



October 20, 2026

Submitted by [SEC Webform](#)

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

RE: File No. S7-2026-27: Regulation Crypto Assets

Dear Ms. Countryman:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),¹ I am writing in response to U.S. Securities and Exchange Commission (“SEC” or the “Commission”) Release Nos. 33-11434 and 34-106150, *Regulation Crypto Assets* (the “Proposal”), which would provide exemptions from the registration provisions of the federal securities laws for offerings of “covered investment contracts,” preempt state securities laws from applying to the offer and sale of such exempted securities, and create a safe harbor under which covered investment contract issuers could be deemed by the Commission to be no longer subject to the federal securities laws.

On balance, Regulation Crypto Assets lacks the robust investor protections necessary for the types of offerings, and offerees, contemplated under its exemptions. The Proposal would strip away disclosure requirements, filing requirements, and resale restrictions without due regard to the adverse impact on retail investors. Promulgating registration exemptions without common investment protections not only invites fraud and victimization, but it undermines the trust necessary to promote innovation in the capital markets. The Proposal also exceeds the Commission’s statutory authority to preempt state securities regulation and ignores case law on the meaning of the term “investment contract.” The Proposal should be withdrawn because it is bad policy that would endanger investors, harm other registrants, and weaken the securities markets generally.

¹ Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA’s membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

I. The Proposal Is Preferential Regulation in Favor of Crypto.

In public remarks, the Commissioners have expressed their views that merit regulation is harmful because it lets regulators pick winners and losers rather than letting investors choose freely.² Yet that is the approach being taken here; Regulation Crypto Assets puts the Commission's thumb on the scale to overcome weaknesses common to crypto offerings in order to facilitate sales to retail investors.

Two aspects of the Proposal are of particular concern. First, the Proposal would offer crypto issuers the freedom to make principles-based disclosures about their offerings while relieving them from required disclosures that are not only common to other securities offerings, but are also relevant to crypto offerings. This is an invitation for crypto issuers to replace material information with marketing while omitting facts that could reveal poor business plans, conflicts of interest, ineffective management, or precarious financial conditions. Second, the Proposal would allow immediate resale of covered investment contract securities to retail investors. Doing so would risk investor victimization by insiders seeking immediate divestment for quick profits.

The reason for these novel accommodations is clear. Many crypto offerings depend on liquid asset transfer mechanisms to create value. In that sense, they appear to operate like schemes that rely on the injection of new capital to give the impression of success. The Proposal refers to this dynamic as “network effects.” The problem for crypto projects that seek only to create profits through liquidity is that ordinary disclosure requirements expose poor or non-existent business plans, and holding restrictions frustrate the plans of insiders who seek to make money by selling before a project fails. State regulators cannot help but be reminded of our seminal calling to protect investors from “speculative schemes which have no more basis than so many feet of blue sky.”³ Yet, the Proposal would make the Commission's accommodation complete by tying our hands too. The Proposal fails to heed decades of hard-earned experience that comes from protecting investors and establishing sound markets just so the Commission can help give crypto assets the liquidity they cannot earn for themselves when following the rules that apply to other investments.

² SEC Chairman Paul Atkins has emphasized that the Commission's role is to “establish the rules of the road and to oversee fair play – not to select winners and losers” consistent with its role as a market regulator rather than a merit regulator. Paul Atkins, Chairman, SEC, [Remarks at the Investor Advisory Committee Meeting](#) (Sept. 10, 2026). Commissioner Mark Uyeda has likewise stated that “[t]here are significant downsides to a [merit] system where government regulators make the decision as to whether an investment is appropriate for investors – instead of allowing them to access opportunities that they deem optimal for their own portfolios.” Mark Uyeda, Commissioner, SEC, [Remarks at the 53rd Annual Securities Regulation Institute](#) (Jan. 26, 2026).

³ *Hall v. Geiger Jones Co.*, 242 U.S. 539, 550 (1917) (citations omitted).

II. The Startup Exemption Lacks Necessary Protections Against Fraud and Misconduct.

Proposed Rule 200 would allow crypto issuers to raise up to \$5 million over a four-year period, exempt from all registration provisions. As proposed, Rule 200 would combine multiple novel exemptive features in a way that would serve as an ideal vehicle for fraud and victimization. In short, under proposed Rule 200, any person anywhere in the world could spin up a website to directly entice retail investors to buy securities held by insiders, all while claiming these actions have been blessed by the Commission. The most foreseeable result will be a proliferation of pump and dump schemes, known in crypto parlance as “rug pulls.”

While NASAA believes Regulation Crypto Assets should be withdrawn, we recommend the following changes in the alternative to mitigate the potential for investor harm under Rule 200.

A. The Startup Exemption Should Require Specified Narrative Disclosures.

The Commission should replace the proposed principles-based disclosure regime with existing prescriptive disclosure requirements, augmented as necessary to capture the unique aspects of blockchain-based offerings and combined as needed with staff guidance.

