operates without reliance on human control and (ii) the issuer has completed or ceased all essential managerial efforts it represented or promised. Under such an alternative approach, the Commission could define the absence of control by looking to its own 2026 Interpretation, which provided that a crypto system is decentralized if it "functions and operates autonomously with no person, entity, or group of persons or entities having operational, economic, or voting control of the crypto system." 2026 Interpretation at 13718 fn. 50.

⁴⁴ This clarification would be consistent with the 2026 Interpretation, which provides that a "digital commodity does not have intrinsic economic properties or rights, such as generating a passive yield or conveying rights to future income, profits, or assets of a business enterprise or other entity, promisor, or obligor, but may have certain other rights[.]" Proposed Rule at 13718. Importantly, the 2026 Interpretation also distinguishes these economic properties or rights from certain technical rights, such as enabling holders to participate in the system's consensus mechanism by staking the system's native digital commodity, and certain governance rights with respect to the associated functional crypto system. *Id.*

⁴⁵ Proposed Rule at 54525.

⁴⁶ Div. Corp. Fin. FAQ (stating "The Commission has recently expressed the view that, once a crypto system is functional, services to secure, maintain, improve, or enhance such a system or its functionality, or to facilitate network effects, whether through sponsoring or funding development projects or other similar activities, would not involve essential managerial efforts. As a result, any representations or promises by the issuer to provide or continue to provide (or arrange for the provision of) such services after the crypto system is functional would not satisfy the Howey test.).

The Commission should build on this clarity by codifying in the final rule that certain blockchain maintenance activities relating to a post-functional network do not constitute essential managerial efforts, rather than relying only on the Proposed Rule preamble or staff guidance, which reflect only the Commission's view. As part of this clarity, the Commission should codify the 2026 Interpretation's definition of a "functional" crypto system.⁴⁷ The Commission should also provide a list of concrete examples addressing ordinary post-launch upgrades, maintenance, security, and feature development that would not be considered essential managerial efforts. Importantly, the Commission should make clear that any examples included in the final rule are non-exclusive, to avoid creating an inference that unlisted activities necessarily constitute essential managerial efforts or limit the rule's ability to accommodate evolving technologies and development practices.

Facilitating Tokenholder Governance Participation

CCI also encourages the Commission to address potential liability arising from ordinary tokenholder participation in decentralized autonomous organization ("DAO") governance. For projects pursuing decentralized governance, meaningful participation by a broad and independent group of tokenholders can help reduce dependence on the issuer or a small group of insiders. Uncertainty about whether casting a governance vote could expose a tokenholder to liability may discourage that participation and undermine the transition the safe harbor is intended to facilitate.

The Commission should therefore consider a narrowly tailored safe harbor, within its authority under the Federal securities laws, providing that a tokenholder's ordinary participation in DAO governance does not, by itself, subject that tokenholder to liability for the DAO's or issuer's conduct. Such protection could cover voting on governance proposals and other routine exercises of tokenholder governance rights, where the participant does not otherwise exercise managerial control or engage in independently unlawful conduct. The Commission should also clarify that ordinary governance participation does not, standing alone, make a tokenholder an issuer, promoter, or person providing essential managerial efforts.

Improving Form TR

⁴⁷ See 2026 Interpretation at 13717 fn. 49 ("For purposes of this release, a crypto system is "functional" if the system's native crypto asset can be used on the system in accordance with the programmatic utility of the system. The term "native" in the context of a crypto asset refers to a crypto asset generated for use on a particular crypto system.").

CCI encourages the Commission to permit issuers to request confidential treatment of the analysis submitted in support of a Form TR certification, so that only the certification itself is made public. The supporting analysis may contain sensitive information regarding the issuer's operations, contractual arrangements, governance transition, or security practices. Permitting confidential submission could encourage issuers to provide a more candid and complete explanation of the basis for their certification without unnecessarily exposing sensitive information or increasing litigation risk.

Confidentiality would not need to come at the expense of Commission oversight. The Commission retains authority to review the analysis and to challenge an issuer's reliance on the safe harbor if it disagrees with the conclusion reached. The Proposed Rule also makes clear that the exemptions under Regulation Crypto Assets do not limit the Commission's anti-fraud and anti-manipulation authorities. At a minimum, the final rule should establish a clear process for requesting confidential treatment of sensitive portions of the submission.

