

April 11, 2025

SEC Staff Issues Statement Regarding Securities Offerings in the Crypto Asset Markets

Division of Corporation Finance Provides Guidance on Application of Disclosure Requirements to Offerings and Registrations

OVERVIEW

On April 10, 2025, the SEC's Division of Corporation Finance provided guidance regarding the application of certain disclosure requirements under the federal securities laws to offerings and registrations of securities in the "crypto asset markets."¹ The Division's statement notes that such offerings and registrations may (i) "involve equity or debt securities of issuers whose operations relate to networks, applications, and/or crypto assets" or (ii) "relate to crypto assets offered as part of or subject to an investment contract." The statement is intended to provide greater clarity on the application of the federal securities laws during the pendency of deliberations regarding a comprehensive regulatory framework for crypto assets.²

DISCLOSURE GUIDANCE

The statement addresses certain disclosure requirements applicable to:

- registration statements under the Securities Act of 1933 (e.g., Form S-1 or Form F-1) and the Securities Exchange Act of 1934 (e.g., Form 10 or Form 20-F); and
- Form 1-A for Regulation A exempt offerings.

In particular, while noting that each issuer should evaluate its own facts and circumstances when preparing its disclosures, the statement addresses the following disclosure items, each of which is discussed in more detail in the Division's statement:

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- **Description of business:** Disclosure should be tailored to the material aspects of the issuer's business and presented in clear, concise, and understandable language, without overly relying on technical terminology or jargon;³
- **Risk factors:** The content and scope of appropriate disclosures will depend on the nature of the security and the issuer's business, and may include factors that address the development and implementation of the issuer's business and the particular characteristics of the security, such as its features, price volatility, limited rights of holders, valuation and liquidity risks, technological risks, cybersecurity risks, business, operational, and network risks, legal and regulatory risks, and risks related to an associated network or application if material;
- **Description of securities:** Disclosure with respect to a crypto asset security may include descriptions of: (i) rights, obligations, and preferences of the crypto asset security; (ii) technical specifications, including the extent to which the underlying code can be modified, and technical requirements for holding and transferring the security; and (iii) whether and how the total supply of the crypto asset security can be changed and related liquidity;
- **Directors, executive officers, and significant employees:** In the context of crypto asset securities, disclosure may be appropriate to reflect the roles played by third parties performing policy-making functions typically performed by executive officers and directors. For example, "certain trusts – such as the spot crypto exchange-traded products – have a sponsor with directors and executive officers who perform functions similar to directors or executive officers of the trust. In these cases, the Division observed that disclosure has been provided with respect to the directors or executive officers of the sponsor," including any fees paid to the third party for performing such functions;
- **Financial statements:** The Division encourages issuers to contact the Division's Office of Chief Accountant with questions regarding financial statements and other financial information, and to consult with that office on accounting and financial reporting questions, "especially those involving unusual, complex, or innovative transactions"; and
- **Exhibits:** To the extent that the rights, preferences, and obligations of holders of the securities are memorialized in smart contract(s) or otherwise programmed into the code of a network or application, a filing may include as an exhibit the code of the smart contract(s) and/or the network or application, with the issuer updating the exhibit in response to subsequent changes to the code.

The Division noted that it welcomes questions about the application of the SEC's disclosure rules to offerings and registrations of crypto asset securities, as well as any ongoing reporting obligations. The Division also welcomes requests for other assistance (including requests for interpretive or no-action letters).

KEY IMPLICATIONS

The Division's statement provides helpful guidance to issuers navigating complex securities law and disclosure questions in connection with capital raising transactions and other securities offerings in the crypto asset markets. The statement signals the SEC staff's openness to engaging with issuers on these issues, including its willingness to consider interpretive or no-action relief.