The argument that crypto issuers need “flexibility” is not a sufficient reason to abandon the core principles of effective disclosure requirements. The essential components of Regulation S-K – business and operational disclosures, a description of the securities, management’s discussion and analysis of financial condition and results of operations (“MD&A”), the identification of management and securities holders, and related party transactions – are common to all enterprises. Proposed Rule 103 alludes to some of these concepts but does not require any particularity or uniformity of disclosure. Other relevant disclosures required under Regulation S-K – including legal proceedings, executive compensation, and corporate governance⁴ – are missing. The Proposal does not explain which of these basic topics is irrelevant to crypto investors or why, but this is information that reasonable investors regard as material.

Further, the Commission has already demonstrated that the Regulation S-K disclosure regime is flexible as evidenced by provisions applicable to particular industries, such as oil and gas and mining. Creating disclosure requirements for specific industries is nothing new for the Commission, and there is no reason it cannot do the same thing here. Proposed Rule 103 identifies features that are common to crypto offerings, which shows that the Commission already has

⁴ “Governance” under proposed Rule 103(b)(8) refers to token governance mechanisms, not corporate governance.

enough knowledge to create mandatory and uniform crypto disclosure requirements. Further, any such requirements can be augmented with staff guidance, as the Commission has done before to apply existing disclosure requirements to new technological developments.⁵ This approach is preferable to the proposed approach of relieving crypto issuers from disclosures that other issuers must make and upon which investors rely.

The Commission's flexibility argument is also misplaced because important Regulation S-K narrative disclosure requirements – such as Risk Factors and MD&A – already require issuers to tailor their disclosures to explain what aspects of their businesses are worthy of touting and what aspects may raise concerns. The Proposal does not explain why the level of flexibility in current disclosure requirements is not sufficient. Proposed Rule 103 also explains that “[i]ssuers should note that disclosure is not required to be provided where a particular disclosure requirement is not applicable, or responsive information is unknown or not reasonably available.”⁶ A crypto issuer could do the same thing in a mandatory disclosure regime. As proposed, however, the principles-based framework relieves crypto issuers from revealing shortcomings that could show that investors are at significant risk of losing money.

Last, tailoring and augmenting existing narrative disclosure requirements would be the better approach because it makes clear to crypto issuers that certain information is material for all investments. The proposal to give crypto issuers a new disclosure regime gives the false impression that materiality is subjective and issuer-defined. That is not correct; materiality is an objective standard of what is important to a reasonable investor.⁷ The Commission's approach would lead to all sorts of misstatements and omissions, whether intentional or inadvertent. Further, prescribed disclosures allow investors to compare offerings, which is better for investor protection and efficient capital formation. Mandatory disclosure requirements also help regulators detect misconduct. The Proposal's reasons for favoring “flexibility” are not strong enough to overcome the needs of investors and regulators to make sure that investment risks are spelled out clearly.

⁵ See, e.g., SEC Div. of Corp. Fin., [CF Disclosure Guidance: Topic No. 2, Cybersecurity](#) (Oct. 13, 2011) (staff guidance explaining where and how cybersecurity issues should be explained in public company narrative and financial disclosures).

⁶ Proposed Rule 103(a).

⁷ See *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 445 (1976) (stating that “[t]he question of materiality, it is universally agreed, is an objective one, involving the significance of an omitted or misrepresented fact to a reasonable shareholder”).

B. The Startup Exemption Should Require Financial Disclosures.

Proposed Rule 200 would relieve startup exemption issuers from providing information about their financial condition,⁸ which would leave investors with little more than a guess as to the fiscal soundness of these enterprises. Financial viability is one of the most important things to know about new businesses. Investors need to know if a project is already, for example, hobbled with debts and therefore likely to fail. Financial disclosures also provide valuable information on the competence of the issuer's management. Because the startup exemption is susceptible to pump and dump schemes involving opaque offerings, requiring even basic financial disclosures would serve as a critical caution to investors of offerings that are primed for failure and fraud because the issuer needs money not to build a network or application but to pay off debts or provide payouts to existing investors.

C. Startup Exemption Disclosures Should Be Filed on EDGAR.

Allowing startup exemption issuers to post disclosures on a website is also problematic. The Commission cannot effectively monitor changes to website disclosures.⁹ Also, forcing investors to go to multiple websites further obscures disclosures by requiring investors to spend extra effort to find and review them. Last, allowing crypto issuers to frame disclosures without the discipline required by standard forms further encourages the improper message that materiality is subjective to the issuer.

Startup exemption issuers should therefore be required to file disclosures on EDGAR. An issuer cannot change a filed disclosure without filing an amendment. That would provide a clear record of how and when disclosures have changed and ensure that disclosures remain consistent over time. Requiring crypto issuers to file on EDGAR would also help investors compare disclosures from one issuer to another, which would improve efficient capital allocation. Last, requiring filing on EDGAR would impress upon crypto issuers that their disclosures are public documents that need to adhere to materiality standards applicable to other investments.