Providing Greater Certainty Regarding Form TR Mechanics

CCI supports the self-executing nature of Form TR, under which the safe harbor is available upon filing without a prior Commission review or approval process. CCI encourages the Commission to retain that mechanic and to clarify that a Form TR is effective on filing in the final rule.

CCI also encourages the Commission to establish a clearly defined period within which it may challenge an issuer's reliance on the safe harbor after the Form TR is filed. As proposed, the absence of a defined period could leave issuers, tokenholders, and secondary-market participants uncertain for an indefinite period about whether the Commission will challenge the issuer's conclusion. That uncertainty could diminish the safe harbor's practical value, particularly where trading platforms and other market participants must determine how to treat the subject crypto asset following the issuer's certification. To further promote certainty, the Commission should protect unaffiliated market participants who rely in good faith on a filed Form TR, unless they have actual knowledge that the certification is false. Trading platforms and other intermediaries should not be required to independently verify an issuer's internal efforts and should be able to rely on the public filing.

The Commission should also modify the Form TR filing process to ensure it does not require an issuer to concede that a crypto asset was initially offered pursuant to an investment contract or that the filer was the issuer of such a contract. This clarification would avoid deterring issuers who seek certainty about the non-security status of a crypto

asset from filing a Form TR, encouraging further use of the safe harbor and fostering broader market clarity.

Protecting Subject Crypto Asset Holders

Until an issuer files Form TR, purchasers of covered investment contracts and holders of the subject crypto assets depend on the issuer, its founders, and its related persons to carry out the essential managerial efforts that were promised. CCI therefore supports the Commission's approach of addressing investor protection through robust disclosure obligations that continue until a Form TR is filed. CCI also encourages the Commission to affirm in the final rule that the Regulation Crypto Assets exemptions and safe harbor do not limit the Commission's anti-fraud and anti-manipulation authorities, including with respect to the accuracy of any Form TR certification.

Preemption of State Registration and Qualification Requirements

Securities Act Section 18 generally preempts state registration and qualification requirements for "covered securities." Under Section 18(b)(3), a security is covered when offered or sold to a "qualified purchaser," as defined by SEC rule. The Proposed Rule would add a definition of "qualified purchaser" to preempt state securities-law registration and qualification requirements with respect to offers and sales of covered investment contracts pursuant to a Regulation Crypto Assets exemption.

Specifically, Rule 500 would define "qualified purchaser" to include (i) any person to whom covered investment contracts are offered or sold in reliance on the startup exemption or fundraising exemption; and (ii) persons engaging in secondary-market transactions in covered investment contracts, other than issuers, underwriters, and dealers, provided that the issuer has satisfied—and remains current with—the applicable Regulation Crypto Assets disclosure, filing, and/or periodic-reporting requirements.

Recommendations

CCI supports preemption for both primary offerings and qualifying secondary-market transactions. As the Commission recognizes in the Proposed Rule, crypto asset offerings are typically interstate or global in nature. State-by-state registration and qualification requirements would impose unworkable burdens on issuers, raise compliance costs, and create fragmented, jurisdiction-by-jurisdiction obligations that are ill-suited to the

borderless nature of crypto asset markets.⁴⁸ Preemption also gives holders a more predictable market, because the same federal disclosure and investor protection framework would apply wherever a token is bought or sold. With these considerations in mind, the final rule should also preserve coverage for secondary-market transactions involving assets initially sold under another federal exemption, provided the applicable issuer disclosure and reporting conditions are satisfied.

The Commission should also make explicit that Rule 500's preemptive power over secondary-market transactions extends to intermediaries facilitating such trading, to the extent the Commission treats any aftermarket transactions in subject crypto assets as securities transactions. Preemption limited to issuers and the transactions themselves would leave platforms, brokers, and other facilitators exposed to duplicative state exchange or broker-registration claims, creating disproportionate burdens for smaller market participants and undermining the proposed secondary-market framework. Relatedly, the Commission should provide clear guidance to secondary market participants for determining whether an issuer has satisfied its disclosure and reporting conditions such that Rule 500's preemption applies.

