

October 20, 2026

BY ELECTRONIC SUBMISSION

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Request for Comments on Proposed Rule Regulation Crypto Assets (Release Nos. 33-11434; 34-106150; File No. S7-2026-27)

Dear Ms. Countryman:

Andreessen Horowitz (“a16z”) appreciates the opportunity to provide comments to the Securities and Exchange Commission (the “Commission” or “SEC”) in response to the Commission’s Proposed Rule Regulation Crypto Assets (the “Proposal”).¹ We strongly support the Commission’s goal of introducing a comprehensive, tailored securities offering regime to help foster innovation and responsible capital formation in the domestic market for crypto assets, while preserving investor protections. We agree with Chairman Atkins that, if properly amended and implemented, the Proposal would help “[...] to onshore innovation in crypto asset markets for generations to come.”² However, it requires several changes to ensure that the Proposal achieves its objectives. Our recommendations are as follows:

- In Section I, we identify the Proposal’s central flaw: the formalistic approach it takes to assessing when a covered investment contract ceases to exist. To remedy this, we recommend that the Commission recommit to *Howey*’s economic reality standard, made administrable by the three targeted changes to proposed Rule 400, which build upon the Commission’s prior work in this area, that we elaborate in response to Question 124.
- In Section II.A, we explain why the freely tradeable instruments the Proposal creates would have nowhere to trade at scale, and we recommend six measures to fix that: (1) safe harbors from exchange and broker registration for qualifying decentralized exchanges and the applications that provide access to them; (2) an exemption permitting covered investment contracts to trade on venues registered with the Commodity Futures Trading Commission (“CFTC”); (3) trader treatment for organic liquidity provision; (4) confirmation of the alternative trading system pathway; (5) guidance under Regulation M for continuous offerings; and (6) confirmation of how Regulation S applies to offshore distributions.
- In Section II.B, we ask the Commission to affirm that programmatic, protocol-level distributions are not offers or sales by any person, exclude them from the definition of “covered transaction” and the startup exemption offering limit, adopt a separate exemption tailored to airdrops, and make the exemption’s duration and issuer eligibility conditions workable.

¹ Proposed Rule, U.S. Securities and Exchange Commission, Regulation Crypto Assets (Aug. 18, 2026), 91 Fed. Reg. 54,510 (Aug. 21, 2026), <https://www.sec.gov/files/rules/proposed/2026/33-11434.pdf> (hereinafter the Proposal).

² U.S. Securities and Exchange Commission, SEC Proposes New Regulation Crypto Assets (Aug. 18, 2026), <https://www.sec.gov/newsroom/press-releases/2026-76-sec-proposes-new-regulation-crypto-assets>.

- In Section II.C, we recommend five targeted changes to the fundraising exemption: enabling variable pricing under certain circumstances, accommodating the mechanics through which token offerings are conducted, eliminating the additional issuer eligibility conditions, tying ongoing disclosure to the crypto system rather than to the issuer, and providing a bridge analogous to Form 8-A.
- In Section II.D, we set out the three targeted changes to proposed Rule 400 previewed in Section I, recommend pairing revised Rule 400 with a transaction exemption under section 28 of the Securities Act and a non-admission provision for transition report (Form TR) filings, and ask that legacy issuers be permitted to file a Form TR without first relying on an offering exemption.
- In Section II.E, we recommend that the Commission incorporate proposed Rule 500 into the final rules, subject to three refinements that would strengthen it.
- In Section II.F, we respond to the Commission’s economic analysis, and explain why, absent these changes, the exemptions are unlikely to see meaningful use.

a16z is a venture capital firm that invests in seed, venture, and growth-stage technology companies, focused on AI, bio and healthcare, consumer, crypto, enterprise, fintech, games, infrastructure, and companies building toward American dynamism. a16z currently has more than \$100 billion in assets under management across multiple funds, with more than \$9.8 billion in committed capital for crypto funds. In crypto, we primarily invest in companies using blockchain technology to develop protocols that people will be able to build upon to launch internet businesses.

I. Introduction

The Proposal is the single most significant step the Commission has taken towards providing a comprehensive, tailored securities offering regime to promote responsible capital formation and innovation in the domestic market for crypto assets. In this section, we provide a summary of the elements of the Proposal that are well designed and that the Commission should carry forward in the final rules. These include the Proposal’s definition of “covered investment contract,” proposed Rule 103’s principles-based disclosure requirements (with certain targeted changes), the ability under the startup and fundraising exemptions for issuers to offer and sell unrestricted covered investment contracts to purchasers, and proposed Rule 500’s preemption of certain state laws. We then provide an overview of a critical weakness in the Proposal and how the Commission can build upon its prior work in this area to rectify it.

First, the Proposal’s definition of “covered investment contract” should be retained in the final rules as drafted.³ This definition is appropriately tailored, capturing those investment contracts to which a non-security crypto asset is subject, while excluding those to which no such asset is subject. Moreover,

³ The Proposal defines “covered investment contract” as “[...] a contract, transaction, or scheme that constitutes an investment contract; provided that the investment contract must meet the following requirements: (1) a crypto asset is subject to the investment contract; (2) such crypto asset is not a security; and (3) no asset other than such crypto asset (including any security or non-security asset) is subject to the investment contract.” The Proposal, *supra* note 1 at 7.

“covered investment contract” reflects a foundational principle that we previously advocated for:⁴ the separation of crypto asset classification from transaction analysis. Due to prior enforcement actions, considerable confusion remains regarding the circumstances under which crypto assets may themselves be securities. For instance, in *SEC v. Coinbase*,⁵ the Commission previously alleged that several crypto assets available for trading on the platform were “crypto asset securities” because they were the subjects of investment contracts. The use of the term “crypto asset securities” conflated these crypto assets with the transactions to which they were subject. Not only did this engender longstanding confusion for market participants, it was also at odds with Supreme Court precedent. As *SEC v. W.J. Howey Co.* makes clear, the subject of an investment contract—in that canonical case an orange grove—is not necessarily a security in and of itself.⁶ We affirm this foundational principle; the primary factor in determining whether a transaction in a given crypto asset involves the sale of a security is not the asset itself, but how it is being sold, the economic and non-economic attributes of the arrangement, and the reasonable expectation of purchasers.⁷ The Proposal’s definition of “covered investment contract” reflects this fundamental precept. By specifying that, to qualify under the definition of “covered investment contract,” a crypto asset must be *subject to* an investment contract, the Proposal affirms the separation of crypto asset classification from transaction analysis. As the Commission explains, “[...] for purposes of Regulation Crypto Assets, the ‘security’ at issue is the covered investment contract (to which the subject crypto asset is subject) rather than the crypto asset itself.”⁸ As such, the definition of “covered investment contract” is sound and should be carried forward in the final rules without modification.

Second, the principles-based requirements of proposed Rule 103 should also be incorporated in the final rules, with certain narrow changes. As we previously submitted, the lack of a tailored disclosure framework reflecting the unique characteristics of different crypto assets is one of the primary challenges offerings of registered crypto assets face. Resolving information asymmetries in the crypto asset market requires adopting a flexible, principles-based approach to disclosure grounded in materiality and tailored to the specific nature of the asset at issue.⁹ We support the Commission’s adoption of this approach in proposed Rule 103, and agree that information pertaining to development plan, source code, crypto asset economics, and the other categories enumerated therein is what is material to purchasers of covered investment contracts. As such, proposed Rule 103 should be adopted in the final rules, with the targeted changes we elaborate in Section II.A.

⁴ See Letter from Andreessen Horowitz to Commissioner Hester M. Peirce, Crypto Task Force, U.S. Securities and Exchange Commission, *re: Comments on the SEC Crypto Task Force’s Questions Concerning the Security Status of Crypto Assets* (Mar. 13, 2025), <https://a16zcrypto.com/posts/papers-journals-whitepapers/control-based-decentralization-framework-securities-laws/> (hereinafter a16z March 2025 Letter) (response to Question 1, Part 1); Letter from Andreessen Horowitz to Commissioner Hester M. Peirce, Crypto Task Force, U.S. Securities and Exchange Commission, *re: Comments on the SEC Crypto Task Force’s Questions Concerning Public Offerings and Safe Harbor from Registration* (May 1, 2025), <https://www.sec.gov/files/ctf-written-input-horowitz-050125.pdf> (hereinafter a16z May 2025 Letter).

⁵ Complaint, *SEC v. Coinbase, Inc.*, No. 1:23-cv-04738 (S.D.N.Y. June 6, 2023), ECF No. 1. The Commission later disavowed the conflation. See Amended Complaint, *SEC v. Binance Holdings Ltd.*, No. 1:23-cv-01599 (D.D.C. Sept. 12, 2024), ECF No. 273 (stating that “with its use of the term ‘crypto asset securities,’ the SEC is not referring to the crypto asset itself as the security” and that it “regrets any confusion it may have invited in this regard”).

⁶ *SEC v. Howey Co.*, 328 U.S. 293 (1946).

⁷ *Id.* at 298.

⁸ See The Proposal, *supra* note 1 at 38.

⁹ a16z May 2025 Letter, *supra* note 4 at 3.

Third, the ability under the startup and fundraising exemptions for issuers to offer and sell unrestricted covered investment contracts to purchasers should also be incorporated into the final rules. Treating these securities as unrestricted is what makes the exemptions usable in practice; purchasers who cannot resell have no means of exit and would thus be unlikely to participate in the Proposal's framework in the first instance. This approach also coheres with the unique nature of crypto assets; because these assets are fungible, those units sold subject to resale conditions would be indistinguishable from other functionally identical tokens. Therefore, imposing resale restrictions on these assets would engender substantial confusion in the market. The Commission should therefore carry this treatment forward, and should extend its logic to resales by affiliates and related persons for the reasons we discuss below.

Finally, we support the state law preemption in proposed Rule 500, and recommend incorporating this feature into the final rules. Preemption of state registration and qualification requirements is what makes a secondary market in these assets practicable, and the Commission is right to extend it beyond primary offerings to secondary market transactions by persons other than an issuer, underwriter, or dealer. Equally important is what the rule declines to do: it does not condition preemption on tracing the exempt offering in which a particular fungible unit was first sold. Fungible tokens cannot reasonably accommodate myriad different state-law requirements, and a rule requiring holders to establish the provenance of individual units would fail for the same reason that restricted status cannot be confined to particular holders.

While these aspects of the Proposal are sound, as we noted above, the Proposal also includes a material flaw that must be rectified in order to achieve the Commission's goals in this regard while also preserving investor protections and upholding market integrity. We believe the formalistic approach the Proposal takes to assessing when a covered investment contract ceases to exist undermines the investment contract safe harbor and the Proposal, as a whole.¹⁰

Under the Proposal, a covered investment contract will be deemed by the Commission to have ceased to exist if the conditions set forth in proposed Rule 400(a) and proposed Rule 400(b) are satisfied. Proposed Rule 400(b) requires that the issuer has filed a transition report ("Form TR") with the SEC, while proposed Rule 400(a) requires that "[...] the issuer of the covered investment contract has completed or otherwise permanently ceased all essential managerial efforts that it represented or promised it would engage in under the covered investment contract and is not making and does not intend to make

¹⁰ We have previously urged that any token-specific exemption be limited to network tokens, because only crypto assets of that kind can eliminate, through decentralization, the trust dependencies the securities laws address. *See* a16z May 2025 Letter, *supra* note 4 (response to Question 10, Part 1). The Proposal takes a different approach. Within the Commission's chosen architecture, two features could address the concern our prior position was meant to resolve. While its representations remain outstanding, an issuer relying on the fundraising exemption operates within a disclosure regime of roughly Regulation A weight and remains subject to "[...] the antifraud and antimanipulation provisions of the Federal securities laws." The Proposal, *supra* note 1 at 96. And the rebuttable presumption against exit for crypto assets carrying an economic interest in a business or person that we propose herein would prevent company-backed tokens from using the regime as a path out of the securities laws. *See infra* Section II.D.

any new representations or promises to engage in essential managerial efforts with respect to the crypto asset.”¹¹

Whether an issuer has completed or permanently halted the efforts it promised to engage in is a narrow question that requires only a formalistic analysis of the representations the issuer made and its related actions (or lack thereof). In effect, proposed Rule 400 allows issuers to determine the conditions under which their covered investment contracts cease to exist. An issuer could, for example, solely promise to supply Form TR. Once submitted, the issuer would thus have simultaneously satisfied the conditions of proposed Rule 400(a) and proposed Rule 400(b), exiting the regime. Under such a formalistic approach, there is no need for an analysis of how the subject crypto asset is being sold, the economic and non-economic attributes of the arrangement, and the reasonable expectation of purchasers. Instead, as long as the issuer submits Form TR and completes or permanently ceases all promised efforts, then the Commission will deem the covered investment contract to have ceased to exist.

This form-over-substance approach is at odds with a foundational principle underpinning the federal securities laws. In elucidating the test for an investment contract, the Supreme Court highlighted that “[f]orm [is] disregarded for substance and emphasis [is] placed upon economic reality.”¹² This substance-over-form approach is what has allowed the *Howey* test to remain effective well into the twenty-first century. The test’s flexibility captures investment schemes not explicitly enumerated in the definition of “security,” and its emphasis on “economic reality” instead of rigid formal categories prevents regulatory arbitrage. The Proposal’s investment contract safe harbor exit criteria, by contrast, forgo economic reality in favor of formalism. Privileging form over substance in assessing whether a covered investment contract has ceased to exist creates five problems that undermine the goals of the Proposal.

First, proposed Rule 400 and March 2026 Interpretive Release on the Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, issued by the Commission jointly with the CFTC (the “2026 Interpretation”) imply that an investment contract only exists, and the securities laws only apply, where an issuer makes explicit promises and

¹¹ The Proposal, *supra* note 1 at 93.

¹² *Howey*, *supra* note 6 at 298; *see also id.* at 299 (the definition of an investment contract “embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits”); *SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344, 352–53 (1943) (the test is “what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect”); *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967) (“form should be disregarded for substance and the emphasis should be on economic reality”); *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 849 (1975) (“Congress intended the application of these statutes to turn on the economic realities underlying a transaction, and not on the name appended thereto”); *SEC v. Edwards*, 540 U.S. 389, 393 (2004); *Reves v. Ernst & Young*, 494 U.S. 56, 61 (1990) (courts “are not bound by legal formalisms, but instead take account of the economics of the transaction under investigation”). *Forman* is instructive. The Court refused to allow the issuer’s own characterization of its instrument as “stock” to determine whether a security was present, 421 U.S. at 848–50; the Proposal’s premise, under which the issuer’s own representations (or their absence) determine whether an investment contract is present, is the same formalism in mirror image. The 2026 Interpretation (defined *infra* note 13) itself recites these authorities. 91 Fed. Reg. at 13,716–17.

representations about its ongoing efforts.¹³ In particular, the 2026 Interpretation articulates this premise at the formation stage by asserting that, absent an issuer’s representations or promises conveyed to purchasers, it would not be reasonable for purchasers to expect profits. Proposed Rule 400 reinforces this premise by providing a pathway out of securities laws where issuers complete or abandon any representations or promises.¹⁴ Together, these approaches could be read to mean that compliance with securities laws is optional—issuers can avoid the securities laws so long as the representations on which purchasers rely are implicit rather than explicit. As discussed further in our response to Question 124, that premise also overrides and supersedes the 2026 Interpretation’s own taxonomy of non-security crypto assets—the underlying characteristics of a crypto asset are not relevant if the presence of representations and promises is what dictates whether securities laws apply.