⁸ See Proposal at 79. The only aspect of proposed Rule 103 that could reasonably involve the issuer's financial condition is the requirement to describe the use of proceeds. See proposed Rule 103(b)(2)(iv).

⁹ Indeed, the Commission has admitted that its ability to review any public disclosures is sporadic, and recent inquiries have found that the Commission's disclosure review program has been harmed by staff losses. See [Letter from Marni Rock Gibson, NASAA President, to Vanessa A. Countryman, Secretary, SEC](#), Re: File No. S7-2026-17: Registered Offering Reform at 10-11 (July 27, 2026) ("Registered Offering Reform Comment Letter").

D. The Startup Exemption Should Include a Current Reporting Requirement.

Proposed Rule 200 would only require startup exemption issuers to amend their disclosures “within 30 calendar days after the end of each calendar year if, as of the end of the calendar year, there are any material changes in the information previously disclosed.”¹⁰ While a periodic filing requirement for startup exemption issuers is a good thing, as proposed issuers would have no obligation to provide updates for material events for as long as 13 months. That time lag presents too great an opportunity for issuers to delay disclosing bad news to existing or new investors who could be caught flat-footed. The fundraising exemption, on the other hand, requires both periodic and current reports. NASAA recommends adding a current reporting requirement to the startup exemption, similar to proposed Rule 305(a)(4), to ensure investors receive timely notice of material changes and events.

E. Pre-Offering Investors Should be Required to Hold Restricted Securities.

As proposed, the startup exemption would allow all purchasers – including insiders and other pre-offering securities holders – to immediately resell covered investment contract securities.¹¹ Resale restrictions are designed to ensure that insiders or others with inside information cannot translate informational advantages into quick gains at the expense of new investors. The startup exemption, on the other hand, is tailor-made for full and immediate insider divestment.¹² The Proposal currently would allow for disclosure of resale restrictions (if an issuer chooses to impose them); however, the Commission also asks whether the startup exemption should include resale restrictions on “related persons.”¹³ It should, and such restrictions should apply both to “related persons” and holders who have purchased or received investment contract securities by whatever means before the offering. Restrictions for all pre-offering holders are key to investor protection.

¹⁰ Propose Rule 200(d)(3).

¹¹ See Proposal at 60. The fundraising exemption would put caps on the amount of sales by affiliates of the issuer.

¹² Notably, the Proposal is more permissive than the CLARITY Act, which would have contained resale restrictions for related persons. See [H.R. 3633](#), 119th Cong. §§ 104(c)(1)(B), (c)(3)(A)(ii) (2026).

¹³ Proposal at 66, Question 35; see also Proposal at 108-09, Question 81 (same question with respect to the fundraising exemption).

One commentator has described a concerning dynamic that could lead to investor harm without such restrictions:

“In almost all cases, founders had to start by going after venture capital. Before a new token hits the market, a select cohort of venture capitalists is usually given the opportunity to buy a load of them at a discounted rate.... The problem with this system is that VCs, by their nature, are incredibly mercenary. If a VC has backed a project, they will naturally expect a return on their investment. VCs have also come to learn that much of the cryptocurrency ecosystem is propped up by flimsy and fickle hype on the part of founders and investors. Hype circles are generally self-sustaining ... until they aren't. Consumer confidence can crash in the space of seconds, and a token that might have seemed watertight this morning can hit \$0 by lunchtime. Savvy VCs know this, and their response is to make sure they always cash out long before the wheels have a chance to come off. As such, they have gathered a well-earned reputation for being ‘dumpers’ – a loaded industry term for individuals or institutions that habitually sell their tokens the second they get their hands on them.”¹⁴

As proposed, the startup exemption lacks the guardrails necessary to prevent this very type of exploitative behavior. The lack of resale restrictions would have two consequences, both troubling. First, it would facilitate the victimization of retail investors. Unfortunately, this already happens.¹⁵ The Commission should take steps to mitigate the potential abuses that can occur when informational asymmetries disadvantage retail investors. Second, the lack of resale restrictions would encourage the proliferation of simple hype-based value transfer schemes rather than the development of decentralized applications that create independent value by providing services that customers will use. The acclaimed purpose of Regulation Crypto Assets is to “allow crypto asset innovation to flourish.”¹⁶ Digital pyramid schemes are not new or innovative. Resale restrictions are needed to focus the Commission’s exemptions on efforts that serve investors, the markets, and

¹⁴ Lee Reiners, [Regulation Crypto Assets: Policymaking by Crypto, For Crypto](#), The FinReg Blog (Aug. 20, 2026) (quoting JAKE DONOGHUE, CRYPTO CONFIDENTIAL (2024)) (“FinReg Blog Post”).