Regulatory Relief for Secondary Market Transactions

While the Proposed Rule provides helpful relief from the Securities Act, it does not resolve key regulatory uncertainty and obstacles under the Exchange Act. According to the Proposed Rule's preamble and the 2026 Interpretation, as long as a crypto asset remains subject to an investment contract, "secondary market offers and sales of such a non-security crypto asset would constitute securities transactions."⁴⁹ The Proposed Rule itself recognizes this raises notable concerns citing former Commissioner Peirce's previous remarks recommending the Commission pursue exemptions from the definitions of "exchange," "broker," and "dealer" under the Exchange Act.⁵⁰ However, the Commission

⁴⁸ Proposed Rule at 54556 ("We anticipate that preemption of State securities laws registration and qualification requirements would reduce issuer costs and promote efficiency by reducing duplicative requirements. We also believe such preemption would enhance secondary market liquidity by eliminating uncertainty as to whether investors need to register or qualify their resale of a covered investment contract in a specific state. Our proposed rules contain investor protections that could address potential concerns that may arise as a result of the preemption of State securities law").

⁴⁹ Proposed Rule at 54515 ("That is, a non-security crypto asset becomes subject to an investment contract when an issuer offers it by inducing an investment of money in a common enterprise with representations or promises to undertake essential managerial efforts from which a purchaser would reasonably expect to derive profits. Under such circumstances, secondary market offers and sales of such a non-security crypto asset would constitute securities transactions that must be registered under the Securities Act or conducted pursuant to an available exemption from registration. The associated investment contract will continue to be transferred to subsequent purchasers of the non-security crypto asset in secondary market transactions until the non-security crypto asset separates from the issuer's representations or promises[.]").

⁵⁰ Proposed Rule fn. 192.

declined to address those recommendations here, noting only that it “will continue to consider whether further action with respect to covered investment contracts beyond the proposed rules in this release is warranted.”⁵¹

Recommendations

CCI strongly urges the Commission to clarify in the final rule that the subject crypto asset may trade separately from the covered investment contract, including on venues that are not registered with the SEC. As the Proposed Rule and the 2026 Interpretation both recognize, “the ‘security’ at issue is the covered investment contract...rather than the crypto asset itself.”⁵² Accordingly, where an aftermarket purchaser buys a crypto asset from a holder unaffiliated with the issuer, without any contractual assignment of rights under the covered investment contract and without any express, contemporaneous representation or promise from the issuer, the crypto asset transaction does not implicate the Federal securities laws. Nothing in that transaction involves an offer or sale of the investment contract, and no registration or exemption should be required for the crypto asset, the venue, or the intermediaries facilitating it. The final rule should also make clear that this trading may occur before the issuer files Form TR, even if the issuer continues to owe essential managerial-effort promises to earlier purchasers. This approach would be consistent with the Clarity Act, which would allow ancillary assets to be traded on digital commodity intermediaries so long as applicable disclosure requirements are satisfied.⁵³

Regulatory clarity on the ability of non-security crypto assets to trade outside of SEC-registered venues would also directly advance the objective of Regulation Crypto Assets to bring crypto asset economic activity onshore. As the Commission notes, the lack of U.S. regulatory clarity and proliferation of crypto asset transactions offshore has raised significant concerns for U.S. investors, including by “limiting investment options (and, therefore, the ability to diversify) for U.S. investors or exposing them to additional risks from participating in markets with less robust investor protections.”⁵⁴ Indeed, currently,

⁵¹ *Id.*

⁵² See, e.g., Proposed Rule at 54520 (explaining that a covered investment contract only includes a crypto asset that is not a security, and that the definition is intended to reflect the key principle that “for purposes of Regulation Crypto Assets, the “security” at issue is the covered investment contract (to which the subject crypto asset is subject) rather than the crypto asset itself.”).

⁵³ See Clarity Act § 10102. CCI also notes that allowing subject crypto assets to trade outside of registered securities exchanges would be consistent with the Commodity Futures Trading Commission’s (the “CFTC”) recent proposal regarding Regulation Crypto Asset Transactions and Regulation Crypto Asset Markets. This proposal contemplates a framework for crypto assets that are not securities to trade on CFTC-registered exchanges, subject to CFTC oversight and core principles aimed at protecting customers and market integrity. CCI urges the Commission to work closely with the CFTC to ensure Regulation Crypto Assets works effectively alongside the CFTC’s contemplated framework.