The statement is part of the SEC's recent efforts to clarify the application of the federal securities laws to crypto assets. Under Commissioner Hester Peirce's leadership, the SEC's Crypto Task Force, which was established on January 21, 2025 by Acting Chair Mark T. Uyeda,⁴ has focused on offering- and registration-

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related matters. For example, Commissioner Peirce's first speech following the creation of the Crypto Task Force listed token offerings and registered offerings as priorities.⁵ In a later statement, Commissioner Peirce requested public comment on a number of topics, including detailed questions regarding public offerings and registration safe harbors.⁶ The Division has also recently issued other crypto-related guidance, including with respect to stablecoins⁷ and "meme coins."⁸ The Division specifically notes that the statement is intended to provide guidance during the pendency of deliberations regarding a comprehensive regulatory framework for crypto assets.⁹

The statement should be viewed in the context of the SEC's broader focus on facilitating capital formation, together with the Division's recent statement to expand existing accommodations for confidential review of draft registration statements¹⁰ and Acting Chair Uyeda's remarks at the 41st Annual Federal Securities Institute on February 24, 2025, where he noted that the SEC is returning to its "narrow mission to facilitate capital formation, while protecting investors and maintaining fair, orderly, and efficient markets."¹¹

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ENDNOTES

- 1 SEC Division of Corporation Finance, *Offerings and Registrations of Securities in the Crypto Asset Markets* (Apr. 10, 2025), <https://www.sec.gov/newsroom/speeches-statements/cf-crypto-securities-041025> (“Statement”).
- 2 *Id.*
- 3 The Division lists examples of disclosure with respect to current or proposed business plans, including: (i) the issuer’s specific business activity, such as operating or developing a network or application and (ii) whether the security or crypto asset has any function(s) in the operation of the business, including whether it has any intended use or role in an associated network or application. The Division also notes that, where an issuer is developing or acquiring or intending to develop or acquire a network or application, it has observed issuers tailoring their disclosure to provide a narrative description of the purpose of the network or the application, and its operation, including: (i) the objectives of the network and how the technology of the network or application functions and accomplishes its objectives, including its architecture, software, cryptographic key management, and functionality; (ii) the process for validating transactions, the consensus mechanism, the block size, the transaction speed, the transaction (or “gas”) fees, and reward mechanism, if any; and (iii) the various roles that exist or are intended to exist in connection with the network and/or application, such as users, onchain and offchain service providers, developers, transaction validators, and governance participants. *Id.*
- 4 SEC Press Release, *SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force* (Jan. 21, 2025), <https://www.sec.gov/newsroom/press-releases/2025-30>.
- 5 Commissioner Peirce, *The Journey Begins* (Feb. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-journey-begins-020425>.
- 6 Commissioner Peirce, *There Must be Some Way Out of Here* (Feb. 21, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125>.
- 7 SEC Division of Corporate Finance, *Statement on Stablecoins* (April 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425>.
- 8 SEC Division of Corporate Finance, *Statement on Meme Coins* (Feb. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins> (providing the Division’s view that transactions in certain meme coins do not involve the offer and sale of securities under the Securities Act or Exchange Act).
- 9 Statement, *supra* note 1 (“The Division recognizes that Acting Chairman Mark T. Uyeda formed the Crypto Task Force to help the Commission develop a comprehensive and clear regulatory framework for crypto assets, including addressing applicable registration and disclosure requirements.”). Congress has also been focused on the application of securities laws to crypto assets—to the extent legislation is signed into law, the disclosure and other requirements applicable to crypto assets may change significantly. See, e.g., United States House Committee on Financial Services, Press Release, *Digital Assets Subcommittee Holds First Market Structure Hearing This Congress* (Apr. 9, 2025), <https://financialservices.house.gov/news/document/single.aspx?DocumentID=409694> (noting “the significant legal uncertainty surrounding the application of securities laws to digital assets, which leaves users inadequately protected and stifles innovation”).
- 10 SEC Division of Corporate Finance, *Enhanced Accommodations for Issuers Submitting Draft Registration Statements* (Mar. 3, 2025), <https://www.sec.gov/about/divisions-offices/division-corporation-finance/draft-registration-statement-processing-procedures-expanded>. For additional information please see our Client Memorandum, <https://www.sullcrom.com/SullivanCromwell/Assets/PDFs/Memos/SEC-Expands-Confidential-Registration-Statement-Submission-Accommodations.pdf>.

ENDNOTES (CONTINUED)

- ¹¹ Remarks at the Florida Bar's 41st Annual Federal Securities Institute and M&A Conference, <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-florida-bar-022425>.

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