¹⁵ Chainalysis reported that in 2022, of the 40,521 tokens launched and analyzed, 9,902, or 24 percent of tokens with meaningful initial activity fell 90 percent in the first week, indicative of possible pump and dump activity. [24% of New Tokens Launched in 2022 Bear On-Chain Characteristics of Pump and Dump Schemes](#), CHAINALYSIS (Feb. 16, 2023). According to coingecko research, 53.2 percent of all cryptocurrencies on GeckoTerminal, since 2021, have failed, with the majority occurring in 2025. Shaun Paul Lee, [Dead Coins: Over 50% of Cryptocurrencies Have Failed](#), COINGECKO (Apr. 17, 2026). Evaluating 5,559 crypto assets recorded in CoinMarketCap between 2014 and 2026, one study found that one in four launches collapsed within the first six months. Aliro Joel Sanhueza and Nicolás Magner, [Born to Die: What Determines Early Collapse in the Cryptoasset Market?](#) (Aug. 3, 2026).

¹⁶ Paul S. Atkins, Chairman, SEC, [Statement on Regulation Crypto Assets: Fit-for-Purpose Exemptions for Crypto Market Innovation](#) (Aug. 18, 2026).

the economy, while giving issuers the ability to build real businesses. They are also important to retain public trust in the capital markets.

F. The Startup Exemption Should Only Be Available to U.S. Businesses.

The Proposal asks whether non-U.S. persons should be allowed to use the startup exemption.¹⁷ They should not. If a purpose of Regulation Crypto Assets is to foster the domestic crypto market and U.S. crypto innovation, it does not make sense to give foreign parties easy means to take money from U.S. retail investors and remove it from the U.S. economy and its startups. NASAA has repeatedly warned of the scam epidemic robbing U.S. citizens at an unprecedented scale,¹⁸ and we have urged a whole of government approach to combat it.¹⁹ One way the Commission can help is by limiting the startup exemption to U.S. businesses. Notably, the fundraising exemption has a U.S. nexus requirement, which begs the question as to why the startup exemption does not. It would also be better for both the quality of crypto offerings and the public interest to limit the startup exemption to parties that can be subjected (quickly if necessary) to federal, state, and local law enforcement.

For similar reasons, the startup exemption should not be extended to natural persons.²⁰ Natural person issuers are the least likely to build lasting businesses. They are also the most likely to fail, either as a function of resources or lack of personal due diligence, and the most likely to be judgment-proof after they lose investors' money.

¹⁷ Proposal at 82-83, Question 49.

¹⁸ FBI Internet Crime Complaint Center, [2025 Internet Crime Report](#) at 11-12, 52-57. Also, as NASAA has reported in prior years, states continue to report that their investigations most commonly involve crypto or digital assets.

¹⁹ See, e.g., [Letter from Marni Rock Gibson, NASAA President, to the Honorable French Hill, Chairman, U.S. H. Comm. on Fin. Servs., Honorable Ann Wagener, Chairman, U.S. H. Comm. on Fin. Servs. Subcomm. on Cap. Mkts., Honorable Maxine Waters, Ranking Member, U.S. H. Comm. on Fin. Servs., and the Honorable Brad Sherman, U.S. H. Comm. on Fin. Servs. Subcomm. on Cap. Mkts.](#), Re: NASAA Letter for the Record for the Congressional Hearing Entitled, "Safeguarding Main Street: Combatting Fraud and Exploitation in Our Capital Markets" at 2-4 (Apr. 14, 2026).

²⁰ Proposal at 82-83, Question 49. Accordingly, NASAA recommends changing Form NOR to remove references to natural persons and removing the words "if any" from the entry line for "Address of Issuer's Principal Executive Offices."

G. The Startup Exemption Should Contain a Concentration Limit.

While the fundraising exemption contains a concentration limit for non-accredited investors, the startup exemption does not. It would be better to establish concentration limits for both exemptions. Concentration limits protect retail investors from particularly risky investments, and the startup exemption is the riskier of the two exemptions proposed. If the Commission believes investors are sufficiently at risk under the fundraising exemption to warrant concentration limits, then it should agree that startup exemption investors deserve the same protection. Even in a \$5 million offering, individual retail investors can become overly concentrated and suffer extraordinary losses. The protection of concentration limits should be decided based on the nature of the investors and the risks of the offering, not the amount of money to be raised.

