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Key Takeaways from the SEC's Proposed 'Regulation Crypto Assets'

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KEY POINTS

- The SEC proposed Regulation Crypto Assets (Reg CA) on August 18, 2026, creating the first purpose-built offering regime for crypto assets under federal securities laws.
- Reg CA would establish two non-exclusive exemptions from Securities Act registration: a startup exemption permitting offerings up to $5 million over four years and a fundraising exemption permitting offerings up to $75 million in any 12-month period.
- A principles-based disclosure framework under proposed Rule 103 replaces traditional line-item disclosures with 10 topics tailored to token projects, including token economics and allocation, governance mechanics, and essential managerial efforts.
- A conditional safe harbor would allow a crypto asset to be deemed no longer subject to an investment contract once the issuer completes or permanently ceases all essential managerial efforts and files a self-certifying Form TR.
- State blue sky preemption is contingent on an issuer's ongoing compliance with Reg CA's information and reporting requirements, making continued secondary market preemption dependent on issuer conduct.

On August 18, the Securities and Exchange Commission (SEC) proposed a tailored securities offering rule called Regulation Crypto Assets, or Reg CA, that would create the first purpose-built path for offering and selling crypto assets to the public under the federal securities laws. The proposal is the SEC's first comprehensive offering framework tailored to crypto assets: two new exemptions, a token-specific disclosure regime, a safe harbor, and broad preemption of state blue sky laws. It follows the SEC's March 2026 interpretive release on the application of the securities laws to crypto assets and converts that interpretation's analytical framework into operative rules: tiered offering exemptions, a conditional safe harbor from "investment contract" status, and preemption of state registration requirements.

The proposal's procedural path is worth noting. The SEC had originally scheduled an open meeting for August 14 to consider the rulemaking, but canceled it the day before, citing an unforeseen scheduling issue, with no replacement date announced. Four days later, the SEC issued the proposed rules by seriatim vote, a written ballot process that does not require a public meeting, with Chairman Paul Atkins and Commissioner Mark Uyeda each issuing supporting statements.

SCOPE AND DEFINITIONS

New Rule 100 would supply the definitions that set the regime's reach. The threshold term is "covered investment contract," which the proposal defines as an investment contract meeting three requirements: a crypto asset is subject to it, that crypto asset is not itself a security, and no other asset of any kind is subject to it. The token is defined separately as the "subject crypto asset."

That two-part structure is the conceptual key to the proposal. The security is the arrangement, not the token, and the token is what the arrangement is about. That is what allows the rules to contemplate the arrangement ending while the asset continues to exist and trade. It also means the regime is unavailable where the asset is a security in its own right, as with a tokenized share or note. Issuers should resolve that threshold question first, because it governs whether any part of Reg CA is available.

The proposal also defines the transactions the startup exemption reaches. A "covered transaction" would cover distributions as well as sales, expressly including airdrops and rewards tied to using, operating, governing, or securing a network. Projects that give tokens away rather than sell them should not assume the regime does not reach them.

THE DISCLOSURE FRAMEWORK AND THE NEW FORMS

Proposed Rule 103 would establish one principles-based disclosure framework common to both exemptions, replacing line items written for operating companies with 10 topics written for token projects. Several have no real analogue in a conventional offering document: the economics and allocation of the asset, governance mechanisms including smart contract permissions, the security of the code and where it can be read, and the issuer's promised essential managerial efforts together with its progress against them.

Two features of Rule 103 will drive behavior more than the topic list will. First, the disclosure would have to be consistent with what the issuer says through its ordinary channels, including its website, official social media accounts, and whitepapers, which turns communications discipline into a securities law obligation rather than a marketing preference. Second, the description of promised managerial efforts sets the benchmark against which the eventual exit is measured, as discussed below. What a project promises at the start defines what it must later show it has finished.

Delivery would run through a set of new forms. An issuer invoking the startup exemption files a notice of reliance on Form NOR. One using the fundraising exemption files an offering statement on Form 1-CRYPTO, built on the Form 1-A model, followed by annual, semiannual, and current reports. Both eventually file Form TR, which closes out the startup period and, where the conditions are met, carries the safe harbor certification. Issuers should note that the first filing obligation arrives before the first covered transaction, not after it.

THE OFFERING EXEMPTIONS

The proposal would create two nonexclusive exemptions from Securities Act registration for eligible crypto asset offerings, per the fact sheet. A startup exemption would permit offerings of up to $5 million over a four-year period, conditioned on public filings at the beginning and end of the period and principles-based narrative disclosures to investors. The four-year clock would start when the issuer files Form NOR, the Rule 103 disclosures would have to stay freely available on a website named in that filing and be refreshed annually if anything material changed, and the period would close with Form TR. An issuer and its affiliates could rely on the exemption only once for a given asset, so a project cannot reset the cap or the clock by relaunching. The startup exemption would not require a U.S. entity, and the issuer may be an individual or a group rather than a company.

