



October 20, 2026

By electronic submission

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

Re: File Number S7-2026-27: Regulation Crypto Assets

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association¹ and its Asset Management Group² (collectively, “SIFMA”) appreciate the opportunity to submit this letter to highlight our recommendations and questions in response to the SEC’s Proposed Rule “Regulation Crypto Assets.”³ We provide below both process and substantive recommendations as the Commission continues its important work in this area.

SIFMA appreciates the Commission’s work to integrate assets associated with fundraising for on-chain platform development within securities regulatory frameworks. As the Commission and other regulators work to incorporate the taxonomy of digital assets broadly – digital securities, digital cash, non-security crypto, and ancillary products – within the appropriate regulatory regimes, the Proposal is a valuable component to these efforts. We also are encouraged to see the Commission approaching this element of regulatory modernization through notice-and-comment rulemaking, which will result in the durable, robust rulemaking necessary for the creation of a new product category.

In our response, we would like to outline a number of open questions which the Proposal does not address or leaves uncertain, yet which are essential if covered investment contracts are to be adopted by

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² SIFMA’s Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG’s members represent U.S. and global asset management firms that manage more than 50% of global AUM. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit <http://www.sifma.org/amg>.

³ Securities and Exchange Commission, Regulation Crypto Assets, Release Nos. 33-11434; 34-106150 (Aug. 18, 2026), available at <https://www.sec.gov/files/rules/proposed/2026/33-11434.pdf>

market participants. These include clarifying the “delinking” process and its implications for regulated institutions, addressing secondary trading, taxonomy and definitions, and investor protection. We also identify a number of concrete recommendations which will facilitate greater regulated entity participation in the market for covered investment contracts.

Executive Summary

- SIFMA is encouraged to see the SEC approaching the regulation of this novel product category through notice-and-comment rulemaking. However, the covered investment contract model created by the Proposal will need to be integrated more broadly within securities regulatory frameworks. The final rule should be accompanied by additional implementation detail and coordinated guidance from the Division of Trading and Markets, developed in consultation with FINRA and other self-regulatory organizations, SIPC, and designated examining authorities, and in coordination with the CFTC and the federal banking agencies.
- The process under which covered investment contracts would become “delinked” from associated crypto assets and transition out of the scope of SEC oversight creates substantial uncertainty for regulated entities working with these assets, including operational and market challenges, definitional ambiguities, and regulatory gaps. SIFMA recommends that the Commission address this through an authoritative, machine-readable source of asset status, an intermediary reliance safe harbor, and an implementation delay before delinking takes effect for intermediaries. Key concerns include:
 - Uncertainty on when and how an asset transitions status, compounded by the breadth of recent staff guidance on what does not constitute “essential managerial efforts”
 - Operational and compliance challenges for holders of the asset once it transitions out of being associated with a securities contracts (such as custody, net capital, recordkeeping and customer-facing issues)
 - Questions on whether an investment contracts associated with these assets could return to securities status if essential managerial efforts were to resume, which the final rule should address expressly, including re-entry triggers, notice to broker-dealers, and protection for intermediaries that relied on a Form TR in the interim
 - Ambiguity as to whether the underlying crypto asset is itself treated as a security for custody and operational purposes before delinking, which the final rule should clarify
- The Proposal is heavily focused on issuance, leaving many open questions on secondary market trading, which need to be addressed if regulated entities are to participate in this market. The starting presumption should be that appropriate secondary market regulations (Regulation ATS, Regulation NMS, and the broader trading rule set) apply according to their terms, with clarification of which provisions cover these instruments and venues , supplemented by

guidance on clearance and settlement, transfer agent functions, cross-asset settlement, and venue migration after delinking.

- The definition of “crypto asset” is broad enough to capture tokenized securities, stablecoins, and tokenized deposits. The final rule should include clear exclusions and cross-references to other regimes, distinguish digital securities, non-security crypto assets subject to a covered investment contract, and delinked crypto assets, and consider the implications of departing from technology neutrality.
- The Commission should clearly define the technical and ministerial functions, such as node operation and minting analogous to securities printing, that an entity can perform without being treated as an issuer.
- Investor protection will be critical to the development of this market, and the Proposal’s investor protection and anti-fraud provisions should be enhanced, including through disclosure of valuation methodology, manipulation risk,; closer oversight of secondary trading; and removal of the proposed blanket amnesty from bad-actor disqualification for past events.
- The final rule should support broker-dealer and asset manager participation in this market through an implementation period of no fewer than 180 days, intermediary reliance safe harbors, customer notice templates, capital and custody guidance, and protection from retroactive liability for reasonable reliance on Commission and EDGAR status indicators.

Support for the SEC’s Rulemaking Process & the Need for Further Development of the Proposal

SIFMA is greatly encouraged to see that the SEC approached the development of regulatory frameworks for these assets and the transactions connected with them through notice-and-comment rulemaking. The release of Regulation Crypto Assets as a proposed rulemaking under the APA with a 60-day comment period provides a valuable process for the industry engagement and dialogue necessary for the development of robust, durable rulemaking in this area.

Given that Regulation Crypto Assets creates a structurally new category of securities regulation for novel products, it is critical that it takes place via a robust process, creating durable rules. Opportunity for structured industry comments will allow for full consideration of the implications of a new issuance and distribution model, consistent with prior changes to capital raising models such as Regulation Crowdfunding.

