



October 20, 2026

VIA ELECTRONIC SUBMISSION

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-2026-27; RIN 3235-AN38; Regulation Crypto Assets

Dear Ms. Countryman:

The Blockchain Association (“BA” or “we”) appreciates the opportunity to submit this comment letter in response to the U.S. Securities and Exchange Commission’s (“SEC” or “Commission”) proposed Regulation Crypto Assets (the “Proposal”).¹

BA is the leading nonprofit membership organization dedicated to promoting a pro-innovation policy environment for the digital asset industry. BA endeavors to achieve regulatory clarity and to educate policymakers, regulators, courts and the public about how blockchain technology can pave the way for a more secure, competitive and consumer-friendly digital marketplace. BA represents more than 100 member companies reflecting the wide range of the dynamic blockchain industry, including software developers, infrastructure providers, exchanges, custodians, investors and others supporting the public blockchain ecosystem.

We commend the Proposal as it represents a significant step toward a more durable, fit-for-purpose regulatory framework for crypto assets in the United States. It appropriately recognizes that the *Howey* test can be difficult to apply to crypto assets and transactions involving crypto assets, and that existing SEC rules do not account for the special features of crypto asset markets.² As SEC Chairman Paul S. Atkins explained in a statement accompanying the Proposal, “[t]his ‘square peg in a round hole’ approach has caused unnecessary complications and, in turn, has impeded capital formation and innovation in the crypto asset markets.”³ The Proposal is an important step to advance President Trump’s executive order on Strengthening American Leadership in Digital Financial Technology,⁴ the recommendations set forth in the President’s Working Group on Digital Asset Markets Report (“PWG Report”),⁵ and the Commission’s Project

¹ Regulation Crypto Assets, Release Nos. 33-11434, 34-106150 (proposed Aug. 18, 2026), 91 Fed. Reg. 54510 (published Aug. 21, 2026) (“Proposing Release”), available at <https://www.federalregister.gov/documents/2026/08/21/2026-17183/regulation-crypto-assets>.

² Proposing Release, 91 Fed. Reg. at 54512.

³ SEC Chairman Paul S. Atkins, “Statement on Regulation Crypto Assets: Fit-for-Purpose Exemptions for Crypto Market Innovation” (Aug. 18, 2026), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-regulation-crypto-assets-081826> (“Atkins Statement”).

⁴ See Exec. Order No. 14178, 90 Fed. Reg. 8647 (Jan. 31, 2025).

⁵ See President’s Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology* (July 30, 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf>.

Crypto initiative.⁶ The Investment Contract Safe Harbor (or “Safe Harbor”), in particular, is an important step toward the regulatory clarity that the industry has been seeking for years.

Based on the collective experience of its diverse members, however, BA believes that the Proposal could be better tailored to the specific challenges and opportunities of crypto asset markets to unleash American innovation while maintaining the same level of investor protection. BA recommends several modifications, as detailed in the following sections.

There are three general themes that are present throughout our letter:

- **Objective but flexible standards:** The Proposal should offer non-exclusive, objective indicators, as opposed to rigid prescriptions or vague, unworkable standards. This is especially important in determining whether an issuer has satisfied applicable disclosure requirements and when an issuer’s essential managerial efforts have ended, including when an associated crypto network or associated crypto application has become “functional.” Overly prescriptive requirements will inhibit innovation and are not necessary to protect investors. This is most important for the Investment Contract Safe Harbor, which is central to the Proposal. Issuers of both new and existing crypto assets need clear, objective ways to show that essential managerial efforts have ended, whether by fulfilling their representations or promises or because the network is functional and operates without control by any person.
- **Technology-neutral, control-based responsibility:** The Proposal should not require an issuer to assume responsibility for the activities of third parties that are not under its control. Issuers should only be required to make disclosures and certifications regarding facts that are under their control or are reasonably knowable. Third-party applications, community activity and forward-looking development are generally outside of an issuer’s control. At the same time, the consequences of an issuer’s non-compliance should fall on the issuer, not on secondary market participants that cannot observe it. For example, secondary market participants should not be subject to an enforcement action and should not be subject to state securities laws if they rely in good faith on a Form TR filed by an issuer. Similarly, to benefit from state law preemption, secondary market participants should not be required to determine whether an issuer is “current with respect to” the disclosure and filing obligations of Regulation Crypto Assets.
- **Intermediary registration and secondary market transactions:** Addressing intermediary registration and secondary market transactions is necessary so that unworkable state or federal regulatory requirements applicable to secondary markets do not undercut issuer-level relief. To the extent possible, the Commission should address

⁶ See SEC Chairman Paul S. Atkins, *American Leadership in the Digital Finance Revolution* (July 31, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125>.

these issues in Regulation Crypto Assets as well as in future rulemaking and, in the interim, through exemptive relief.

I. The Scope of Regulation Crypto Assets Should Be Clarified

The SEC should clarify certain key terms and mechanics that apply to the Proposal as a whole, so that issuers and market participants understand the scope and operation of the Proposal.

a. Scope and Definition of “Covered Investment Contract”

Under Rule 100, an investment contract is a “covered investment contract” only if a non-security crypto asset is subject to the contract and no other asset is “subject to” it. The Commission should provide guidance on the meaning of “subject to.” Specifically, the Commission should confirm that a blockchain development company may sell covered investment contracts to the public under Regulation Crypto Assets even while selling equity or debt in a separate Regulation D offering. The Proposal notes that “issuers of covered investment contracts may be able to use the startup exemption in combination with the fundraising exemption and/or other current offering exemptions, assuming that such issuer does not run afoul of the integration doctrine.”⁷ But even if an issuer complies with ordinary integration principles, because investors may buy equity or debt based on many of the same representations that support the covered investment contract, issuers may fear that the equity or debt is “subject to” the same investment contract. A concurrent, separately exempt offering of a different security should not disqualify the Regulation Crypto Assets offering.

b. “Essential Managerial Efforts” and “Functionality”

A covered investment contract exists only if the issuer is engaged in “essential managerial efforts.” Under the Investment Contract Safe Harbor, an issuer must complete or otherwise permanently cease all essential managerial efforts that it represented or promised it would engage in and must not make or intend to make any new representations or promises to engage in essential managerial efforts with respect to the underlying crypto asset. In addition, the issuer must file a transition report (“Form TR”) with an analysis to support its determination that the covered investment contract has ceased to exist. BA agrees with the Commission’s decision not to define “essential managerial efforts” in proposed Regulation Crypto Assets. Issuers and market participants should continue to rely on the SEC’s *Howey* interpretation issued in March of this year (the “Howey Interpretation”) and other relevant guidance.⁸ But given the importance of the “essential managerial efforts” concept and given that issuers will need to publish an analysis to support their determination that their “essential managerial efforts” have ended, the Commission should provide additional guidance in rule text. In particular, without unduly limiting issuers, the Commission should provide: (1) non-exclusive examples of activities that would not be considered essential managerial efforts; and (2) non-exclusive examples of statements regarding essential managerial efforts that would not be considered representations or promises. The Division of

⁷ Proposing Release, 91 Fed. Reg. at 54576.

⁸ U.S. Sec. & Exch. Comm’n, Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Release Nos. 33-11412, 34-105020 (Mar. 17, 2026), 91 Fed. Reg. 13714 (Mar. 23, 2026), <https://www.federalregister.gov/documents/2026/03/23/2026-05635/application-of-the-federal-securities-laws-to-certain-types-of-crypto-assets-and-certain> (“Howey Interpretation”).

Corporation Finance’s recent Frequently Asked Questions on the Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets (the “Staff FAQs”)⁹ provide a useful starting point, including the staff’s views that promoting a crypto system’s current utility, or making indefinite aspirational statements that do not promote the potential for profit, is not a representation or promise to engage in essential managerial efforts, and that statements by an issuer regarding a functional crypto system with no central party are unlikely to create a new investment contract. Because staff guidance has no legal force and may change without notice, the Commission should incorporate these examples into the final rule. The Commission should confirm that treasury operations of a functional crypto system, including purchases of its non-security crypto asset, conducted under parameters approved through decentralized governance and executed programmatically, are not essential managerial efforts and are not representations or promises to engage in them.

BA agrees with the Proposal that, once an issuer has developed a crypto asset and satisfied its representations or promises regarding essential managerial efforts, efforts undertaken by an issuer to maintain functionality are not essential managerial efforts.¹⁰ The Commission also should confirm, consistent with the Proposal, that such post-functionality services are not essential managerial efforts whether they are provided or coordinated by the issuer or another party, including third party developers and infrastructure service providers. Similarly, the transition of post-functionality services to decentralized governance or to service providers acting under its authority is not an assumption of representations or promises to engage in essential managerial efforts. The Commission should further confirm that developing a new version of, or a major upgrade to, a functional network or application, particularly one adopted through decentralized governance, is not a new representation or promise to engage in essential managerial efforts and does not revive a covered investment contract. Moreover, security upgrades, patches, vulnerability-based upgrades, interoperability upgrades and upgrades intended to meet new technical standards and regulations for certain types of networks (*e.g.*, Decentralized Physical Infrastructure Networks or “DePIN”) are not essential managerial efforts. Issuers should be permitted, but not required, to delineate in their Rule 103 disclosures the essential managerial efforts they have represented or promised to undertake, as distinct from ordinary post-functionality activity. An issuer that does so should be able to rely on that delineation as the reference point for its Form TR analysis.

The Commission should also provide non-exclusive, objective indicators of when a network or application is “functional,” a term the Proposal uses but does not define. Such

⁹ U.S. Sec. & Exch. Comm’n, Division of Corporation Finance, Frequently Asked Questions on the Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets (Sept. 25, 2026, updated Sept. 28, 2026), *available at* <https://www.sec.gov/about/divisions-offices/division-corporation-finance/faqs-crypto-assets>.

¹⁰ Proposing Release, 91 Fed. Reg. at 54525 (“We further note that an issuer may make other representations or promises to take certain actions that would not constitute essential managerial efforts. For example, once an issuer has satisfied its representations or promises to engage in essential managerial efforts under the covered investment contract, the associated crypto network or associated crypto application may be functional. Once such network or application is functional, it is our view that services to secure, maintain, improve, or enhance such a network or application or its functionality, or to facilitate network effects, whether through sponsoring or funding development projects or other similar activities, would not constitute essential managerial efforts. As a result, any representations or promises (whether by the issuer or another party) to provide or continue to provide or arrange for the provision of such services after the network or application is functional would not satisfy the *Howey* test.”).

indicators could include, for example, that the network or application has launched on mainnet, is operating substantially as described to purchasers and permits the subject crypto asset to be used for its intended purpose. Functionality should not require that a network be feature-complete, and the continued provision of services such as upgrades, sequencing and security monitoring should not by itself indicate that a network is not yet functional.

In addition, the Commission should identify objective, non-exclusive indicators that an issuer's essential managerial efforts have ended, drawing on the *Howey* Interpretation's description of a crypto system that "operates autonomously with no person, entity, or group of persons or entities having operational, economic, or voting control of the crypto system."¹¹ Where a network or application is sufficiently decentralized such that users no longer rely on the issuer to exercise control, the essential managerial efforts of the issuer should be treated as having ended. At the same time, decentralization should not become a *de facto* requirement for exit. An issuer's essential managerial efforts should equally be treated as having ended when the issuer has completed or permanently ceased the efforts it represented or promised. The *Howey* Interpretation does not make decentralization a condition of a crypto asset falling outside an investment contract, and indicators of decentralization should be one way, but not the only way, to show that essential managerial efforts have ended. With objective, non-exclusive indicators tied to decentralization, issuers and market participants will have greater certainty in determining whether a crypto asset remains subject to an investment contract. The most useful indicators can be verified from the network's operation rather than reconstructed from an issuer's historical statements, such as: (1) the source code is freely and publicly available; (2) no person retains unilateral authority to censor transactions or grant preferential access; (3) no person or group under common control holds a majority share of outstanding tokens or governance voting power such that they maintain actual network control; (4) no person retains unilateral authority to alter the network's functionality or consensus rules; and (5) the network's value accrual mechanisms function independently of the issuer's continuing efforts.¹² Each indicator maps onto an existing *Howey* concern: whether purchasers rely on an identifiable promoter, whether a group of persons retains common control, and whether expected returns still depend on the managerial efforts of others. Indicators of this kind would not define "essential managerial efforts." They would give issuers and intermediaries a common, examinable reference point for the Form TR analysis. They could also inform the alternative, control-based pathway to exit discussed below under Rule 400.