H. The Disqualification Provision Should Align with Regulation A.

The Proposal states that the disqualification provision under proposed Rule 104 should align with Securities Act Rule 262 under Regulation A “rather than enumerate disqualification requirements specific to the proposed exemptions in Regulation Crypto Assets, in the interest of regulatory consistency and simplicity.”²¹ However, proposed Rule 104 contains a proviso that reads “*provided, however*, that such disqualification shall not apply with respect to any conviction, order, judgment, decree, suspension, expulsion, or bar that occurred or was issued before [INSERT EFFECTIVE DATE OF FINAL RULE, IF ADOPTED].”²² The Proposal explains that any such act, which would be disqualifying under Rule 262, would instead “require the issuer to include in an offering circular or otherwise furnish to each purchaser, a reasonable time prior to sale, a description in writing of any matters that would have triggered disqualification under Rule 104 but occurred before the date on which Rule 104 becomes effective.”²³ What the Proposal does not explain is why persons who have incurred criminal convictions, court injunctions, disciplinary bars, or SEC cease-and-desist orders involving securities violations or fraud should be allowed to raise money through exempt offerings so long as they disclose their prior bad acts. We cannot think of a good reason to give wrongdoers the option to use an exemption with so few investor safeguards. As proposed, Rule 104 is not an effective disqualification provision and is yet one more feature of the Proposal that will attract persons more interested in fleecing investors than raising capital to build businesses. Rule 262, and hence proposed Rule 104, contains a waiver provision under which the Commission could find good cause to allow a disqualified person to use the registration exemption. Presumptive bad actors therefore have a means to use the exemptions, and they should be required to go through those steps.

²¹ Proposal at 69.

²² Proposed Rule 104(a).

²³ Proposal at 69-70.

III. The Fundraising Exemption Is Also Vulnerable to Fraud and Misconduct.

Proposed Rule 300, the “fundraising exemption,” would create a two-tiered registration exemption modeled on Regulation A. It contains important investor protections the startup exemption lacks, including financial disclosures, affiliate sales limits, a U.S. issuer limitation, an offering statement filing requirement, ongoing and current reporting requirements, and concentration limits.

However, the fundraising exemption has some of the same failings as the startup exemption, including the principles-based disclosure regime of proposed Rule 103, and the ability for a limited but substantial amount of immediate sales by “affiliates of the issuer.” The fundraising exemption therefore carries the same risks to retail investors of inadequate disclosure, overconcentration, and immediate losses through dumping.

Accordingly, NASAA recommends the same fixes as suggested for the startup exemption; namely, standard prescriptive disclosure requirements that integrate the topics of proposed Rule 103 with the information requirements of Regulation S-K, resale restrictions for all insiders and pre-offering investors of investment contract securities acquired by whatever means before the offering, and a disqualification provision that mirrors Rule 262. In short, the same risks require the same measures to protect investors.

While these recommended changes to the startup and fundraising exemptions would change the Proposal substantially, we believe they are necessary to both protect investors and promote responsible innovation. As proposed, the accommodations the Commission has crafted would undermine the principles of effective securities regulation and turn the theory of exemptive relief on its head; issuers should be granted relief from full registration requirements only when doing so is accompanied by sufficient protections to avoid investor harm. That is usually accomplished by tools like accredited investor limitations, concentration limits, regulator review (per Regulation A), and the comfort provided by intermediaries acting in the best interests of their customers and clients. None of that exists here. Instead, as one commentator described it:

“No major federal capital-raising exemption currently combines retail access, general solicitation, immediately transferable securities, no registered intermediary, no individual investment limit, and no financial statements.”²⁴

²⁴ FinReg Blog Post, *supra* note 14.

Crypto issuers and issuances may also not have other hallmarks of safe investments, such as boards of directors who have fiduciary duties to their shareholders, debtholder rights to issuer assets or shareholder rights to equity, or the value of professional intermediation in the purchase or sale of crypto assets. Taken together, none of the rationales supporting exemptive relief from registration for other securities offerings are being observed in the Proposal. We urge the Commission to more closely align its approach to crypto with the principles of sound securities regulation.

IV. The Investment Contract Safe Harbor Would Also Facilitate Fraud.

Proposed Rule 400 would create a path for covered investment contract issuers to be deemed by the Commission to no longer be subject to the jurisdiction of the federal securities laws. In particular, an issuer using either exemption could claim it is no longer providing essential managerial efforts. Two parts of this concept are particularly prone to fraud and should be revisited.

First, the Commission would allow an issuer to claim it has ended its essential managerial efforts either because it has met its promises *or because it has failed to meet them*.²⁵ The latter prong suffers from the same defects that render the Proposal generally dangerous to investors; namely, it creates conditions to defraud investors and encourages crypto business models that are prone to quick failure. For instance, when combined with the startup exemption, a person with little money and no particular technical ability could create a cryptocurrency,²⁶ cut and paste another issuer's whitepaper onto a website, issue covered investment contract securities, collect money, and then claim to be unable to continue developing the network. Enabling such a scheme through an adopted federal regulation undermines not only the regulation, but the capital formation and investor protection goals of securities regulation generally.

When an ordinary business fails, the issuer liquidates and pays investors whatever portion of debt and equity the business's assets can satisfy. In the proposed world of crypto offerings, investors would receive nothing except the continued ability to trade their non-security crypto assets. However, even that ability would remain only so long as the underlying blockchain continues to operate. If the blockchain fails, the entire venture becomes immediately worthless.²⁷

²⁵ See Question 133.