As SIFMA has noted in our prior letters to the Commission in connection with the development of digital asset regulation, we strongly believe that significant structural changes, such as new issuance and trading models for securities, should be made through open notice-and-comment rulemaking rather than through no-action processes or exemptive orders. Notice-and-comment rulemaking not only provides a structured channel for industry engagement and dialogue during the rulemaking process, but also

provides a degree of permanence and regulatory durability that supports the investments needed for market participants to build capability to support these new products and operating models. Notice-and-comment rulemaking produces durable rules of general applicability that broker-dealers and their designated examining authorities can implement, test, and examine against consistently. We encourage the SEC to follow this approach as it approaches other elements of digital asset-related rulemaking.

SIFMA supports the work of the Commission in developing a structured, regulated approach to these products covered under Regulation Crypto Assets and the projects they support. Integrating them within a securities regulatory framework which clearly defines how they can be issued, held, and traded with appropriate disclosures and investor protection controls will enable them as investable assets and as a vehicle to support new technology and platform development.

We support the development of regulated frameworks which support investor choice and innovation, while also making clear that the Commission bears the responsibility to develop a credible, well-supported framework that gives firms confidence that these products can be evaluated, supervised and offered responsibly.

Additional Rulemaking Will Be Needed to Integrate Covered Investment Contracts in Regulatory Frameworks More Broadly

We recognize that the focus of the Proposal is on the issuance of these assets, while broader questions such as secondary market trading remain underdeveloped. Many of the operational, supervisory and compliance questions raised by SIFMA in our response to the Proposal stem from the fact that the Commission has not clearly articulated how critical aspects of the framework are intended to function in practice. As the Proposal moves forward, we recommend that the SEC provide additional analysis, supporting rationale and implementation detail so it presents a holistic view of how this novel product category would operate.

SIFMA recommends that the final rule be accompanied by coordinated guidance from the Division of Trading and Markets, and that the Commission consult with FINRA and other self-regulatory organizations, SIPC, and designated examining authorities, and coordinate with the CFTC and the federal banking agencies, before adoption, so that broker-dealers can implement the new framework consistently across registration, examination, and enforcement programs.

Challenges Associated with the Transition of Covered Investment Contracts and Associated Assets Out of Securities Regulation (“Delinking”)

We would like to highlight a number of operational and markets challenges, definitional ambiguities, and regulatory gaps associated with the process under which covered investment contracts would become “delinked” from associated crypto assets and transition out of the scope of SEC oversight, and propose

potential solutions which would facilitate regulated broker-dealer and asset manager participation in the markets for these assets.

Foundational to the Proposal's approach to covered investment contracts is the concept of "delinking," where over time, the connection between the asset and the investment contract may disappear if the promoter's essential promised efforts have been completed or permanently abandoned. This process results in the "delinking" of the relationship between the underlying crypto asset (which is not a security) and the investment contract associated with it. While we recognize this process is an attempt to resolve the complex regulatory perimeter questions associated with assets connected to projects whose nature changes over time, the framework for this transition as developed in the Proposal creates a number of ambiguities and friction points which would make regulated broker-dealer and asset manager engagement with these assets challenging.

Potential challenges for regulated entities looking to engage with covered investment contracts include:

- ***The status of these assets turns on a subjective, unverifiable test with no real-time signal:*** The trigger for delinking and the change in the regulatory treatment of the asset is the issuer's own "completed or permanently ceased essential managerial efforts" determination, with no objective functionality, decentralization, or governance benchmarks, yet a holder must know the asset's status at the moment of the trade.
- ***Status change is effective on filing, with no review or notice:*** Under the Proposal, the filing of Form TR invoking Rule 400 and completion of the associated requirements by the issuer flips the asset's status immediately. This change would occur with no Commission review, no objection window, no public notice to secondary market participants, and no provision addressing an issuer that later resumes managerial efforts. At a minimum, it will be necessary to make sure that market participants broadly will be notified when these status changes occur.
- ***Lack of predictability:*** This is a contrast to the model provided by Rule 144, which provides a predictable, rules-based path for securities to transition from being effectively illiquid or restricted to being freely tradable in the public market. The safe harbor provided by Rule 144 is defined by objective conditions such as defined holding periods, public information requirements, and filing requirements.

Given the issues above, it is very challenging for broker-dealers to consistently and accurately track this information on an individual basis, let alone for entities across the market to do so in a consistent manner. The onus to determine that the status of the asset has changed should not be on the broker-dealer or asset manager, particularly for those who are not involved in the initial issuance.

There is a need for some sort of clear, authoritative, dated public statement which makes a clear delineation when the status of an asset has changed. Otherwise, the broker-dealer or asset manager would need to get legal determination that each of these assets that it works with is no longer a security,

which would be an extremely complex and cumbersome process with a range of negative compliance and operational impacts. For example, firms which work with these securities would need to go back through prior disclosures and see if there are gaps with prior disclosures.