⁵⁴ Proposed Rule at 54512.

only 12 percent of centralized crypto asset exchange volume occurs on U.S.-based exchanges.⁵⁵ Without clarity for the secondary markets, U.S. based platforms will continue to face an uphill battle to regain this market share as investors continue to rely on offshore venues. Failure to provide clarity may also create adverse incentives, potentially pushing issuers to file Form TR prematurely simply to qualify for the safe harbor.

To the extent the Commission does not adopt the clarification above, it should, at a minimum, confirm that any trading limitation applicable to a crypto asset subject to an investment contract applies only to the units that the issuer offered and sold under a Regulation Crypto Assets exemption, and not to the crypto asset's entire supply. Applying such a limitation to the full supply would reach units for which no covered investment contract was ever created, such as mining and staking rewards, no-consideration airdrops, and other non-securities distributions.

More broadly, the Commission should rely on its exemptive authority under the Exchange Act as necessary or appropriate to facilitate the secondary market trading of covered investment contracts and onchain securities transactions. With this end in mind, CCI appreciates the Commission's recent "innovation exemption" which provided a pathway for certain tokenized stocks to trade on automated market makers using liquidity pools (Tokenized Securities Venues).⁵⁶ However, this relief, though a welcome step forward, is significantly limited in scope and only applies to Tokenized NMS stocks, leaving covered investment contracts and subject crypto assets out of scope.⁵⁷ The Commission should therefore also consider explicitly allowing covered investment contracts and their subject crypto assets to trade on Tokenized Securities Venues as an initial step towards broader secondary market clarity with respect to onchain venues.

CCI also encourages the Commission to adopt safe harbors from exchange and broker registration for decentralized exchanges and the applications that provide access to them. Whereas exchange and broker registration regimes under the Exchange Act are directed at centralized operators and risks presented by human intermediaries, systems that lack such an operator do not present those same risks, and imposing registration requirements on them would reintroduce the intermediaries and costs that these technologies render

⁵⁵ See CCI Report "Why Digital Asset Market Structure Legislation is Needed Now" at 16-17, <https://cryptofofinnovation.org/wp-content/uploads/2026/07/CCI-Report-Why-Market-Structure-is-Needed-FINAL.pdf>.

⁵⁶ Order Granting Temporary Conditional Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934, from the Definition of "Exchange" in Section 3(a)(1) of the Exchange Act for the Use of Certain Distributed Ledger Trading Venues for Tokenized NMS Stocks and from the Definition of "Dealer" in Section 3(a)(5) of the Exchange Act for Certain Liquidity Providers for Tokenized NMS Stocks, and Request for Comment, Exchange Act Release No. 34-106402, File No. 4-927 (Sept. 17, 2026).

⁵⁷ *Id.*

unnecessary. The Commission should therefore provide clarity regarding when automated market maker pools may facilitate trading of covered investment contracts without registering as an exchange, and when interfaces providing users access to such pools do not need to register as brokers under the Exchange Act.⁵⁸

Without further clarity or exemptive relief for secondary market transactions at the Federal level, the Regulation Crypto Assets framework's utility will remain severely constrained. Issuers could complete primary offerings, but investors would have extremely limited options for trading the purchased crypto assets. Failure to provide this relief may also create adverse incentives, potentially pushing issuers to file Form TR prematurely simply to qualify for the safe harbor.

Moreover, to the extent covered investment contracts are required to be traded on platforms registered as national securities exchanges, the covered investment contracts would have to be registered under Section 12(b) of the Exchange Act. As a result, the issuer or its transfer agent would be subject to the Exchange Act transfer agent rules. However, both existing transfer agent rules and the Commission's proposed amended transfer agent rules contemplate that securityholders' real-world identities must be maintained.⁵⁹ This requirement is inconsistent with the permissionless nature of native crypto assets operating on decentralized networks or applications, which are designed to allow individuals to transact without an intermediary to collect or verify customer identity in the first place.⁶⁰ The Commission should therefore also provide exemptive relief where necessary or appropriate to avoid imposing registration or recordkeeping obligations that are incompatible with the permissionless systems associated with a covered investment contract's subject crypto asset.