A fundraising exemption would operate in two tiers, up to $20 million or up to $75 million in any 12-month period, with principles-based narrative disclosures, a discussion of financial condition, financial statements (audited at the higher tier), and ongoing reporting modeled on Regulation A. Within those totals, affiliated selling securityholders would be capped at $6 million in Tier 1 and $22.5 million in Tier 2, and could not account for more than 30% of an offering during the issuer's first year, a set of limits aimed at insider distributions. Nonaccredited investors could participate, subject to a 10% investment limit measured against the greater of income or net worth. Unlike the startup exemption, the fundraising exemption would require the SEC to qualify the offering statement before any sale, though an issuer could test the waters first.

The fundraising exemption would also carry a U.S.-nexus requirement, meaning the issuer must be organized in the U.S., with a majority of U.S. officers and directors, a majority of assets in the U.S., and its principal place of administration here. This condition would exclude the offshore foundation structures many existing projects use.

Both exemptions leave the antifraud and antimanipulation provisions of the federal securities laws fully applicable, and both would be subject to bad-actor disqualification under proposed Rule 104, which incorporates the Regulation A framework of Securities Act Rule 262. Neither would restrict purchasers to accredited investors, and covered investment contracts sold under either exemption would not be restricted securities or subject to a rule-based holding period. If adopted, issuers would have a crypto-specific path to retail capital at meaningful scale, without the qualification process that made Regulation A impractical for most token offerings.

THE INVESTMENT CONTRACT SAFE HARBOR

Separately, the proposal includes a conditional safe harbor addressing when a crypto asset ceases to be offered and sold as part of an investment contract. An issuer could rely on the safe harbor where it has (1) completed or otherwise permanently ceased all essential managerial efforts undertaken pursuant to the investment contract, and makes no new representations regarding such efforts, and (2) made a public filing certifying its compliance with those conditions. Upon satisfaction, the crypto asset would be deemed not to constitute or represent the investment contract for purposes of the statutory definitions of "security."

Three features are worth noting. The safe harbor is optional relief, not a requirement: a token sold under the exemptions may simply remain subject to the securities laws, with continued reporting. The trigger is a factual condition rather than a time limit, a notable departure from earlier safe harbor concepts that used a fixed development window. And the mechanism is self-certification: no staff review of the issuer's certification is contemplated, though the SEC could revisit the issuer's conclusion after the fact, so the filing is a representation, not immunity. The safe harbor would also be nonexclusive, so an issuer that prefers not to certify could continue to rely on its own analysis under *Howey* and the March interpretation. Projects contemplating the safe harbor should build the record supporting a future certification contemporaneously rather than reconstructing it at filing.

STATE BLUE SKY PREEMPTION, WITH A CONTINUITY CONDITION

The proposed rules would remove state registration and qualification requirements for offers and sales under the Regulation CA exemptions, and for certain secondary market transactions, by deeming purchasers in those transactions qualified purchasers under Section 18(b)(3) of the Securities Act. State antifraud authority would be preserved. The secondary market preemption, however, continues only "for the period during which the issuer continues to satisfy" the applicable information, filing, and reporting requirements. Preemption would therefore turn on an issuer's ongoing compliance, which is a status third parties cannot readily observe.

WHAT THE PROPOSAL LEAVES OPEN

Reg CA is an offering rule, and what it does not reach matters to everyone downstream of the issuer. It does not address the registration status of the exchanges, brokers, dealers, and clearing agencies that would trade or intermediate these assets, and the release indicates the SEC is still weighing whether further action is warranted. It also gives third parties no way to verify an issuer's exit determination independently, and no express protection for having relied on a certification that later proves unfounded. The practical result is that primary issuance becomes considerably easier while the transition to secondary trading remains a judgment call. Platforms and asset managers should expect to keep making that judgment themselves, including tracking whether the issuers whose tokens they support remain current in their filings.

PRACTICAL IMPLICATIONS

The proposal arrives as Congress's own crypto legislation remains in the background. The Digital Asset Market Clarity Act has passed the House and is awaiting a Senate floor vote expected in September. Atkins acknowledged the parallel tracks directly, stating that while the SEC is acting within its existing statutory authority, "legislation remains indispensable to enacting 'future-proofed' rules of the road" and that the SEC will continue to support Congress in delivering the CLARITY Act to the president's desk. Issuers and market participants should monitor both tracks, as congressional action could alter or supplement the framework established by Regulation Crypto Assets.

The proposal is the most significant step yet in the SEC's effort to build tailored rules for crypto assets, and its architecture, which regulates the offering while the issuer's efforts continue and permits exit from securities status when those efforts verifiably end, is an improvement over earlier time-boxed safe harbor concepts. Companies outside the crypto industry should note the limits: a token is not equity, and the safe harbor is structurally unavailable to a business whose value depends on its own continuing efforts. Comments are due October 20, 2026, following the proposal's August 21 publication in the Federal Register, and market participants should evaluate eligibility and operational implications while the comment window can still shape the final rule. The comment window will shape the final rule's most consequential details, including eligibility, certification mechanics, and resale treatment.

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