To be clear, we do not suggest that an issuer’s representations and promises are beside the point. Their presence or absence is among the most probative facts in any investment contract analysis, and the Commission is right to give that fact substantial weight. Our objection is to treating it as the only fact that matters. The applicable case law under *Howey* has never required an express promise. The Supreme Court in *SEC v. C.M. Joiner Leasing Corp.* located the character of an instrument in “the plan of distribution, and the economic inducements held out to the prospect,” and reached “[n]ovel, uncommon, or irregular devices” offered “under terms or courses of dealing which established their character in commerce as ‘investment contracts.’” The decision that coined the phrase “essential managerial efforts,” which proposed Rule 400(a) adopts, held that *Howey* “must be construed realistically, so as to include within the definition those schemes which involve in substance, if not form, securities.”¹⁵ An exit standard keyed to the inventory of an issuer’s express representations cannot account for expectations that courts locate in structure, conduct, and course of dealing.

Second, this formalistic approach creates a potential loophole for issuers seeking to attract investment on the basis of conduct, rather than compact. In the market for crypto assets, explicit promises are not always necessary to garner substantial investor interest. For more than a decade, projects have attracted capital on the strength of reputations, roadmaps implied rather than stated, and patterns of conduct, rather than express promises. An exit conditioned solely on an issuer’s explicit promises (and the submission of a form) fails to reach these arrangements, even if they pose security-like risks. While it is conceivable that some issuers could make, and go on to fulfill, full and specific representations regarding

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

¹⁴ See the 2026 Interpretation, *supra* note 13, 91 Fed. Reg. at 13,721.

¹⁵ *Joiner*, 320 U.S. at 351–53; *SEC v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476, 482 (9th Cir. 1973); *SEC v. LBRY, Inc.*, 639 F. Supp. 3d 211 (D.N.H. 2022) (slip op. at 15–17). Courts have applied the same principle to crypto assets. In *SEC v. LBRY, Inc.*, the court held that “even if [the issuer] had never explicitly broadcast its views on the subject, any reasonable investor who was familiar with the company’s business model would have understood the connection” between the issuer’s efforts and the value of its token, because the issuer’s retention of a large reserve of tokens “signaled that it was motivated to work tirelessly to improve the value of its blockchain for itself and any [token] purchasers.” *LBRY*, slip op. at 15–16. And in *SEC v. Telegram Group Inc.*, the court held that disclaimers “contrary to the apparent economic reality of a transaction” are “not dispositive,” and found an implicit, though formally disclaimed, commitment by the issuer to the continued success of the network. 448 F. Supp. 3d 352, 365 (S.D.N.Y. 2020).

their efforts in relation to a covered investment contract, it is more likely that they will opt out of securities laws altogether by not making *any* explicit representations. In addition to exposing investors to potential harms, this creates an adverse selection problem: The projects best able to access financing on the basis of reputation (theirs or their funders') can effectively bypass securities laws entirely, while those projects least able to raise capital based on reputation remain incentivized to use the regime. Innovation flourishes when entrepreneurs compete on a level playing field, not when the best-capitalized projects play by different rules than everyone else.

The contrast between ETH and FTT showcases what is at stake. ETH derives its value from the programmatic operation of a network that no person or management team controls. By contrast, FTT, the exchange token of the defunct centralized exchange FTX, derived its value from FTX's discretionary decision to use exchange revenues to buy and burn the token. FTX did represent that it would do so, investors priced the token accordingly, and when FTX collapsed, holders were affected by precisely the risks the securities laws exist to police. Under the Proposal, however, a company in FTX's position could exit the regime simply by ceasing to promise that it would use revenues to repurchase the token, while continuing to do exactly that through its conduct. Under a formalistic reading, FTT would thereby exit the securities laws even though every risk associated with a security remained present, because the Proposal requires no evaluation of the economic reality of the arrangement in question. An issuer could continue to conduct the essential managerial activities that drive its crypto asset's value after exiting the regime, so long as it remains silent about them. And a test that cannot distinguish ETH from FTT cannot distinguish either from a token whose value tracks an ordinary company's revenues; it therefore does not merely leave a gap in the crypto asset market; it invites regulatory arbitrage via the restructuring of ordinary securities into token form.¹⁶

Third, proposed Rule 400's formalism incentivizes issuers that *do* make public representations to keep those representations binary in nature and as negligible as possible, thereby limiting their risk of failing to exit the regime. Because proposed Rule 400(a) in effect permits an issuer to set the conditions under which its covered investment contract ceases to exist, many issuers will choose representations that are deliberately negligible in nature. An issuer promising only what it can readily accomplish (e.g., the deployment of a particular feature, or the filing of a Form TR) can readily depart the regime, notwithstanding the fact that investors may remain—as a matter of economic reality—entirely dependent on their issuer's continued efforts. Issuers that instead commit to substantial undertakings, such as improving a crypto system's functionality over time, risk that they may never be able to exit the regime.

Fourth, this formalistic approach fails to distinguish between the abandonment and the fulfillment of a promise. Proposed Rule 400(a) requires only that an issuer have "[...] completed **or otherwise permanently ceased** all essential managerial efforts" (emphasis added). Whether the issuer, in actuality, delivered what it represented it would is immaterial under the Proposal. Provided the issuer stops working toward that end, the covered investment contract is deemed to have ceased to exist—even if the promised efforts bear materially on the arrangement's risk profile. This inverts the ordinary structure of the securities laws, under which an issuer that fails to deliver what it represented it would remains

¹⁶ On the distinction between network tokens such as ETH and company-backed tokens such as FTT, *see* a16z March 2025 Letter, *supra* note 4 (response to Question 5).

accountable through antifraud liability and continuing disclosure. Under proposed Rule 400(a), by contrast, abandonment of represented efforts is not a failure with consequences but the trigger for departing the regime.

Finally, the formalism embedded in proposed Rule 400 exposes issuers to the risk of private claims. As the Commission itself recognizes, “[...] 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).”¹⁷ Even if the Commission deems that a covered investment contract has ceased to exist under proposed Rule 400, a private plaintiff could still assert that the crypto asset at issue remains subject to an investment contract. “Investment contract” is a statutory term construed by the Supreme Court, and a reviewing court owes the Commission’s construction no deference; in fact, that construction is only relevant in this regard to the extent that it is persuasive. The standard courts apply is far broader (locating expectations in conduct as well as representations), and so a court may find that a covered investment contract that the Commission deemed had ceased to exist does in fact involve a crypto asset that remains subject to an investment contract. A court hearing such a private claim could reach that conclusion notwithstanding a filed Form TR. As a consequence, issuers who make use of the exemption may leave themselves open to being broadsided by private claims. Due to this risk, sophisticated issuers are likely to forgo reliance on proposed Rule 400, and with it the regime.

In sum, the Proposal’s elevation of form over substance in assessing whether a covered investment contract has ceased to exist creates problem that may prevent the Proposal from achieving its goal. Sophisticated issuers are likely to avoid it entirely, while those that do rely on it will remain subject to considerable risk. Moreover, investors—especially retail investors—are left ungarded due to the Proposal’s failure to reach arrangements that pose security-like risks.

How can the Commission amend the Proposal to solve these problems and realize its goals? The Commission, itself, has already supplied the answer. Addressing the issues created by the Proposal’s formalism requires recommitting to the fundamental principle underpinning *Howey*: economic reality. Determining whether a transaction in a given crypto asset poses security-like risks requires thoughtfully analyzing how it is being sold, the economic and non-economic attributes of the arrangement, and the reasonable expectation of purchasers. The flexible, substance-over-form approach encapsulated in *Howey* is what is missing from the Proposal. To ameliorate the Proposal’s central flaw, we urge the Commission to adopt *Howey*’s economic reality standard in the final rules, and to make it administrable by formalizing the crypto asset taxonomy the Commission articulated in the 2026 Interpretation.¹⁸ Incorporated together, an emphasis on economic reality and the 2026 Interpretation’s crypto asset taxonomy would enable the Proposal to achieve its aims while preserving investor protection and upholding market integrity. In Section II.D. we provide a full set of recommendations regarding how the Proposal should be updated in

¹⁷ The Proposal, *supra* note 1 at 167. A court construing a statutory term exercises its own independent judgment and does not defer to an agency’s interpretation. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). That principle applies with particular force to “investment contract,” a term whose meaning the Supreme Court has itself construed. *See Howey*, *supra* note 6.

¹⁸ The 2026 Interpretation, *supra* note 13.

these respects, and the table in our response to Question 124 compares the Proposal’s entry and exit standards with the approach we recommend.

We acknowledge the risk of adopting a substance-over-form approach. Open-ended inquiries, particularly those conducted outside of a well-articulated framework, can be applied unpredictably: ambiguity about when a crypto asset was or was not subject to an investment contract invites regulation by enforcement, and the present Commission’s instinct to prefer a determinate test is understandable. But the Commission can retain the benefits of substance *and* eliminate most of its costs by providing concrete, verifiable exits from the investment contract analysis. Moreover, these can be drawn from its own taxonomy and what it has already set forth in proposed Rule 400 and, importantly, carry economic substance. The changes we recommend in Section II.D. substantially adopt the Commission’s own framing, including its taxonomy, its definition of a decentralized crypto system, its fulfillment concept, and its Form TR mechanism, while aligning the rule with the courts’ construction of *Howey*. A standard that tracks the case law will be respected by courts, by the states, and by future Commissions, and it materially reduces issuers’ exposure to private rights of action in a way that a formalistic deeming provision cannot. Absent market structure legislation, the case law is the only foundation for these rules that courts will respect regardless of who sits on the Commission. Fidelity to *Howey* is therefore the source of the rules’ durability and is what would enable the Commission to fulfill its goal of providing a comprehensive, tailored securities offering regime to promote responsible capital formation and innovation in the domestic market for crypto assets for decades to come.

II. Responses to Questions

A. Regulation Crypto Assets and General Rules (Subpart A, Rules 100 through 104)

Question 2: Are there any defined terms that we either should not adopt or should change in the final rules? If so, please identify those defined terms along with any recommended changes to the definitions.

The Proposal should amend its definitions of the terms “related person,” “aggregate offering price,” and “aggregate sales.”

As drafted, the definition of “related person” is underinclusive. We agree with the Proposal’s goal of capturing “[...] any person that may be viewed as an ‘insider’ of the issuer to ensure that investors are adequately protected and informed.”¹⁹ However, the Proposal’s definition—“[...] founders, promoters, employees, affiliates, and any person that is a director, officer, trustee, consultant, contractor, or advisor to the issuer, in each case together with any immediate family member”²⁰—risks excluding persons who may retain control over a crypto system or possess asymmetric information about it or its associated crypto asset. To remedy this, the Commission should adopt a broader definition modeled on the

¹⁹ The Proposal, *supra* note 1 at 38.

²⁰ The Proposal, *supra* note 1 at 38; *see also id.* at 323 (proposed rule text).

September 13, 2026 version of the Digital Asset Market Clarity Act (“CLARITY”).²¹ In addition to the categories enumerated in the Proposal’s definition of “related person,” that definition reaches founders who beneficially own not less than four percent of the outstanding units of the associated crypto asset; executive officers, directors, trustees, general partners, and owners of more than ten percent of any class of equity shares of the issuer; and any person, or group of persons under common control, that beneficially owns ten percent or more of the outstanding units of the crypto asset, in each case subject to a lookback period. It also expressly excludes a decentralized governance system.²² Each of these categories of person may retain control over a crypto system or possess asymmetric information about it or its associated crypto asset and the definition is warranted on those terms alone. Adopting it will help ensure that the Proposal reaches the persons whose information and influence matter most to purchasers.

The Proposal’s definitions of “aggregate offering price” and “aggregate sales” should also be amended. At present, “aggregate offering price” is defined as “[...] the sum of all cash and other consideration to be received for the covered investment contracts being offered,” while “aggregate sales” is defined as “[...] the gross proceeds for all securities sold pursuant to other offering statements”²³ under the Proposal. The defect in both is that they measure value without assessing whether the issuer has actually raised any capital. Although the reference to “gross proceeds” might suggest that “aggregate sales” counts only cash, the Proposal forecloses that reading. Proposed Rule 100 provides that where covered investment contracts are not offered for cash, “[...] the aggregate offering price or aggregate sales must be based on the value of the consideration as established by bona fide sales of that consideration,” or otherwise on fair value, and Question 54 confirms the Commission’s understanding that services rendered in exchange for covered investment contracts “[...] may constitute ‘covered transactions’ that count towards the offering limit.” Both definitions therefore sweep non-cash consideration into the limit at imputed value.²⁴

Because both definitions include non-cash consideration, many projects distributing crypto assets through airdrops and incentive-based rewards would rapidly deplete the startup exemption’s offering limit. The definitions should therefore be amended to exclude programmatic, protocol-level distributions effected by the autonomous operation of a crypto system, and should likewise exclude from the offering-limit calculation gratuitous and incentive-based distributions to users of the crypto system. Genuinely gratuitous airdrops involve no investment of money and, under the 2026 Interpretation, fall outside *Howey* altogether, so they should not consume a limit designed to bound capital raised; and incentive-based distributions, while they may involve consideration in the form of use or services, raise no capital for the issuer and should likewise be excluded from the limit, with the exemption continuing to supply the disclosure framework and public record that make such distributions orderly. They should also be updated to exclude compensatory grants to related persons whose crypto assets are subject to vesting or lockup conditions on the model of Rule 701, and to only count disclosed, programmatic liquidity

²¹ Digital Asset Market Clarity Act, Amendment in the Nature of a Substitute to H.R. 3633, EHF26724 (Sept. 13, 2026), <https://www.lummis.senate.gov/wp-content/uploads/EHF26724.pdf> (hereinafter CLARITY). As CLARITY has not been enacted, we refer to it only as a drafting model.

²² CLARITY, *supra* note 21 at 10–11 (§ 10001(14)).

²³ The Proposal, *supra* note 1 at 33; *see also id.* at 321 (proposed rule text).

²⁴ *See* The Proposal, *supra* note 1 at 321–23 (proposed 17 C.F.R. § 228.100); *id.* at 84 (Request for Comment No. 54).

provision to an automated market maker once, at the value of the tokens when deposited, or on a net basis.²⁵ Each of these changes would help make the offering limit under the startup exemption practical. We elaborate each of these changes, as well as the risks of leaving the definitions as drafted, in our response to Question 44.

If the Commission opts to continue to count non-cash consideration toward the limits, it should prescribe a single administrable valuation convention, rather than the open-ended standard the Proposal contemplates: non-cash consideration should be valued at the price per unit in the issuer's first bona fide arm's length sale of the subject crypto asset for cash to unaffiliated purchasers. An undefined standard applied to illiquid, newly issued crypto assets will produce inconsistent results across issuers and be difficult for purchasers to verify, whereas a price set in an actual arm's-length transaction is observable, fixed, and already part of the issuer's public record.²⁶

Question 3: Are there additional terms used in Regulation Crypto Assets that we should define?

The Commission should define the terms “digital commodity” and “decentralized unincorporated nonprofit association.”

