FACT SHEET

Regulation Crypto Assets

The Securities and Exchange Commission ("Commission") proposed rules, titled "Regulation Crypto Assets," to create a tailored offering regime for certain investment contracts involving crypto assets ("covered investment contracts"). The proposed rules include:

- A "startup exemption," which would exempt offerings of up to $5 million from the registration requirements of the Securities Act of 1933 ("Securities Act") during a four-year period;
- A "fundraising exemption," which would exempt offerings of up to $75 million from the registration requirements of the Securities Act during each 12-month period;
- An "investment contract safe harbor," which would provide a conditional safe harbor from the term "investment contract" in the definitions of "security" in the Securities Act and the Securities Exchange Act of 1934 ("Exchange Act"); and
- A definition of "qualified purchaser" for purposes of the Securities Act, which would preempt state securities law registration and qualification requirements with respect to offers and sales of covered investment contracts issued pursuant to Regulation Crypto Assets, as well as certain secondary market transactions.

Background

The crypto asset markets have grown significantly since the advent of Bitcoin in 2008, but the Commission has not adapted its rules to address the unique aspects of this asset class. Without fit-for-purpose rules, existing regulatory requirements, many of which were adopted well before the proliferation of crypto assets, could complicate an issuer's transaction planning and, in turn, impede capital formation and innovation in the crypto asset markets. Furthermore, in response to these regulatory challenges, some issuers may choose to conduct their crypto asset transactions offshore, limiting investment options for U.S. investors or exposing them to additional risks from participating in markets with less robust investor protections.

Recently, the Commission took steps to start addressing these concerns. In March, the Commission issued an interpretive release clarifying how the federal securities laws apply to certain crypto assets and transactions involving crypto assets, which complements Congressional endeavors to codify a comprehensive market structure framework.

Building on this interpretation, Regulation Crypto Assets would provide a tailored offering regime for covered investment contracts. The proposed rules are intended to facilitate capital formation and accommodate innovation within the crypto asset markets while, at the same time, ensuring that investors are adequately protected and provided with the information they need to make informed investment decisions.

Startup Exemption

The startup exemption would be a one-time, non-exclusive exemption from Securities Act registration requirements. It would permit issuers to conduct offerings of covered investment contracts of up to $5 million, during a period of up to four years, if they satisfy certain conditions. Those conditions include making public filings at the beginning and end of such period as well as making certain principles-based narrative disclosures available to their investors during such period.

The startup exemption is intended to provide issuers with temporary relief from Securities Act registration requirements—during which time they may work towards fulfilling the essential managerial efforts they represented or promised investors they would engage in under the covered investment contract—while, at the same time, ensuring that investors remain sufficiently protected and informed. Issuers that rely on the exemption would remain subject to the antifraud and antimanipulation provisions of the federal securities laws.

Fundraising Exemption

The fundraising exemption would be a non-exclusive, two-tier exemption from Securities Act registration requirements, modeled in part on Regulation A. Under Tier 1, issuers would be permitted to conduct offerings of up to $20 million of covered investment contracts in a twelve-month period. Under Tier 2, issuers would be permitted to conduct offerings of up to $75 million of covered investment contracts in a twelve-month period. Issuers relying on this exemption would be required to publicly file offering materials consisting of the same principles-based narrative disclosures required under the startup exemption, a discussion of the issuer's financial condition, and financial statements (which, for Tier 2 offerings, would be required to be audited). Issuers also would be subject to ongoing reporting requirements modeled on analogous provisions in Regulation A, tailored to offerings of covered investment contracts.

The fundraising exemption is intended to facilitate larger capital raising transactions for covered investment contract issuers than would be permitted under the startup exemption. Issuers that rely on the exemption would remain subject to the antifraud and antimanipulation provisions of the federal securities laws.

Investment Contract Safe Harbor

The investment contract safe harbor would provide a conditional safe harbor from the term "investment contract" in the definitions of "security" in the Securities Act and the Exchange Act. If the conditions of the safe harbor were satisfied, then a covered investment contract would be deemed by the Commission to have ceased to exist, and the crypto asset that was subject to the covered investment contract would be deemed by the Commission not to constitute or represent or to be subject to such investment contract for purposes of those statutory definitions of "security."

An issuer of a covered investment contract would satisfy the investment contract safe harbor if it has: (1) 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 underlying crypto asset; and (2) made a public filing certifying that it has satisfied the conditions of the safe harbor and providing an analysis supporting that certification.

The investment contract safe harbor builds on the recent Commission interpretation and would provide market participants greater clarity as to when a covered investment contract has ceased to exist because of a lack of essential managerial efforts and, therefore, the crypto asset is no longer subject to an investment contract.

Preemption of State Registration and Qualification Requirements

Finally, the proposed rules would add a definition of "qualified purchaser" under the Securities Act such that state securities law registration and qualification requirements would be preempted with respect to offers and sales of covered investment contracts pursuant to an exemption in Regulation Crypto Assets.

With respect to secondary market transactions by any person other than an issuer, underwriter, or dealer, the proposed amendments would preempt state securities law registration and qualification requirements for covered investment contracts that were initially sold by the issuer either pursuant to an exemption in Regulation Crypto Assets or another exemption under the federal securities laws. Such secondary market preemption would continue for the period during which the issuer continues to satisfy the information and filing and/or periodic reporting requirements of an exemption under Regulation Crypto Assets for that covered investment contract.

Additional Information:

The public comment period will remain open for 60 days following the date of publication of the proposing release in the Federal Register.