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October 21, 2026

BY E-MAIL

rule-comments@sec.gov

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

RE: Regulation Crypto Assets (Release Nos. 33-11434; 34-106150; File No. S7-2026-27)

Dear Ms. Countryman:

We welcome the opportunity to comment on Regulation Crypto Assets (referred to herein as “Regulation CA”) proposed by the U.S. Securities and Exchange Commission (the “Commission”).¹ Skadden, Arps, Slate, Meagher & Flom LLP’s Blockchain and Digital Assets group has significant experience advising crypto-native companies, as well as financial institutions, in connection with their digital asset projects. While our comments are informed by that experience, we are submitting these comments on our own behalf, and the views contained herein do not necessarily reflect the views of any of our clients.

¹ Regulation Crypto Assets, Release Nos. 33-11434; 34-106150 (Aug. 18, 2026), 91 FR 54510 (Aug. 21, 2026) (the “Proposing Release”).

We believe that Regulation CA is the most significant step the Commission has taken toward providing clarity regarding its regulation of crypto assets, and we appreciate the obvious care that the Commission has put into the preparation of the Proposing Release. We support the Commission's objective of creating a tailored offering regime for digital assets that facilitates capital formation and accommodates innovation while ensuring that investors are adequately protected. Nevertheless, we believe that Regulation CA could be refined in certain respects so that it is used as broadly as the Commission intends and delivers the certainty it seeks to provide to market participants. Accordingly, we respectfully submit the following comments for the Commission's consideration.

Financial Statements of Issuers That Are Not Yet Operational

Background

The fundraising exemption in Regulation CA would exempt "Tier 1" offerings of up to \$20 million in any 12-month period (with a \$6 million cap on affiliate sales) and "Tier 2" offerings of up to \$75 million in any 12-month period (with a \$22.5 million cap on affiliate sales) from the registration requirements of the Securities Act of 1933. As the Commission explained, it expects that "many of the issuers who would utilize the proposed fundraising exemption would be in an early stage of development,"² and that many would be "newly-formed or otherwise developing subject crypto assets and associated crypto networks or associated crypto applications that have not yet been launched."³

Under the proposed fundraising exemption, however, issuers would still be required to provide in Part F/S of Form 1-CRYPTO consolidated balance sheets and statements of comprehensive income, cash flows and changes in stockholders' equity for each of the two fiscal years preceding the most recent balance sheet (or such shorter period as the issuer has been in existence) prepared in accordance with U.S. GAAP.⁴ The same financial statements would be required to be filed on an annual basis on Form 1-KC and semiannually on Form 1-SC.⁵ The Commission has requested comment on whether financial disclosure should focus on "financial matters related to the development of the associated crypto network or associated

² *Id.* at 54546.

³ *Id.* at 54548.

⁴ *Id.* at 54546-47. Audited financial statements are only required for Tier 2 offerings.

⁵ *Id.* at 54551.

crypto application” and whether there are “alternative financial information requirements that [the Commission] should consider.”⁶

Comment

We believe that the financial reporting requirements applicable to Tier 1 and Tier 2 offerings would risk unduly burdening newly formed and early-stage issuers that have no predecessor business in furtherance of conveying information of questionable utility to investors. An issuer that is eligible for the fundraising exemption is likely to be without current operations or in an early stage of development and may have little or no revenue. Accordingly, a statement of comprehensive income for such an issuer would largely report only development expenses. Likewise, a statement of cash flows for such an issuer would principally restate the receipt of financing proceeds and their expenditure on development—information that is more directly and usefully conveyed through the issuer’s balance sheet, its use-of-proceeds disclosure and its discussion of financial condition.

In our view, requiring these statements from issuers eligible for the fundraising exemption would impose unnecessary costs on early-stage issuers without providing a corresponding benefit to investors. We believe investors in early-stage issuers need to principally understand (i) the issuer’s state of development and (ii) whether the issuer has sufficient financial resources to complete its planned development. In lieu of submitting financial statements, this information could instead be conveyed to investors through a narrative describing the issuer’s current and planned operations and a general description of its revenue and costs. Issuers that qualify for the fundraising exemption should be able to submit this information in the form of a narrative if they certify that the issuer lacks meaningful historical or current operations and/or revenue, and that the capital for its planned future expenditures is to be primarily raised through the fundraising itself. Such narrative could also contain appropriate risks and cautionary language.

We therefore respectfully recommend that the Commission revise Part F/S of Form 1-CRYPTO, and the corresponding requirements of Forms 1-KC and 1-SC, to permit an issuer that has not yet commenced operations and that has no predecessor business to omit financial statements that are not relevant to its circumstances, such as the statement of comprehensive income and the statement of cash flows, provided that the issuer:

⁶ *Id.* at 54546 (Request for Comment No. 102); *id.* at 54548 (Request for Comment No. 105).

- (i) certifies to the Commission that it has not yet commenced principal operations;
- (ii) includes a balance sheet prepared in accordance with U.S. GAAP (audited, in the case of a Tier 2 offering);
- (iii) provides a narrative description of its financial condition, its available liquid resources, the anticipated cost of its planned development activities and, if those resources are insufficient to carry out such activities, its plan for funding any shortfall; and
- (iv) ceases to rely on the accommodation once it commences principal operations, at which point the full requirements of Part F/S would apply.

Alternatively, we encourage the Commission and the staff to consider similar forms of conditional relief from the proposed financial information requirements or alternative frameworks for these issuers to provide relevant financial information that is not unduly burdensome, in order to ensure the proposed exemptions can be utilized widely.