Nowhere in the Proposal is the term “digital commodity” defined, though it appears therein.²⁷ Instead, the 2026 Interpretation's definition of “digital commodity” is incorporated by reference. The 2026 Interpretation defines “digital commodity” as “[...] a crypto asset that is intrinsically linked to and derives its value from the programmatic operation of a crypto system that is ‘functional,’ as well as supply and demand dynamics, rather than from the expectation of profits from the essential managerial efforts of others.”²⁸ Formally incorporating this definition of “digital commodity” into the final rules would serve three functions. First, while the definition of “covered investment contract” already incorporates the 2026 Interpretation's taxonomy by reference (since whether a crypto asset “is not a security” is a question the taxonomy answers), no defined term anchors the taxonomy in the rule text, leaving the regime's threshold condition dependent on interpretive guidance that a future Commission could withdraw without notice and comment. Second, the revised Rule 400 we propose in Section II.D. keys its conclusive exit to digital commodities, and a category that gates the exit from the federal securities laws must exist in the Code of Federal Regulations, not only in a release. Third, formalization gives market participants, the courts, and the Commission itself a stable referent against which the disclosures required by proposed Rule 103 and the analyses required by Form TR can be measured, reducing the cost of compliance and the risk of inconsistent application across issuers.

However, in formalizing this definition, the Commission should address an ambiguity that is unresolved in the 2026 Interpretation. The 2026 Interpretation states that there may be crypto assets “[...]”

²⁵ 17 C.F.R. § 230.701.

²⁶ The Proposal, *supra* note 1 at 34 (providing that, where covered investment contracts are not offered for cash, the aggregate offering price or aggregate sales is based on “[...] the fair value as determined by an accepted standard”); see also *id.* at 321–22 (proposed rule text); *id.* at 40 (Request for Comment No. 10) (“Should we establish a required standard for determining fair value under Regulation Crypto Assets?”).

²⁷ See The Proposal, *supra* note 1 at 16, 79, 187.

²⁸ The 2026 Interpretation, *supra* note 13 at 14.

with hybrid characteristics that may fall within more than one category.”²⁹ To be effective, a category that gates the exit from the Proposal—as we propose in Section II.D. with respect to digital commodities—must be determinate. The Commission should therefore classify crypto assets according to their technical, economic, and legal characteristics in a manner that differentiates the categories clearly and forecloses the possibility of hybrid characterizations. The most useful clarification would specify which financial interests and economic rights are compatible with digital commodity status and which are not. Value that accrues programmatically from the operation of the crypto system itself, such as transaction fees, protocol-funded burns, and programmatic supply adjustments, is consistent with the category; whereas value that derives from an offchain business, such as a company’s discretionary use of its revenues to purchase and burn the crypto asset, is not. One useful drafting model excludes from the parallel category any crypto asset that is “substantially economically or functionally equivalent to” an entitlement to, or a reasonable expectation of, a payment or transfer of value from a person, or “an express or implied financial interest” in a person. The Commission should draw this line by rule, and it should do so with reference to express and implied interests alike, because the implied interest is the one that drafting can otherwise conceal.³⁰ A line drawn only at express contractual entitlements would be drafted around in a single sentence; the exclusion must reach implied interests.

The term “decentralized unincorporated nonprofit association” appears four times in the Proposal’s questions, but is also undefined.³¹ The decentralized unincorporated nonprofit association (“DUNA”) gives decentralized autonomous organizations (“DAOs”) legal existence, the capacity to contract and meet tax obligations, and liability protection for members. Wyoming adopted the statute in 2024, Alabama and West Virginia enacted it in 2026,³² and prominent crypto systems, including the Uniswap community in 2025, have already adopted the structure.

The Proposal should adopt a formal definition of “decentralized unincorporated nonprofit association” in line with state law, and conform the Proposal’s forms accordingly. The definition can be straightforward: “an association formed under a state statute providing for decentralized unincorporated nonprofit associations,” citing Wyoming, Alabama, and West Virginia as examples. Form NOR, Form TR, and Form 1-CRYPTO should accept a DUNA’s state of formation as its jurisdiction of formation, should accept a registered agent’s address where an association has no principal executive office, and should permit an association’s administrator or other person authorized under its governing principles to sign and certify on its behalf. Absent those conforming changes, the forms’ assumptions of corporate structure—a principal executive office, a board of directors, and named officers—would exclude precisely the organizational form best suited to governing a decentralized crypto system.

²⁹ *Id.*

³⁰ See CLARITY, *supra* note 21, § 10102 (proposed Securities Act § 4B(a)(7)(B)), at 22–23 (defining “disqualifying financial rights”); see also *id.* § 10105(a), at 113 (directing the Commission to adopt rules regarding the characteristics of network tokens).

³¹ See The Proposal, *supra* note 1 at 87, 95, 130, 159.

³² Wyo. Stat. §§ 17-32-101 to 17-32-129 (2024); Act of Apr. 2, 2026, Ala. S.B. 277, 2026 Reg. Sess. (codified at Ala. Code § 10A-17-2.01 *et seq.*, eff. Oct. 1, 2026); W. Va. S.B. 670, 2026 Reg. Sess. (approved Apr. 1, 2026) (codified at W. Va. Code § 36-13-1 *et seq.*, eff. July 1, 2026).

Question 5: Does the definition of “covered investment contract” scope in the appropriate population of securities? If not, what scope would be more appropriate?

We support the Commission’s proposed definition of “covered investment contract,” for the reasons elaborated in Section I. By affirming the separation between crypto asset classification and transaction analysis, this definition aligns with traditional securities law principles in a manner that ensures market participants are protected from risks without unnecessarily restricting non-securities use cases that fall outside the SEC’s jurisdiction. For these reasons, this definition should be carried forward in the final rules without modification.

Likewise, the definition of “covered investment contract” should not be broadened to include investment contracts involving non-crypto assets. Broadening the term in this manner—as the Proposal implicitly contemplates in Question 6—would inappropriately expand its scope. Multi-asset or hybrid arrangements involving non-crypto assets give rise to distinct considerations and risks that the Proposal is ill-suited to address. For example, while proposed Rule 103’s principles-based disclosure requirements are appropriate for crypto assets, the categories of disclosure enumerated therein—which include information pertaining to, for instance, development plan, source code, and crypto asset economics—are not an appropriate fit for assets that are not crypto assets. Moreover, if the deficiency highlighted in Section I is not cured, then expanding “covered investment contract” in this manner could compound the Proposal’s present problems by enabling more types of arrangements to take advantage of it.

One additional clarification would be helpful in this regard. The Commission should confirm that equity and crypto assets may be sold together as part of early-stage financing. Specifically, the Commission should confirm that equity may be sold under Regulation D or another available exemption and that crypto assets may be sold under the Proposal, together, without integrating the two into a single multi-asset arrangement that falls outside the Proposal. This is a common arrangement used to promote long-term growth and align incentives, and the Commission should make clear that it is permissible thereunder. Such a clarification would track the approach taken for Regulation S offerings, which are not integrated with simultaneous Regulation D offerings, and it is warranted because equity securities offerings and covered investment contract offerings under the Proposal are not offerings of the same class of securities. Absent that confirmation, issuers and their counsel may be left to guess whether a concurrent equity financing integrates with a token distribution. Under these circumstances, many may separate equity financing and token distribution in time, or forgo the token distribution altogether, driving early-stage projects away from the Proposal and toward the undocumented alternatives it is meant to replace.

Question 28: Are there any other disclosure requirements that we should specify in Rule 103?

Proposed Rule 103’s principles-based disclosure requirements should be incorporated in the final rules with targeted changes. As we previously noted, the absence of a tailored disclosure framework reflecting the unique characteristics of different crypto assets is a significant challenge registered crypto

asset offerings presently confront.³³ Due to the quickly evolving nature of the market for crypto assets and its underlying technologies, prescriptive line-item disclosures are ill-suited. As such, we strongly support proposed Rule 103’s principles-based approach and urge the Commission to adopt it with four changes.

First, proposed Rule 103(b)(1) should be amended to require the issuer to delineate its essential managerial efforts from ordinary post-functionality activity. Issuers and related persons frequently engage with a project after it has become functional, and these engagements do not necessarily give rise to the control-related risks addressed in Section II.D. below. Nevertheless, to ensure that participants are equally situated with respect to the information necessary to evaluate a given crypto asset, this post-functionality activity should be disclosed. The disclosure should also state objective criteria for the completion of those efforts. In this respect, proposed Rule 103(b)(1) already requires a description of the issuer’s representations or promises “[...] and its progress with respect to such representations or promises,”³⁴ but this does not go far enough. Requiring an issuer to state where its undertakings end, including with respect to essential managerial efforts *and* ordinary post-functionality activity, is ultimately what makes that progress measurable, and it is the record against which any subsequent determination under revised Rule 400 (as detailed in Section II.D.) will be made.

Second, proposed Rule 103 should be amended to require disclosures related to what legal rights (if any) a given crypto asset confers and how tokenholders’ interests relate to those of the issuer’s equity holders. As described above, issuers commonly make use of crypto assets alongside traditional equity to finance projects. While this arrangement can help foster the long-term growth of a project by aligning funder and issuer incentives, it can also create confusion for market participants. Equity ownership confers specific claims, whereas many token sales do not. To ensure that all investors are aware of what rights (if any) purchasing a given crypto asset confers, proposed Rule 103 should require issuers to disclose to that effect. Proposed Rule 103(b) should therefore be amended to require a statement of what legal rights the subject crypto asset confers, against whom, and under what instrument. It should also be altered to require disclosure of who owns the intellectual property, the principal user interface, the domain names, and the revenue associated with the network or application, and a description of the relationship, and any divergence of interests, between the issuer’s equity holders and tokenholders.

Third, proposed Rule 103(b)(7) should be amended to require that the circulating supply and the fully diluted supply be stated side by side, together with the schedule on which tokens that may be subject to lockups unlock, as well as the identity of the holders, such that the purchasers can clearly understand the structure at hand. It should also require disclosure of how any lockups are implemented and enforced, including whether they are enforced through public, non-discretionary onchain mechanisms, and whether, and by whom, they may be waived. A lockup enforced onchain can be verified by anyone at any time, which helps ensure that all participants are equally situated with respect to the information necessary to evaluate a potential purchase; a lockup that the issuer can waive offers purchasers far less.³⁵

³³ a16z May 2025 Letter, *supra* note 4 at 3.

³⁴ The Proposal, *supra* note 1 at 54; *see also id.* at 326 (proposed rule text).

³⁵ *See* The Proposal, *supra* note 1 at 327–28 (proposed rule text) (requiring disclosure of the subject crypto asset’s “[...] supply, pricing, lockups, distribution methods, holdings by related persons, and release schedules”).

Fourth, proposed Rule 103(b)(7) should also require the issuer to disclose where and how value accrues to the subject crypto asset, if at all: whether through programmatic mechanisms embedded in the crypto system, such as transaction fees, protocol-funded burns, and programmatic supply adjustments, or through the discretionary conduct of the issuer or an affiliated business. This disclosure serves two purposes: it tells purchasers what they are buying, and it creates the record against which a digital commodity's eventual separation under the revised Rule 400 we propose in Section II.D. can be verified. A crypto asset whose value accrues programmatically from the system's operation is, by the Commission's own definition, a digital commodity. A crypto asset whose value depends on an offchain business is not. This additional disclosure under revised Rule 103(b)(7) would help market participants as well as the Commission, itself, assess whether a digital commodity has achieved separation under the revised Rule 400 we propose in response to Question 124 below.

Question 153: How would investors who purchase covered investment contracts under the proposed rules exit their investment? What is the likelihood that there would be a ready market for covered investment contracts issued in reliance on the proposed rules? What entities or investors are likely to supply the liquidity, and what discounts, if any, are investors likely to face when exiting their investments?

Investors who purchase covered investment contracts under the proposed rules are likely to exit their investment through secondary market sales. For this reason, we support the Commission's position that covered investment contracts are unrestricted securities, and proposed Rule 500's state registration preemption for secondary transactions by persons other than an issuer, underwriter, or dealer. Whether a ready market for covered investment contracts would develop is another matter, however, and as proposed the likely answer is that it would not.³⁶ Liquidity in these assets is supplied through two channels, and the Proposal obstructs both. Below, we describe those channels and the obstacles the Proposal leaves in place, and then recommend six measures that would remove them.

Onchain, liquidity is supplied by automated market maker pools funded by permissionless liquidity providers, and the fixed-price requirement discussed in our response to Question 76 prevents an issuer from seeding such a pool. An issuer should be able to seed a pool directly, or through initial purchasers acting under a disclosed mechanism, because without that seeding onchain liquidity is unlikely to develop at all: independent liquidity providers will not commit capital to a pool that has no initial depth. Offchain, liquidity is supplied by centralized trading platforms and the professional market makers that quote on them, and a platform that brings together buyers and sellers of a covered investment contract is operating an exchange within the meaning of the Exchange Act. No centralized venue can therefore list these assets without registering as a national securities exchange, which would return the issuer to Exchange Act registration absent the Form 8-A analog discussed in our response to Question 76, or operating as an alternative trading system through a registered broker-dealer, a path the Proposal leaves unaddressed.

Accordingly, investors would face losses on exit driven by shallow liquidity and by a factor the Proposal does not address. Insiders will seldom hold covered investment contracts acquired under the

³⁶ See The Proposal, *supra* note 1 at 279 (Request for Comment No. 153).

exemptions—founders receive allocations at genesis, early investors purchase under Regulation D or Regulation S, and employees are compensated under Rule 701. The likely outcome is that insiders sell outside of the framework that the Proposal would establish. To rectify this, the Commission should confirm that resales of a subject crypto asset by an issuer’s affiliates and related persons sit outside the restricted- and control-securities regime, consistent with the Proposal’s premise that the crypto asset of a covered investment contract is not itself a security.³⁷ Because these assets are fungible, restricted or control status attaching to particular units would spread across the entire trading market, increasing confusion without effectively resolving risks. The Commission already recognizes this problem; for precisely this reason, proposed Rule 500 rightly declines to condition preemption on tracing. The investor-protection interest in insider sales is served by mechanisms that require no tracing: disclosure of related-person holdings and lockups under revised Rule 103(b)(7), current reporting of related-person dispositions under revised Form 1-UC, and the antifraud and insider-trading provisions, which reach sales on material nonpublic information whether or not the units sold are “restricted.” Lockups voluntarily undertaken as a condition of an exemption, and verifiable onchain, are a different matter from restricted status attaching to fungible units. Obligations should sit with those who control the system and hold its information, not with the holders who use it.

Building an effective market for crypto assets also requires professional liquidity provision, and the Proposal does not address the present obstacles to it. A firm maintaining two-sided quotations in covered investment contracts as a business must confront the Exchange Act dealer analysis. Wherever its inventory is issuer-supplied, it confronts the underwriter analysis under section 2(a)(11) of the Securities Act. And proposed Rule 500 by its terms does not preempt state registration and qualification requirements for dealer transactions, since it only reaches secondary transactions by persons other than an issuer, underwriter, or dealer.³⁸ The Proposal acknowledges that Commissioner Peirce has recommended “[...] exemptions from the definitions of ‘exchange,’ ‘broker,’ and ‘dealer’ under the Exchange Act,” and states that “[t]his proposal does not address those recommendations.” Venues present a parallel gap: listing on a national securities exchange would return the issuer to Exchange Act registration absent the bridge discussed in our response to Question 76, while the alternative trading system pathway is not effectively addressed by the Proposal.³⁹

These obstacles have a cross-border dimension. The Proposal’s architecture avoids fragmentation at the level of the asset, and this is one of its strengths: because the security is the transaction and the

³⁷ 17 C.F.R. § 230.144(e), (f). We continue to believe that resale restrictions on related persons have value while a crypto system remains subject to control, for the reasons set out in our prior submissions, including in response to the questions that informed Request for Comment No. 35, and the airdrop exemption we describe in response to Question 46 reflects it as a condition of that exemption. What we do not propose is restricted status attaching to units of a fungible asset. *See* a16z March 2025 Letter, *supra* note 4 (response to Question 1, Part 5); a16z May 2025 Letter, *supra* note 4 (response to Question 10, Part 5).