These indicators should be sufficient but not necessary. An issuer that satisfies them should be entitled to treat its essential managerial efforts as having ended, without reconstructing its historical statements. No single indicator should be required, satisfying them should not be a condition of the Safe Harbor and the absence of any indicator should not give rise to an inference that essential managerial efforts are ongoing. Networks use a variety of governance structures, including councils of independent organizations, and the indicators should accommodate them. Nor should any indicator be read to treat the security upgrades, patches, interoperability upgrades and other maintenance activities described above, or the narrowly scoped security authority described below, as evidence that a person retains control.

¹¹ *Howey* Interpretation, 91 Fed. Reg. at 13718 n.50.

¹² *Cf.* Digital Asset Market Clarity Act of 2025, H.R. 3633, 119th Cong. § 205 (as passed by House, July 17, 2025) (conditioning relief on certification that a blockchain system is not controlled by any person or group of persons under common control).

The Commission should also confirm that narrowly scoped authority retained for security purposes, such as an emergency pause function or a security council empowered to respond to an active exploit, is a maintenance function and not an essential managerial effort. That treatment should apply where the authority is limited to a genuine security response and no person has the unilateral authority to make those changes.

c. “Covered Transactions”

The proposed Startup Exemption applies to “covered transactions.” The definition of “covered transaction” includes certain airdrops and tokens distributed as a reward or incentive for operating, governing, or securing a crypto network. Footnote 200 of the Proposal notes that, under the Howey Interpretation, airdrops of “non-security crypto assets by issuers to recipients who do not provide the issuer with money, goods, services, or other consideration in exchange for the airdropped non-security crypto assets” do not become subject to an investment contract.¹³ The footnote explains that “[i]f . . . an issuer conducts an airdrop that falls outside the scope of the circumstances described in the 2026 Interpretation, then such issuer may conduct such airdrop in reliance on the startup exemption, subject to the [applicable] offering limit.”¹⁴

BA agrees with the Proposal that airdrops that meet the requirements of the Howey Interpretation are not subject to an investment contract and need not rely on the Startup Exemption or any other exemption. Such airdrops are not “covered transactions” at all and are not merely excluded from the offering limit. The Commission should reaffirm that airdrops, as described in the Howey Interpretation, fall outside the scope of the federal securities laws in the adopting release for Regulation Crypto Assets.

The “free stock” cases do not support a contrary result. Each of those matters involved an instrument that was admittedly a security, corporate stock, and the only question was whether an ostensibly free transfer was nonetheless a sale “for value” under Section 2(a)(3) of the Securities Act of 1933 (“Securities Act”).¹⁵ Under the Howey Interpretation, a non-security crypto asset is not itself a security. The Commission therefore cannot presuppose security status and ask only whether a distribution was for value. It must first determine whether the transaction independently satisfies *Howey*, including the investment of money element. Where no bargained-for consideration is given, that element is absent, and the “for value” question never arises.

The SEC should also confirm that crypto assets received in connection with ordinary network operations are not subject to an investment contract, even if: (1) the same crypto asset, when sold by the issuer in other transactions, is subject to an investment contract; and (2) the crypto asset was transferred in a transaction that did not meet the requirements for a “covered airdrop” under the Howey Interpretation. The SEC should adopt a transaction-based analysis to determine whether a crypto asset granted as a reward or incentive is subject to an investment

¹³ Proposing Release, 91 Fed. Reg. at 54530 n.200.

¹⁴ *Id.*

¹⁵ See *SEC v. Harwyn Industries Corp.*, 326 F. Supp. 943 (S.D.N.Y. 1971); *In re Capital General Corp.*, 54 SEC Docket 1714 (July 23, 1993); *In re Joe Loofbourrow*, Securities Act Release No. 7700 (July 21, 1999); *In re Theodore Sotirakis*, Securities Act Release No. 7701 (July 21, 1999); *In re WowAuction.com Inc.*, Securities Act Release No. 7702 (July 21, 1999); *In re Web Works Marketing.com, Inc.*, Securities Act Release No. 7703 (July 21, 1999).

contract. It should not transform the guidance in the Howey Interpretation regarding airdrops into a prescriptive test that will determine, in all cases, when a crypto asset transferred in connection with network operations is subject to an investment contract.

To give this guidance durable form, the Commission could adopt a standard modeled on the “end user distribution” concept in the House-passed Digital Asset Market Clarity Act: a distribution that does not involve the exchange of more than a nominal value of consideration and is made in a broad and equitable manner, including incentive-based rewards for staking, validating or other network-operation activity.¹⁶ Distributions meeting that standard should be presumed not to involve the offer or sale of a security, subject to the Commission’s antifraud authority. They should not be treated as covered transactions that consume the Startup Exemption’s offering limit. The nominal value standard, however, should not be the only path. Where a recipient receives a crypto asset solely for network activity, such as providing services, testing, security, liquidity or participation in governance, the distribution should not be treated as a covered transaction or as creating a new covered investment contract unless the issuer makes an express representation or promise to engage in essential managerial efforts in connection with it. Rewards of this kind raise no capital, even where the network activity has more than nominal value.

In addition, we ask that the Commission:

- Codify the Howey Interpretation’s treatment of airdrops in rule text, confirming that airdrops do not constitute the offer or sale of a security as long as there is no bargained-for consideration. If there is no bargained-for consideration, there is no investment of money under *Howey*, and therefore, no investment contract is formed.¹⁷
- Clarify that administrative and compliance steps after an airdrop is announced (*e.g.*, connecting an eligible or compatible wallet, signing a claim transaction, accepting terms of use, sanctions or geographic screening) are neither “consideration”¹⁸ nor “further conditions”¹⁹ under footnote 141 of the Howey Interpretation.
- Acknowledge that without an investment of money, no investment contract is formed, so no registration or reliance on an exemption or safe harbor is needed, regardless of whether the transaction is a “covered airdrop” or any other transaction involving crypto assets.

¹⁶ H.R. 3633 § 104 (defining “end user distribution”); *see also* Senate Banking Committee, Discussion Draft (May 12, 2026), § 10102, new Securities Act § 4B(b)(4)(A) (providing that a gratuitous distribution “shall be presumed to not constitute an offer, sale, or distribution of a security,” subject to a savings clause preserving antifraud authority).

¹⁷ Howey Interpretation, 91 Fed. Reg. at 13730-31.

¹⁸ *Id.* at 13731 (“For example, where such consideration was provided to the issuer prior to the announcement of the airdrop and the recipients are not required to provide any further consideration to the issuer after such announcement in order to obtain the airdropped non-security crypto asset, we would not view such consideration as being provided to the issuer in exchange for the airdropped non-security crypto asset.”).

¹⁹ *Id.* at 13731 n.141 (“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 interpretation would not pertain to such airdrop.”).

- Codify the position of the Division of Corporation Finance in its 2025 no-action letter to DoubleZero Foundation that “Programmatic Transfers” in the DePIN context do not require registration under Section 5 of the Securities Act.²⁰

d. “Crypto Asset”

The proposed definition of “crypto asset,” which mirrors the definition of “digital asset” in the GENIUS Act,²¹ is broad. BA recognizes the value of a consistent federal definition and does not ask the Commission to depart from it. However, the Commission should clarify that, notwithstanding the broad definition of “crypto asset,” certain tokens that fall within the definition will never be subject to an investment contract under the Howey Interpretation and other applicable guidance. For example, and without limitation, “payment stablecoins” are subject to a different regulatory regime and should not be regulated as the “subject crypto asset” of an investment contract. No negative inference should be drawn from this example for other stablecoins.

Separately, the Commission should confirm that a token is not “subject to” an investment contract merely because it is issued in connection with the same project or is created by a third party using the subject crypto asset. Under the third part of the definition of “covered investment contract,” no asset other than a non-security crypto asset may be subject to the investment contract. Absent this confirmation, ancillary tokens that qualify as securities or are tied to non-crypto assets could cause an otherwise eligible investment contract to fail to qualify as a covered investment contract.

This concern is especially acute for wrapped tokens, receipt tokens and liquidity provider (“LP”) tokens. These are claim or receipt tokens that represent a right to underlying assets (*e.g.*, an LP token evidences a share of a liquidity pool). These tokens are routinely created by third parties that deposit a crypto asset into a protocol and receive a token in return, without any involvement by the issuer. The Commission should confirm that such a token does not affect the status of a covered investment contract. Issuers cannot control, and should not be required to analyze, every token that third parties create using the subject crypto asset. The same reasoning applies to tokens minted automatically by a self-custodial smart contract to evidence a holder’s deposit in, or claim on, the protocol, such as tokens evidencing a lending or vault position (“Position Tokens”), including when the deposited asset is a subject crypto asset. Unlike a receipt issued by a depository or custodian, a Position Token does not evidence assets held by a third party on the holder’s behalf. The Commission should confirm that such tokens do not affect the status of a covered investment contract, that the Howey Interpretation’s treatment of Redeemable Wrapped Tokens does not extend to such tokens, and that the protocol, its developers and its governance participants are not issuers of such tokens.

Relatedly, in the Howey Interpretation, the Commission said that the offer and sale of a Redeemable Wrapped Token will be considered an offer or sale of a security if the Redeemable Wrapped Token is a receipt for a non-security crypto asset that is subject to an investment contract

²⁰ Letter from Michael P. Seaman, Chief Counsel, SEC Division of Corporation Finance to Derek O. Colla (Sept. 29, 2025), available at <https://www.sec.gov/files/corpfin/no-action/doublezero-final-conformed-092625.pdf>.

²¹ 12 U.S.C. § 5901(6) (“The term ‘digital asset’ means any digital representation of value that is recorded on a cryptographically secured distributed ledger.”).

(i.e., a “subject crypto asset”).²² The Commission cited the definition of “security” under the federal securities laws, which includes any “receipt for” a security. Read literally, because a security cannot be subject to a covered investment contract, this guidance seems to suggest that a Redeemable Wrapped Token that is a receipt for a “subject crypto asset” cannot itself be subject to a covered investment contract and may even compromise the status of an investment contract as a covered investment contract. BA believes that this was not the Commission’s intent and requests that the Commission confirm that a Redeemable Wrapped Token created by a third party or a Position Token minted by a self-custodial protocol does not affect the status of a covered investment contract.

e. Governance of Self-Custodial Lending Protocols

Consistent with the Proposal’s view that services to secure, maintain, improve or enhance a functional network or application are not essential managerial efforts, the Commission should confirm that setting protocol-wide parameters for a functional self-custodial lending protocol, such as collateral factors, liquidation thresholds, interest rate curves and supported assets, through decentralized governance or published, rules-based processes, and maintaining the protocol’s functionality are not essential managerial efforts, where no person or group retains material ongoing discretion over those parameters.

f. Offering Limits

To reduce unnecessary compliance costs, the Commission should increase flexibility in the calculation of the offering limits for the Startup Exemption and the Fundraising Exemption. For both exemptions, if covered investment contracts are not offered for cash, the aggregate offering price or aggregate sales would be based on the value of the consideration as established by bona fide sales or, in the absence of sales, on the fair value as determined by an “accepted standard.” The Proposal asks whether the “standard” should be U.S. Generally Accepted Accounting Principles (“GAAP”). In many cases, companies may sell covered investment contracts in exchange for illiquid tokens issued by other early-stage companies. Mandating a GAAP valuation would introduce unnecessary complexity and is not always feasible, so the Proposal should permit other standards as well.

g. Disqualification

Proposed Rule 104(b) helpfully cross-references the Regulation A Rule 262 disqualification events for consistency and simplified diligence. The disqualification events would not apply retroactively, but the Proposal would require issuers to disclose to purchasers, “a reasonable time prior to sale, a description in writing of any matters that would have triggered disqualification under Rule 104 but occurred before the date on which Rule 104 becomes effective.”²³ While, in the past, the Commission has adopted a similar disclosure requirement with respect to new disqualification provisions, BA believes that it would be inappropriate to impose such a requirement here. Crypto projects tend to be decentralized and fluid with individuals and

²² Howey Interpretation, 91 Fed. Reg. at 13729 (“... the offer or sale of a Redeemable Wrapped Token that is a receipt for a digital security or a non-security crypto asset that is subject to an investment contract is an offer or sale of a security within the meaning of section 2(a)(1) of the Securities Act or section 3(a)(10) of the Exchange Act.”).

