CLIENT ALERTS & INSIGHTS

# SEC Publishes the Long-Awaited Regulation Crypto Assets Proposed Rules

SEPTEMBER 18, 2026

Authors: William E. Walsh, Patrick Beisell, Collin Cahill, Matthew G. Wulf

Featured Practices: Litigation, Corporate, Intellectual Property, Data Privacy & Cybersecurity, White Collar, Government Investigations & Regulatory Compliance, Securities & Commodities Litigation & Investigations

## Key Takeaways

- The SEC has proposed its most comprehensive crypto framework to date, creating a clearer regulatory path for digital asset projects from launch through maturity. The proposal includes new exemptions for startups and fundraising activities, along with disclosure requirements intended to provide greater certainty for issuers and investors.
- A proposed Investment Contract Safe Harbor could provide long-sought clarity on when a crypto asset is no longer subject to federal securities laws. If adopted, the framework would establish a formal process for demonstrating that a digital asset has become sufficiently decentralized and separated from its original investment contract.
- While regulators are moving away from "regulation by enforcement," enforcement itself is not going away. Recent SEC, CFTC and DOJ actions show that agencies remain focused on fraud, Ponzi schemes and other misconduct, underscoring the importance of strong compliance and governance as the regulatory landscape continues to evolve.

---

As the CLARITY Act appears increasingly unlikely to achieve passage in the Senate before the midterm elections, the SEC has separately advanced its effort to bring greater clarity to digital asset issuers. On August 18, 2026, the SEC published proposed rules titled “Regulation Crypto Assets,” building on ideas from the SEC and CFTC’s official taxonomy for digital assets.[1] The long-awaited rules mirror the ideas outlined by SEC Chairman Paul Atkins in his March 17, 2026 remarks.

## Regulation Crypto Assets Proposed Framework:

Regulation Crypto Assets provides a combination of general rules and targeted proposals applying to different stages of a crypto asset project. Although the proposal borrows from existing rules, it relies primarily on flexible, principles-based nonfinancial disclosure requirements.

**1. Startup Exemption (Subpart B, Rule 200)**

The one-time Startup Exemption gives early-stage crypto projects a four-year "regulatory runway" to decentralize digital asset holdings and avoid the later application of securities laws. Key features include:

- **Offering Limit**: Up to $5 million during the four-year exemption period
- **Issuer Eligibility**: Can be an entity, an individual or a group of individuals or entities

**2. Fundraising Exemption (Subpart C, Rules 300-307)**

Modeled largely on Regulation A, the Fundraising Exemption has two tiers. Both require a discussion of the issuer's financial condition and financial statements, plus general nonfinancial disclosures. Tier 2 requires audited financial statements. Key features include:

- **Offering Limit**: Up to $20 million in any 12-month period for Tier 1, and up to $75 million for Tier 2
- **Issuer Eligibility**: Must be a U.S.-organized entity with a majority of executive officers or directors who are U.S. citizens or residents, more than 50% of its assets in the United States, and its business principally administered in the United States

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

The Investment Contract Safe Harbor may be Regulation Crypto Assets' most consequential feature. It would codify the SEC and CFTC's official taxonomy for determining when a crypto asset is no longer subject to an investment contract. Under the Safe Harbor:

- A covered investment contract would be deemed to have ceased if: (1) the issuer has completed or otherwise permanently ceased all essential managerial efforts it represented or promised it would undertake and is not making and does not intend to make any new such representations or promises; and (2) the issuer files a Form TR with the SEC.
- The SEC would take the position that registration, reporting, and other federal securities law requirements no longer apply to transactions involving that crypto asset.

The Safe Harbor is available to any issuer, whether or not the issuer has used the other exemptions, and it has no time limit-an issuer may satisfy it whenever it completes its promised essential managerial efforts.

## What This Means for the Industry

Regulation Crypto Assets is the most comprehensive attempt to date to create a workable regulatory framework for crypto asset offerings at every stage. The Investment Contract Safe Harbor provides a formal mechanism to establish that a crypto asset has separated from its investment contract-a persistent source of industry uncertainty. Comments on the proposed rules are due by **October 20, 2026**.

## Enforcement Updates

In our last update, we discussed then-Deputy Attorney General Blanche's April 2025 memorandum directing the DOJ to "end the regulatory weaponization against digital assets."[2] Blanche was confirmed as Attorney General in August 2026, signaling a continued shift away from regulation-by-enforcement, consistent with the SEC's and CFTC's approach.

Although the Administration has reduced crypto-specific enforcement, it has prioritized fraud enforcement, including crypto-related fraud. In August, the SEC and CFTC brought parallel actions against Goliath Ventures Inc. and its CEO over an alleged $400 million crypto Ponzi scheme after the CEO pleaded guilty to federal criminal charges for his role in the fraud.[3] That same month, the DOJ unsealed a 25-count indictment against Edward Zimbardi for allegedly running a $165 million crypto Ponzi scheme that defrauded more than 6,000 investors.[4] The DOJ has continued to pursue confidence scams, including its July 2026 charges against members of a Chinese money laundering network for allegedly laundering $43 million in cyber investment fraud proceeds.[5]

**Takeaway for Market Participants:** Enforcement has shifted, not disappeared. Agencies are targeting fraud and misappropriation rather than market-structure violations, and that posture is expected to continue as the regulatory framework takes shape.

**The Benesch team will continue to monitor developments surrounding Regulation Crypto Assets and other federal digital asset initiatives. We have extensive experience advising clients on digital asset regulation, securities compliance, enforcement matters, investigations and emerging technology issues, and stand ready to help market participants assess the impact of these evolving requirements on their businesses.**

---

[1] For an overview of the taxonomy, please see our last article on this topic.

[2] *Memorandum from Todd Blanche, Deputy Att'y Gen., to All Dep't Employees,* DOJ (Apr. 7, 2025), https://www.justice.gov/dag/media/1395781/dl.

[3] *SEC Charges Company and its CEO in Alleged $425 Million Ponzi Scheme*, SEC (Aug. 11, 2026), https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26608; *CFTC Charges Goliath Ventures Inc. and CEO with $400 Million Fraud Scheme*, CFTC (Aug. 11, 2026), https://www.cftc.gov/PressRoom/PressReleases/9280-26.

[4] *Alleged Mastermind of $165 Million Cryptocurrency Ponzi Scheme Facing Federal Charges after Deportation from Fiji*, DOJ (Aug. 17, 2026), https://www.justice.gov/usao-ndga/pr/alleged-mastermind-165-million-cryptocurrency-ponzi-scheme-facin
.

[5] *Two Key Members of Chinese Money Laundering Network Charged with Laundering $43 Million in Investment Fraud Proceeds*, DOJ (Jul. 16, 2026), https://www.justice.gov/opa/pr/two-key-members-chinese-money-laundering-network-charged-laundering-
.