Recommendations to Provide Certainty to Market Participants

While some degree of changeability on the status of covered investment contracts is inherent to the Regulation Crypto Assets framework, the Commission can adopt measures to provide broker-dealers and other regulated entities greater certainty and confidence in working with these assets. These include:

Intermediary reliance safe harbor: SIFMA recommends that the Commission adopt an intermediary reliance safe harbor for SEC-registered broker-dealers that reasonably rely on a filed Form TR invoking Rule 400 and objective, SEC-maintained EDGAR status indicators, absent actual knowledge that the filing is materially deficient. Without such a safe harbor, broker-dealers would bear the risk of an issuer's incorrect or premature self-certification — a risk that broker-dealers are not positioned to evaluate, particularly when they had no role in the initial issuance. Similarly, the proposal should extend the safe harbor framework to the Investment Company Act and the Advisers Act including a reliance framework permitting investment product sponsors to rely on Form TR filings and issuer certifications concerning the completion or cessation of essential managerial efforts. These protections should include protection against Commission enforcement from private-action and state-law exposure for registered entities relying on the safe harbor, supplemented with clear information from the Commission explaining the legal reach of the proposed protections.

Authoritative, machine-readable status source: SIFMA recommends that the Commission establish a dated, machine-readable, authoritative public status source — maintained on EDGAR or an equivalent Commission data system — that identifies the covered investment contract, the subject crypto asset, the issuer, the filing basis (Startup Exemption or Fundraising Exemption), the status-effective time, relevant CUSIP/DTI/token contract identifiers, and whether the status determination is limited to Securities Act and Exchange Act definitions (as proposed Rule 400 is). This data feed should be available in structured, API-accessible format so that broker-dealer compliance, surveillance, and trading systems can consume it programmatically.

Implementation delay for intermediaries: Delinking should not become operationally effective for SEC-registered broker-dealers and registrants under the Investment Company Act and the Advisers Act until after a short implementation period (e.g., 30 calendar days) or a stated effective time following Form TR filing invoking Rule 400, even if the issuer's reporting obligations end on filing. Firms need time to move assets between securities and non-securities systems, update account agreements, customer notices, books and records, reserve formula treatment under Rule 15c3-3, capital treatment under Rule 15c3-1, and custody arrangements.

Impacts on Regulated Holders of Delinked Assets

Regulated entities would face major unanswered questions on how to treat assets they hold that abruptly cease to be associated with a securities contract. Broker-dealers would likely face a series of custody, books-and-records, capital, reporting, operational, and customer-account transition issues when an asset no longer has connection with a securities contract. These include:

- ***Custody:*** While the asset is a security, the broker-dealer may be holding it pursuant to the securities regulatory framework applicable to customer securities custody and possession/control obligations. Once the asset is delinked and no longer treated as subject to an investment contract, the firm's legal basis for holding it may change significantly. The asset could shift from being treated as a securities position to being treated more like a commodity, digital asset, or other non-security asset. This raises a number of operational and legal questions, including whether the asset continues to be held by the broker-dealer or instead be held by an affiliated non-broker entity; whether customer agreements need amendment; and how customer statements describe the asset after delinking.
 - ***Rule 15c3-3 framing:*** While an asset is a security or is treated as subject to a covered investment contract for Exchange Act intermediary purposes, a broker-dealer holding it for a customer must analyze possession-or-control obligations under Rule 15c3-3(b)(1), customer reserve computation requirements under Rule 15c3-3(e), and customer securities treatment. The SEC Division of Trading and Markets' December 17, 2025 staff statement on custody of crypto asset securities addresses only the physical possession prong of paragraph (b)(1) of Rule 15c3-3 (not the control prong), concerns only crypto asset securities, and expressly states it has no legal force or effect. It does not solve non-security custody after delinking.
 - After confirmed delinking, the broker-dealer needs clear Commission guidance on whether it may continue custodying the asset in a securities account, must transfer it to an affiliate or non-broker custodian, may hold it under a non-securities accommodation arrangement, or must facilitate customer withdrawal. Specific operational impacts include private-key management and rotation, DLT/network assessment procedures, hard fork and airdrop handling, protocol upgrade responses, and wind-down or customer transfer arrangements in the event of firm failure or voluntary withdrawal from crypto custody.
 - ***Net Capital and Balance Sheet Treatment:*** If the regulatory characterization of an asset held by a broker-dealer changes, there will be a range of capital model changes and potential capital charges. A status change under proposed Rule 400 can alter whether the position is treated as a security inventory position, a customer security, a non-security asset, or an accommodation asset for purposes of Rule 15c3-1 computations. This may affect applicable haircuts, aggregate indebtedness or alternative-standard net capital calculations, and market-maker or dealer capital requirements. SIFMA recommends that the Commission provide transition relief and written
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capital treatment guidance coordinated with FINRA and designated examining authorities, including clear statements on how positions in transition should be treated during any implementation delay period.