²³ Proposing Release, 91 Fed. Reg. at 54609.

entities constantly entering and exiting. For this reason, the Startup Exemption can be claimed not only by an individual or an entity but also by a “group of individuals or entities.” Rule 262 may disqualify an issuer based on an event affecting any “predecessor of the issuer,” “affiliated issuer” or similar related entities that may have occurred years before the effective date of Regulation Crypto Assets.²⁴ Issuers will need to devise some method to determine which entities are within the scope of the disqualification provisions and track whether such entities have been subject to a disqualification event within the period set by Rule 262. Although proposed Rule 104(b) would excuse an issuer that did not know and, in the exercise of reasonable care, could not have known of an undisclosed matter, the reasonable care standard requires a factual inquiry whose scope is uncertain for decentralized and pre-entity projects. Doing so will be challenging and costly, and the market should be given more time to adjust.

To avoid unnecessary compliance burdens for decentralized projects, the SEC should limit the disclosure obligations of issuers to disqualification events that occurred within one year, or a similar period, before the filing of Form NOR (for Subpart B) or Form 1-CRYPTO (for Subpart C). Alternatively, the Commission should limit the scope of entities that could trigger a disclosure obligation based on a disqualification event that occurred prior to the effective date of Regulation Crypto Assets.

h. Integration

The Commission should clarify the application of the integration doctrine to offerings of covered investment contracts. Covered investment contracts are unique because the underlying crypto asset may be purchased both to earn a return and to use the underlying crypto asset for its intended purpose. An issuer may sell covered investment contracts to institutional investors for investment purposes in a Regulation D offering, or under another applicable exemption, while simultaneously selling covered investment contracts to future users of the underlying crypto asset under Regulation Crypto Assets. The adopting release should provide additional guidance on the circumstances under which an offering of covered investment contracts under one exemption may be integrated with an offering of covered investment contracts under Regulation Crypto Assets. Similarly, the Commission should clarify the application of “flowback” restrictions under Regulation S when an issuer sells covered investment contracts in a Regulation S offering and also sells covered investment contracts in a Regulation Crypto Assets offering.

i. Inflation Adjustment

BA supports periodic adjustment of offering limits based on the Consumer Price Index. Proposed Rule 102 would require adjustments at least once every five years. The Commission should commit to a shorter adjustment cycle. The operating costs for the crypto industry are more volatile than the operating costs for other industries. For example, security, engineering and infrastructure costs in the crypto industry can change rapidly, which supports more frequent inflation adjustments.

²⁴ 17 C.F.R. § 230.262.

j. Section 12(g)

BA supports the Commission’s view that covered investment contracts are not “equity securities” and therefore are not subject to Section 12(g) of the Securities Exchange Act of 1934 (“Exchange Act”). As contemplated in Request for Comment 45, the Commission should codify that view, such as by amending Rule 12g5-1, and should confirm that self-custodied wallet addresses and smart contract addresses, such as lending pools and vaults, are not holders of record, without look-through to depositors.

This conclusion follows from the Commission’s own framework. Section 12(g) is triggered by a class of equity securities held of record by a defined number of persons, a mechanism calibrated to a company’s identifiable shareholders.²⁵ A covered investment contract has none of the features that are characteristic of an “equity security.”²⁶ There is also no coherent basis for applying a holder-of-record count to a fungible token held pseudonymously by a constantly shifting population.

II. Disclosure Requirements Should Be Tailored to Crypto Asset Markets

Regulation Crypto Assets appropriately establishes principles-based disclosure requirements. Principles-based requirements are helpful because they are technology neutral and can be adapted to developments in the market and the particularities of each covered investment contract. But they can also create uncertainty. Moreover, offerings of covered investment contracts are different from other securities offerings because the information that is material to a covered investment contract will be different from the information typically material to a security. Securities are usually claims on the cash flow of an issuer, and thus, material information generally relates to the financials of the issuer. For a covered investment contract, the materiality analysis will be novel. Thus, the Commission should provide some illustrative, non-exclusive examples in the adopting release for issuers, while maintaining the flexibility and adaptability of the current Proposal. In particular, the Commission should provide illustrative examples of risk factor disclosures. Illustrative examples could include, where relevant, a description of what legal rights, if any, the subject crypto asset confers, and a presentation of circulating and fully diluted supply alongside vesting and release schedules, including whether lockups are enforced through onchain mechanisms and whether they may be waived.

In addition to the above, BA recommends the following:

- **“Associated Crypto Application”**: Where a crypto asset underlying a covered investment contract can be used within, or facilitates access to, an “associated crypto application,” the issuer has certain disclosure obligations with respect to the application. If the relevant application is built or controlled by a third party, issuers should not be responsible for disclosing or standing behind facts outside their control. The Commission should confirm that disclosure obligations relate only to the issuer’s own activities and not the activities of third parties. Alternatively, there should be a materiality or knowledge qualifier for any disclosure obligation related to third-party activities.

²⁵ Securities Exchange Act of 1934 § 12(g), 15 U.S.C. § 78l(g); 17 C.F.R. § 240.12g-1.

²⁶ See 17 C.F.R. § 240.3a11-1 (“Definition of the term ‘equity security’”).

- Cessation of Essential Managerial Efforts: The Commission should confirm that Rule 103(b)(1), which requires an issuer to describe the “material terms” of a covered investment contract, does not require issuers to predict when their essential managerial efforts will end. The federal securities laws regulate the financing activities of companies, not their underlying businesses. The Commission should not require issuers to determine in advance the timeline of future development efforts. A requirement to forecast that timeline would also penalize candor. An issuer that publishes a detailed development plan would face both a greater risk of creating representations or promises and a fixed deadline to fulfill them, while an issuer that stays vague avoids both. A rule that makes disclosure the riskier choice will produce less of it. Non-exclusive, objective indicators of functionality, as recommended above, would give issuers a workable reference point for these disclosures without requiring them to forecast development timelines.
- Delivery: The Proposal asks whether there should be prescribed delivery methods for the disclosures required by Regulation Crypto Assets. BA supports the flexibility in proposed Rule 103. BA agrees that issuers relying on the Startup Exemption should not be required to file their Rule 103 disclosures on EDGAR. For the Fundraising Exemption, where proposed Rule 101(c) would require the offering statement and periodic reports to be filed on EDGAR, the Commission should permit delivery through any acceptable method of electronic delivery, whether under proposed Regulation E-Delivery²⁷ or existing electronic delivery guidance. In addition, as the Commission suggests in Request for Comment 89, where an issuer submits an EDGAR filing, the EDGAR filing by itself should satisfy the delivery requirement, and a separate notice to investors should not be necessary.
- Related Persons: The Proposal also asks whether there should be specific minimum holding periods for related persons rather than disclosures regarding related person resale or transfer restrictions. For Regulation A offerings, there is no specific minimum holding period for related persons, and BA believes that the Commission should continue to choose disclosure over prescriptive holding periods. If the final rule does include holding periods, the holding periods should be based on fixed time periods (e.g., 1 year) rather than tied to milestones in the development of the subject crypto asset and the associated crypto network. Holding periods should be predictable and tying them to milestones would introduce uncertainty for related persons who are compensated in tokens. In addition, the definition of “related person” should exclude de minimis holders, such as non-executive employees, and developers and consultants who receive small token grants for discrete contributions, for whom related person obligations would impose compliance costs disproportionate to any investor protection benefit. More generally, the Commission should define “related person” by reference to role, control or access to material nonpublic information, drawing on existing concepts such as the Rule 405 definitions of “affiliate” and “control” and the persons covered by Rule 262 of Regulation A, rather than by token holdings alone. The Commission should also clarify that attestation of related person holdings by an issuer is sufficient to satisfy this disclosure requirement for privacy-

²⁷ U.S. Sec. & Exch. Comm’n, Electronic Delivery of Information Under the Federal Securities Laws, Release Nos. 33-11430; 34-105921; 39-2564; IA-6980; IC-36252 (proposed July 16, 2026), 91 Fed. Reg. 45884 (published July 21, 2026), available at <https://www.govinfo.gov/content/pkg/FR-2026-07-21/pdf/2026-14679.pdf>.

preserving networks and that there is no requirement that related person holdings be independently viewable onchain.

- Methods to Verify Transaction History: Proposed Rule 103(b)(7) would require an issuer to disclose “methods to verify the subject crypto asset’s transaction history.” With respect to privacy-preserving networks that rely on zero-knowledge proofs to verify transactions, the Commission should clarify that there is no requirement that transaction history be independently viewable onchain.

III. The Startup Exemption Should Be Modified So That It Can More Effectively Fulfill Its Intended Purpose

The proposed Startup Exemption is an important step toward supporting early-stage crypto projects. The exemption preserves necessary investor protections, elicits material information from issuers, is easy to use, and generally does not impose an undue compliance burden. BA agrees that issuers should not be required to file disclosures on EDGAR, and that issuers should be required to assess their amendment obligations annually and not more frequently. Nonetheless, with a few adjustments, the exemption could more effectively support early-stage crypto projects.

a. Offering Limit and Pacing

The SEC should increase the offering limit for the Startup Exemption to \$10 million. A \$10 million offering limit would align with Rule 504 of Regulation D, an alternative the Commission itself considered in the Proposal, and would be consistent with the expected costs of an early-stage crypto project. Even the smallest crypto projects tend to require substantial engineering and security costs. Moreover, unlike Rule 504, the Startup Exemption would include disclosures tailored to the crypto industry, which, in combination with the SEC’s antifraud authority, will reduce information asymmetries and thereby reduce the risk of investor harm. The lighter compliance requirements will be essential for early-stage crypto projects, which will have smaller legal and compliance budgets. Thus, it is important that a significant portion of early-stage crypto projects have the ability to leverage the Startup Exemption.

The case for a higher limit is stronger because the Startup Exemption’s single \$5 million limit would apply both to capital raising transactions and to the broad-based distributions that projects use to bootstrap their networks. In addition to capital raising transactions, the definition of “covered transactions” expressly includes distributions of covered investment contracts, including airdrops, made in exchange for, in recognition of, or as incentive for use of an associated crypto network or associated crypto application, or as a reward or incentive for activities primarily related to operating, governing or securing it. Where recipients provide services or other non-cash consideration, that consideration would be valued and counted toward the limit. A project that relies on the Startup Exemption for these distributions could exhaust capacity intended for capital formation. In addition to raising the limit, the Commission should exclude distributions described in paragraph (2) of the definition of “covered transaction” from the offering limit, so that the limit applies to capital raising as intended. Compensatory issuances to bona fide service providers that benefit the network should be treated the same way. As discussed above, distributions that meet the nominal value standard should not be treated as covered transactions.