CCI greatly appreciates Chair Atkins recognizing the importance of regulatory clarity for

⁵⁸ For example, CCI encourages the Commission to consider the proposals outlined by a16z and DeFi Education Fund: Miles Jennings et al., *Recommendations Regarding a Safe Harbor for Certain Applications From the Exchange Registration Requirement of the Securities Exchange Act of 1934*, DeFi Education Fund & Andreessen Horowitz (Sept. 14, 2026), <https://dwt2zme5yrom6.cloudfront.net/uploads/2026/09/ctf-written-input-andreessen-horowitz-a16z-defi-education-fund-def-091426.pdf>; and Miles Jennings et al., *Recommendations Regarding a Safe Harbor for Applications from the Broker Registration Requirements of the Securities Exchange Act of 1934*, DeFi Education Fund & Andreessen Horowitz (Aug. 13, 2025), <https://tinyurl.com/bdavax5vd>.

⁵⁹ See, e.g., SEC Proposed Rule Regarding Transfer Agent Rules § 240.17ad-9 (requiring that transfer agents include in position detail the full name and physical mailing address of each registered securityholder).

⁶⁰ Sanctions compliance obligations that may attach to issuers of covered investment contracts may also undermine the inherently permissionless nature of the subject native crypto assets.

onchain financial markets, and we look forward to working with the Commission on advancing a durable framework that advances this objective.⁶¹

Equity Securities

The Commission states its view, in a footnote, that covered investment contracts are not “equity securities” under Exchange Act Section 3(a)(11), Rule 3a11-1, or Securities Act Rule 405.⁶² The Commission reasons that an investment contract is not among the instruments enumerated in those definitions of “equity security.” On that basis, the Commission concludes that covered investment contracts are not subject to the registration and reporting obligations that Section 12(g) imposes once an issuer crosses the specified thresholds for total assets and number of holders of record.⁶³

Recommendations

CCI appreciates the Commission explaining that it does not view covered investment contracts as equity securities under Exchange Act Section 3(a)(11), Rule 3a11-1, or Securities Act Rule 405, and therefore they would not be subject to Exchange Act Section 12(g)’s reporting requirements. However, the Commission should elevate and confirm this view in the text of the final rule itself, rather than leaving it as a footnote in the Proposed Rule’s preamble.

The Commission should also further clarify the significance of footnote 192 with respect to Federal securities laws more broadly. While footnote 192 addresses definitional provisions under the Exchange Act and Section 12(g), it remains unclear to what extent covered investment contracts would not be considered equity securities in other contexts. Accordingly, the Commission should further clarify that covered investment contracts do not constitute equity securities where that term is used in the Exchange Act or incorporated by reference in other Federal securities laws.⁶⁴

⁶¹ See e.g., Chair Atkins Remarks on AI Innovation, Capital Markets, and Regulatory Flexibility, <https://corpgov.law.harvard.edu/2026/05/09/remarks-by-chairman-atkins-on-ai-innovation-capital-markets-and-regulatory-flexibility/> (“[W]e should remember that onchain market structures today are often hybrid in nature, combining elements of what are often referred to as “traditional” and “decentralized” finance. We should clarify how the Commission views the spectrum of models that may implicate our statutes through notice and comment rulemaking, using our exemptive authorities where necessary and prudent, all with full participation from innovators, investors, and the public alike.”).

⁶² Proposed Rule at 54530-31, fn. 192.

⁶³ *Id.*

⁶⁴ See e.g., 17 C.F.R. § 270 (defining equity security for Investment Company Act purposes by cross-referencing 17 C.F.R. § 240.3a-11).

III. Conclusion

CCI appreciates the Commission proposing Regulation Crypto Assets and considering the above recommendations. The Proposed Rule marks an important step towards addressing key regulatory obstacles that have long impeded capital formation, stifled innovation, left investors without purpose-fit disclosures and protections, and ultimately driven crypto asset activity offshore. CCI looks forward to working with the Commission to advance this critical initiative and achieving these important objectives.

Respectfully submitted,



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