- **Securities Recordkeeping Issues:** As a security, these assets can be integrated into securities books and records systems and workflows. Once it changes status, recordkeeping would need to change, coupled with documentation to provide an audit trail for the transition and basis for delinking.
 - **Customer Protection and Disclosure:** How do broker-dealers meet customer protection and disclosure requirements when their customers are holding an asset whose legal characterization has changed? De-linking could materially affect liquidity, marketability, and investor access. Broker-dealers may need a framework for assessing the implications of those changes and determining whether, and how, they should be communicated to customers.
 - **Customer-facing operational requirements:** Broker-dealers need guidance on customer-facing operational matters including: account type reclassification; treatment on customer statements and trade confirmations; eligibility for SIPA treatment under the definition of “customer” and “customer property” (noting that SIPA defines “security” to include investment contracts but not currency or commodities, and but only provides coverage to the investment contracts if the asset “is the subject of a registration statement” with the SEC under the Securities Act.
-); whether the asset remains in a securities account; whether customer assets retain reserve and possession-or-control protections; customer consent to transfer to an affiliate or third-party custodian; and disclosure of any loss or change in protections (including loss of SIPC coverage if it was even covered to begin with) after delinking. The final rule should not require a broker-dealer to make independent legal status determinations beyond objective reliance on SEC/issuer filings, but firms need a defined process to communicate material consequences to customers.
- **Supervisory and Compliance Issues:** The proposal creates a conditional safe harbor based on completion or cessation of essential or promised managerial efforts. However, firms will need a defensible basis for concluding that delinking has actually occurred, and that their treatment of the asset and meeting associated regulatory requirements has changed as well.
 - **Bank Permissibility:** The transition in status can create permissibility issues for broker-dealers who are bank holding company affiliates. While we expect that holding or transacting in these assets while they are securities would be permitted, it is unclear if they could continue to be held once they transition to some form of non-security digital asset. While these issues cannot be directly addressed in SEC rules, ambiguity around them can meaningfully limit the types of entities that can engage with these products and thereby limit this market’s development.
 - **Legal Entity Model Conflicts:** Similarly, some broker-dealers may hold these assets in entities which are not legally permitted to work with non-security assets. While transferring them to
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another affiliated entity can be an option for some firms, there are other broker-dealers that have no affiliation with an entity that can hold non-security assets, in which case it is uncertain how they would support clients who become holders of non-security assets following their conversion.

- **SIPC Eligibility:** It is not clear that SIPA protection would extend to these positions even before delinking. SIPA's definition of "security" includes investment contracts, but the subject crypto asset is, by definition, not itself a security (see the discussion of security status below). Relatedly, under SIPA, the definition of "security" in 15 U.S.C. § 78III(14) notes that for investment contracts, SIPA contains an additional condition so that
 - an investment contract is a SIPA "security" only if it "is the subject of a registration statement" with the SEC under the Securities Act. It is reasonable to assume – but uncertain – that these assets could be excluded from SIPC coverage even prior to delinking, because the investment contract was not registered, even if it was held within a SIPC-member broker-dealer.
 - Whatever protection applies before delinking would presumably be lost once the asset's status changes. The Commission should coordinate with SIPC to clarify treatment in both periods so that broker-dealers can accurately disclose it to customers.
 - **Transition Period:** Given the multiple operational and compliance challenges associated with the abrupt transition of these assets from security to non-security status, the implementation delay for intermediaries recommended above is essential to allow firms to make these adjustments following the change in status.

Resumption of Essential Managerial Efforts

While the proposal defines the cessation of promised managerial efforts associated with a project funded by a Regulation Crypto Assets issuance as one of the triggers for the change of status for an asset ceasing to be associated with securities contract, it is entirely possible that at some point managerial efforts could resume for an ongoing project. Scenarios where this occurs could include situations where project founders reengage and propose a major strategic pivot, or the developers associated with the project make major protocol updates, or governance bodies begin to make decisions which reshape the operations connected to the asset.⁴ However, the proposed framework remains focused on the process by which investment contracts associated with these assets exit securities status, without consideration of how they could potentially re-enter securities status. In addition to the overall uncertainty around how this transition would be identified and reported, the process of new offers, sales, or other transactions involving the crypto asset again constituting investment contracts because of renewed material promises

⁴ There are several recent cases where managerial activity on mature digital asset systems resumed or dramatically increased, such as post-2022 restructuring of MakerDAO under the Endgame initiative and Block.one's 2019 decision to restructure governance of the EOS network. While these changes did not have a clear split between cessation and resumption of managerial activity, they highlight that even when managerial activity occurs on a spectrum, it can clearly increase substantially after periods of decline.

or undertakings by an issuer or other relevant actor would raise a similar range of compliance and operational challenges to those discussed above in connection with the transition out of security status.

SIFMA recommends that the final rule expressly address reversal or re-entry if an issuer, foundation, developer group, DAO, or other relevant actor resumes material managerial efforts or makes new representations or promises after filing Form TR involving rule 400. The rule should specify: (a) what triggers re-entry into securities status; (b) how broker-dealers would be notified; (c) whether a new Form NOR or equivalent filing is required; (d) whether the intermediary reliance safe harbor protects broker-dealers that continued to treat the asset as a non-security in reasonable reliance on the Form TR during the interim period; and (e) what customer notice, account reclassification, and custody transition steps would be required. As discussed above in the context of uncertainty on covered investment context status, some form of safe harbor would allow market participants not engaged in the offering not to have to make these distinctions on the renewal of materials promises or undertakings.

Uncertainty on the Scope of “Essential Managerial Efforts”

The challenges in determining when an asset’s status transitions or when managerial efforts resume are compounded by ambiguity created by the Division of Corporation Finance staff’s crypto asset FAQs, issued September 25, 2026 and revised September 28, 2026, “Frequently Asked Questions on the Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets.”⁵ Those FAQs offer a broad interpretation of the types of activities which the issuer could undertake, yet which would not be considered as “essential managerial efforts.” These include activities which in other contexts would likely be considered as managerial efforts, such as securing, maintaining, improving, or enhancing a functional crypto system, facilitating its network effects, and announcing token buyback programs where the system is functional and has no central party.