The adopting release should also confirm that issuers are not required to raise funds evenly or at a certain pace during the four-year Startup Exemption period. Early-stage crypto projects often need concentrated financing during their first year for engineering, development and security. Issuers should be permitted to exhaust the offering limit of the Startup Exemption as early as they wish.

b. “One-Time Use” Condition

The Commission should clarify the scope of the “one-time use” condition. Footnote 206 of the Proposal states: “For example, two crypto assets would be substantially similar if they have different names but the crypto asset and the associated crypto network or associated crypto application are functionally identical.”²⁸ “Functionally identical” is a much easier standard to apply than “substantially similar.” The Commission should clarify that a crypto asset and the associated crypto network or associated crypto application *must be* functionally identical in order for the one-time use restriction to apply. Alternatively, the Commission should provide more concrete guidance on the meaning of “substantially similar.”

The one-time use condition, and the application of the condition to affiliates of the issuer, is likely to impede serial entrepreneurs and angel investors. The Proposal recognizes the burden on serial entrepreneurs and angel investors but suggests that the proposed one-time use requirement is needed to avoid circumvention of the four-year limitation and offering size limitation. BA agrees with the solution suggested in Request for Comment 52. A *de minimis* carveout would alleviate the burden on serial entrepreneurs and angel investors. The *de minimis* carveout should capture two separate fact patterns.

In the first fact pattern, an angel investor provides capital to two early-stage, substantially similar crypto projects but participates in neither project. The policy concern behind the one-time use condition is not relevant because the two projects operate independently and are only connected by the ownership interest of the angel investor. To accommodate this fact pattern, the Commission should carve out issuers that have a common parent or ultimate beneficial owner, but the common parent or ultimate beneficial owner is not actively engaged in the management of at least one of the issuers. To determine whether a person is “actively engaged in the management” of an issuer, the SEC could reference FINRA guidance on principal registration.²⁹ More generally, although terms not defined in Rule 100 take their Rule 405 meanings, the Commission should confirm that, for purposes of the one-time use condition, entities under common ownership that do not participate in the management of the issuer or the development of the subject crypto asset are not affiliates of the issuer.

In the second fact pattern, a serial entrepreneur relies on the Startup Exemption as part of a consortium of companies and entrepreneurs and then relies on the exemption again as part of a different consortium of companies and entrepreneurs. Based on the current language of the Proposal, it is unclear whether the participation of the entrepreneur would compromise the exemption for the consortium. A consortium with counsel could avoid this issue entirely by forming an entity that is owned by members of the consortium but is not under the control of the

²⁸ Proposing Release, 91 Fed. Reg. at 54532 n.206.

²⁹ See FINRA Rule 1220(a)(1).

entrepreneur. But other consortiums may inadvertently violate the one-time use condition because one of their members is acting as an issuer in more than one offering under the Startup Exemption. To accommodate this fact pattern, the Commission should confirm that the Startup Exemption will be available to a “group of individuals or entities,” so long as the group as a whole did not previously rely on the Startup Exemption with respect to a substantially similar crypto asset and is not affiliated with an issuer in a prior substantially similar Startup Exemption offering. Alternatively, the final rule could carve out consortiums that include individuals and entities that have previously acted as issuers in Startup Exemption offerings if the individuals and entities are collectively entitled to no more than 50% of the profits and losses of the relevant crypto project.

c. Issuer Eligibility Conditions and Guidance for Decentralized Issuers

BA supports the issuer eligibility conditions for the Startup Exemption, but the Commission should provide additional guidance for decentralized issuers. Many early-stage crypto teams are pre-entity, and the Startup Exemption appropriately permits a “group of individuals or entities” to offer covered investment contracts to the public. The Startup Exemption also appropriately includes foreign issuers, so that U.S. investors are not unfairly disadvantaged and may access foreign markets.

The Commission should provide additional guidance to accommodate pre-entity and decentralized issuers. Rule 200(b)(2) would require “each member of the group (or an authorized person for each member) . . . to sign the notice of reliance and transition report and provide the certifications thereunder.” In many cases, it will be impractical for each member of the group to sign the notice of reliance and the transition report and provide the necessary certifications. Thus, the authorized signatory will be an important mechanism. The Commission should provide additional guidance on the meaning of “authorized” in this context to provide for a practicable authorized signatory mechanism. BA also agrees that certain pre-entity and decentralized issuers, including decentralized autonomous organizations and unincorporated associations, should not be required to supply a jurisdiction of formation or principal office on Form NOR. The Commission should also accommodate decentralized unincorporated nonprofit associations (“DUNAs”) formed under state law. To that end, the final rules should adopt a definition for DUNAs drawn from state law, namely an association formed under a state statute providing for DUNAs, such as the statutes enacted in Wyoming, Alabama and West Virginia, and should conform its forms to that definition. Forms NOR, TR and 1-CRYPTO should accept a DUNA’s state of formation as its jurisdiction, a registered agent’s address in lieu of a principal office, and the signature of an administrator or other person authorized under its governing principles. The Commission should also confirm that participation in onchain governance, such as voting, delegating, or approving protocol parameters or asset listings, does not, by itself, make a person a member of a “group of individuals or entities” acting as an issuer, an affiliate of the issuer for purposes of the one-time use condition or Rule 262, or a “related person,” and that actions approved through decentralized governance are not attributed to the issuer as new representations or promises.

d. Certification of Development Efforts

An issuer should be required to certify that it is “aware of” the four-year time limitation, and not that it intends to fulfill its representations or promises within four years. The Commission identifies this alternative in Request for Comment 62. As noted above, the federal securities laws

regulate the financing activities of companies, not their underlying businesses. The Commission should not mandate that blockchain companies complete their development efforts within any given time frame. Instead, an issuer that does not complete their development efforts within four years should simply be required to rely on a different exemption for future offerings. BA appreciates that the Commission proposed the Startup Exemption to accommodate issuers that intend to complete their development efforts within four years. But in many cases, it will take longer than expected to complete development, and a public certification may expose an issuer to unnecessary litigation risk.

The litigation risk is not limited to issuers that misstate their intent. “Representations or promises” is not currently confined to a formal offering document. It may reach roadmap updates, interviews and community posts made over several years across many channels, and neither an issuer nor its counsel can identify every statement a court or the Commission may later treat as a promise. An issuer that certifies in good faith could still be found to have certified against a standard whose scope it could not know, with potential exposure under Sections 17(a)(2) and (3) of the Securities Act, which do not require scienter.³⁰

e. Form TR and Filing Issuers’ Analyses Confidentially

Form TR will require issuers to file legal analyses with the SEC and disclose them to the public. Where the issuer files Form TR at the end of the four-year period and has satisfied the conditions of the Investment Contract Safe Harbor (discussed below), Item 3 of Form TR requires the issuer to provide an analysis supporting its determination that it has satisfied the conditions of the Investment Contract Safe Harbor. Where an issuer files Form TR and has not satisfied the conditions of the Safe Harbor but nonetheless determines that the covered investment contract has ceased to exist, Item 6 requires the issuer to provide an analysis supporting its determination that the covered investment contract has ceased to exist. The adopting release should provide additional guidance on the expected length and content of these analyses, including how an issuer may support a determination that the related network or application is functional with non-exclusive examples.

In addition, the final rule should allow issuers to file their analyses confidentially, so that the arguments they make in Form TR do not reveal sensitive nonpublic information or potentially invite frivolous litigation. Only the required certifications should be made public, and the confidential analysis should be considered sufficient to permit reasonable reliance by secondary market participants so that secondary market participants are not unnecessarily subject to liability. The Proposal confirms that the Commission may challenge an issuer’s determination notwithstanding its attempted reliance on the Safe Harbor, so the Commission’s oversight does not depend on public disclosure of the analysis.

BA discusses Form TR in greater detail later in this letter.

³⁰ See *Aaron v. SEC*, 446 U.S. 680, 697 (1980).

IV. The Fundraising Exemption Should Be Expanded and Modified to Eliminate Unnecessary Compliance Costs and Increase Its Usefulness

BA supports the proposed Fundraising Exemption. The Fundraising Exemption would provide a useful exemption for issuers seeking to offer covered investment contracts to the public. That said, we recommend certain modifications to support innovation, reduce unnecessary compliance costs and ensure that U.S. investors are not unduly disadvantaged.

a. Tier 2 Offering Limit and Securityholder Limit

The Tier 2 offering limit should be higher given the expected compliance costs, and the SEC should not limit sales by selling securityholders. Blockchain development can be highly capital intensive, given the required technology, engineering, security and other costs. Thus, as commenters recommended and the Commission considered as an alternative in the Proposal, \$150 million would be a more appropriate limit. The Proposal includes several safeguards to address investor protection concerns for larger offerings. Among other things, the issuer would be subject to ongoing reporting obligations and tailored disclosure requirements. The Fundraising Exemption includes the core investor protections of Regulation A, together with tailored disclosure and greater transparency, which suggests that the Fundraising Exemption should have a higher offering limit.

Fundraising Exemption offerings will generally be more transparent than Regulation A offerings. Transactions in the assets underlying covered investment contracts, along with the smart contracts and other code that support the underlying assets, will be public and auditable. While the managerial efforts of the issuer will impact the value of the covered investment contract, the value of the covered investment contract will ultimately depend not on the undisclosed future business prospects of the issuer, as in a typical Regulation A offering, but on the utility of the underlying asset, which investors may independently assess. Thus, there would be fewer information asymmetries in Fundraising Exemption offerings. Given these protections and the added transparency of Fundraising Exemption offerings, a higher offering limit is warranted.

For both Tier 1 and Tier 2, the Commission should rely on disclosure and not prescribe a specific amount of sales by selling securityholders. The Proposal currently limits sales by affiliated selling securityholders to no more than \$6 million for Tier 1 and no more than \$22.5 million for Tier 2 in any twelve-month period. In addition, when an issuer first sells securities under the Fundraising Exemption, the portion of the aggregate offering price attributable to the securities of selling securityholders may not exceed 30% of the aggregate offering price. The SEC should take the same approach to the Fundraising Exemption that it plans to take to the Startup Exemption. That is, it should rely on disclosure and not prescriptive requirements.

The Commission should also clarify the application of the investment limitations for non-accredited investors in the Fundraising Exemption. The Proposal would limit the amount that can be purchased by a non-accredited investor to no more than 10% of the purchaser's annual income or net worth if the investor is a natural person or revenue or net assets if the investor is a non-natural person. The adopting release should confirm that the investment limitation applies on a per-offering basis and that issuers are not expected to verify whether a non-accredited investor has previously purchased covered investment contracts in a Fundraising Exemption offering. BA supports proposed Rule 300(c)(2)(i)(D), which would permit issuers to rely on a representation of

the purchaser when determining compliance with the investment limitation. Issuers should not be required to independently conduct diligence to verify the income, net worth, revenue or assets of the purchaser.

b. Foreign Issuers

Foreign issuers should be eligible for the Fundraising Exemption, so that U.S. investors can participate in global crypto markets on equal footing. The Proposal notes that crypto projects have moved overseas and suggests that limiting the Fundraising Exemption to U.S. issuers “could help reverse this trend.”³¹ BA respectfully submits that expanding eligibility would better promote efficiency, competition and capital formation under Section 2(b) of the Securities Act by giving U.S. investors access to a broader range of projects. To the extent the Commission is concerned about recourse against foreign issuers or information asymmetries, it could condition eligibility on an outcomes-based comparability assessment of the issuer’s home jurisdiction. In the alternative, the SEC could simply extend the Fundraising Exemption to Canadian issuers, which are already eligible issuers under Regulation A.

c. Accommodating Decentralization and Deemphasizing GAAP Financials

Because the Fundraising Exemption closely follows Regulation A, which is a traditional Securities Act exemption that is designed for a different market, it is largely focused on the financials of the issuer. BA appreciates that the Proposal permits an issuer to provide less than two years of financial information if the issuer has been in existence for less than two years. But in other respects, the Fundraising Exemption is unnecessarily focused on issuer financial information. For example, the Fundraising Exemption requires an issuer to be a single entity that can prepare financial statements. Moreover, unlike Regulation A, the Fundraising Exemption subjects *both* Tier 1 and Tier 2 issuers to ongoing reporting obligations, meaning that even Tier 1 issuers will need to constantly update and refile financial statements. Tier 2 issuers are also required to provide audited financial statements.