³⁸ *See* 15 U.S.C. § 77b(a)(11); The Proposal, *supra* note 1 at 177 (extending preemption to “all secondary market transactions of a covered investment contract—by any person other than the issuer, an underwriter, or a dealer”). For a detailed treatment of the related resale gap for insiders discussed above, *see* Letter from Gabriel Shapiro to Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, re: File No. S7-2026-27; Release Nos. 33-11434; 34-106150; Regulation Crypto Assets (Sept. 24, 2026), <https://www.sec.gov/comments/S7-2026-27/s7202627-1073359-3717666.pdf> (hereinafter the Shapiro Letter).

³⁹ The Proposal, *supra* note 1 at 73 n.192. On the scope of proposed Rule 500’s preemption, *see id.* at 170, 175, 177; on the consequences of exchange listing, *see id.* at 158 (Request for Comment No. 120).

crypto asset is not itself a security, a crypto asset sold to U.S. purchasers under the fundraising exemption and to non-U.S. purchasers under Regulation S is a single fungible instrument trading in a single global market, with no U.S. tranche to legend or trace. The fragmentation the Proposal does not avoid is at the level of the venue. Non-U.S. purchasers will trade on offshore platforms that are subject to no U.S. requirement, while U.S. purchasers can trade only on venues that have resolved the Exchange Act questions described above, which today means decentralized exchanges alone. The result is two pools of price discovery bridged by arbitrage, with U.S. venues excluded from the deeper one. This fragmentation also matters because a project deciding where to conduct its public distribution now has an alternative. Under the European Union’s Markets in Crypto-Assets Regulation, a public offering of a crypto asset that is not a financial instrument requires a white paper notified to a national authority, carries no offering cap, no investment limits, and no periodic reporting, and the white paper passports the asset to trading platforms across the Union.⁴⁰ A project that distributes under that regime, excludes U.S. persons from the distribution, and allows its crypto asset to reach U.S. purchasers through secondary trading bears none of the costs of the Proposal and loses nothing it values, unless compliance with the Proposal is what unlocks access to U.S. venues and the liquidity they provide.

To resolve this, the Commission should address each channel through which liquidity is actually supplied, and it should do so in the final rules rather than deferring the Exchange Act questions as the Proposal does. In this respect, we recommend six measures.⁴¹

First, for decentralized venues, the Commission should adopt the safe harbors from exchange and broker registration for the decentralized exchanges and the applications that provide access to them and that meet the criteria set out in our prior submissions with the DeFi Education Fund. Those submissions propose objective criteria: a qualifying decentralized exchange⁴² must be non-custodial, automated, permissionless, and credibly neutral, and a qualifying application⁴³ must take no custody of user assets, exercise no discretion over trade coordination, pricing, matching, or execution, and derive pricing and

⁴⁰ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, 2023 O.J. (L 150) 40, arts. 4–15 (offers to the public of crypto-assets other than asset-referenced tokens or e-money tokens). Crypto-assets that qualify as financial instruments under Directive 2014/65/EU are excluded from that regulation, *id.* art. 2(4)(a), so the regime applies to the assets the 2026 Interpretation would classify as digital commodities, digital collectibles, and digital tools.

⁴¹ We have previously explained why secondary transactions in which neither the issuer nor its affiliates participate generally should not be treated as securities transactions. *See* a16z March 2025 Letter, *supra* note 4 (response to Question 1, Parts 2 and 5). We do not renew that request as a freestanding recommendation here; the transaction-lifecycle alternative we describe in response to Question 124 would reach the same result. Exchange Act relief conditioned on disclosure works within the Proposal’s own architecture and does not depend on how that question is resolved.

⁴² Miles Jennings et al., *Recommendations Regarding a Safe Harbor for Certain Applications From the Exchange Registration Requirement of the Securities Exchange Act of 1934*, DeFi Education Fund & Andreessen Horowitz (Sept. 14, 2026),

<https://www.sec.gov/files/ctf-written-input-andreessen-horowitz-a16z-defi-education-fund-def-091426.pdf> (hereinafter Exchange Safe Harbor Proposal).

⁴³ Miles Jennings et al., *Recommendations Regarding a Safe Harbor for Applications from the Broker Registration Requirements of the Securities Exchange Act of 1934*, DeFi Education Fund & Andreessen Horowitz (Aug. 13, 2025),

<https://www.sec.gov/files/ctf-written-a16z-def-safe-harbor-proposal-applications-081325.pdf> (hereinafter Broker Safe Harbor Proposal).

market data from pre-disclosed, objective, independently verifiable parameters. The exchange and broker registration regimes are directed at centralized operators, because it is the human intermediary acting as operator that introduces the risks those regimes address; systems that lack such an operator do not present those risks, and imposing registration on them would reintroduce the intermediaries and costs that these technologies make it possible to eliminate. For covered investment contracts, the exchange safe harbor and broker safe harbor would confirm that the automated market maker pools through which such assets trade and the interfaces that provide access to them may operate without an Exchange Act registration.

Second, for centralized venues, the Commission should enable crypto assets that are the subject of covered investment contracts to trade on exchanges registered with the CFTC. On October 13, 2026, the CFTC published an advance notice of proposed rulemaking on Regulation Crypto Asset Transactions and Regulation Crypto Asset Markets, which would establish a tailored designation for trading facilities that list crypto asset transactions, together with intermediation, clearing, and core-principle requirements governing listing standards, surveillance, trade reporting, system safeguards, and proof of reserves.⁴⁴ We expect most centralized trading platforms to opt into that regime for their crypto asset trading. The CFTC describes this advance notice of proposed rulemaking as a complementary framework for crypto assets that are subject to the safe harbor proposed in Regulation Crypto Assets. Moreover, the CFTC expressly solicits comments regarding the securities-law implications of a party asserting that a crypto asset underlying such a transaction is, in fact, subject to an investment contract.⁴⁵ Under the Proposal, however, a CFTC-registered venue could list a crypto asset *only after separation*, because each pre-separation transaction is an offer and sale of the covered investment contract and a venue bringing together buyers and sellers of such contracts is an exchange under the Exchange Act. As a consequence, centralized trading platforms that opt into the CFTC's new proposed framework will only be able to list these assets after separation, which would undermine access to, and innovation in, the domestic market for crypto assets. The CFTC's framework cannot itself resolve whether a transaction is a securities transaction; only an exemption from the Commission can, which is why the two frameworks must be joined. That is what the exemption described next would do.

The Commission can do so with authority it already cites: section 36 of the Exchange Act, included in the authority citation for proposed Part 228, permits the Commission to conditionally exempt any person, security, or transaction from any provision of the Exchange Act where necessary or appropriate, in the public interest, and consistent with the protection of investors.⁴⁶ The Commission

⁴⁴ Advance Notice of Proposed Rulemaking, U.S. Commodity Futures Trading Commission, Regulation Crypto Asset Transactions and Regulation Crypto Asset Markets, RIN 3038-AF80, 91 Fed. Reg. 64,811 (Oct. 13, 2026) (hereinafter "CFTC ANPRM"). We note that the CFTC ANPRM cites the a16z March 2025 Letter, *supra* note 4, submission in describing the factors relevant to whether a crypto asset is readily susceptible to manipulation, including the economic, operational, and governance control of the associated blockchain system. 91 Fed. Reg. at 64,833 & n.311.

⁴⁵ See CFTC ANPRM, *supra* note 44, § I.B.4, 91 Fed. Reg. at 64,822 (describing the notice as providing "a complementary federal regulatory framework for crypto assets subject to the safe harbor proposed in Regulation Crypto Assets") and § vi., 91 Fed. Reg. at 64,839 (soliciting comment on "the securities-law implications that arise where a crypto asset underlying a [crypto asset transaction] is asserted to be, or to be part of, an investment contract").

⁴⁶ 15 U.S.C. § 78mm; see The Proposal, *supra* note 1 at 321 (proposed authority citation for 17 C.F.R. Part 228). The Commission relied on the same authority to adopt Regulation ATS, and it has recently used it to accommodate

should exercise that authority to exempt CFTC-registered crypto asset trading venues, and the intermediaries and market makers that transact on them, from the exchange and broker-dealer registration requirements with respect to transactions in covered investment contracts. However, to uphold market integrity and preserve investor protection, this exemption should be conditioned on continuous compliance with the CFTC’s core principles; on the issuer being subject to its disclosure obligations under the Proposal or having filed a Form TR, with the venue providing access to the issuer’s EDGAR filings; on surveillance and information-sharing arrangements with the Commission; and on the preservation of the antifraud and anti-manipulation provisions of both statutes.

This would be legally durable because such an exemption removes the registration violation on which Exchange Act section 29(b) rescission claims depend. It would also be practically transformative. By attaching relief to CFTC-registered intermediaries, it would resolve the dealer and underwriter questions for market makers. Moreover, it would give issuers a reason to enter the Proposal’s regime rather than draft around it, since complying with it would enable them to list on venues that provide access to potential purchasers, and it would realize the Chairman’s stated objective of allowing tokens tied to an investment contract to trade on non-SEC-regulated platforms, including those registered with the CFTC.⁴⁷

Third, the Commission should adopt a safe harbor for organic liquidity provision, so that persons who supply automated market maker liquidity for their own account, without compensation from the issuer, are treated as traders rather than dealers. The Commission has already reached this conclusion in a parallel setting. In its recent exemptive order for tokenized securities venues,⁴⁸ the Commission stated that “[l]iquidity provision alone does not constitute engaging in dealer activity” and that, absent other indicia of dealer activity, liquidity providers in an automated market maker pool “would typically be engaged in trader (and not dealer) activity.” The Commission also recognized that, absent committed liquidity, the automated pricing and execution mechanisms of such pools “cannot operate as designed.” The same is true here, and it explains why trader treatment generates liquidity. Once the issuer seeds a pool, as described above, the pool deepens only if independent participants add their own capital alongside the seed; those participants take genuine investment risk, are not conduits for issuer inventory, and will not commit capital if doing so risks dealer registration. The safe harbor should be limited to persons who receive no compensation from the issuer and are not participants in the distribution, so that it confers no benefit on underwriters or issuer-compensated market makers, whose status would remain governed by the dealer and underwriter analyses and by the CFTC-venue exemption described above. Treating organic liquidity providers as traders costs investors nothing, because the issuer’s disclosures remain available to every counterparty.

tokenized securities venues. See Regulation of Exchanges and Alternative Trading Systems, 63 Fed. Reg. 70,844 (Dec. 22, 1998); Release No. 34-106402 (Sept. 17, 2026) (exemptive order for tokenized securities venues).

⁴⁷ See Paul S. Atkins, Chairman, U.S. Securities and Exchange Commission, *The SEC’s Approach to Digital Assets: Inside “Project Crypto,” Remarks at the Federal Reserve Bank of Philadelphia* (Nov. 12, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-111225-secs-approach-digital-assets-inside-project-crypto> (hereinafter Atkins Statement) (stating that the Chairman had asked the staff to prepare recommendations “[...] that would allow tokens tied to an investment contract to trade on non-SEC regulated platforms, including those intermediaries registered at the CFTC or through a state regulatory regime”).

⁴⁸ Order Granting Temporary Conditional Exemptive Relief, SEC Release No. 34-106402, File No. 4-927 (Sept. 17, 2026).

Fourth, the Commission should confirm expressly that alternative trading systems may trade covered investment contracts, and that such trading triggers no registration obligation for the issuer. The confirmation is nearly costless since the staff has already indicated that alternative trading systems may trade crypto asset securities alongside non-securities, and it would give venues that prefer the broker-dealer pathway a clear route.⁴⁹

Fifth, the Commission should provide guidance under Regulation M for continuous offerings, in which a distribution and secondary market will coexist by design. Regulation M prohibits an issuer, its affiliated purchasers, and the underwriters and other participants in a distribution from bidding for or purchasing the security being distributed during a restricted period surrounding the distribution, so that those with an interest in the offering cannot condition the market price at which it is sold.⁵⁰ That framework assumes a distribution with a beginning and an end, and a restricted period measured from its pricing. An offering under the Proposal may have neither, because a sale conducted through a disclosed programmatic mechanism, or a program of covered transactions under proposed Rule 200 that continues for years, prices continuously and may never be completed. Read literally, Regulation M would place the issuer and anyone acting in concert with it in a perpetual restricted period, with the result that an issuer could not repurchase its crypto asset for treasury purposes, a market maker that had participated in the distribution could not quote it, and a liquidity provider that had received an allocation could not support the pool in which it trades. Whether Regulation M applies at all is itself uncertain, because the security being distributed is the covered investment contract while the instrument that trades is the crypto asset, and the exception for actively traded securities, which is available only to distribution participants, is keyed to a public float value that has no analog here. Faced with that uncertainty, the safest course for a market maker is to withdraw, which deprives the market of the liquidity on which the Proposal depends. The Commission should therefore confirm that, where an offering is conducted through a disclosed mechanism whose rules are fixed before sales begin and enforced by smart contract, the manipulation concern that Regulation M addresses is absent, because no participant can condition the price at which the mechanism sells; that independent market makers and liquidity providers that receive no compensation from the issuer are not distribution participants; and that issuer purchases made under a program disclosed in advance and executed on fixed terms are permitted during a continuous offering, on the model of the Commission's existing safe harbor for issuer repurchases.

⁴⁹ See Division of Trading and Markets, U.S. Securities and Exchange Commission, *Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology* (updated Feb. 19, 2026), <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology>; see also Letter from Andreessen Horowitz to Commissioner Hester M. Peirce, U.S. Securities and Exchange Commission, *re: Request for Information Regarding National Securities Exchanges and Alternative Trading Systems Trading Crypto Assets* (Sept. 14, 2026) (recommending a notice-registration framework, modeled on Regulation ATS, for crypto asset trading platforms that trade security and non-security pairs).

⁵⁰ 17 C.F.R. §§ 242.100–102. The restricted period is defined by reference to the pricing of the distribution, 17 C.F.R. § 242.100(b), and the exception for actively traded securities requires an average daily trading volume of at least \$1 million and a public float value of at least \$150 million, 17 C.F.R. § 242.101(c)(1). The Commission's safe harbor for issuer repurchases is found at 17 C.F.R. § 240.10b-18.

Sixth, the Commission should confirm how Regulation S applies to an offshore distribution of a subject crypto asset conducted alongside an offering under the Proposal. The Proposal already provides that offshore offers and sales made in compliance with Regulation S are not integrated with an offering under the exemptions and do not count toward their offering limits, which is the right result.⁵¹ But the conditions of Regulation S were written for certificated debt and equity, and an investment contract over a crypto asset that is not itself a security fits neither category. As a result, an issuer cannot determine which distribution compliance period applies, and the legending, stop-transfer, and purchaser-certification requirements that apply to equity securities of domestic issuers cannot be implemented for a fungible asset recorded on a permissionless ledger.⁵² The Commission should confirm that an offshore distribution of a subject crypto asset satisfies Regulation S where the issuer implements offering restrictions, makes no directed selling efforts in the United States, and excludes U.S. persons from the distribution through reasonable geographic and onchain controls for a 40-day distribution compliance period, and that Rule 905 does not apply.