²⁶ Allie Grace Garnett, [Create Your Cryptocurrency: A Complete Step-by-Step Guide](#), INVESTOPEDIA (Mar. 16, 2026); [How to make your own cryptocurrency](#), KRAKEN (Dec. 30, 2025).

²⁷ There are many examples of dead, and therefore worthless, blockchains. See, e.g., KUCOIN, [Harmony Blockchain Developers Plan Project Closure Amid Security Breach](#) (Sept. 7, 2026) (describing closure of blockchain and migration plans for remaining assets following exploits and vulnerability concerns); Pavlo Kot, [Blockchain becomes a burden: Why crypto projects are abandoning L2 networks](#), TRADERS UNION (Oct. 11, 2026) (describing closures of blockchain networks because operating costs exceeded revenues).

Second, the Commission asserts that efforts to continue to maintain a blockchain do not constitute essential managerial efforts.²⁸ This approach represents a material weakness in the Commission's approach and is not consistent with settled law. Blockchain maintenance and support are critical to any crypto enterprise because a token without a functioning chain is worthless. Further, courts have held that chain maintenance is an essential managerial effort.²⁹ Claiming that "maintenance" or "system support" are non-essential managerial efforts elevates form over substance, which runs counter to the Supreme Court's decision in *SEC v. W.J. Howey*³⁰ and 80 years of progeny which hold consistently that economic realities are determinative. In this case, chain maintenance is in fact an essential managerial effort necessary to support token value.

While NASAA disagrees with the Commission's interpretation of essential managerial efforts and the approach taken in the Proposal on this point, we offer the following recommendation to improve proposed Rule 400 to make it more useful to investors and regulators; namely, Form TR should require issuers to describe (1) any remaining involvement of the issuer, its personnel, or its affiliates in the continued operation of the crypto project or application, and (2) the means by which the underlying blockchain will be maintained. Such disclosure requirements, in addition to the analyses required under Parts I and II of Form TR, would give the Commission or any other regulator the basis to challenge the issuer's assertion that it is no longer subject to the securities laws. It would also give investors more insight into whether the project is at risk of collapse once the issuer tries to disclaim further involvement.

²⁸ Proposal at 57, 163.

²⁹ See *Friel v. Dapper Labs, Inc.*, 657 F. Supp. 3d 422, 448 (S.D.N.Y. 2023) (reasoning that since the subject blockchain was privatized and the subject tokens traded only on that blockchain, "purchasers rely on Dapper Labs's managerial efforts in cultivating the Marketplace and maintaining the Flow Blockchain, as without those efforts Moments would not exist"); *SEC v. Telegram Grp. Inc.*, 448 F. Supp. 3d 352, 375 (S.D.N.Y. 2020) (finding that Telegram's essential managerial efforts included, among other efforts, supporting Grams and the TON blockchain, and that if Telegram ceased all efforts to support the TON blockchain, the Initial Purchasers would likely be unable to earn their expected profits); *SEC v. Kik Interactive Inc.*, 492 F. Supp. 3d 169, 180 (S.D.N.Y. 2020) (finding that Kin's value would not grow on its own but would rely heavily on Kik's entrepreneurial and managerial efforts to foster an ecosystem, and that without Kik's promised development of the Kin digital ecosystem, Kin would be worthless).

³⁰ 328 U.S. 293 (1946).

V. Proposed Rule 500 Violates the Administrative Procedure Act.

A. *The Proposed Rule Exceeds the Commission's Statutory Authority.*

As NASAA explained in its comment letter on the Registered Offering Reform proposal, the proposal to define “qualified purchaser” under Section 18(b)(3) of the Securities Act of 1933 as any purchaser of an SEC-registered offering exceeds the Commission’s statutory authority.³¹ Congress intended Section 18(b)(3) to be limited to purchasers who are sophisticated enough not to need the protections provided by state securities registration. That intention is evident in the term “qualified purchaser” itself, in the context and overall construction of the National Securities Markets Improvement Act of 1996 (“NSMIA”),³² and in the legislative history that specifically explained the purpose of Section 18(b)(3).³³ NASAA and other commenters on the Registered Offering Reform proposal also pointed out that the Commission held this same understanding of the reach of Section 18(b)(3) when it proposed changes to the definition of “qualified purchaser” in rulemakings in 2001 and 2007.³⁴ While the Commission purports to be acting within its statutory authority, it is ignoring the language of NSMIA, the express will of Congress, and its own previously faithful interpretations of Section 18(b)(3).

³¹ Registered Offering Reform Comment Letter, *supra* note 9, at 16-18.

