

SEC Staff Issues Statement on Crypto Asset-Related Securities Offerings

APRIL 17, 2025

Key Takeaways

- The staff of the SEC's Division of Corporation Finance issued a Statement outlining disclosure expectations for entities conducting offerings of securities in connection with crypto asset-related activities.
- The Statement addresses disclosure requirements set forth in Regulation S-K as they apply to Securities Act and Exchange Act registration forms.
- The Statement provides detail on several categories of required disclosures for issuers of debt or equity securities whose operations relate to networks, applications and/or crypto assets, including: the description of the issuer's business; risk factors; the terms, rights, characteristics and obligations associated with the securities offered; the technical specifications of the securities offered; the directors, executive officers and significant employees of the issuer; and the issuer's financial statements and exhibits.

The staff of the SEC's Division of Corporation Finance (the "Staff") recently released a statement addressing the application of federal securities laws to certain offerings and registrations of securities involving crypto assets.¹ These offerings and registrations may involve equity or debt securities of issuers whose operations may merely relate to crypto assets, crypto asset networks or their applications. The offerings or registrations may also relate to crypto assets offered as part of, or subject to, an investment contract (within the meaning of *Howey*).²

The Statement also notes that the SEC's newly formed Crypto Task Force (which we covered in an earlier *OnPoint*) is seeking to develop a regulatory framework for crypto assets, including disclosure requirements. The Statement says that it is providing the Staff's views "during the pendency of these deliberations."

The Statement addresses the Staff's views regarding certain disclosure requirements as they apply to Securities Act registration forms (such as Form S-1) and Exchange Act registration forms (such as Form 10, or, for certain foreign private issuers, Form 20-F). Certain of the guidance in the Statement would also apply to exempt offerings under Regulation A using Form 1-A. Specifically, the Statement seeks to provide guidance around a number of disclosure items, including the following:

- **Description of the Issuer's Business:** Disclosure should be tailored to the issuer's business and presented in a concise and comprehensive manner that avoids technical jargon. Disclosures regarding the business should:
 - Relate to the material aspects of the issuer's current or proposed business, rather than to networks, crypto assets or technologies that are not specific or material to the issuer's current or proposed business.

- Address the current stage of development of the business and identify forward-looking or future plans of development.
- Be consistent with the issuer’s public statements and promotional materials (including white papers and developer documentation).
- Identify the issuer’s specific business activity, such as operating or developing a network or application, and the current stage of development.
- Identify whether the issuer will continue to operate the business following network launch, or whether and how another entity will operate the business.
- Describe any technological or other milestones needed to implement the business.
- Explain how the issuer generates revenue or plans to increase profits or value.
- Explain whether the security or crypto asset has any function in the operation of the business, network or application.
- Describe whether the development team is developing a network or application and/or a crypto asset for the network or application.
- Address the current state and timeline for the development of the network or application.
- Identify the objectives and functionality of the network, including its architecture, software, cryptographic key management and functionality.
- Describe whether the technology is derived from proprietary or open-sourced software and any licenses or intellectual property rights.
- Explain the validation process, the consensus mechanism, the block size, the transaction speed and any “gas” or transaction fees and rewards.
- Describe any products and services that will be offered through the network or application.
- Identify the various roles in the network, such as users, onchain and offchain service providers, developers, transaction validators and governance participants.
- Explain the process for network upgrades.
- Identify network security measures.
- Describe the network’s governance system.
- **Risk Factors:** Disclosures should address material risks relating to a network or application, such as:
 - Risks relating to the issuer’s planned business operations, such as risks relating to technology and cybersecurity, as well as reliance on another network or application.
 - Risks relating to the security, such as the risks relating to any unique characteristics of the security including its form, price volatility, the rights of holders or their lack of rights, valuation and liquidity, supply and custody.
 - Risks related to other applicable laws and regulations, such as whether the issuer’s activities may require it to register with federal and/or state regulators.
- **Description of the Security:** Issuers should provide a description of the terms, rights, characteristics and technical specifications of the crypto asset security including:
 - How the rights of holders and characteristics of the security are memorialized, and how such rights and characteristics can be transferred or modified.
 - The rights of holders with respect to dividends, profit sharing and voting.
 - How the issuer intends to comply with proxy rules for any voting rights.
 - The rights of holders with regard to transactions or events that impact the issuer or the network, such as bankruptcy, mergers or network forks.