Absent a clear, authoritative source of the status of a covered investment contract at any given point, it will be very challenging for regulated broker-dealers and asset managers to assess the status of these assets based on statements by their issuers, particularly when it is uncertain how staff guidance such as the FAQs aligns with the case-law precedents that have traditionally informed the analysis of an issuer’s role.

Ambiguity in the Security Status of Covered Investment Contract Assets

The comments above presume that assets issued in connection with this framework would be treated as securities prior to delinking, given that transactions in investment contracts associated with them are

⁵ Division of Corporation Finance, Frequently Asked Questions on the Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets (Sept. 25, 2026, updated Sept. 28, 2026), available at <https://www.sec.gov/about/divisions-offices/division-corporation-finance/faqs-crypto-assets>

securities transactions. However, it is arguably uncertain whether the underlying crypto asset itself would be treated as a security for custody, control, and operational purposes.

If firms were not able to treat the underlying assets as securities, they would need to hold them in a different entity structure and meet different reporting and compliance requirements, while needing to comply with securities regulations for any transactions in them – creating a fundamental disconnect between the regulatory and entity structures used for the assets “at rest” versus when they are involved in a transaction. This would be very operationally challenging and likely unworkable.

The status of the underlying assets connected with covered investment contracts prior to delinking should be clear – whether the underlying assets can be held like securities while transactions in them are treated as securities transactions.

Secondary Market Activity, Trading, and Settlement

Secondary market transactions in assets issued under Regulation Crypto Assets prior to de-linking would presumably be treated as securities transactions, and so they would be eligible for trading on securities trading venues. However, the focus of the Proposal is on issuance, and it provides limited perspective on how secondary trading in these assets would be handled, and how they would integrate into securities trading regulatory frameworks. Below we would like to highlight a number of open questions on the secondary trading of these assets – these issues would need to be resolved to support the development of a robust secondary market.

SEC-registered broker-dealers and asset managers need a complete lifecycle framework from initial distribution through trading, clearing, settlement, custody, transfer, delinking, and any post-delinking asset migration. As noted above, it is critical that whether in the final version of the Rule or as follow-on rulemaking, there be close engagement with other divisions within the Commission as well as FINRA to fully embed covered investment contracts within the full suite of regulations governing secondary trading.

Before delinking, secondary activity involving covered investment contracts may occur on registered national securities exchanges or broker-dealer-operated ATSS subject to Regulation ATS (17 CFR 242.301). After delinking under Rule 400, the same token may cease to be eligible for securities venue treatment, requiring a clear migration protocol that broker-dealers can implement without disruption to customers or exposure to regulatory liability.

The rule contemplates exchange trading but does not address what it entails. Covered investment contracts are assumed to be suitable for trading on securities trading venues, yet nothing addresses standards for trading on these venues, Reg NMS applicability, clearance and settlement, the transfer agent function, or DTC eligibility, and it is unclear whether the listed instrument is the contract or the token.

Similarly, while the Proposal sets out restrictions on the types of investors who can participate in the initial distribution of covered investment contracts, a broader investor base could presumably buy these assets within the secondary market, and potentially at volumes outside the restrictions imposed at distribution.

The transition of appropriate trading venues following “delinking” also remains uncertain. If the asset is being traded on securities trading venues, what would happen when it ceases to be treated as a security? Does trading completely need to shift to non-security trading venues? What would the process be for this transition?

Settlement: Post-trade issues generally are quite uncertain for these products. A range of clearance and settlement questions would need to be addressed, including DTC or other depository eligibility, omnibus versus individual wallet custody at the clearing level, and settlement on the standard T+1 cycle as well as any voluntary atomic settlement arrangements). The industry will need more guidance on settlement windows in general. While there are particularly issues in cross-asset settlement (discussed below), generally it is essential that both legs have the same settlement time frame. Differing time frames for the same transaction could create market disruption/risk.

Cross-asset settlement: Where one leg of a transaction is a security (a covered investment contract) and the other is a non-security crypto asset or stablecoin, broker-dealers need clarity on whether and how they may intermediate both sides of the transaction without taking impermissible custody or principal exposure in non-security assets. Atomic settlement of securities-versus-non-securities pairs raises particular questions about which regulatory framework governs each leg, whether the broker-dealer must segregate the non-security leg, and how confirmations and customer statements should reflect the bifurcated nature of the trade.

Additional Areas Requiring Guidance

- In addition to these broader open questions on secondary trading, SIFMA requests that the Commission provide clarity on the following specific issues:
- Regulation ATS registration and compliance obligations for broker-dealer-operated platforms trading covered investment contracts;
- Reg NMS applicability and trade reporting obligations;
- Exchange listing standards for covered investment contracts;
- Transfer agent obligations and good control locations; and
- Whether the listed or traded instrument is the covered investment contract, the subject crypto asset, or both.