³² Numerous decisions have held that statutory language must be construed with the full context and structure of the statute. *See Abramski v. United States* 573 U.S. 169, 179 (2014) (stating that statutory interpretation occurs “not in a vacuum, but with reference to the statutory context, ‘structure, history, and purpose.’”) (quoting *Maracich v. Spears*, 570 U.S. 48, 76 (2013)); *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989) (“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”); *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 523 (2018) (“[A] statute’s meaning does not always ‘turn solely’ on the broadest imaginable ‘definitions of its component words.’ Linguistic and statutory context also matter.”) (quoting *Yates v. United States*, 574 U.S. 528, 637) (2015); *Loper Bright Enters.*, 603 U.S. 369, 392 n. 4 (2024) (“[S]tatutes can be sensibly understood only ‘by reviewing text in context.’”) (quoting *Pulsifer v. United States*, 601 U.S. 124, 133 (2024)); and *Nat’l Assn. of Private Fund Mgrs. v. SEC*, 103 F.4th 1097, 1111 (5th Cir. 2024) (“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”) (quoting *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012)); *see also* JUSTICE AMY CONEY BARRET, LISTENING TO THE LAW: REFLECTIONS ON THE COURT AND CONSTITUTION 232 (2025) (explaining that statutory context matters “because words are colored by their surroundings and the backdrop against which they were enacted.”).

³³ Registered Offering Reform Comment Letter, *supra* note 9, at 16-17 (describing relevant legislative history).

³⁴ Registered Offering Reform Comment Letter, *supra* note 9, at 16-17 (discussing SEC Rel. No. 33-8041, [proposed rule] *Defining the Term ‘Qualified Purchaser’ Under the Securities Act of 1933* (Dec. 19, 2001)); [Letter from Americans for Financial Reform Education Fund to Vanessa Countryman, Secretary, SEC](#), Re: Registered Offering Reform; Release Nos. 33-11418; 34-105513; IC-36160; File No. S7-2026-17 at 13-14 (July 27, 2026) (discussing SEC Rel. No. 33-8878, [proposed rule] *Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S-3 and F-3* (Dec. 27, 2007)); and [Letter from Michael Bixby, President, Public Investors Advocate Bar Association, to Vanessa Countryman, Secretary, SEC](#), Re: File No. S7-2026-17; Registered Offering Reform at 2 (July 24, 2026) (discussing SEC Rel. No. 33-8828, [proposed rule] *Revisions of Limited Offering Exemptions in Regulation D* (Aug. 3, 2007)).

Proposed Rule 500 exceeds the limits of Section 18(b)(3) even more blatantly. As proposed, state securities regulators would be preempted from registering any offering of or secondary transaction in any covered investment contract that complies with the terms of either proposed exemption. Both exemptions are designed to allow offers and sales to retail investors, which would read the term “qualified” out of Section 18(b)(3) entirely.³⁵

The Commission asks whether it should “consider a ‘qualified purchaser’ definition that reflects some attributes of the purchaser, issuer, and offering?”³⁶ It should; as NASAA and others have urged, the Commission must consider the nature of the investors at issue to remain faithful to NSMIA. Section 18(b)(3) was reserved for circumstances where the sophistication of the purchaser does not warrant the protection of state securities laws. That is not the case here; state authorities are working to protect retail investors from crypto abuses, including through unregistered offering cases.³⁷ A generalized reading of NSMIA that allocates national offerings to the Commission and local and regional offerings to the states is not borne out by the construction of the statute. NSMIA did not, and does not, give the Commission an unlimited remit to preempt any offering that has an interstate element. In the 30 years since NSMIA was enacted, no other Commission has read it that way. Further, because NSMIA’s preemptive grants are explicit, the Commission has to operate within the statute’s limits.³⁸

Proposed Rule 500 also violates Section 18(b)(3) because it is not “consistent with the public interest and the protection of investors” as required by statute. The proposed preemption applies virtually no Commission process, review or oversight before allowing retail transactions. Instead, the Commission proposes to abdicate its own responsibilities by giving issuers the power to determine their own disclosure requirements, by removing resale restrictions, and by giving bad actors immediate access to retail investors. The Commission therefore cannot argue that its procedures are an adequate investor protection substitute for preempted state registration.

³⁵ See *Rubin v. Islamic Rep. of Iran*, 583 U.S. 202, 213 (2018) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)) (“[O]ne of the most basic interpretive canons [is] that [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.”).

³⁶ Proposal at 181, Question 139.

³⁷ NASAA, [2024 Enforcement Report](#) at 11-14; NASAA, [2025 Enforcement Report](#) at 19-23.

³⁸ See *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008) (“[W]hen the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily ‘accept the reading that disfavors pre-emption.’”) (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005)); *Cipollone v. Liggett Grp.*, 505 U.S. 504, 523 (1992) (stating that courts must “fairly but—in light of the strong presumption against pre-emption—narrowly construe the precise language” of an express preemption provision, giving it “a fair but narrow reading”); and *Zuri-Inv. AG v. Natwest Fin. Inc.*, 177 F. Supp. 2d 189, 191-92 (S.D.N.Y. 2001) (stating that “there is a presumption against preemption,” overcome only by the “clear and manifest purpose of Congress”).