There should be less of a focus on GAAP financials in the Fundraising Exemption, not more. Because a covered investment contract is not a claim on the future cash flows of an issuer, the financial prospects of the issuer are less relevant in covered investment contract offerings than they are in traditional securities offerings. What matters most to purchasers is the information the Proposal already requires issuers to describe, including the issuer’s representations or promises regarding essential managerial efforts, the development plan and token economics such as supply, treasury and related person holdings, and vesting and release schedules. Decentralized and early-stage projects should be permitted to offer covered investment contracts to the public, even if they do not rely on a single entity with financial statements. The Commission should also address how projects without a traditional reporting entity may satisfy the financial statement requirements. Information about the use of offering proceeds may also be more relevant to purchasers than issuer financial statements.

BA recognizes that the Commission proposes ongoing reporting for Tier 1 issuers because, unlike Tier 1 Regulation A offerings, Fundraising Exemption offerings are not expected to be

³¹ Proposing Release, 91 Fed. Reg. at 54540.

local, and secondary purchasers should have access to current information. Much of the most relevant information, however, is not financial. The Commission should therefore scale Tier 1 ongoing reporting to focus on updates to the issuer’s development progress, token economics and other Rule 103 disclosures, rather than periodic financial statements. BA also supports proposed Rule 305(d)(2), which would terminate ongoing reporting once the issuer satisfies the conditions of the Safe Harbor or the covered investment contract otherwise ceases to exist, because it ties the reporting obligation to the period when purchasers are relying on the issuer’s efforts.

Similarly, Tier 2 issuers should not be required to provide audited financial statements. It is not necessary for investors to review audited financial statements to determine whether an issuer has the funds necessary to continue their development efforts. Instead, investors can independently verify on the blockchain much of the information that matters most for a covered investment contract, including information that proposed Rule 103(b)(7) already requires issuers to describe. That onchain record provides a form of third-party verification that audited issuer financial statements do not. Thus, BA recommends that the Commission dispense with the requirement that issuers file audited financial statements. If the Commission maintains the audited financial statements requirement, BA asks that the Commission increase the offering limits, so that the compliance cost is more proportionate to the amount of capital that may be raised. The Commission should also continue to encourage the Financial Accounting Standards Board (“FASB”) and Public Company Accounting Oversight Board (“PCAOB”) to coordinate on crypto asset accounting.

d. Legal Opinions

Issuers should not be required to file a “legality opinion relating to the securities covered by the offering statement.”³² As proposed, Form 1-CRYPTO would require counsel to opine that the securities will be binding obligations of the issuer. That standard was designed for debt and equity securities and fits poorly with an investment contract, the existence and terms of which depend on the issuer’s representations or promises rather than a single written instrument. The requirement would add cost and delay without meaningful investor protection. BA recommends that the Commission eliminate the requirement or, in response to Request for Comment 112, require an opinion only where necessary to address a specific material legal issue. If any opinion is retained, it should be limited to the issuer’s corporate power and due authorization and should expressly exclude the existence, terms, characterization or enforceability of the covered investment contract.

e. Form 1-CRYPTO

Form 1-CRYPTO should be effective and self-executing upon filing, like Form NOR (*i.e.*, the form filed for the Startup Exemption), rather than subject to affirmative staff qualification. A qualification requirement could create a processing bottleneck and materially reduce the utility of the exemption. Even if the SEC is committed to qualifying offering statements in a timely fashion, there is no guarantee that this will hold indefinitely in the future as agency priorities and resources fluctuate.³³ If the Commission retains a review period, the rule should require a short, defined

³² *Id.* at 54548.

³³ It is our view that a qualification requirement significantly hampered use of Regulation A, so we believe the Commission should not create the same circumstances here.

period (e.g., 20 days) after which the filing becomes effective automatically unless the Commission objects.

f. Additional Delayed and Continuous Offerings

BA agrees that delayed and continuous offerings should be eligible for the Fundraising Exemption and encourages the Commission to permit additional delayed and continuous offerings to qualify for the Fundraising Exemption. With at the market and “token shelf” offerings, an issuer may more easily match the supply of the underlying crypto assets with the revealed market demand. As commenters noted and the Proposal acknowledges, market dynamics often require the ability to adjust offering terms in real time, and the Commission asks in Requests for Comment 91 through 94 whether delayed, at the market and token shelf offerings should be permitted. Issuers should have the opportunity to sell into the market as necessary to meet demand. Even if the Commission does not permit at the market offerings, Regulation Crypto Assets should nonetheless accommodate variable pricing, so that issuers that assume the costs necessary for an offering under Regulation Crypto Assets may continue to sell into the market.³⁴ Relatedly, although proposed Rule 300(c)(3)(i)(B) and (C) would permit continuous offerings under employee benefit plans and upon the exercise of outstanding options, warrants or rights, the Proposal notes that the overlying option or warrant could not itself rely on the exemption. The Commission should confirm how issuers may grant token-based compensation, including vesting awards, without a separate exemption for the overlying instrument. More broadly, Rule 701 is not a workable path for many token-based compensation arrangements. It is limited to employees, directors, consultants and advisors who provide bona fide services not in connection with a capital raising transaction, and open source contributors, validators and other network participants often fall outside those categories. The Commission should provide a compensatory path for issuances of crypto assets to bona fide service providers that benefit the associated crypto network, without counting those issuances toward the Startup Exemption’s offering limit.

g. Using Blockchain Technology

The Commission should leverage the unique capabilities of blockchain technology. BA commends the SEC for considering potential modifications to its rules to better facilitate transactions “given technological innovations and practices with crypto assets.”³⁵ In particular, BA believes that the Fundraising Exemption should permit preregistration of crypto wallet addresses and similar network actions to serve as an indication of interest by a prospective investor seeking to purchase a covered investment contract. The Commission itself raises this practice in Request for Comment 78. Similarly, BA encourages the Commission to recognize that payment stablecoins issued by permitted payment stablecoin issuers under the GENIUS Act are an appropriate means of payment in Regulation Crypto Assets offerings. Doing so would extend the transparency and user protections Congress established for payment stablecoins to onchain capital raising.

³⁴ See Proposing Release, 91 Fed. Reg. at 54544 (“As discussed in n.310, proposed Rule 300(c)(3)(ii) is intended to require offerings under the fundraising exemption to be made at a specified dollar amount per security and, by contrast, prohibit[] variable pricing. If we continue to prohibit at the market offerings under the fundraising exemption, should we otherwise permit variable pricing?”).

³⁵ *Id.* at 54538.

V. The Investment Contract Safe Harbor Should Be Modified to Mitigate Unnecessary Litigation Risk and Increase Its Usefulness

The Investment Contract Safe Harbor is a crucial element of Regulation Crypto Assets because it will increase certainty for issuers and market participants regarding the cessation of a covered investment contract. BA recommends certain adjustments to mitigate litigation risk and increase the usefulness of the Safe Harbor. The usefulness of the Safe Harbor will also depend on its durability. “Investment contract” is a statutory term, and a court applying *Howey* is not bound by the Commission’s construction of it except to the extent that construction is persuasive. A private plaintiff or state regulator could therefore argue that a crypto asset remains subject to an investment contract even after an issuer has satisfied Rule 400. Several recommendations below are intended to address that risk, including non-admission provisions, reliance protections, qualified purchaser status for transactions effected in reliance on a filed Form TR, an alternative pathway to exit grounded in the functionality of a crypto system and the absence of control, and an exemption from Section 5 for transactions effected after a Form TR is filed.

a. Legacy Crypto Assets

The Safe Harbor should more effectively address crypto assets that were “issued” prior to the effective date of Regulation Crypto Assets. BA strongly supports the Commission’s decision to make the Safe Harbor available both to issuers that rely on a Regulation Crypto Assets exemption and to issuers that do not rely on a Regulation Crypto Assets exemption and have issued a covered investment contract prior to the effective date of the regulation.³⁶ The Commission should state expressly, in the final rule or the adopting release, that the Safe Harbor is available for crypto assets first sold before the effective date of Regulation Crypto Assets, and should explain how an issuer or qualifying third party may rely on it for those assets, including the analysis expected where the relevant representations or promises predate the rule. With respect to crypto assets that were initially “issued” prior to the effective date of Regulation Crypto Assets, there may no longer be an identifiable “issuer” that can file Form TR, or the issuer may be unavailable, unable or unwilling to file Form TR. That gap follows from the text of the rule. Rule 400(b) conditions the Safe Harbor on a filing by “[t]he issuer of the covered investment contract,” while Rule 400(a) is satisfied only where the issuer has completed or permanently ceased all essential managerial efforts.³⁷ The more completely an issuer has done so, by winding down, dissolving or dispersing development among a foundation and unaffiliated contributors, the less likely it is that anyone remains who can file as “the issuer.” As drafted, the assets with the strongest substantive claim to transition are the ones least able to invoke the Safe Harbor. Therefore, the Commission should permit third parties (*e.g.*, trading platforms, self-regulatory organizations and industry associations) to file Form TR with respect to previously issued crypto assets. Third-party filings should disclose their factual basis, material information limitations and relevant interests. They should also address whether any successor has assumed the issuer’s outstanding representations or promises, consistent with the staff’s view that separation does not occur where another party

³⁶ *Id.* at 54554 (“The investment contract safe harbor would be available to any issuer that satisfies its conditions. Thus, the safe harbor would be available to issuers that have utilized the startup exemption or the fundraising exemption once they have satisfied the safe harbor’s conditions. The safe harbor also would be available to issuers that have not utilized these proposed exemptions.”).

³⁷ *Id.* at 54615 (Proposed 17 C.F.R. § 228.400(a)–(b)).

assumes them.³⁸ Filing Form TR with respect to a previously issued crypto asset also should not, by itself, be treated as an admission that the filer is or was the issuer, an affiliate of the issuer or an underwriter, and should not subject the filer to issuer obligations under Regulation Crypto Assets.

Legacy assets carry the regulatory debt accumulated during years in which no viable compliance path existed. Projects that tried to comply gained little for the effort, while projects that ignored the law faced the same enforcement risk. Transition relief for legacy assets, including a third-party Form TR pathway, would reward good faith compliance and bring existing assets inside the framework rather than leaving them to state regulators and private litigants. For conduct predating the effective date of Regulation Crypto Assets, the Commission should also confirm that good faith reliance on the Howey Interpretation and prior Commission and staff guidance will be considered in determining whether to pursue enforcement.

The final rules should provide an express liability safe harbor for third parties preparing and submitting these analyses in good faith, including where the Commission later disagrees or historical information proves incomplete. The protections should preserve accountability for fraud and knowing misstatements. The same reliance protections should apply to eligible third-party filings as to issuer filings, including for firms trading the asset and customers transacting through a venue that relies on the filing.

b. Reliance on Form TR

Intermediaries that reasonably rely on a filed Form TR should not be subject to enforcement actions. The final rules should establish an express reliance safe harbor covering trading venues, principal trading firms, other secondary market participants, and purchasers under both the Securities Act and the Exchange Act, using Section 28 and Section 36, respectively. Once an issuer files Form TR, intermediaries should be permitted to rely on the safe harbor and should not be required to monitor all of the subsequent activities of the issuer to determine whether the crypto asset is still subject to an investment contract. Otherwise, intermediaries would need to constantly track all statements by an issuer, including, among others, those in formal published statements as well as at informal public appearances and events, to determine whether the issuer has in fact ceased making representations and promises related to the underlying crypto asset. The Proposal itself recognizes the breadth of that universe: proposed Rule 103(a) measures an issuer's disclosure against its statements in its established public communication channels, including its official social media accounts.³⁹ An issuer can police its own statements across those channels. A liquidity provider quoting hundreds of assets cannot. Faced with that burden, intermediaries are more likely to exit the market than to support trading in the relevant crypto asset and assume responsibility for the issuer's legal determinations. Intermediaries that reasonably rely on a filed Form TR should be protected. Under the Proposal, neither the Commission nor its staff would review or act on a Form TR, and the filing would satisfy the transition report condition immediately upon filing.⁴⁰ Intermediaries therefore should be permitted to transact in reliance on a filed Form TR from the date of filing. Protection should begin upon filing a qualifying transition certification

³⁸ Staff FAQs, Question 2.2.