Broker-Dealer Interest in Adequate Disclosure

While primary-market disclosure is principally an issuer concern, adequate, comparable, and timely issuer disclosure under proposed Rule 103 is necessary for SEC-registered broker-dealers to perform due

diligence on covered investment contracts, supervise recommendations under Regulation Best Interest, maintain product review and new-product approval processes, assess custody and network risks, confirm ongoing exemption and preemption status under Rule 500, and communicate risks to customers. SIFMA requests that Rule 103 disclosures and amendments be accessible in a standardized, machine-readable format on EDGAR and identify specific broker-dealer-relevant fields, including: issuer contact information and service address, token identifiers (CUSIP/DTI/contract address), description of essential managerial efforts and progress milestones, related-person transfer restrictions (Rule 103(b)(4)), network governance structure, security and source-code review status, custody-relevant network risks, and events requiring current reporting on Form 1-UC.

Definitional Scope: “Crypto Asset,” “Covered Investment Contract,” and Technology Neutrality

As SIFMA has outlined in prior letters, definitions of on-chain products should be clear and consistent across rules and regulators. It should be clear what regulatory regimes on-chain products follow, with clear delineation of different products. Rule 100 defines a “crypto asset” as any digital representation of value recorded on a cryptographically-secured distributed ledger, and a “covered investment contract” as a contract, transaction, or scheme involving a crypto asset that constitutes an investment contract, provided — among other requirements — that the crypto asset subject to the contract “is not a security.” While we appreciate the clarity on non-security status, a definition reaching “any digital representation of value” on a distributed ledger could encompass tokenized securities, stablecoins, and tokenized deposits that holders and issuers already handle under other frameworks.

Clear exclusions and cross-references are also needed to integrate these products in a broader taxonomy. SIFMA supports a framework that distinguishes natively issued and wrapped tokenized securities (which are themselves securities under existing law) from non-security crypto assets that may be subject to a covered investment contract. However, the proposed definition of “crypto asset” as “any digital representation of value recorded on a cryptographically-secured distributed ledger” is broad enough to create confusion unless the final rule expressly excludes or cross-references other regulatory regimes for digital securities, tokenized deposits, payment stablecoins (which may be subject to the GENIUS Act), security-based swaps, registered fund interests, and other products already regulated under existing frameworks.

For SEC-registered broker-dealers, the classification of a crypto asset is not academic. It determines whether Exchange Act broker-dealer registration (Exchange Act § 15), ATS registration (Regulation ATS), exchange and clearing agency frameworks, transfer agent obligations, Rule 15c3-3 customer protection and possession-or-control requirements, Rule 15c3-1 net capital computations, books-and-records rules, Regulation Best Interest and suitability obligations, customer communications requirements, and SIPA customer and customer property definitions apply. A broad “crypto asset” definition does not, by itself,

establish eligibility for the covered-investment-contract exemptions, it is critical to embed this in a framework which prevents overlap and misapplication. Broker-dealers need a clear taxonomy to configure product-approval, onboarding, and surveillance systems. SIFMA urges the Commission to recognize three distinct categories throughout the final rule:

- digital assets that are themselves securities, including natively issued digital securities, wrapped tokenized securities, and security-entitlement tokens;
- non-security crypto assets that are subject to a covered investment contract during the life of that contract; and
- non-security crypto assets after effective and reliable delinking under proposed Rule 400.

The regulatory obligations applicable to broker-dealers differ materially across these three categories, and the final rule should not conflate them.

The definition of “covered investment contract” should remain limited to a single non-security subject crypto asset, as proposed. Expanding the definition to multi-asset structures (SAFTs, SAFE-plus-token warrant packages, notes) without separate rulemaking would create substantial uncertainty for broker-dealers where a token package includes instruments that are themselves securities under existing law. SIFMA requests that the Commission provide taxonomy examples and non-exhaustive asset-status indicators to help broker-dealers configure product-approval and surveillance systems.

Implications of Departing from Technology Neutrality

The rule is a departure from the technologically neutral approach the SEC has historically taken, and which has informed its work in integrating digital assets into its regulatory frameworks. While this reflects the specific technological underpinnings of a specific type of project and the fundraising associated with them, arguably similar dynamics could be observed in off-chain markets.

The SEC should consider the implications of creating a framework for fundraising which could conceivably be applied more broadly beyond blockchain-based markets.

Definitional Scope: Activities That Would Bring Entities in Scope as “Issuers”

Given the potential for a range of entities and individuals to be recognized as issuers of projects created under the framework, provided they are undertaking “essential managerial efforts”, it is important to also distinguish this role from entities carrying out certain technical or ministerial functions in connection with these projects.

The SEC should recognize and clearly define what technical and ministerial functions an entity can undertake in connection with these projects without triggering reporting obligations. For example, operating a node in a project which is managed and directed by others should generally be out of scope, absent other

factors indicating essential managerial efforts. Similarly, the treatment of minting should distinguish ministerial functions analogous to securities printing, which should be out of scope, from issuance activity that puts assets into circulation. Entities who are providing technical and ministerial functions which are not managerial efforts should be clearly scoped out of being considered as asset issuers and incurring any reporting requirements.

Investor Protection and Anti-Fraud Provisions

Robust investor protections and anti-fraud provisions are critical for the successful development of the market in covered investment contracts and the projects they support. Given the novel technological and operating models of these projects, clear disclosures supporting investor confidence are particularly critical. We note with encouragement the Proposal's framing that it aims to facilitate crypto capital formation "while preserving the investor protections at the core of federal securities laws." Similarly, we are encouraged that the proposal requires disclosures, ongoing reporting (for larger offerings), financial statements, bad actor disqualification provisions, and continued application of federal antifraud rules, as well as disclosure of insider holdings and tokenomics. Robust investor protections – particularly at the front end of the issuer life cycle – need to be part of the final Regulation Crypto Assets framework.