Reliance on Form TR

Background

Proposed Rule 400 of Regulation CA would provide a non-exclusive safe harbor from the term “investment contract” in the definition of “security” under the Securities Act of 1933 and the Securities Exchange Act of 1934, contingent on the filing of a Form TR certifying that the issuer has completed or otherwise permanently ceased all essential managerial efforts it represented or promised to engage in, and is not making and does not intend to make any new such representations or promises.⁷ The Proposing Release explains that, although the 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).”⁸

⁷ Proposed 17 CFR 228.400.

⁸ Proposing Release at 54555.

The proposed safe harbor is available only as to a “covered investment contract,” which is defined as a “contract, transaction, or scheme involving a crypto asset that constitutes an investment contract,” provided the crypto asset is “subject to” the investment contract, the crypto asset is not itself a security, and no asset other than the crypto asset is “subject to” the investment contract.⁹

The Commission has requested comment on whether it should “adopt Rule 400 as proposed” or make changes to the rule, as well as whether “there [are] changes [the Commission] could make to the investment contract safe harbor that would address” concerns that the safe harbor may “requir[e] 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.”¹⁰

Comment

The value of the proposed safe harbor depends not only on how the Commission will treat a crypto asset, but also on whether purchasers, trading platforms, custodians, broker-dealers, intermediaries and other market participants can transact in that asset with confidence. The Proposing Release states that a Form TR filing is intended to “inform investors and other members of the public” that the federal securities laws no longer apply to transactions involving a particular crypto asset, and that the issuer’s supporting analysis should be “sufficiently clear and detailed such that a reasonable investor could understand how the issuer made its determination.”¹¹ Yet, if parties other than the Commission remain free to argue under the *Howey* test that the asset continues to be subject to an investment contract, and potentially to pursue private securities litigation against persons who transact in that asset in reliance on the Form TR, the safe harbor may provide limited practical comfort to the very market participants whose activity is necessary to develop the network effects that Regulation CA seeks to foster.

Further, because the safe harbor only applies to “covered investment contracts,” the Proposing Release as drafted appears to require issuers that file a Form TR to concede that the subject crypto asset is or was previously the subject of an investment contract. This is likely to dissuade issuers from utilizing the safe harbor protection, particularly if the subject crypto asset was issued prior to the

⁹ Proposed 17 CFR 228.100.

¹⁰ Proposing Release at 54555 (Request for Comment Nos. 124-25, 134).

¹¹ *Id.* at 54555.

implementation of the Proposing Release or filing of a Form TR. The safe harbor would thus be practically unavailable to those issuers that do not believe the digital asset was ever the subject of an investment contract (or do not want to formally concede as much) yet still wish to obtain the certainty that the safe harbor provides.

We believe the Commission can meaningfully reduce these uncertainties within its existing authority, and respectfully recommend that the Commission:

- (i) provide in Rule 400, or in the adopting release, that any persons that transact in a crypto asset may reasonably rely on a Form TR that has been filed and not withdrawn, and that such a filing creates a presumption under the Commission's interpretation and application of the federal securities laws that the conditions of the safe harbor are satisfied, absent actual knowledge that the certification is materially inaccurate; and
- (ii) expressly confirm that filing a Form TR, or relying on the startup exemption, the fundraising exemption or the safe harbor, does not constitute, and will not be deemed, an admission or concession that a covered investment contract or other security exists or previously existed.

Application to Tokenized Real-World Assets

Background

The Proposing Release explains that the definition of “covered investment contract” excludes crypto assets that are themselves securities, such as digital securities, as well as investment contracts that involve any asset other than a non-security crypto asset, and that offerings of such instruments may be more appropriately conducted under another framework.¹² The Commission has requested comment on whether the definition “scope[s] in the appropriate population of securities” and whether investment contracts involving other assets should be permitted.¹³

¹² *Id.* at 54519 & n.116; *see also id.* at 54512 n.19.

¹³ *Id.* at 54520 (Request for Comment Nos. 5-7).

Comment

In our experience, a substantial and growing share of market interest is focused not on protocol networks that are intended to transition to decentralized governance, but on the tokenization of real-world assets, such as real estate, artwork, loans and other revenue-generating assets. For many such projects, transition to decentralization is neither a design objective nor feasible. As proposed, it appears that many tokenized real-world asset offerings may fall outside the definition of “covered investment contract,” either because the token represents an interest in an underlying asset that is itself subject to the investment contract or because the token would be characterized as a digital security.

We respectfully request that the Commission confirm in the adopting release whether, and to what extent, Regulation CA is available for offerings of tokenized real-world assets, including by addressing how the definitions of “crypto asset” and “covered investment contract” apply to tokens whose value derives from an identified off-chain asset. To the extent such offerings are outside the scope of Regulation CA, we encourage the Commission to provide guidance on the existing exemptions available for such offerings and, to the extent that existing exemptions do not apply to tokenized real-world assets, to adopt a similarly tailored framework for such assets.

We appreciate the opportunity to submit, and the Commission’s consideration of, our comments. We would be happy to provide any additional information you may find useful, and we are available to meet and discuss these comments or any questions the Commission and its staff may have. Please do not hesitate to contact Daniel Michael (212-735-2200), Alexander Drylewski (212-735-2129), Andrew Brady (202-371-7513), Joshua Shainess (202-371-7594) or Peter Varlan (212-735-3332) of this firm.

Very truly yours,

Skadden, Arps, Slate, Meagher & Flom LLP