³⁹ Proposing Release, 91 Fed. Reg. at 54608.

⁴⁰ *Id.* at 54535 n.217.

and supporting analysis and continue until a publicly identifiable withdrawal, superseding filing, or Commission determination terminates prospective reliance. Qualifying transactions completed before that termination should remain protected even if the certification is later found incorrect.

The Proposal preserves the Commission’s ability to challenge whether an issuer in fact satisfied the conditions of the Safe Harbor,⁴¹ but does not address the consequences for intermediaries that relied on the filing. Without reliance protection, a filed Form TR could leave intermediaries worse off than no filing at all. The filing places a contested legal determination on the public record and gives every market participant notice of it, while expressly preserving the Commission’s ability to reach a different conclusion. If the Commission later challenges an issuer’s determination, any consequences should apply prospectively, and intermediaries that transacted in good faith before the challenge should not face liability. Reliance should be based on the public certification, so that it remains available if the analysis is filed confidentially. Proposed 17 C.F.R. 200.30-1(n)(4) would delegate authority to deny a transition report filing by cross-reference to Rule 307, which addresses offering statements. The Commission should clarify whether and when a Form TR could be denied and confirm that any denial would operate prospectively. The Commission should maintain a searchable public record identifying the asset, the filing’s purpose and any change in reliance status, so that a filing reporting the end of the Startup Exemption period without certifying transition is distinguishable from a filing invoking the transition safe harbor. These protections should exclude participants that knowingly rely on a materially false certification or participate in fraud.

Because market participants and intermediaries may be subject to liability under the federal securities laws if they transact in a crypto asset and the SEC later disagrees with the conclusions of the issuer under Form TR, the issuer may face lawsuits and reputational harm. To prevent unnecessary litigation and to mitigate risk for issuers, the SEC should allow issuers to voluntarily submit Form TR for pre-approval. The SEC could also consider implementing a process similar to Commodity Futures Trading Commission (“CFTC”) Regulations 40.5 and 40.6, where entities have the option to either “self-certify” Form TR or voluntarily request approval.⁴² In addition, there should be a time limit for the SEC to object to a filed Form TR after which the SEC could object only on a heightened standard, such as fraud or material misstatements. Otherwise, issuers, exchanges and service providers will not have the certainty they need to conduct their business.

c. Rule 400 and “Tacit Admission”

The SEC should modify Rule 400 to mitigate the “tacit admission” concern. BA agrees that issuers are likely to worry that the filing of Form TR will be considered a “tacit admission” that their crypto asset was previously subject to an investment contract. The Commission anticipated this concern in Request for Comment 134 and asked whether issuers will rely on the Howey Interpretation instead of using Rule 400. Absent a fix, many will. A filer that lacks assurance that its filing will not be used against it, the issuer or the crypto asset in later enforcement or litigation concerning pre-filing transactions may simply decline to file, which would undercut the purpose of the Safe Harbor. The concern is built into the form itself: Items 1 and 2 of Form TR require the filer to describe “the covered investment contract” and to certify that it has completed

⁴¹ *Id.* at 54554.

⁴² 17 C.F.R. §§ 40.5, 40.6.

the essential managerial efforts it promised “under the covered investment contract.” Rule 400 should expressly contemplate “protective” Form TR filings. The rule should provide that Form TR, when published, will include the following language: “The filing of Form TR should not be interpreted as an admission that a crypto asset is subject to an investment contract.” The non-admission principle should appear in the rule text itself, not only in a legend, and the rule should provide that a Form TR is filed solely for purposes of the Safe Harbor and will not be treated by the Commission as an admission or evidence that a crypto asset was subject to an investment contract or that the filer was an issuer, consistent with the approach of the preliminary note to Rule 144 and Rule 3a4-1. The Commission recently used a similar device in its September 2026 exemptive order for tokenized NMS stock, which provides that reliance on its liquidity-provider exemption creates no presumption that a person is a dealer.⁴³

The SEC should also adopt an alternative, non-exclusive pathway to exit that does not require a filing and is instead based on the functionality of the crypto system and the absence of control. This pathway would operate alongside the promise-based standard in Rule 400(a). Neither pathway should be a condition of, or a substitute for, the other, and an issuer should be able to rely on whichever pathway best fits its facts. The two pathways measure different things. The promise-based standard asks whether the issuer has completed or permanently ceased the essential managerial efforts it represented or promised. A control-based pathway asks whether purchasers’ expectations of profit continue to depend on the efforts of the issuer or any other person. Specifically, where the subject crypto asset is a digital commodity and the associated crypto system “functions and operates autonomously with no person, entity, or group of persons or entities having operational, economic, or voting control of the crypto system,” as the Howey Interpretation describes, the covered investment contract should be deemed to have ceased to exist.⁴⁴ Because these conditions can be verified from a network’s operation, issuers and intermediaries would not need to reconstruct years of issuer statements to determine whether every representation or promise has been fulfilled, which would reduce litigation risk. This pathway also would not be available to a crypto asset that conveys rights to future income, profits or assets of a business enterprise, which the Howey Interpretation excludes from the definition of “digital commodity.”⁴⁵ The objective indicators discussed above could inform whether these conditions are met. An issuer relying on this pathway should also be permitted, but not required, to file Form TR on that basis, so that the reliance and preemption protections discussed in this letter are available to purchasers and intermediaries.

We understand that another commenter has proposed a different structure for Rule 400, under which an issuer’s completion or cessation of its represented efforts would create a rebuttable presumption, rather than a conclusive determination, that a covered investment contract has ceased to exist, and separation would be presumed not to occur where a crypto asset conveys an economic interest in a business or person.⁴⁶

⁴³ U.S. Sec. & Exch. Comm’n, Release No. 34-106402, slip op. at 53–54 & n.115 (Sept. 17, 2026) (the “Innovation Exemption”).

⁴⁴ Howey Interpretation, 91 Fed. Reg. at 13718 n.50.

⁴⁵ *Id.* at 13718.

⁴⁶ Letter from Andreessen Horowitz (“a16z”) to Vanessa A. Countryman, Secretary, U.S. Sec. & Exch. Comm’n, Re: Request for Comments on Proposed Rule Regulation Crypto Assets (Release Nos. 33-11434; 34-106150; File No. S7-2026-27) (Oct. 20, 2026).

For issuers that instead rely on the fulfillment of their representations or promises, the Commission could permit an issuer to support its Form TR filing by publicly disclosing, together with the required certifications, any powers over the associated crypto network or associated crypto application that the issuer and its related persons retain, as well as their holdings of the crypto asset. One commenter has further suggested that the Safe Harbor be unavailable while the issuer or its related persons hold unilateral, discretionary powers, with exceptions for powers subject to holder approval or a timelock, narrow authority to correct bugs, and powers that are publicly disclosed, limited to defined circumstances and exercisable only under a published process.⁴⁷ If the Commission considers that approach, those exceptions are essential, consistent with the treatment of narrowly scoped security authority discussed above. Disclosure would give purchasers and intermediaries a verifiable basis for relying on a determination under the promise-based standard. Rule 400 should confirm that the failure to satisfy either pathway will not be interpreted to mean that essential managerial efforts are ongoing.

d. Investment Advisers Act and Investment Company Act

The Commission should expand Rule 400 to apply to the definition of “security” under the Investment Company Act of 1940 (“Investment Company Act”) and the Investment Advisers Act of 1940 (“Advisers Act”). The relevant term, “investment contract,” is identical across the Securities Act, the Exchange Act, the Investment Company Act and the Advisers Act.⁴⁸ Moreover, if the purpose of the Safe Harbor is to promote certainty in the market, it is unclear why investment advisers and investment companies, which will not have control over the issuer, should have less certainty than other market participants. BA appreciates that the Commission raised this question in Request for Comment 135. At a minimum, the Commission should address the issue in the adopting release or a separate proposal, including how a change in an asset’s status upon a Form TR filing would affect the 40% test in Section 3(a)(1)(C) of the Investment Company Act and the treatment of pooled vehicles and vaults that hold subject crypto assets.

e. Independence of the Howey Interpretation and Applicability of Safe Harbor to Previously Issued Covered Investment Contracts

The Commission should reaffirm core principles of the Safe Harbor in the adopting release, including the independence of the Howey Interpretation and the applicability of the Safe Harbor to previously issued covered investment contracts. The Commission should reaffirm in the adopting release that the Howey Interpretation is independent of Rule 400 and that issuers and intermediaries may choose to rely on the Howey Interpretation and not Rule 400. In addition, final Rule 400 should provide that the failure by an issuer to satisfy the Safe Harbor does not mean that a crypto asset is subject to an investment contract. The Proposal already acknowledges that the Safe Harbor is not the sole means by which a crypto asset may fall outside the federal securities laws, and the final rule should codify that statement. The final rule should be clear on this issue, so that private plaintiffs and state regulators do not draw a negative inference when an issuer chooses not to rely on the Safe Harbor.

⁴⁷ Letter from Gabriel Shapiro to Vanessa A. Countryman, Secretary, U.S. Sec. & Exch. Comm’n, Re: File No. S7-2026-27; Release Nos. 33-11434; 34-106150; Regulation Crypto Assets (Sept. 24, 2026) (discussing disclosure of retained powers in Form TR).

⁴⁸ See 15 U.S.C. § 80a-2(a)(36); 15 U.S.C. § 80b-2(a)(18); 15 U.S.C. § 77b(a)(1); 15 U.S.C. § 78c(a)(10).

f. Digital Commodities

As proposed, the Safe Harbor addresses the cessation of a covered investment contract. Thus, the Safe Harbor will increase certainty for issuers that initially sold a crypto asset under a covered investment contract. However, the Safe Harbor should also increase certainty for issuers that sold crypto assets that were never subject to a covered investment contract. Specifically, the Commission should define “digital commodity” in Rule 100, using the formulation set out in the Howey Interpretation. A defined term would also support the alternative pathway to exit described above. Without unduly limiting issuers, the SEC should also consider codifying other parts of the Howey Interpretation and other recent guidance on the definition of “security,” including, as noted above, guidance regarding “covered airdrops” and “programmable transfers.” The Commission should also codify and clarify the Howey Interpretation’s definition of “central party,”⁴⁹ on which the Staff FAQs increasingly rely.⁵⁰ In particular, the Commission should confirm that: (1) holders who participate in decentralized onchain governance are not, individually or collectively, a “group of persons or entities” having voting control solely by reason of that participation, consistent with the Howey Interpretation’s recognition that a digital commodity may convey governance rights; and (2) persons who perform functions under authority granted by, and revocable through, decentralized governance, such as multisignature signers, parameter or risk stewards and treasury service providers, do not have operational or economic control of a crypto system where that authority is limited in scope, subject to timelock or governance override, and exercised to implement parameters approved through decentralized governance.