However, we would like to highlight several areas where the Proposal can be enhanced to better combat fraud and support investor confidence. The Proposal needs greater emphasis on the potential for fraud (e.g. Ponzi schemes) and broader consumer protection considerations associated with these products. Regulatory uncertainty and insufficient guardrails can create opportunities for bad actors, increasing risks to investors and potentially undermining confidence in the market.

While the disclosures provided address some key concerns that would enable clients to determine whether it is a suitable investment, these products feature a range of novel operating, valuation, and secondary market features which may not be adequately covered in their disclosure frameworks. The disclosure framework should address token-supply schedules, insider and related-party allocations, treasury transactions, concentrated holdings, market-making arrangements, liquidity limitations, governance rights, repurchase or burn mechanisms, and conflicts that could create artificial or unsustainable demand or obscure the basis for valuation.

Investor protection provisions are heavily focused on point-in-time disclosures, in part because the proposal does not integrate secondary trading of Reg CA assets into established securities trading frameworks. As such, there are gaps in oversight of asset trading, potentially enabling market manipulation or other activities that could harm investors. Absent a robust investor protection framework, many regulated broker-dealers may be unable to support these assets, particularly in client segments where they have existing requirements like Regulation Best Interest.

Bad-Actor Disqualification Amnesty

Exclusion of bad-actors will be a critical element of investor confidence in covered investment contracts, particularly given it is a novel product category and its trading may operate outside the established regulatory frameworks that mitigate fraud. We are encouraged to see that the Proposal's Section 228.104 incorporates Regulation A's bad-actor disqualification framework, but are concerned that it excludes convictions, orders, judgments, suspensions, expulsions, or bars that predate the final rule's effective date. We recognize that under the Proposal prior events instead must be described in writing in the offering circular or furnished to each purchaser a reasonable time before sale, subject to a reasonable-care exception.

However, we question the value of a blanket bad-actor disqualification amnesty, particularly in a nascent market where assets and products lack any reporting history. The market will develop better if the SEC errs on the side of excluding market participants whose past behavior could undermine the standards of a developing market category and harm investor confidence. This market will develop only if there is confidence that it is made up of products issued by reputable developers and issuers.

Direct Sales Without Intermediary Obligations and Retroactive Burden-Shifting

SIFMA does not contend that broker-dealers must be mandatory intermediaries for every crypto asset sale. However, where the Commission permits direct issuer sales under Subpart C, it should recognize that bypassing registered intermediaries can remove or reduce practical application of protections exercised through the regulations which brokers must comply with, such as Regulation Best Interest, suitability, customer identification (31 CFR 1023.220), AML monitoring (31 CFR 1023.210), sanctions screening, investor-limit administration, offering-circular delivery controls, complaint handling, and surveillance. SIFMA recommends that the Commission address the gaps this presents – this could be through requiring registered intermediary participation for retail public sales, or where brokers are not present in the distribution process, to ensure that issuer-level controls are in place to mitigate illicit finance and other risks. This could include wallet aggregation procedures for investment limits, identity verification, sanctions screening, delivery logs, and customer support. We recognize that issuers of covered investment contracts would like not be BSA-regulated persons and thus not subject to the implementing rules of the BSA, the fundraising exemption would require the issuer to be an entity organized in the United States such that the issuer would have sanctions screening obligations. Nonetheless, the startup exemption has no such requirement. This creates a substantial gap not only with issuance procedures in the established markets, but within the provisions of the Proposal itself.

The sanctions screening obligations of issuers of crypto assets that can be the subject of the investment contracts addressed by this rulemaking would likely extend to the secondary markets, which are designed to be permissionless; however, sanctions screening is grounded in real-world identity. We similar tension underway in the GENIUS Act rulemaking addressing permitted stablecoins. We encourage the

Commission to engage with the Treasury Department to develop coordinated approaches to these questions.

Similarly, the limited segments of the established of the securities markets which allow for direct distribution of securities to investors without broker intermediation (e.g. Regulation D Rule 506 (b) & 506(c), Section 4(a)(2) traditional private placements, Regulation A, Rule 504) do have anti-fraud and monitoring provisions. Similarly, OFAC screening requirements cut across all transactions involving U.S. persons. The experiences of these markets can provide guidance for the Commission in addressing risks inherent with the direct distribution of these assets.

As issuance for covered investment contracts grows and develops, we strongly encourage the Commission to continue to closely monitor the experiences of issuers and investors and be prepared to impose additional requirements if needed to address emerging risk patterns.

Ultimately, direct smart-contract distributions should not shift compliance burdens retroactively to broker-dealers that later facilitate secondary trading in those assets.

EDGAR Access for Nontraditional Issuers

Section 228.101(c) of the Proposal requires documents under Regulation Crypto Assets to be submitted electronically through EDGAR in accordance with Regulation S-T. At the same time, the startup exemption permits the issuer to be an entity, an individual, or a group of individuals or entities, with each member of a group required to sign and certify the applicable filings. However, the proposal does not explain how EDGAR access would work for nontraditional issuers. EDGAR onboarding, account administration, signature authentication, and filing accountability are generally structured around identifiable organizational filers and authorized individuals.