Taken together, the foregoing six measures work within the Proposal as drafted and would ensure that the freely tradeable instruments the Proposal creates have somewhere to trade at scale, and that the market in which they trade includes the United States. Absent them, exit discounts will be severe, and the exemptions will go largely unused.

Alternatively, the transaction-lifecycle approach described in our response to Question 124 below would resolve these obstacles at their source, by treating secondary sales by holders who neither control the system nor possess material nonpublic information as outside the securities laws. For insiders, that approach would be paired with a status-based safe harbor of the kind the Decentralization Research Center has previously proposed to the Crypto Task Force: a safe harbor from underwriter status for control persons that opt into holding-period, volume, and disclosure conditions, with nothing attaching to the units sold, which would resolve the underwriter analysis for insiders without reintroducing restricted status to a fungible asset.⁵³ We would support that approach as well. The six measures above are what the Proposal requires if the Commission retains its current architecture; the alternative is what it could adopt if it is prepared to go further.

B. Startup Exemption (Subpart B, Rule 200)

⁵¹ See The Proposal, *supra* note 1 at 42 (proposed Rule 101(b), directing issuers to 17 C.F.R. § 230.152); 17 C.F.R. § 230.152(b)(2) (offers and sales made in compliance with Regulation S are not integrated with other offerings); The Proposal, *supra* note 1 at 321 (defining “aggregate sales” by reference to securities sold pursuant to other offering statements under Regulation Crypto Assets).

⁵² See 17 C.F.R. § 230.903(b)(3) (conditions applicable to Category 3 offerings, stated separately for debt securities and for equity securities); 17 C.F.R. § 230.905 (treating equity securities of domestic issuers acquired in Regulation S transactions as restricted securities).

⁵³ See Sarah Brennan, Decentralization Research Center, *2025 Safe Harbor Framework Overview* 5–6, 9 (Mar. 10, 2025) (written input to the SEC Crypto Task Force), <https://www.sec.gov/files/ctf-input-brennan-2025-03-10.pdf> (proposing that “insider sales and private placements may occur within the safe harbor” subject to holding-period, volume, and disclosure conditions keyed to the seller’s status as a related person, and carrying those conditions forward after the token ceases to be treated as a security).

Question 43: Should we exempt covered transactions from the registration requirements of section 5 of the Securities Act if the conditions in Rule 200(b) are satisfied, as proposed in Rule 200(a)?

As an initial matter, we strongly support the aim of the startup exemption to set forth an exemption from the registration requirements of section 5 of the Securities Act for certain offers, sales, and other distributions of covered investment contracts during a period of up to four years. In our responses under this Section II.B., we emphasize the exemption’s impact on airdrops.

Airdrops make it possible for projects to disperse ownership and control of an underlying crypto system, enabling it to operate autonomously, independent of human control, in a manner that mitigates risks for market participants. Airdrops are often conducted for free or for de minimis consideration, reducing their risks. Nonetheless, as we previously noted, market participants confront significant uncertainty in assessing whether a given airdrop program constitutes a securities transaction and therefore may require registration under the Securities Act.⁵⁴ This regulatory uncertainty has led numerous projects to exclude U.S. persons from receiving airdrops. Not only does this preclude Americans from fully participating in the next era of the internet, it also undermines the ability of crypto systems to disperse ownership and control in a manner that reduces participant risk.

The regulatory clarity that proposed Rule 200 would provide represents a significant step forward in this regard. However, as currently drafted, the proposed startup exemption contains two problems that, if unaddressed, will undermine its goals. We describe these problems, and propose solutions, in response to Question 44 below.

Question 44: Does the proposed definition of “covered transactions” establish an appropriate scope for the exemption?

The proposed definition of “covered transactions” fails to establish an appropriate scope for the exemption. As a practical matter, the overly broad definition of the term “covered transaction” renders the exemption’s offering limit unusable for projects leveraging proof-of-stake consensus mechanisms. The proposed definition of “covered transaction” reaches distributions made “[...] as a reward or incentive for conducting activities primarily related to operating, governing, or securing an associated crypto network or associated crypto application.”⁵⁵ Read literally, that language sweeps in the programmatic issuance that every proof-of-stake network effects through its consensus mechanism via validator rewards, staking emissions, and the like. In addition, the overbreadth of the term “covered transaction” also creates the possibility that every operating crypto system whose crypto asset remains subject to a covered investment contract would be saddled with a latent theory that its ordinary consensus processes may constitute unregistered offerings. To rectify this, the final rule should explicitly affirm that programmatic, protocol-level distributions effected by the autonomous operation of a network are not offers or sales by any person, and should be expressly excluded from the definition of the term “covered transaction.”

⁵⁴ Letter from Andreessen Horowitz to Crypto Task Force Chairman and Commissioner Hester M. Peirce, U.S. Sec. & Exch. Comm’n, re: *Recommendations Regarding a Safe Harbor for Certain Airdrops and Incentive-Based Rewards of Network Tokens* (Mar. 13, 2025), <https://www.sec.gov/files/a16z-crypto-safe-harbor-proposal-03132025.pdf> (hereinafter a16z Airdrop Safe Harbor Proposal), at 2–3.

⁵⁵ The Proposal, *supra* note 1 at 36; *see also id.* at 323 (proposed rule text).

A related problem is that the definition of “aggregate offering price” includes non-cash consideration, meaning that the startup exemption’s offering limit is also likely to be exceeded almost instantaneously by networks attempting to effect the global distribution of their associated crypto asset via airdrops and incentive-based rewards. A project relying on proposed Rule 200 could distribute roughly \$5 million of value in airdrops and incentive rewards, in total, across four years, inclusive of any cash raised. For a project intending to distribute meaningful ownership across a global user base, that allowance will dwindle quickly, undermining the ability of projects to rely on it while seeking to disperse ownership and eliminate control via decentralization. To resolve this, the Commission should amend the offering-limit calculation in four respects, each of which follows from the same principle: the limit should bound the capital an issuer raises from the public, not the value it distributes to the people who use, secure, and build its crypto system.

First, programmatic, protocol-level distributions effected by the autonomous operation of a network should be excluded from the limit, for the reason given above: they are not transactions by any person, they raise no capital, and counting them at imputed value would exhaust the limit within hours for any functioning proof-of-stake network. This would allow live networks to practically rely on the exemption. Further, the risk of this exclusion is negligible: an issuer can no more redirect a validator reward to itself than it can direct the network’s consensus. As such, excluding protocol-level distributions effected by the autonomous operation of a network would make the startup exemption practicable without increasing risks for market participants.

Second, gratuitous and incentive-based distributions to users of the crypto system should be excluded from the limit. Gratuitous airdrops involve no investment of money and fall outside *Howey* under the 2026 Interpretation’s own reasoning; incentive-based distributions, which reward use of a system rather than finance its development, raise no capital. Excluding them from the limit, while leaving them within the exemption’s disclosure framework, allows projects to disperse ownership broadly, which is what makes decentralization possible and what the Commission’s own economic analysis identifies as a source of network effects. The risk that an issuer disguises a capital raise as an incentive program is addressed by the 2026 Interpretation’s treatment of distributions made for more than nominal consideration and by the exemption’s disclosure of distribution methods under proposed Rule 103(b)(7).

Third, compensatory grants to disclosed related persons whose crypto assets are subject to disclosed vesting or lockup conditions should be excluded, on the model of Rule 701. Assessed at fair value, a project’s grants to its own developers and contributors could otherwise largely consume the limit even before a single unit is sold to the public. Making such grants under Rule 701 produces restricted crypto assets with no path to the resale relief Rule 701 ordinarily provides, because the issuer never becomes a reporting company. An express exclusion, conditioned on disclosure and on vesting or lockup terms, is both more protective and more workable. Therefore, these compensatory grants should be excluded from the limit. The same exclusion should extend to disclosed compensatory grants to unaffiliated persons who render bona fide services to the crypto system, such as validators and open-source contributors, whom Rule 701’s recipient categories do not reach.

Fourth, disclosed, programmatic liquidity provision to an automated market maker should be counted once, at the value of the crypto assets when deposited, or on a net basis. As drafted, each purchase from a pool is arguably a sale by the issuer at the prevailing price, with nothing netted for the pool's purchases. That trading volume, alone, could exhaust the limit without any net issuance. Counting the deposit once reflects the capital actually committed, keeps the limit administrable, and removes a trap that would otherwise catch issuers acting in good faith.

Question 45: In footnote 192 above, we express our view that covered investment contracts are not “equity securities” and, therefore, are not subject to section 12(g) of the Exchange Act. Should we codify this view by, for example, amending 17 CFR 240.12g5-1 to provide that for purposes of determining whether an issuer is required to register a class of equity securities with the Commission pursuant to section 12(g) of the Exchange Act, an issuer may exclude covered investment contracts?

The Commission should codify its position that covered investment contracts are not equity securities for purposes of section 12(g) of the Exchange Act, as this question contemplates. The codification should further state that the position applies wherever the term “equity security” appears in the Exchange Act and the rules thereunder. The position matters a great deal. Section 12(g)'s registration thresholds are crossed by nearly every crypto asset on its first day of distribution, and a token with ten thousand holders would otherwise trigger Exchange Act registration and the reporting that the Proposal is designed to avoid. The Commission's reasoning in this regard is sound: an investment contract is not among the instruments enumerated in section 3(a)(11) of the Exchange Act, Rule 3a11-1, or Rule 405, and a covered investment contract confers none of the attributes of equity. But, as proposed, that reasoning appears only in a footnote of the release, which binds no court and no private plaintiff and which a future Commission could abandon without notice and comment. Codifying it, by amending Rule 12g5-1 and by adding a corresponding provision to Part 228, would give issuers the certainty they need to distribute broadly, which is the purpose of the regime. Extending the codification to every use of the term “equity security” follows from the same logic and avoids the anomalous results that would otherwise arise under sections 13(d) and 16 and the tender offer rules, where large holders would face beneficial-ownership reporting, and related persons short-swing liability, with respect to an instrument the Commission has concluded is not equity at all; the Proposal already takes the parallel position under section 3(b)(3), and the two should be aligned.

Question 46: Are there specific revisions we should make to the proposed startup exemption to address airdrops? For example, should we provide additional guidance on how to calculate any consideration provided in exchange for the airdrop? Alternatively, should we adopt a separate exemption specifically tailored for airdrops? If so, what should a standalone exemption contain?

The Commission should adopt a separate exemption tailored to airdrops. As noted above, airdrops and incentive-based rewards do not typically involve an investment of money: they are distributed free of charge or for de minimis consideration, and are frequently transmitted in exchange for useful work such as securing a crypto system. The startup exemption, by contrast, is constructed around a capital-raising transaction, and accommodating distributions that raise no capital within that framework would require distorting conditions designed for a distinct purpose.

As we have previously argued,⁵⁶ this exemption should only be available to distributions where (1) the distribution is of a digital commodity; (2) the associated network is functional; (3) the distribution is broad and equitable; (4) the distribution is effected for limited consideration; and (5) transfer restrictions apply to certain related persons. Critically, failure to satisfy those conditions should create no adverse presumption; such distributions should instead be assessed under traditional approaches to the application of the federal securities laws.⁵⁷

Adopting a separate exemption for airdrops, and excluding programmatic and user-incentive distributions from the startup exemption's offering limit, would sharpen the startup exemption's purpose. Proposed Rule 200 would retain three distinct functions. It would provide a notice-based pathway for small cash raises, up to the offering limit, without the qualification process of the fundraising exemption, which is the pathway a seed-stage project needs to sell a community round. It would provide a lawful and disclosed home for the consideration-bearing distributions that are neither gratuitous airdrops nor capital raising, such as announced points and incentive campaigns, testnet rewards, and contributor grants, which under the 2026 Interpretation may form covered investment contracts and which, with programmatic and incentive distributions excluded from the limit, could proceed within the exemption's disclosure framework and public record rather than outside any framework at all. And it would supply the lifecycle record, from Form NOR through Form TR, through which a small project documents its representations and their completion. The separate airdrop exemption would cover distributions meeting its five conditions; the startup exemption would remain the vehicle for everything else a qualifying project distributes or sells.

Question 47: Should Rule 200 be time-limited as proposed in Rule 200(b)(1)? If so, is four years an appropriate duration for Rule 200?

The four-year default duration is appropriate. The Commission should, however, permit an extension where the issuer can demonstrate meaningful progress toward whatever exit conditions it is targeting, whether the elimination of control, the completion of its representations and promises, or the cessation of ongoing essential managerial efforts. The purpose of the period is to afford an issuer time to reach separation, and a project demonstrably approaching it along any of those paths should not lose the exemption to an arbitrary deadline. The extension mechanism should not favor projects pursuing decentralization over projects pursuing the completion of their representations; it should favor progress.⁵⁸

Question 48: Should we allow individuals or a group of entities or individuals to rely on Rule 200, as proposed under Rule 200(b)(2)? By requiring each member of a group to make the certifications in the notice of reliance and transition report, would the rule discourage two or more persons (whether individuals or entities) from collaborating on projects?

The Commission should permit individuals and groups to rely on proposed Rule 200, subject to three clarifications. Doing so would allow pre-entity teams and community-governed projects to use it at

⁵⁶ a16z Airdrop Safe Harbor Proposal, *supra* note 54 at 7; *see also* a16z March 2025 Letter, *supra* note 4 (response to Question 1, Part 5).

⁵⁷ *See* a16z Airdrop Safe Harbor Proposal, *supra* note 54 at 3.

⁵⁸ The Proposal, *supra* note 1 at 78; *see also id.* at 79 n.202 (relying in part on a16z's recommendation in setting the duration).

the stage at which distributions actually occur, rather than forcing premature incorporation, which in practice has often meant incorporation offshore. That is the right outcome, provided the rule is clear about who bears responsibility. First, because proposed Rule 200(b)(2) permits a group to be an issuer without specifying who belongs to it, the Commission should confirm that holding or voting a crypto asset does not, in and of itself, make a person a member of an issuer group. Second, the requirement that each member sign and certify would discourage collaboration, and the Commission should permit a group to act through a single designated legal entity, including a DUNA (see our response to Question 3 above), that signs, certifies, and bears responsibility for the exemption's conditions.⁵⁹ Third, the Commission should permit a successor or other interested person to file a Form TR where the original issuer has dissolved or cannot be found. A crypto asset whose issuer has disappeared is the clearest case of essential managerial efforts having permanently ceased, and as proposed no person is able to say so.

Each clarification addresses a concrete risk. Without the first, it could be argued that every tokenholder who votes in a project's governance is a member of the issuer group, bearing joint responsibility for the exemption's conditions and signing obligations under Form NOR and Form TR. That exposure would chill governance participation and make community-governed projects unusable as issuers. Without the second, responsibility for the exemption would be diffused across pseudonymous contributors who cannot practically sign, certify, or be served, whereas a designated legal entity concentrates accountability in a person with the capacity to do all three, which serves the Commission and investors better than joint and several responsibility that exists on paper only; the DUNA is the natural vehicle for this purpose. Without the third, the crypto assets of abandoned projects would remain perpetually subject to covered investment contracts that no one is able to terminate, to the detriment of holders and the secondary markets in which they trade. The risk that successor filings could be abused is addressed by conditioning them on public notice and on the same supporting analysis required of any Form TR.

Question 55: Should we include investment limits for individuals, as we have proposed for the fundraising exemption? If so, what limits should we adopt?

The Commission should not adopt individual investment limits for proposed Rule 200. Recipients of these distributions are earning or receiving tokens rather than investing savings, and the exemption's aggregate cap already bounds total exposure.