Finally, proposed Rule 500 is an improper intrusion into state authority even by the Commission's own understanding of NSMIA. The Proposal explains that this Commission understands that Congress intended "that states should 'generally retain their authority to regulate small, regional, or intrastate securities offerings,'"³⁹ and this the Commission "believe[s] most issuers of covered investment contracts will conduct offerings that are neither regional nor solely intrastate." However, there have been crypto offerings that are local or regional in character.⁴⁰ Therefore the Commission proposes to intrude into territory that it concedes belongs to states based on generalities about crypto offerings generally. That is also a clear violation of NSMIA.

B. The Proposed Rule Is Arbitrary and Capricious.

A little discussed aspect of proposed Rule 500 "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.*"⁴¹ The Commission asks whether the proposed "preemption of secondary market transactions [should] be limited to resale of covered investment contracts that were initially issued pursuant to an offering relying on an exemption in Regulation Crypto Assets and not another available exemption under the Federal securities laws?"⁴²

As a matter of administrative law, the Proposal cannot support preemption of state registration and qualification provisions as they apply to secondary transactions available (or not available) under other federal registration exemptions. Without analysis or explanation, the Proposal would alter the reach and application of other regulatory exemptions. Any changes to other regulations would require notice and comment rulemaking, supported by both analyses of how each affected regulation would be changed, including economic analyses, and whether those changes promote efficiency, competition and capital formation, and are consistent with the public interest and the protection of investors. The Proposal contains no such analyses or discussions with respect to other affected federal securities rules and exemptions, and therefore any proposal that

³⁹ Proposal at 173 (citing H.R. Rep. No. 622, 104th Cong. 2d Sess. at 16 (1996)).

⁴⁰ One example is INDXcoin, in which a local faith leader marketed a crypto-based scheme to his congregants. See COLORADO DEPT. OF REGUL. AGENCIES, [Colorado Securities Commissioner Files Complaint Against Alleged Cryptocurrency Fraud Scheme](#) (Jan. 18, 2024) (Colorado's action involved both antifraud and unregistered offering violations). The Commission's proposed intrusion local and regional offerings is particularly concerning because such offerings may be associated with affinity frauds. See, e.g., U.S. DEP'T OF JUST., [Former Tri-Cities Past Indicted for Multi-Million Dollar Cryptocurrency Scam](#) (indictment brought against pastor of Spanish-language church who induced members of his congregation and other to invest in a cryptocurrency investment call "Solano Fi"). While the Proposal notes that state authorities would retain antifraud authority, states can and do bring unregistered offering cases to address activities like the above.

⁴¹ Proposal at 171 (emphasis added).

⁴² Proposal at 180, Question 140.

carries those consequences without such discussions and analyses would be arbitrary and capricious. If the Commission intends to modify the scope of other rules, it must fully explain in a new proposed rule which existing rules would be affected and how, and it would have to provide required analyses with respect to each of them. The Proposal does none of that, and therefore that aspect of the Proposal would be arbitrary and capricious if applied as proposed.

VI. The Commission's Approach Will Harm Other Registrants, Investors, and the Markets.

The Proposal is a form of preferential regulation because it provides accommodations to facilitate retail purchases in ways not afforded to other securities offerings. Regulation Crypto Assets picks winners by excusing one set of issuers from basic investor protections applicable to other issuers. In some instances, the Commission justifies this approach by citing arguments that existing requirements are not “fit for purpose.” That argument, however, does not explain why an issuer should not be required to provide financial information, file its disclosures through EDGAR, or impose restrictions on pre-offering investors' securities. Putting a thumb on the scale in favor of an industry out of concern that certain weaknesses may become apparent when exposed to the disclosure, accountability, and investor protection requirements that underpin securities regulation does not serve the interest of innovators or investors. In doing so, the Commission is not simply enabling investors to make their own choices; it is changing the regulatory conditions under which those choices are made in favor of one subset of industry participants.

CONCLUSION

The Commission should withdraw Regulation Crypto Assets and repropose a set of exemptions that adhere to the Commission's prior practice of limiting or conditioning exemptive relief as appropriate to protect retail investors. Regulation Crypto Assets disregards all of that prior thinking and is therefore not worthy of the term "regulation." The Commission should also refrain from intruding on the ability of states to protect their citizens in violation of NSMIA.

NASAA appreciates the opportunity to comment on the Proposal. Thank you for considering these views. Should you have any questions about this letter, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth H. Bowling". The signature is fluid and cursive, with the first name "Elizabeth" and last name "Bowling" clearly distinguishable.

Elizabeth H. Bowling
NASAA President