The Commission should clarify whether and how EDGAR access would be expanded or adapted for individual issuers and unincorporated groups, including who would obtain and control the filer account, authenticate signatures, and bear responsibility for submissions.

From a broker-dealer onboarding and accountability perspective, the final rules or form instructions should identify who is legally responsible for the filing where the issuer is an individual, group, or unincorporated association; who controls EDGAR credentials; who can amend or withdraw filings (including Form TR); who receives legal notices and service of process; and who has authority to bind the issuer. Broker-dealers should not be required to onboard or permit secondary trading in assets where there is no identifiable issuer contact, no service address, or no accountable signatory for Commission filings.

State Blue Sky Law Preemption

The Proposal's approach to preemption of state Blue Sky laws raises several open questions for broker-dealers which should be addressed in the final rule. Proposed Rule 500's secondary-market preemption excludes transactions by an issuer, underwriter, or dealer. A broker-dealer's capacity in each transaction is therefore determinative. A broker-dealer effecting customer agency transactions may benefit from preemption, but the same firm acting as a dealer (buying and selling for its own account) would fall outside the provision. SIFMA recommends that the final rule clarify that capacity is assessed transaction by transaction and that the Commission address whether excluding dealer transactions is necessary where the dealer is an SEC-registered broker-dealer already subject to Exchange Act, FINRA, AML, net capital, and customer-protection obligations.

SIFMA recommends that registered broker-dealers receive a reasonable reliance safe harbor for issuer compliance with the disclosure, filing, and periodic reporting conditions of Rule 500, and for the availability of preemption in secondary transactions, absent actual knowledge of noncompliance.

Preemption should not turn on issuer facts that unaffiliated broker-dealers cannot verify in real time — such as whether the issuer is “current” with all filing obligations or whether a Form 1-UC was timely filed — without an objective, publicly accessible compliance indicator.

Implementation and Transition Framework

SIFMA recommends that the Commission address the following practical implementation and transition matters to ensure that SEC-registered broker-dealers and asset managers can comply with the final rule in an orderly and operationally sound manner:

- **Implementation period:** A reasonable implementation period (no fewer than 180 days) after final rule adoption before broker-dealers and registrants under the Investment Company Act and the Advisers Act are required to effect transactions in, or custody, covered investment contracts under the new framework. During this period, broker-dealers should be permitted to continue relying on existing staff statements and no-action positions. This should also apply in the event that managerial efforts resume and the asset is once again classified as a security.
- **Asset-status data feed:** A centralized, machine-readable, real-time EDGAR data feed identifying the status of each covered investment contract — including issuer, token identifiers, exemption basis, filing history, reporting status, and Form TR effective time — accessible via API for integration into broker-dealer compliance and surveillance systems.
- **Form TR effective-time rules:** Clear rules specifying when a Form TR invoking Rule 400 becomes operationally effective for intermediaries, including a minimum notice period before delinking takes effect for broker-dealer purposes and a defined mechanism for Commission challenge or objection.

- **Intermediary reliance safe harbors:** Express safe harbors protecting SEC-registered broker-dealers and registrants under the Investment Company Act and the Advisers Act that reasonably rely on filed Form TR certifications, EDGAR status indicators, issuer reporting compliance, and Rule 500 preemption eligibility — absent actual knowledge of deficiency or noncompliance.
- **Regulatory coordination:** Coordinated guidance from the Division of Trading and Markets, FINRA, SIPC, and designated examining authorities, in coordination with the CFTC and the federal banking agencies, before or contemporaneous with final rule adoption, addressing broker-dealer custody, capital, supervisory, books-and-records, customer-protection, and examination obligations under the new framework.
- **Customer notice templates:** Model customer notice templates or guidance for communications that broker-dealers must deliver when an asset's status changes from security to non-security (or vice versa), including disclosure of changes to SIPC coverage, account type, custody arrangements, and applicable investor protections.
- **Capital and custody guidance:** Written guidance on Rule 15c3-1 net capital treatment and Rule 15c3-3 possession-or-control and reserve formula treatment of covered investment contracts, subject crypto assets during the life of the contract, and non-security crypto assets after delinking — including transition relief during any implementation period.
- **Secondary trading and settlement guidance:** Guidance on Regulation ATS, Reg NMS, trade reporting, clearance, settlement, transfer agent, and depository eligibility for covered investment contracts and subject crypto assets, including the treatment of atomic settlement where one leg is a security and the other is not.
- **No retroactive liability:** An express statement that SEC-registered broker-dealers shall not be subject to retroactive enforcement liability for transactions effected, or custody maintained, in reasonable reliance on public Commission or EDGAR status indicators — including Form TR filings and Rule 500 preemption eligibility — that are subsequently challenged or withdrawn by the Commission, absent actual knowledge of deficiency or noncompliance. As noted above in the discussion of the intermediary reliance safe harbor, this should also include protections from private-action and state-law exposure.

Conclusion

We look forward to working with the Commission as it finalizes the Rule and on the larger process of integrating covered investment contracts within the broader securities regulatory framework. Please feel free to contact Peter Ryan (pryan@sifma.org) or Charles De Simone (cdesimone@sifma.org) with any questions regarding these comments.

A handwritten signature in blue ink, appearing to read "K. Bentsen", with a stylized flourish at the end.

Kenneth E. Bentsen, Jr.

CEO and President

Securities Industry and Financial Markets Association