Question 58: Should we require an issuer to file a notice of reliance on Form NOR prior to any covered transaction as proposed in Rule 200(c)?

The Commission should retain the requirement that a Form NOR be filed prior to any covered transaction, but should clarify that a single Form NOR filed in advance of a campaign covers the distributions made under that campaign. Because the announcement of such a campaign may itself commence the offering, an issuer would otherwise be unable to determine when its filing obligation attaches. This approach is preferable to transaction-by-transaction filings for two reasons. Distributions under the startup exemption are typically continuous: campaigns run for months, distributions occur in

⁵⁹ The Proposal, *supra* note 1 at 79 (providing that “[t]he issuer may be an entity, an individual, or a group of individuals or entities,” and that each member of a group “would be required to sign the notice of reliance and transition report and provide the certifications thereunder”).

rolling tranches, and the number of individual transactions can run to the thousands, so per-transaction filings would be unworkable for issuers and uninformative for the public. And a single Form NOR filed before a campaign begins gives the Commission and the market notice at the only moment it matters, when the terms of the campaign are set and before any distribution has occurred, which is consistent with the Proposal's objective of establishing a fixed public record of the issuer's representations.

The Commission should also confirm that the certification of intent in Form NOR is one of present, good-faith intent, measured against the representations the issuer states in its Rule 103 disclosure, and that a change in plans subsequently disclosed on Form 1-UC is not a misstatement in the original certification. Absent that confirmation, the certification becomes a liability trap for the candid issuer, and the rational response is to say less.

Question 65: Should Rule 200(d)(1) require the information required by Rule 103 be filed on EDGAR rather than permitting the issuer to provide such information on a separate website? Would permitting this information to be provided on a separate website adversely impact the ability of investors and the Commission to pursue claims against the issuer for material misstatements or omissions? For example, absent the requirement to file such information on EDGAR, how would investors and the Commission be able to determine what information the issuer provided to investors at the time they were offered and sold covered investment contracts? Are there changes we should make to address these concerns?

The Commission should require that the proposed Rule 103 information be filed on EDGAR rather than merely posted to the issuer's website. Whereas a website can be edited or taken down, a fixed public record of the representations made at the time of the offer and sale is permanent, making the framework administrable.

C. Fundraising Exemption (Subpart C, Rules 300 through 307)

Question 76: Are there any portions of the fundraising exemption that we either should not adopt or that we should change in the final rules? If so, please identify those provisions along with any recommended changes to the rule.

As a general matter, we strongly support the fundraising exemption. The exemption would deliver benefits the Commission plainly intends: a level playing field on which entrepreneurs can finance crypto systems under a disclosure framework tailored to those systems rather than to corporate equity; equal access to capital formation for projects that lack venture backing, and equal access to participation for investors who are not accredited; and a domestic venue for token financing that would bring onshore activity that regulatory uncertainty pushed abroad. Those benefits will not materialize, however, unless the exemption is usable by the projects it is meant to serve. We believe that the Commission should make five targeted changes to the proposed exemption to maximize its utility.

First, proposed Rule 300(c)(3)(ii) should be amended to permit variable pricing under certain circumstances. The Commission's interpretation of proposed Rule 300(c)(3)(ii) suggests that offerings under the fundraising exemption must be made at a specified dollar amount per security.⁶⁰ Yet fixed-dollar pricing is incompatible with the manner in which crypto assets often trade. For example, disallowing

⁶⁰ The Proposal, *supra* note 1 at 126–27.

variable pricing forecloses the possibility of an issuer using an automated market maker pool to sell its crypto asset at floating prices. To address this, the Commission should replace the fixed-price requirement with a disclosed-mechanism requirement, permitting variable pricing where: (i) the pricing mechanism is disclosed; (ii) the rules governing that mechanism are fixed and disclosed before the sale begins; (iii) the sale is executed in accordance with those rules through public, auditable smart contracts; and (iv) a cap on proceeds or on units sold is enforced by the smart contract, itself. Uniform-price auctions, pooled-commitment sales in which every purchaser pays the same demand-determined price, sales along a published formula, and disclosed programmatic liquidity provision should each qualify.

Second, as drafted, the fundraising exemption does not expressly accommodate the mechanics through which many token offerings are conducted. Indications of interest are commonly expressed through wallet preregistration, subscriptions are mediated by smart contract, and offering materials are delivered by wallet-addressed notice or token-gated access, rather than to identified persons. Absent express accommodation of these practices, an issuer cannot determine whether an ordinary onchain offering satisfies the conditions of the exemption. To rectify this, the final rule should expressly permit these mechanics.

Third, certain of the proposed exemption's issuer eligibility criteria are ill-suited to the projects that the Proposal is meant to serve. Many projects store their assets onchain and enjoy a global base of contributors. Imposing requirements, especially issuer eligibility criteria, that are at odds with these characteristics would merely invite further offshoring of this industry. The requirement that an issuer be organized in the United States is a sufficient jurisdictional nexus on its own, because a domestic entity is subject to U.S. jurisdiction and service of process without more. The three additional conditions in proposed Rule 300(b)(1) add nothing to recourse and much to exclusion. The requirement that a majority of the issuer's executive officers or directors be U.S. citizens or residents disqualifies projects whose contributor teams are, as most are, international, without improving the Commission's or investors' ability to reach the issuer. The requirement that more than 50 percent of the issuer's assets be located in the United States is unadministrable for any issuer that holds its treasury onchain, since an onchain treasury has no set location, and it would therefore exclude issuers at random. And the requirement that the issuer's business be administered principally in the United States is irreconcilable with a distributed team, which is administered from a variety of locations, and would only serve to invite further offshoring, contrary to the Proposal's competitiveness rationale. The Commission should eliminate all three; if it believes an additional nexus is warranted, a principal-place-of-business requirement of the kind Regulation A uses, or an agent for service of process and consent to jurisdiction, would serve the purpose without the arbitrary exclusions.⁶¹ For the same reasons, and in response to Requests for Comment Nos. 49 and 50, the startup exemption should remain free of these nexus conditions.

Fourth, ongoing disclosure should track the assets that investors actually hold. At present, Form 1-UC's current-report triggers are initiated by corporate events of the issuer rather than events affecting the crypto system or related crypto assets, and therefore do not capture what is material to a tokenholder. Form 1-SC presents a related difficulty: as proposed, it does not center on the issuer's progress against the efforts it represented it would undertake, which is the record on which any subsequent determination under Form TR depends. To resolve this, the Commission should tie Form 1-UC's triggers to network

⁶¹ The Proposal, *supra* note 1 at 109.

developments, such as changes in control of the network or its administrative keys; material exploits or outages; material protocol upgrades; changes to token supply or economic mechanisms; and related-person dispositions above specified thresholds. Tying the triggers to the crypto system resolves the problem because investors hold the crypto asset, not the issuer's equity, and the asset's value and risk are altered by events affecting the system: a change in who controls the network's administrative keys, an exploit, an upgrade, or a change in supply bears directly on what a tokenholder owns, whereas a change in control of the issuer's corporate parent is, at most, second-order. Aligning current reports with the asset makes them informative to the people who read them, and it builds the ongoing record against which the issuer's eventual Form TR analysis can be verified.

Fifth and finally, the Proposal provides no analog to the Form 8-A bridge available to Regulation A issuers. As a consequence, exchange listing could require full Securities Act registration of a covered investment contract issuer. Separately, proposed Rule 305(c)'s reporting off-ramp imports a concept that is unadministrable on a permissionless ledger:⁶² the number of holders "held of record," defined by reference to 17 CFR 240.12g5-1. Addresses are not persons, and omnibus accounts, smart contracts, and multisignature arrangements render any record-holder count unworkable. As Question 123 asks directly, the Commission should not adopt that definition here. To resolve these challenges, the Commission should provide a bridge analogous to Form 8-A. Under Regulation A, a Tier 2 issuer may register a class of securities under section 12(b) of the Exchange Act by filing a short-form Form 8-A, with the qualified offering statement serving in place of a full registration statement. An analogous provision would permit a covered investment contract issuer that elects to pursue listing on a national securities exchange to register the class on the strength of its qualified Form 1-CRYPTO, rather than preparing a Form 10 or a registration statement under the Securities Act. The benefit is a lawful route to exchange listing for issuers that want one, whereas the cost, Exchange Act reporting, is one the issuer assumes by choice. The reporting off-ramp should be tied to separation, that is, to the filing of a Form TR under revised Rule 400, together with objective trading-volume thresholds, such as a specified average daily trading value in U.S. markets. Each of those conditions can be verified from public data without reference to the identity of holders, which is what makes them administrable on a permissionless ledger, and tying the off-ramp to separation aligns the end of reporting with the end of the dependence that reporting exists to mitigate.

D. Investment Contract Safe Harbor (Subpart D, Rule 400)

Question 124: Should we adopt Rule 400 as proposed?

Proposed Rule 400 should be adopted in the final rules, subject to certain amendments that bring the Proposal in line with the *Howey* case law and the Commission's own taxonomy. The investment contract safe harbor is, in our view, the single most valuable innovation in the Proposal. An administrable public mechanism marking the moment at which a covered investment contract ceases to exist is something no regulator has previously offered, and its benefits are substantial: it gives legacy projects that have completed their work a way to place the transition on the public record (the Commission's own estimates anticipate far more reliance on the safe harbor than on either offering exemption); it ends, for separated assets, the venue and intermediary problems described in our response to Question 153; and it gives purchasers notice of the point at which the federal securities laws no longer apply, so that they can

⁶² The Proposal, *supra* note 1 at 159.

price the asset and protect themselves accordingly. The Commission is right to provide it. To realize the first of those benefits, the final rules should confirm that a legacy issuer, whose crypto asset was distributed before the final rules take effect, may file a Form TR and rely on the safe harbor without first relying on either offering exemption.

Our concern with proposed Rule 400 is confined to the standard by which separation is measured. As we explained in Section I, proposed Rule 400 contains a critical flaw: its emphasis on form over substance opens the door to substantial circumvention of the Proposal in a manner that is at odds with both the goals of the Proposal and the Commission’s investor protection mandate. As we have previously argued,⁶³ what makes the *Howey* test such a durable framework is its focus on “economic reality.” *Howey* asks not for a narrow evaluation of an issuer’s representations, but for a holistic assessment of how an asset is being sold, the economic and non-economic attributes of the arrangement, and the reasonable expectation of purchasers. Although the test is decades old, it is for precisely this reason that it continues to apply to novel structures of which its original drafters could not possibly have conceived. The benefit of a substance-over-form analysis is that it can distinguish between a genuine reduction of risks and superficial changes to a covered investment contract. Proposed Rule 400, by contrast, advances a *formalistic* approach that would make possible substantial circumvention and, ultimately, stymie the Commission’s goal of providing a comprehensive, tailored securities offering regime to help foster innovation and responsible capital formation in the domestic market for crypto assets.

Under the Proposal, the Commission will deem a covered investment contract to have ceased to exist if the conditions set forth in proposed Rules 400(a) and (b) are satisfied. Proposed Rule 400(b) requires that the issuer has filed Form TR with the SEC, while proposed Rule 400(a) requires that “[...] the issuer of the covered investment contract has completed or otherwise permanently ceased all essential managerial efforts **that it represented or promised it would engage in under the covered investment contract** and is not making and does not intend to make any new representations or promises to engage in essential managerial efforts with respect to the crypto asset” (emphasis added).⁶⁴ This standard is consistent with the 2026 Interpretation, which advanced the same formalistic reading of *Howey* at the formation stage. That consistency is the problem. The 2026 Interpretation helpfully identified several categories of non-security crypto assets—digital commodities, digital collectibles, and digital tools—but its formalistic approach to *Howey* makes the universe of crypto assets that escape the securities laws far broader than those enumerated categories. Under it, any crypto asset that is not an enumerated security can avoid the securities laws so long as its issuer makes no explicit representations or promises, and any covered investment contract can be terminated by completing representations the issuer itself drafted. The primary consequence of the 2026 Interpretation and the Proposal, taken together, is that projects can avoid the securities laws merely by not speaking, which renders the taxonomy’s careful categories largely beside the point.⁶⁵ That result is not in line with the case law, under which the absence of representations

⁶³ a16z March 2025 Letter, *supra* note 4 (response to Question 1, Part 2) (describing *Howey* as “a flexible, substance-over-form framework” whose “emphasis on ‘economic reality,’ rather than rigid formal categories, prevents regulatory arbitrage”).

⁶⁴ The Proposal, *supra* note 1 at 93.

⁶⁵ The point bears spelling out, because the taxonomy is the 2026 Interpretation’s principal contribution, and the formalistic premise quietly undoes it. The taxonomy sorts crypto assets by what they are: a digital commodity, for example, cannot convey “[...] intrinsic economic properties or rights, such as generating a passive yield or

is highly probative but not dispositive, and it may not be respected by the states, by the courts, or by a future administration.

This standard creates the five problems we identified in Section I, all of which share a single root cause. Proposed Rule 400 deems a covered investment contract extinguished when the issuer has exhausted the inventory of efforts it represented or promised. But a contract can be extinguished by exhausting its promise inventory only if the promise inventory is actually exhaustive of the contract; the exit design therefore presupposes a formation theory under which investment contracts are made of issuer statements and nothing else.

The Commission has two ways to answer that implication, and both present challenges. If the promise inventory is exhaustive, then the Commission has adopted, without analysis, a formation rule that is narrower than *Howey*, under which courts locate expectations in structure, conduct, and course of dealing as well as in statements. As an interpretation of the statute, that will earn no deference and offer little persuasive weight. Alternatively, if the promise inventory is not exhaustive, then proposed Rule 400 deems extinguished contracts that continue to exist in economic reality, which means it operates not as an interpretation but as an exemption, forbearing from the application of the securities laws to arrangements that still satisfy them, without invoking the Commission’s exemptive authority or making the findings that authority requires. Either way, the cure is the same: The Commission should amend proposed Rule 400 to provide that a covered investment contract ceases to exist only when, in economic reality, purchasers’ expectations of profit no longer depend on the essential managerial efforts of the issuer or related persons. By measuring cessation by economic reality rather than formalism, the final rules would track existing case law and earn judicial respect. And by using the transaction exemption we recommend in response to Question 134, the exemptive relief would be based on a substantive standard.

The SEC can effectively implement this recommendation through three targeted changes to proposed Rule 400, each of which builds upon the Commission’s prior work in this area. The first change gives every digital commodity a conclusive, code-verifiable exit. The second preserves the Proposal’s own fulfillment test as a presumption, so that completion of represented efforts continues to carry real weight. The third confines the residual substantive inquiry to the narrow class of arrangements, those carrying an economic interest in a business or person, where ambiguity is the lesser evil. The result retains determinacy where determinacy is safe and restores substance only where formalism is dangerous. Each of these pathways is discussed in further detail below.

	Entry (formation of the investment contract)	Exit (cessation of the investment contract)
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conveying rights to future income, profits, or assets of a business enterprise or other entity, promisor, or obligor.” The 2026 Interpretation, *supra* note 13 at 14. The formation and exit tests, by contrast, sort crypto assets by what the issuer said. Once the second sort is operative, the first does no work. A crypto asset that conveys exactly the economic rights the definition excludes, distributed without express representations, sits outside the securities laws on the same footing as a digital commodity; and a digital commodity whose issuer happened to make representations remains inside until those representations are exhausted, although its features placed it outside from the start. The exclusion the Commission wrote into its own definition is thus left unenforced by its own test. The amendments we propose in response to this question restore the taxonomy to its intended role, by making digital commodity status the conclusive exit and an economic interest in a business or person the presumptive bar to it.