Codification matters because interpretive guidance does not bind courts or state regulators and may be revised or withdrawn by a future Commission. The treatment of transactions that fall outside the federal securities laws under the Howey Interpretation, including their exclusion from “covered transactions,” should be set out in rule text so that it survives independent of the Howey Interpretation. The same is true for the concepts on which the Safe Harbor depends, including “group of persons” and the affiliate and control-person concepts that determine who remains subject to securities treatment.

g. Private Litigation

We urge the Commission to address the risk of private litigation, so that market participants may safely rely on the Investment Contract Safe Harbor. According to the Proposal, “while the investment contract safe harbor would control with respect to the Commission’s administration of the Federal securities laws, it would not prevent other parties from asserting that a crypto asset is subject to an investment contract (or is otherwise a security).”⁵¹ The Commission cannot prevent a court from reaching its own view on whether a crypto asset remains subject to an investment contract, but it can limit the consequences of that view for transactions undertaken in reliance on Rule 400. The Commission should use its authority under Section 28 of the Securities Act to exempt from Section 5 of the Securities Act offers and sales of a crypto asset effected in good faith reliance on a filed Form TR, from the date of filing until a withdrawal, superseding filing or Commission determination terminates prospective reliance. Because liability under Section

⁴⁹ Howey Interpretation, 91 Fed. Reg. at 13718 n.54.

⁵⁰ See Staff FAQs, Questions 2.4, 2.5.

⁵¹ Proposing Release, 91 Fed. Reg. at 54555.

12(a)(1) of the Securities Act depends on a violation of Section 5, those transactions could not give rise to Section 12(a)(1) claims, even if a court later concludes that the crypto asset remained subject to an investment contract. Because the exemption would turn on an objective, public filing, private plaintiffs could not avoid it by relitigating the issuer's underlying determination. The exemption would not displace the antifraud provisions or protect persons who knowingly rely on a materially false Form TR.

h. Privacy-Preserving Networks

For crypto assets on privacy-preserving networks, the Commission should confirm that offchain attestations and cryptographic proofs may be used to support the analysis in a Form TR where relevant onchain data is not publicly available.

VI. The State Law Preemption Provisions of the Proposal Should Be Strengthened

BA supports proposed Rule 500, which would preempt state law registration and qualification requirements with respect to Regulation Crypto Assets offerings and certain secondary market transactions. Rule 500 would promote regulatory uniformity and efficiency.

a. "Qualified Purchaser"

The Commission should expand the definition of "qualified purchaser" to accommodate offerings that took place before the effective date of Regulation Crypto Assets. The Proposal would preempt state law registration and qualification requirements as applied to covered investment contracts sold in an offering under Regulation Crypto Assets or in certain secondary market transactions following an offering under Regulation Crypto Assets. The Proposal, however, would not preempt state law registration and qualification requirements with respect to crypto assets that were sold pursuant to a covered investment contract prior to the effective date of Regulation Crypto Assets unless the issuer later relies on a Regulation Crypto Assets exemption and remains current in its obligations under that exemption. Thus, there would be no preemption pathway for most existing crypto assets that were previously sold pursuant to an investment contract. Without a preemption pathway for existing crypto assets, Rule 500 would only promote uniformity and efficiency with respect to a small portion of the existing crypto asset market.

Regulation Crypto Assets should preempt state law registration and qualification requirements with respect to secondary market transactions in crypto assets that were initially sold under a Securities Act exemption prior to the effective date of Regulation Crypto Assets. BA supports the Proposal's approach of extending preemption to secondary market transactions in a crypto asset underlying a covered investment contract regardless of the exemption under which it was originally sold and opposes the alternative in Request for Comment 140 that would limit preemption to covered investment contracts initially issued under Regulation Crypto Assets. As the Commission recognizes, it would be impractical for market participants to track the chain of transactions for each crypto asset underlying a covered investment contract to determine whether the crypto asset was originally sold pursuant to a covered investment contract under an applicable Securities Act exemption. It would also serve no policy purpose. Instead, state law should be preempted with respect to any offer or sale of a crypto asset underlying a covered investment contract in the secondary market, so long as: (1) the offeror or seller has no reason to believe that

the issuer has not satisfied its ongoing reporting obligations; and (2) the offeror or seller does not have actual knowledge that the relevant covered investment contract was originally issued in violation of the federal securities laws.

Once an issuer files Form TR and satisfies the conditions of the Safe Harbor, the crypto asset is no longer subject to an investment contract, and state securities registration and qualification requirements should not apply to transactions in it. The Commission should confirm this in the adopting release. To address the risk that a state regulator or private plaintiff later disputes the issuer's determination, the Commission should also include within the definition of "qualified purchaser" any purchaser of a crypto asset for which the issuer has filed Form TR, so that transactions effected in reliance on a filed Form TR remain covered even if the determination is later questioned. Under the expanded preemption provision, the SEC would take the lead in determining which crypto assets are subject to an investment contract, which would increase predictability and efficiency.⁵² Under Securities Act Section 18(b)(3), "the Commission may define the term 'qualified purchaser' differently with respect to different categories of securities, consistent with the public interest and the protection of investors."⁵³ As the Proposal notes, "issuers will not routinely seek to limit sales of covered investment contracts to a single state because of the unlikelihood that information about such asset will be limited or tied to one geographic location."⁵⁴ Thus, "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."⁵⁵ Preemption would also promote investor protection because, with a consistent definition of "security," investors would know which transactions are subject to the protections of the securities laws and which transactions are not. Unless preemption applies to crypto assets covered by a filed Form TR, however, the efficiency and investor protection benefits of preemption will not extend to most crypto assets.

The same protection should extend to qualifying third-party transition filings. Rules 400 and 500 should be coordinated so that transition does not create a gap in protection if a state later takes a different view of the asset's investment contract status. Protection should apply across eligible centralized venues, bilateral transactions and decentralized protocols, while preserving state authority over fraud under Section 18(c) of the Securities Act. Even if no issuer or qualifying third party has filed a Form TR, the SEC should preempt state law where an issuer or a qualifying third party publishes a statement confirming that all essential managerial efforts have ceased, provided the statement is made in a prescribed, publicly accessible form that identifies the crypto asset and is dated.

b. Secondary Market Transactions and Liquidity Providers

State law should be preempted with respect to secondary market transactions, so long as the issuer is "subject to" the requirements of Regulation Crypto Assets. Participants in the

⁵² Section 18(b)(3) applies to securities transactions. 15 U.S.C. § 77r(b)(3). If a state securities regulator takes the position that, even after the filing of Form TR, a non-security crypto asset remains subject to an investment contract, then the Commission's qualified purchaser definition would provide a basis to preempt state registration and qualification requirements under Section 18(b)(3).

⁵³ 15 U.S.C. § 77r(b)(3).

⁵⁴ Proposing Release, 91 Fed. Reg. at 54556.

⁵⁵ *Id.*

secondary market should not be required to determine whether an issuer is “current with respect to” the disclosure and filing requirements and/or periodic reporting obligations of Regulation Crypto Assets. Market participants will not have the ability to determine whether issuers are in compliance with applicable disclosure and filing requirements. While a market participant may access the relevant disclosures or filings, it would be unreasonable to expect them to verify that the disclosures or filings are complete or were timely prepared. If the Commission retains this requirement, it should clarify that market participants are not expected to verify the timeliness, accuracy or completeness of any disclosure or filing. The Commission has already recognized this concern by excluding current reports on Form 1-UC from the “current” condition, and the same reasoning supports a “subject to” standard, as contemplated in Request for Comment 142. Relatedly, the Commission should address the gap that arises when a Startup Exemption issuer files Form TR at the end of the four-year period, but the covered investment contract has not ceased to exist. As proposed, secondary market preemption would end at that point even though the securities remain outstanding and freely transferable. Preemption should continue so long as the issuer keeps its Rule 103 disclosures publicly available.

If the Commission retains exemption-compliance or reporting conditions in Rule 500(b), it should apply a reasonable-belief standard to both sets of conditions. Request for Comment 141 contemplates that standard, and Request for Comment 143 recognizes that it may be “too difficult for secondary market participants that are unaffiliated with the issuer to know whether the issuer had satisfied its current reporting obligations.” An undetectable issuer compliance or reporting lapse should not retroactively deprive an otherwise qualifying secondary market transaction of preemption.

The Commission should also consider whether preemption can attach based on the venue where a transaction occurs. Where a transaction in a subject crypto asset is effected on a national securities exchange, an alternative trading system, a venue operating under Commission exemptive relief or a venue subject to CFTC oversight, purchasers generally cannot identify their counterparty, and federal oversight of the venue provides investor protection. Section 18(b)(3) permits the Commission to define “qualified purchaser” differently for different categories of securities. Any venue-based approach should supplement, not replace, the transaction-based protections discussed above, so that bilateral transactions and decentralized protocols remain eligible.

Preemption should also extend to transactions involving liquidity providers. Rule 500(b) reaches only “an offering pursuant to a transaction by any person other than an issuer, underwriter, or dealer.” The Proposal should extend preemption to transactions involving liquidity providers, without regard to whether their activity is characterized as trading or dealing. Without such preemption, state securities regulators could effectively inhibit the development of robust secondary markets by imposing additional requirements on liquidity providers. BA agrees with the Proposing Release, which notes: “it is appropriate to apply preemption broadly to secondary market transactions involving the same covered investment contract . . . because of the investor protections provided by secondary market participants’ ability to access and benefit from the issuer’s initial and ongoing disclosures under either the startup exemption or the fundraising

exemption.”⁵⁶ These protections apply equally to investors that purchase crypto assets from liquidity providers.

Consistent with its recent Innovation Exemption, the Commission should also confirm that reliance on liquidity provider exemptive relief does not by itself make a firm a dealer for purposes of Rule 500(b). Because Exchange Act relief would not by itself resolve the dealer exclusion in Rule 500(b), the Commission should address that exclusion expressly, including through its Section 28 authority where appropriate, so that qualifying liquidity provision does not take otherwise eligible secondary market transactions outside Rule 500.

VII. Intermediary Registration Requirements Should Be Addressed to Support Secondary Markets

BA agrees that covered investment contracts sold under Regulation Crypto Assets should not be “restricted securities” subject to rule-based transfer restrictions. As the SEC explains in the Proposal, “restrictions on resale would make it more difficult for investors as well as potential users of the crypto asset to obtain the subject crypto asset, thus slowing down or limiting potential network effects, which are key for the completion of an issuer’s associated crypto network and associated crypto application.”⁵⁷ In order for crypto assets to trade in the secondary market, however, there must be intermediaries to facilitate trading. The Proposal does not address intermediary registration requirements. The Commission has stated that it will continue to consider whether further action is warranted with respect to the definitions of “exchange,” “broker” and “dealer.”⁵⁸ State preemption alone is not sufficient. Secondary market transactions also need express protection at the federal level, so that ordinary trading in a non-security crypto asset is not treated as a continuing securities transaction. The Commission should take the following steps, either as part of the Proposal or future proposals, so that intermediaries may facilitate the growth of secondary markets.

First, the Commission should confirm that where a crypto asset is not itself a security and a purchaser acquires it in the secondary market from a holder that is not affiliated with the issuer, without any assignment of rights under the covered investment contract and without any express, contemporaneous representation or promise from the issuer to that purchaser, the transaction should not be treated as a securities transaction. Relatedly, the SEC should acknowledge that the underlying crypto asset may trade separately from the covered investment contract on venues that are not registered with the SEC. The final rule should clarify that trading in the underlying crypto asset on these venues may occur before the issuer files Form TR in those circumstances. The Howey Interpretation already provides that “a non-security crypto asset that has been subject to an investment contract does not remain subject to the associated investment contract in secondary market transactions where purchasers would not reasonably expect such representations or promises to remain connected to the non-security crypto asset.”⁵⁹ The Commission should confirm that, absent such an assignment or an express, contemporaneous representation or promise, purchasers in secondary market transactions would not reasonably expect an issuer’s representations or promises to travel with the underlying crypto asset. In particular, the Proposal

⁵⁶ Proposing Release, 91 Fed. Reg. at 54558.

⁵⁷ *Id.* at 54587-88.

⁵⁸ *Id.* at 54529 n.192.