Proposal as drafted	Express representations or promises by the issuer to undertake essential managerial efforts.	Completion or permanent cessation of those represented or promised efforts, and the filing of Form TR; conclusive only as to the Commission.
Recommended approach	Economic reality: a reasonable expectation of profits from the essential managerial efforts of the issuer or related persons, whether created by representations or by conduct.	Economic reality, verified through three rails: (1) for a digital commodity, elimination of control together with completion or cessation of represented efforts, which is a conclusive exit; (2) for any other crypto asset, completion or cessation of represented efforts creates a rebuttable presumption of exit; and (3) where the crypto asset carries an express or implied economic interest in a business or person, a rebuttable presumption against exit applies.

The **first** change the Commission should make to Rule 400 is to specify, through an explicit and conclusive test consistent with its own categorization of digital commodities as non-security crypto assets, that a covered investment contract involving a crypto asset that is a digital commodity (as defined in revised Rule 100, per Section II.A. above) ceases to exist once its associated crypto network operates without reliance on human control and its issuer has completed or ceased all promised efforts. As we have previously argued,⁶⁶ the presence of control is what gives rise to the principal-agent risks that the federal securities laws address. As such, eliminating control warrants limiting the application of the securities laws. This is precisely the conclusion the Commission itself reached in the 2026 Interpretation when it determined that digital commodities are non-security crypto assets: an asset whose value derives from the programmatic operation of a functional system, rather than from the efforts of a controlling party, does not present the risks the securities laws address. The promised-efforts element is not a roving review of every public statement the issuer has made; it is measured against the representations and completion criteria the issuer would be required to state under Rule 103(b)(1), as revised in our response to Question 28. Together, these bound the inventory of promised efforts and make completion verifiable.

Once the crypto system to which a digital commodity relates operates absent human control, and the issuer and related persons have ceased all promised efforts, the digital commodity no longer poses security-like risks. Therefore, the Commission should incorporate an explicit, conclusive exit into revised Rule 400 specifying that a covered investment contract involving only a digital commodity ceases to exist once its associated crypto network operates without human control and its issuer has completed or ceased all promised efforts.

Significantly, the Commission has already supplied a framework for determining when an associated crypto system operates without reliance on human control. As the SEC specified in the 2026 Interpretation, a crypto system functions absent human control if it “[...] functions and operates autonomously with no person, entity, or group of persons or entities having operational, economic, or

⁶⁶ a16z March 2025 Letter, *supra* note 4 (response to Question 1, Part 5) (explaining that “whoever controls a system can unilaterally affect or structure the risk associated with that system”).

voting control.”⁶⁷ In the final rules, the Commission could leave that definition in place without further elaboration, preserving its own flexibility to apply it to novel architectures. Alternatively, if the Commission wishes to make the digital commodity exit as determinate as possible, it could further elaborate on that definition with objective, verifiable indicators of each form of control it identifies. We would support either course.⁶⁸ If the Commission elects to elaborate, the indicators could ask, for example, whether the crypto system in question operates autonomously on pre-established rules embedded in source code; whether any person can unilaterally restrict, censor, or prohibit use; whether the source code grants private permissions or hard-coded privileges; whether users maintain independent custody and control of their assets; and whether the network’s economic mechanisms operate programmatically without managerial discretion. We discussed these mechanisms of control in our initial submission and do not repeat that discussion here.⁶⁹ Either way, the final rules can instantiate Chairman Atkins’ summary of Commissioner Peirce’s observation regarding how an investment contract may terminate in relation to crypto assets: “Networks mature. Code is shipped. Control disperses. The issuer’s role diminishes or disappears.”⁷⁰

The Commission’s September 2026 staff guidance also points in the same direction, and the Commission should codify it. The staff has confirmed that, once a crypto system is functional, services to secure, maintain, improve, or enhance it, or to facilitate network effects, do not involve essential managerial efforts (Question 2.3); that once a functional crypto system has no central party, issuer statements relating to the system likely would not create a new investment contract (Question 2.4); and, as amended, that an issuer’s announcement of a buyback program for the crypto asset of a functional crypto system with no central party would not constitute a representation or promise to undertake essential managerial efforts (Question 2.5). These answers should be codified in the final rules or adopted in the adopting release, because staff FAQs have no legal force or effect. The “no central party” condition also reconciles the guidance with our third recommendation below: programmatic and protocol-funded mechanisms on a system that no one controls are consistent with digital commodity status, and the conclusive exit we propose would confirm as much, but a buyback funded by the discretionary use of an offchain business’s revenues is not a buyback on a system with no central party, and it falls within the presumption against separation.⁷¹

⁶⁷ The 2026 Interpretation, *supra* note 13 at 14.

⁶⁸ We note that the Proposal considered a decentralization-based alternative and declined it on cost grounds, reasoning that issuers might “[...] need to retain the services of legal and technical professionals to verify that they meet the conditions of the safe harbor.” We respectfully submit that uniform, code-and-ledger criteria are cheaper to verify than a subjective promise inventory—for issuers, for investors, and for the Commission alike—because they apply identically across projects and are observable by anyone. The alternatives analysis, moreover, counts only the costs to issuers; it never weighs the cost to purchasers of a token leaving the securities laws while its issuer retains control of it. The Proposal, *supra* note 1 at 276; *see id.* at 274–76 (considering this alternative under the heading “Network Decentralization and Functionality Requirements”). For our discussion of control, *see* a16z March 2025 Letter, *supra* note 4 (response to Question 1, Part 3); a16z May 2025 Letter, *supra* note 4 (responses to Questions 13a and 14) (explaining that “a control-based decentralization framework must be defined to mean the elimination of control, not just its dispersion,” because “[d]ispersion is not equivalent to elimination”).

⁶⁹ a16z March 2025 Letter, *supra* note 4.

⁷⁰ Atkins Statement, *supra* note 47.

⁷¹ *See* Division of Corporation Finance, SEC, *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, as amended Sept. 28, 2026), Questions 2.3, 2.4, and 2.5,

In this respect, the Proposal should also specify that participation in transparent, rules-based decentralized governance (including narrowly scoped security councils and emergency mechanisms delegated through and accountable to such governance) does not constitute human control. Since collective decision-making through an open, rules-based process does not reintroduce the trust dependencies of individual human control, it should not be treated as such. Finally, in future guidance the Commission could clarify concentration thresholds with respect to what constitutes sufficient distribution of ownership and voting power to address control-related risks. While important, these thresholds are better specified in guidance than in the final rules: the rule should state the principle that ownership and voting power must be distributed, while the numeric calibration is a judgment that will require revision as markets evolve. Two qualifications keep that principle from being gamed. Governance counts for this purpose only where its outcomes bind the system; a mechanism that is advisory, or subject to unilateral veto, is control retained under a governance label. And the assessment should address the crypto system as a whole, including the contracts through which the asset is actually used, since immutability of a token contract alone does not foreclose unilateral control over the system's functionality.

The **second** change the Commission should make to Rule 400 is to specify that the Proposal's standard—completion or permanent cessation of represented or promised essential managerial efforts—provides only a rebuttable presumption that a covered investment contract has ceased to exist, rather than a conclusive determination to that effect. Doing so would ensure that the cases outlined above in which a covered investment contract is deemed to no longer exist, but security-like risks remain as a result of the economic reality surrounding that asset, continue to be subject to Commission oversight. A rebuttable presumption provides a way for the Commission to continue to police covered investment contracts for security-like risks, even after Form TR has been submitted and all relevant promises have been fulfilled or halted—while still granting clarity to market participants.

The **third** change the Commission should incorporate into proposed Rule 400 is a rebuttable presumption that where a crypto asset carries an economic interest in a business or person, whether explicit or implicit, separation should be presumed *not* to have occurred. This ensures that arrangements that continue to pose security-like risks remain subject to the Commission's oversight. If a crypto asset's value is substantially driven by offchain revenue or the operations of an identifiable company, the related covered investment contract poses security-like risks, and should be treated accordingly. Significantly, the Commission already implicitly recognizes this in the 2026 Interpretation's definition of "digital commodity," which excludes any crypto asset that conveys "[...] intrinsic economic properties or rights, such as generating a passive yield or conveying rights to future income, profits, or assets of a business enterprise or other entity, promisor, or obligor."⁷² Such arrangements were also excluded from Question 2.5 of the Commission's September 2026 staff guidance.⁷³ Adding a rebuttable presumption to this effect would ensure that arrangements conveying economic interests that give rise to security-like risks are presumed to continue to be covered investment contracts.

Taken together, these three targeted changes to proposed Rule 400 would resolve the central problem contained in the Proposal, enabling it to achieve its goal of introducing a comprehensive, tailored

<https://www.sec.gov/about/divisions-offices/division-corporation-finance/faqs-crypto-assets> (hereinafter the September 2026 Guidance). The FAQs state that, like all staff guidance, they "have no legal force or effect."

⁷² The 2026 Interpretation, *supra* note 13 at 14.

⁷³ The September 2026 Guidance, *supra* note 71.

securities offering regime to help foster innovation and responsible capital formation in the domestic market for crypto assets, while preserving investor protections. Importantly, none of these changes are net new; each builds upon prior Commission work in this area and creates consistency across the Commission's regulation of crypto assets. The 2026 Interpretation provides a workable definition of "digital commodity," the control assessment is similarly drawn from the 2026 Interpretation, and the proposed rebuttable presumptions alter mechanisms already present in the Proposal, itself. For the same reasons, we encourage the Commission to conform the 2026 Interpretation to the economic reality standard at the formation stage as well. Doing so would not require any change to the taxonomy itself (the categories of non-security crypto assets the 2026 Interpretation identifies); it would rather make those categories meaningful, because they would no longer be superseded by a formalistic reading of *Howey* under which many other types of crypto assets escape the securities laws merely because their issuers refrain from speaking.

Our recommendations are deliberately incremental. They retain the Proposal's architecture, including a covered investment contract that persists until separation and an exit measured in the first instance by the issuer's own representations, and they add to that architecture the economic reality the case law requires. A more comprehensive alternative exists that we would also support. Rather than treating every transaction in a subject crypto asset as a transaction in the covered investment contract until exit, the Commission could adopt a single theory of transactions across the lifecycle of a crypto asset. Under that approach, sales by the issuer before a crypto system is functional would be securities transactions; after functionality, capital-raising sales by the issuer and resales by control persons would be addressed through a safe harbor from underwriter status for sellers that opt into holding-period, volume, and disclosure conditions, which attach to the seller rather than the units sold, on the model of Rule 144; compensatory grants, airdrops, and other distributions for which no cash changes hands carry no presumption either way and may opt into covered status and preemption; and ordinary secondary sales by holders who neither control the system nor possess material nonpublic information are not securities transactions, with a control-based safe harbor marking the exit. We understand that the Decentralization Research Center will submit a proposal along these lines on this docket. The approach is close to the framework of the Financial Innovation and Technology for the 21st Century Act that the United States House of Representatives passed in 2024, which we supported, and it resolves the secondary-market obstacles we describe in our response to Question 153, because it asks of each transaction the question *Howey* asks rather than attributing the original contract to every later sale. It is a larger departure from what the Commission has proposed and more complex to administer, although we believe its resemblance to Rule 144 is a strength. If the Commission is prepared to go further than the Proposal, that approach is the better route. If it is not, the three changes we recommend above are the minimum that an economic reality standard requires.

Should the Commission opt not to incorporate our three proposed changes to proposed Rule 400 in its final rules, a further potential solution is supplied by another commenter. In his recent submission, Gabriel Shapiro proposed that the Commission consider amending Form TR to require disclosure of the powers the issuer and its related persons retain and the tokens they hold, as well as a bright-line disqualifier making the safe harbor unavailable while the issuer or its affiliates hold unilateral, discretionary powers—with a narrow exception for bug-fix authority and powers that are publicly disclosed, limited to defined circumstances, and exercisable only under a published process. We urge the

Commission to adopt the changes to proposed Rule 400 we outline above and, if not, to instantiate those proposed by Mr. Shapiro.⁷⁴ Should the Commission decline to adopt any of these proposals, it should, at a minimum, condition proposed Rule 400 categorically on the subject crypto asset being a digital commodity, and, failing that, so limit the exemptions themselves. An unconditioned exit reached through an unconditioned exemption would create the risks described in Section I. We urge the Commission to make the amendments proposed in response to this question, without which the Proposal will fail to achieve its important objective.

Question 130: Should Form TR require issuers to include an analysis supporting their determination with respect to the proposed condition in Rule 400(a)? Alternatively, should we allow issuers to certify that they have made this determination without requiring them to include any analysis?

As noted above, we urge the Commission to revise proposed Rule 400 in line with our recommendations outlined in response to Question 124. We further urge the Commission to require issuers to certify their determination under proposed Rule 400(a) as so revised with a supporting analysis. If the Commission adopts the objective, verifiable criteria described above, that determination becomes a question of fact rather than legal analysis, and supplying such a document would be a simple exercise that would help ensure investors are equally situated with respect to the information pertaining to a given crypto asset. Due to the objective, verifiable nature of this information, investors could also readily verify this supporting analysis, a feature that further supports investor protection and market integrity.

Question 132: Is additional guidance required beyond the views that the Commission expressed in the 2026 Interpretation regarding the types of efforts that may be regarded as essential managerial efforts for purposes of the investment contract safe harbor? If so, which issues should we address on this point?

Whether additional guidance is warranted depends on whether the Commission adopts the amendments to proposed Rule 400 recommended in our response to Question 124. If it does not, then additional guidance regarding the types of efforts that constitute essential managerial efforts would do little work, because under the Proposal's formalistic approach the question is not a substantive one: the essential managerial efforts are simply whatever efforts the issuer represented or promised, and an issuer that makes no representations or promises has no essential efforts at all, because nothing makes the relationship an investment contract in the first place. Guidance cannot give substantive content to a term the rule has defined solely by reference to the issuer's own statements.

If the Commission adopts our recommendations, however, guidance becomes valuable, and it should address three matters.

First, the Proposal suggests that after a "[...] crypto network or associated crypto application is functional,"⁷⁵ activities of and contributions made by parties are unlikely to constitute essential managerial efforts, because success thereafter depends on the activities of many parties. That premise holds only where the crypto system actually operates without reliance on human control, as that concept is

⁷⁴ See the Shapiro Letter, *supra* note 38.

⁷⁵ The Proposal, *supra* note 1 at 56.

described above in our response to Question 124. A crypto system that is “functional” but remains dependent on one party’s offchain operations remains substantially dependent on that party, and therefore remains subject to security-like trust dependencies; the guidance should say so. The converse should be stated as well. A crypto system that operates without reliance on human control does not require that development cease. Absent representations or promises to undertake them, ongoing contributions by developers are the ordinary operation of open infrastructure, not essential managerial efforts of the issuer.

Second, the guidance should confirm that the expectation of profit from essential managerial efforts can arise not only from express representations but also from conduct, consistent with the case law; an issuer that engages in a pattern of conduct, such as regular token buybacks funded by company revenue, creates precisely the expectation the federal securities laws address, whether or not it ever says so.

Third, and most usefully, the guidance should enumerate the types of relationships that are likely to implicate essential managerial efforts, drawing on the 2026 Interpretation’s own description of the economic rights that are incompatible with digital commodity status: passive yield; rights to future income, profits, or assets of a business enterprise, promisor, or obligor; and dependence on an offchain business’s revenues or discretionary conduct. So enumerated, those relationships would supply the content of the third amendment we recommend to proposed Rule 400, allowing the rebuttable presumption against separation to be keyed to the relationships the Commission has itself identified rather than to buybacks alone.

Question 133: Should we modify the proposed safe harbor to cover only certain circumstances in which a covered investment contract may cease to exist? For example, should the proposed safe harbor only be available for issuers that have fulfilled their representations or promises to engage in essential managerial efforts under the covered investment contract?

Fulfillment and abandonment should not exit on identical terms, for the reasons given in Section I. The remedy, however, is not to withhold the safe harbor from issuers that abandon their efforts, but to condition reliance on it in those circumstances. The Commission should require enhanced disclosure of the circumstances of the cessation, consistent with the 2026 Interpretation’s requirement that a public announcement of non-performance be “[...] widely disseminated to market participants and unambiguous,”⁷⁶ and should preclude the same principals from relying on the Proposal’s exemptions with respect to a substantially similar crypto asset, on the model of the one-time use condition in proposed Rule 200(b)(3). These conditions serve three purposes. Enhanced disclosure gives holders what they need most in the event of abandonment, which is to know that it has occurred, so that they can price the asset and pursue any recourse available to them. An unambiguous public signal is also what the 2026 Interpretation itself requires for separation by announcement, and conditioning the safe harbor on it aligns the two. And a bar on reusing the exemptions prevents serial abandonment from becoming a business model, in which the same principals launch, raise, abandon, exit, and repeat, while giving the Commission a record against which a pretextual abandonment can be tested.

⁷⁶ The 2026 Interpretation, *supra* note 13 at 31; *see also* The Proposal, *supra* note 1 at 165 (quoting the same requirement); *id.* at 168 (Request for Comment No. 133); *id.* at 83 (Request for Comment No. 51) (the “substantially similar” standard in the one-time use condition).

Question 134: We recognize that some parties may be reluctant to rely on the investment contract safe harbor because they may view the safe harbor as requiring a tacit admission that the crypto asset previously was subject to an investment contract and that the party relying on the safe harbor was the issuer for such investment contract. Are there changes we could make to the investment contract safe harbor that would address these concerns? Will issuers opt to rely on the 2026 Interpretation instead of using Rule 400?

The concern this question identifies is substantial, and it cannot be addressed by adjustments to the safe harbor’s mechanics alone. Instead, it can only be resolved through the changes to proposed Rule 400 that we recommend above in response to Question 124. As currently drafted, reliance requires a party to concede both that the crypto asset was subject to an investment contract and that it was the issuer of that contract, while, as the Commission acknowledges, the safe harbor “[...] would not prevent other parties from asserting that a crypto asset is subject to an investment contract (or is otherwise a security).” Reliance therefore constitutes an admission that private plaintiffs could later use to bring an action against the issuer in the manner described in Section I. As such, we expect that sophisticated issuers will forgo the Proposal in favor of the 2026 Interpretation, leaving the Proposal to be used principally by those parties with the least to lose from making this admission.

The distinction between an exemption and a deeming provision explains both the problem and its solution. Reliance on an exemption is the ordinary posture of every exempt offering: an issuer that claims Regulation D or Regulation A concedes that it is conducting a securities offering, but the concession exposes it to nothing, because if the exemption’s conditions are satisfied there is no violation of section 5 and therefore no claim under section 12(a)(1), and the burden of establishing the exemption is one issuers routinely carry. Form TR is different because proposed Rule 400 is not an exemption but a deeming provision. It asserts the Commission’s view that the contract has ended; it does not exempt the transactions that follow. A private plaintiff who persuades a court that the contract persisted may therefore bring claims under section 12(a)(1) with respect to post-separation sales, and may use the narrative in the Form TR, including the issuer’s own description of the representations it made, as evidence concerning the original offering, subject to the applicable periods of repose. The solution proposed in response to Question 124 mitigates that exposure because a court applying *Howey* is far more likely to agree that a contract ended when control was eliminated and economic reality was assessed than when the issuer merely completed, or abandoned, a list of its own promises; a determination that tracks the judicial standard earns persuasive weight precisely because it tracks the judicial standard. The measures described below close the remaining gap structurally.

Two further measures would help make the exit durable and enhance its acceptance by courts. First, revised Rule 400 should be paired with an exemption from the registration requirements of section 5 of the Securities Act for post-separation transactions, adopted under the Commission’s exemptive authority.⁷⁷ Specifically, the Commission should adopt, under section 28 of the Securities Act, an exemption from section 5 for offers and sales of a subject crypto asset occurring after the issuer has satisfied revised Rule 400 and filed its Form TR. An exemption operates against all persons, whereas a deeming provision controls only the Commission’s administration of the federal securities laws. Because

⁷⁷ 15 U.S.C. § 77z-3. The Commission proposes the fundraising exemption pursuant to this same authority. *See* The Proposal, *supra* note 1 at 96.

section 12(a)(1) liability attaches only to offers and sales made in violation of section 5, an exemption from section 5 removes the predicate for private claims in a way that no deeming provision can; courts apply exemptions as written, and the public-interest and investor-protection findings section 28 requires would be made once, in the rule. Those findings follow from the substantive standard that conditions the exemption. Once revised Rule 400 is satisfied, whether through the conclusive exit for digital commodities or through an un rebutted presumption of separation, purchasers no longer depend on any person's essential managerial efforts; the information asymmetries that registration exists to remedy have receded; the issuer's Rule 103 disclosures and Form TR analysis remain on the public record; and the antifraud provisions remain available for any misstatement made along the way. On that basis, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors. Fraud claims would survive, as they should. The exemption would also complement the Exchange Act relief we recommend in response to Question 153, so that both the Securities Act and the Exchange Act consequences of separation are addressed through the Commission's exemptive authority, rather than through interpretation alone. The Commission should also state that separation is prospective: it neither validates nor impugns transactions completed before it, which remain governed by the exemption under which they were conducted.

Second, the final rules should expressly state that reliance on the safe harbor, including the filing of a Form TR, is not an admission that the subject crypto asset was previously subject to an investment contract or that the filer was the issuer of one, and creates no presumption to that effect. The Commission can accomplish this in the rule text itself, in the same manner that its existing safe harbors and exemptions disclaim adverse inferences: Rule 144's preliminary note provides that a person who does not comply with the rule is not thereby deemed an underwriter; Rule 3a4-1 provides that failure to meet its conditions creates no presumption of broker status; and the Commission's recent exemptive order for tokenized securities venues provides that "no presumption shall arise on the basis of a person's reliance on the Covered Firm Exemption that the person is a dealer."⁷⁸ A parallel provision would govern the Commission's own treatment of the filing and the inferences the rule itself supports. It would not purport to control the admissibility of evidence in private litigation, which the Federal Rules of Evidence govern, but it would give courts a clear statement of the filing's intended significance. The benefit is direct. The Commission's own estimates assume substantial reliance on the safe harbor, and the public record the Form TR creates is the safe harbor's principal contribution to investor protection. Without a non-admission provision, the projects the Commission most wants on that record are precisely the ones counsel will keep off it.

Question 135: Should Rule 400 also set forth a safe harbor from the term "investment contract" in the definitions of "security" in section 2(a)(36) of the Investment Company Act and section 201(a)(18) of the Investment Advisers Act of 1940? If so, how should we revise Rule 400 to incorporate these uses of the term?

The Commission should set forth a safe harbor from the term "investment contract" in the definitions of "security" in section 2(a)(36) of the Investment Company Act and section 201(a)(18) of the Investment Advisers Act of 1940, but *only if* the revisions to proposed Rule 400 recommended in our response to Question 124 are adopted. Absent these changes, extending proposed Rule 400's formalistic

⁷⁸ Release No. 34-106402, *supra* note 46.

exit into those statutes would compound rather than resolve the defects described above, permitting an issuer to escape the Investment Company Act and the Advisers Act through the submission of a form and the fulfillment of representations that are, by design, narrow or easily satisfied (or both).

If those revisions are adopted, however, the extension would deliver real benefits. Many crypto assets touch pooled or managed value, including liquid staking tokens and tokens representing interests in onchain vaults, and for them a determination under the Securities Act and the Exchange Act that the asset is no longer subject to an investment contract resolves only part of the question. Separation under revised Rule 400 would reflect a finding that the asset no longer carries security-like dependence on any person's efforts, and that finding should carry across the four statutes, so that an issuer does not face an investment company or investment adviser question about an asset the Commission has already concluded is outside the investment contract concept. Consistency across the statutes avoids regulatory arbitrage between them and spares issuers the cost of relitigating a settled determination under a different statute.

E. Preemption of State Registration and Qualification Requirements (Definition of “Qualified Purchaser” in Subpart E, Rule 500)

Question 136: Should we adopt the definition of “qualified purchaser” in Rule 500 as proposed?

We support proposed Rule 500, including its coverage of secondary market transactions and its refusal to condition preemption on tracing the exempt offering in which a particular fungible unit was first sold. Fungible tokens cannot sensibly carry myriad different state-law resale histories, and, as such, the Commission's approach reflects a sophisticated understanding of these markets.

Three refinements would strengthen the proposed rule in this regard. First, preemption for secondary transactions should turn on whether the issuer is subject to the applicable disclosure and reporting obligations, rather than on whether it is current on them. Holders and secondary market participants cannot observe issuer compliance in real time, and a holder should not lose the benefit of preemption on account of issuer misconduct it can neither detect nor control. Conditioning preemption on currency would also produce the perverse result that an issuer's delinquency harms its investors twice, once through the missing disclosure and again through the loss of their state-law protection. Issuer delinquency is better policed through suspension of the exemption under proposed Rule 306, which is the Commission's tool against the issuer rather than against the market.⁷⁹

Second, the rule should adopt a reasonable-belief standard, permitting market participants to rely on the issuer's EDGAR filings absent actual knowledge to the contrary. EDGAR is the public record the Proposal creates, and a purchaser who consults it and finds the issuer's filings in order should be protected; the standard mirrors the reliance standards the Commission uses elsewhere, such as the reasonable-belief standard for accredited investor status under Regulation D, and it gives secondary market participants a workable rule for a question they cannot otherwise answer.

Third, preemption should extend to secondary transactions in crypto assets whose issuers have filed a transition report or have otherwise made disclosures at the level required by proposed Rule 103. After separation, the crypto asset is no longer subject to an investment contract as a matter of federal law, but state regulators and state courts applying their own definitions of “security,” which are not uniform

⁷⁹ See The Proposal, *supra* note 1 at 105, 147.

with *Howey* (New York’s Martin Act, for example, reaches “other securities” as construed by the state’s courts), are not bound by the Commission’s determination, so an issuer that exits through proposed Rule 400 would lose its state-law bridge at the moment it needs one. The same problem confronts an issuer that reaches the end of the startup exemption’s four years unable to certify separation: as proposed, its disclosure obligations end and preemption lapses with them, leaving the crypto asset in a worse position than it occupied during the exemption. The Commission should permit such an issuer to elect a continuing status, keeping its disclosure under proposed Rule 103 current at least annually, and should provide that, for so long as it does so, it remains within proposed Rule 500(b) and within any intermediary relief the Commission adopts.

F. Economic Analysis

Question 145: What types of companies (e.g., in terms of size, industry, age, etc.) would most likely rely on Regulation Crypto Assets? Would they use it for capital raising, or would they rely mainly on the investment contract safe harbor?

Absent the changes recommended in this letter, the exemptions are unlikely to see meaningful use. Public offering pathways attract adverse selection, because projects able to raise from professional investors tend to do so privately. As such, we expect sophisticated projects to continue to seek private financing followed by reliance on the Proposal, if at all, as a distribution mechanism at launch, with the investment contract safe harbor bearing the heaviest use. Each of the design choices discussed above, namely the counting mechanics of the offering limit, the liquidity gap, and above all an exit conditioned on an issuer’s own promises, serves to repel issuers from the regime.

The Commission also asks, in Question 146, how likely the exemptions are to attract companies considering offerings under Regulation D, Regulation A, or Regulation Crowdfunding. Absent the changes we recommend, the answer is that they are likely to attract such companies for the wrong reasons: an arrangement in which a crypto asset carries an economic interest in a business would find in the Proposal a pathway more attractive than Regulation A for an economically identical financing, with a self-certified exit from disclosure that no security enjoys, and without the safeguards those pathways carry. With the exit reworked as we recommend, the Proposal would complement those pathways rather than displace them.

III. Conclusion

Consider the decision the Proposal presents to an entrepreneur acting in good faith. The Proposal, read together with the 2026 Interpretation, offers three paths, and under a formalistic standard each leads to the same place. An entrepreneur who takes the 2026 Interpretation at its word and raises without making express representations avoids the Commission’s enforcement of securities laws in the short term, but acquires no broad or long-term protection in doing so. The formalistic reading binds neither the courts, which will apply *Howey* as they always have, nor a future Commission, which may apply it in the same way—silence, standing alone and without contemplation of essential managerial efforts, will fail to provide a sufficient defense. An entrepreneur who instead enters the regime, makes narrow representations, fulfills them, and files a Form TR exits into the same exposure—and now with a public record of its own representations in the file. And an entrepreneur who enters the regime and remains in it,

making and fulfilling substantial representations over time, faces a different risk: a future Commission rewriting the rule to close the exit before it can pass through. A rule that departs from the case law is, after all, one that future leadership can change. In each case, the entrepreneur has been lured into a trap by a standard that looked like certainty, but was not.

The departure from case law is not the only deterrent. An entrepreneur who enters the regime as currently proposed confronts a second problem. The Proposal creates freely tradeable instruments with nowhere to trade at scale. As we explain in our response to Question 153, no centralized venue can list a crypto asset that is subject to a covered investment contract without becoming an exchange; no professional market maker can quote it without confronting the dealer and underwriter analyses; and the issuer cannot seed the onchain pools through which such assets actually trade. An entrepreneur comparing the Proposal to its alternatives will see that a public distribution conducted abroad under a lighter regime, with U.S. persons excluded, costs less and delivers a crypto asset that reaches U.S. purchasers anyway through secondary trading and without disclosure. For the Proposal to be chosen over that alternative, compliance with it must be the condition of access to U.S. venues and the liquidity they provide. The venue-level measures we recommend, including safe harbors for decentralized exchanges and the applications that serve them, an exemption permitting trading on CFTC-registered venues, trader treatment for organic liquidity provision, confirmation of the alternative trading system pathway, and guidance under Regulations M and S, can make that so. Without these measures, however, the regime offers entrepreneurs a cost without a market.

The Proposal's final harm is to incentives. A threshold built on formalism tells entrepreneurs that what matters is what they say, not what they build, and so it discourages the one thing that protects a project under any administration and before any court: genuinely eliminating reliance on the ongoing managerial efforts of any person. A project that has eliminated control holds a defense that does not depend on which Commission is sitting or which reading of *Howey* it favors, because it is the defense the case law itself supplies. An exit grounded in substantive analysis paired with an exemption for transactions completed in reliance on it achieves two things at once: it makes the Commission's rule durable, and it points entrepreneurs toward the pro-innovation conduct that makes their own position sustainable. Formalism offers neither. We urge the Commission to adopt the amendments recommended in this letter so that the Proposal delivers what it promises: a clear path into the regime, a market in which to trade while in it, a real path out of it, and certainty that holds in the long term.

We greatly appreciate the opportunity to provide comments on these matters, and we look forward to continued engagement with the Commission. We urge the Commission to continue to seek industry and public input as it fashions the final rules.

Respectfully submitted,

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