⁵⁹ Howey Interpretation, 91 Fed. Reg. at 13722.

states that secondary market offers and sales of a subject crypto asset constitute securities transactions and that the associated investment contract continues to be transferred to subsequent purchasers until the asset separates from the issuer's representations or promises.⁶⁰ The Commission should reconcile that statement with the Howey Interpretation's recognition that secondary purchasers may not reasonably expect those representations or promises to remain connected to the asset.⁶¹ Focusing the analysis on the seller and the transaction, rather than the token, also avoids a problem with fungible supply. If tokens sold in different tranches carry different investment contract status, secondary purchasers cannot know which tokens they hold or what obligations attach. This approach keeps the compliance obligations with the parties positioned to satisfy them.

In addition, consistent with the staff's FAQ on promoter status,⁶² merely listing an asset or facilitating secondary trading should not itself make a venue a promoter under Rule 405 or attribute the issuer's managerial commitments to the venue.

Second, the Commission should, to the fullest extent of its authority, address state intermediary registration requirements and not merely offering registration and qualification requirements. The Commission should also support legislative preemption where it does not have the statutory authority to preempt state law. Preemption is particularly important for intermediaries that facilitate transactions in crypto assets that were previously subject to a covered investment contract. Once an issuer files Form TR, intermediaries should not be required to compare the activities of the issuer (*e.g.*, podcasts and public appearances) to the applicable statute for over fifty different jurisdictions to determine whether they are required to register in each jurisdiction in order to trade the underlying crypto asset. Additionally, tokens under this regime that are no longer subject to an investment contract should be able to flow to the secondary market and trade on a range of venues beyond the alternative trading system and over the counter regimes. For this to work, federal preemption should follow the asset into the secondary market. Qualified purchaser treatment under Section 18 does not itself resolve state intermediary or money transmitter registration requirements; the Commission should identify the specific statutory gaps and support legislation needed to close them.

Third, the Commission should adopt, by rule, a tailored exemptive framework for trading venues and intermediaries that facilitate transactions in subject crypto assets, building on its recent Innovation Exemption for tokenized NMS stocks. A durable, codified framework would give entrepreneurs and investors greater regulatory certainty and allow them to build the infrastructure needed to support secondary markets. The Innovation Exemption itself is temporary and expires after five years. Relief that accompanies a codified offering framework should be set out in rule text rather than left to a time-limited order that would leave market participants facing the same uncertainty on a deferred schedule. The SEC should consider exempting certain venues not currently addressed in the Innovation Exemption, while providing a framework that lets the market develop naturally rather than dictating market structure. This framework would complement, not

⁶⁰ Proposing Release, 91 Fed. Reg. at 54515.

⁶¹ Howey Interpretation, 91 Fed. Reg. at 13722.

⁶² Staff FAQs, Question 2.6.

substitute for, the confirmation requested above that qualifying secondary market transactions in a non-security crypto asset are not securities transactions.

BA also notes that open questions remain about how existing definitions apply to firms that supply liquidity in crypto asset markets. These include how the statutory trader exclusion in Section 3(a)(5)(B) of the Exchange Act applies to proprietary trading and liquidity provision, and whether borrowing crypto assets, including from an issuer or affiliated holder, for bona fide liquidity provision could be viewed as underwriting or participation in a distribution. BA encourages the Commission to address these questions and provide express clarity as it develops its intermediary framework, consistent with the statutory text, and to treat exemptive relief as a supplement to, rather than a substitute for, statutory exclusions.⁶³

The final framework should address trading both before transition and after a qualifying transition filing, including conventional principal trading, centralized venues, bilateral arrangements and decentralized protocols. A secondary market safe harbor should permit eligible activity beyond existing alternative trading system and over the counter structures, with conditions reflecting the functions performed, the presence of an identifiable intermediary, and the risks presented. For decentralized markets, the Commission should include safe harbors from exchange and broker registration for qualifying decentralized exchanges and the applications that provide access to them, based on objective criteria such as whether the system is non-custodial and automated and whether the application takes custody of user assets or exercises discretion over pricing, matching or execution. If additional rulemaking is needed, the Commission should promptly seek comment and provide interim exemptive relief within its authority while durable rules are developed. The capital formation benefits the Proposal anticipates depend on liquid secondary markets, and unresolved registration, dealer and state law questions for firms supplying liquidity may limit those benefits. Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require the Commission to consider efficiency, competition and capital formation, and Requests for Comment 151 and 153 ask about the economic effects of preemption and how investors will exit their investments, including which entities are likely to supply liquidity and what discounts investors may face.⁶⁴ Resolving these questions would help ensure that the capital formation benefits the Proposal anticipates are realized.

Fourth, the Commission should expressly address how holders may use subject crypto assets after issuance, including, without limitation, lending, pledging, collateralizing, staking and depositing them into self-custodial protocols, whether permissionless or permissioned. The Commission should confirm that these activities are not, by themselves, offers or sales that require registration and do not affect the status of a covered investment contract or the availability of preemption. In particular, the Commission should confirm that a holder may supply a subject crypto asset, including one acquired in an offering under Regulation Crypto Assets, as collateral to a self-custodial lending protocol at any time, including before the issuer files Form TR, without affecting the issuer's exemption, the status of the covered investment contract or the availability

⁶³ In 2024, a federal court vacated the Commission's dealer rule in its entirety in a challenge brought in part by BA, holding that a definition keyed to the provision of liquidity could not be reconciled with the statutory text. The Commission should not reintroduce that approach through the treatment of liquidity provision in crypto asset markets. *Nat'l Ass'n of Private Fund Managers v. SEC*, No. 4:24-cv-00250-O (N.D. Tex. Nov. 21, 2024); *Crypto Freedom All. of Tex. v. SEC*, No. 4:24-cv-00361-O (N.D. Tex. Nov. 21, 2024).

⁶⁴ 15 U.S.C. §§ 77b(b), 78c(f).

of preemption under Rule 500. The Proposal declines to treat covered investment contracts as restricted securities because transfer restrictions would limit holders' ability to use the subject crypto asset and slow network effects, and the same reasoning applies to its use as collateral. The Commission should also confirm that a self-custodial lending protocol, whether permissionless or permissioned, and the persons who develop or participate in its governance, are not acting as an exchange, broker, dealer or issuer, or as a promoter as defined in Securities Act Rule 405⁶⁵ solely because the protocol supports a subject crypto asset as collateral or a borrowable asset. Access controls imposed by an asset's issuer and enforced at the token level should not, by themselves, change that result. Finally, the Commission should provide guidance on how automated liquidations of collateral and resales of borrowed assets fit within Rule 500, consistent with the approach to liquidity providers discussed above.

As secondary markets develop, BA encourages the Commission to address certain other secondary market-related issues, whether via the Proposal or future proposals, to facilitate bringing the U.S. markets onchain consistent with what Chairman Atkins set forth in Project Crypto, including:⁶⁶

- Market Data: The Commission should take steps to support the broad dissemination of market data. For example, the SEC should expressly permit the use of quality oracle systems to ingest market data.
- 24/7 Trading: The Commission should permit 24/7 trading of crypto assets subject to covered investment contracts. BA supports the SEC's current efforts to permit 23/5 exchange trading in traditional securities markets as a step toward 24/7 trading.⁶⁷
- Market Surveillance: The Commission should encourage the use of onchain transaction data for surveillance. Onchain transaction data is public, immutable and available in real time, which provides a level of transparency that does not exist in traditional securities markets. The Commission should encourage information sharing arrangements among venues and should treat onchain data as a complement to venue-level surveillance. The

⁶⁵ Staff FAQs, Question 2.6.

⁶⁶ See Chairman Paul S. Atkins, *American Leadership in the Digital Finance Revolution* (July 31, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125> ("I have directed the Commission staff to update antiquated agency rules and regulations to unleash the potential of on-chain software systems in our securities markets ... To make this vision a reality, we will need to consider some changes to our rules.").

⁶⁷ In the Matter of the Application of 24X National Exchange LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission, 89 Fed. Reg. 97092 (Dec. 6, 2024); Cboe EDGX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Amended by Amendment No. 1, To Extend the Exchange's Trading Hours to 23 Hours per Day, Five Days per Week, 91 Fed. Reg. 33238 (June 3, 2026); MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Rules To Permit Trading 23 Hours per Day, Five Days per Week, 91 Fed. Reg. 58185 (Sept. 14, 2026); The Nasdaq Stock Market LLC; Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Amended by Amendment Nos. 2 and 3, To Extend the Exchange's Trading Hours to 23 Hours a Day, Five Days a Week, 91 Fed. Reg. 20222 (Apr. 15, 2026); NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Temporary Rule 7.34-E(T) To Provide for an Overnight Trading Session and To Amend the Hours for the Exchange's Early Trading Session and the Late Trading Session, and To Make Corresponding Changes to Other Rules, 91 Fed. Reg. 31509 (May 27, 2026).

pseudonymity of onchain addresses should not be a basis for imposing identity-collection obligations on self-custodial protocols.

- Self-Custody: The Commission should support self-custody, and it should explore how federal preemption could reach the state money transmitter and virtual currency regimes that would otherwise burden self-custodial secondary market activity.
- Tick and Lot Size Standardization: Unlike in the market for NMS stock, tick and lot size standardization is not necessary for crypto assets. Fractionality is a benefit of onchain markets. Restricting fractional trading or standardizing tick and lot sizes would upset how these markets currently work and the benefits they have to offer. Therefore, BA discourages the Commission from mandating specific tick and lot sizes for crypto assets.
- CAT Reporting: The Commission should not impose reporting obligations for crypto assets comparable to the consolidated audit trail requirements for NMS stocks.

VIII. The Commission Should Continue Building a Framework for Onchain Markets

Regulation Crypto Assets is an important step toward bringing U.S. capital markets onchain, and BA encourages the Commission to complete that work. The Commission should not limit itself to analogies to Regulation A and other frameworks designed for traditional securities and should allow its rules to accommodate how the technology operates. In particular, BA encourages the Commission to consider: (1) a pathway for permissionless securities, which today trade largely offshore, to be offered and traded in the United States; (2) guidance confirming that token holders who participate in onchain governance do not, by doing so alone, assume responsibility for the conduct of the protocol or the issuer under applicable securities laws, so that holders are not discouraged from participating in governance; (3) extending the exemptive approach of its Innovation Exemption for tokenized NMS stocks to self-custodial lending markets, including permissioned markets that limit collateral suppliers to eligible investors, together with confirmation of the resale exemptions available when restricted tokenized securities are liquidated onchain; and (4) guidance applying the Howey Interpretation's analysis of Protocol Staking and Liquid Staking to restaking and liquid restaking tokens, confirming that such arrangements do not involve securities transactions where the service provider's role is administrative or ministerial and it does not guarantee or otherwise set the amount of rewards. We look forward to working with the Commission and its staff on these issues going forward.

IX. The Proposal is Consistent with the Administrative Procedure Act

In addition to the substantive merits of the Proposal, BA supports how it was developed through a measured, deliberate process consistent with the Administrative Procedure Act ("APA"). The Proposal directly engages with the rationale that makes the Proposal necessary, including the issues in the industry it is intended to address. The Commission's analysis also includes a detailed economic analysis, considers reasonable alternatives and provides meaningful opportunity for public comment. Accordingly, the Proposal reflects reasoned, evidence-based decision-making that satisfies the APA's requirements. BA applauds this approach. The Proposal also rests on clear statutory authority, including the Commission's general exemptive authority under Section 28 of the Securities Act and its authority under Section 18(b)(3) to define "qualified purchaser."

X. Conclusion

We commend the Commission for developing a thoughtful Proposal that represents a key step toward developing clear rules for crypto offerings. We appreciate the opportunity to comment and welcome further engagement with the Commission as the Proposal is finalized. BA welcomes the opportunity to meet with the Commission and its staff, and any questions regarding this comment letter can be directed to Ashok Pinto, Executive Vice President, Legal and Government Relations, and Jack Solowey, Senior Counsel, Policy and Regulatory Affairs.

Respectfully submitted,

/s/ Ashok Pinto

Ashok Pinto

Executive Vice President

Legal and Government Relations

/s/ Jack Solowey

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