- The characteristics of the security such as maturity, restrictions on transfer, redemption rights, burning rights and whether the security is certificated or eligible for deposit at a securities depository.
- The network associated with the security or subject crypto asset, and whether the underlying code can be modified, how, when and by whom and what effect(s) that may have on the rights of a holder of the security or subject crypto asset.
- The technical requirements for holding, accessing and transferring the crypto asset, such as the requirements and characteristics as to wallets and keys, whether the wallet addresses of the sender and receiver must be included in an approved list of participants and any network transaction fees required for the transfer.
- Where the definitive record of ownership exists and who maintains it.
- Whether the crypto asset is divisible and any limits on its division.
- Whether the crypto asset and the smart contract(s) and/or code on which it is/are based, if applicable, have been subjected to a third-party security audit and details for such audit and its results.
- The total supply of the crypto asset and rules regarding such supply, including rules relating to minting, burning, redemption and lock-ups.
- Whether any entity or person(s) implements the rules regarding the supply of the asset or can change the rules relating to supply.
- Whether and on what terms the issuer intends to enter into market-making arrangements to provide liquidity for the asset.
- ***Directors, Executive Officers and Significant Employees:*** SEC rules require disclosures regarding the identity and experience of the issuer's executive officers, directors and certain significant employees who make or are expected to make a significant contribution to the issuer's business. The Statement notes that such disclosures may be required for an individual who performs a policy function for the issuer, regardless of whether the individual holds a formal title at the issuer, as well as for a third party who performs a policy function of the type typically performed by directors or executive officers of an issuer. For example, a spot exchange-traded product may not have directors or executive officers, and the sponsor of the spot crypto exchange-traded product may have directors and executive officers who perform functions on behalf of the spot crypto exchange-trade product. In such cases, disclosure may be required with respect to the directors or executive officers of the sponsor, although executive compensation disclosure for the issuer would not be applicable in this situation. Note that disclosure may be required of any fees paid to the sponsor or other third party performing these functions.
- ***Financial Statements and Exhibits:***
 - The Statement provides relatively little guidance around financial statements for issuers of crypto asset-related securities, instructing issuers to contact the Division's Office of Chief Accountant with requests for assistance regarding financial statements and other financial information required to be included in SEC filings.
 - With respect to exhibits, the Statement notes that 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, filings should include as an exhibit the code of the smart contract(s), with the issuer updating any such exhibit in response to subsequent changes in such code.

The Scope of the Statement and Next Steps

The Statement is the latest in a series of crypto-related pronouncements issued by the Staff in 2025,³ reflecting an ongoing effort to clarify how federal securities laws apply to crypto assets. Additional

guidance may follow as market practices and technology continue to evolve. The Statement also notes that while it does not apply to issuers of non-security crypto assets, it does apply to crypto assets that are part of or subject to an investment contract, even if the crypto assets are not securities in themselves.

The question of which crypto assets are securities, and the circumstances under which non-security crypto assets may be offered and sold as securities has been contentious in the crypto asset industry, and the Statement does not clarify which crypto assets are securities. Given that many token issuers have not registered or sought to register their offerings, it is unlikely that the publication of the Staff's guidance as to disclosures will spur further registrations of token offerings. However, there are a range of crypto-adjacent or crypto-related issuers (for example, mining companies, crypto exchange-traded products, crypto trading platforms and others) who have registered or seek to register offerings of common stock or other conventional instruments who may find the Statement helpful as they prepare their disclosures.

The Statement also notes that the SEC's new Crypto Task Force is considering a regulatory and offering framework for crypto assets. It is likely that any new offering regime for crypto assets will require disclosures that are substantially similar to those in the Statement. In that sense, the Statement may be a sign of things to come — crypto market participants should continue to monitor developments carefully.

Footnotes

1. *Offerings and Registrations of Securities in the Crypto Asset Markets*, SEC Division of Corporation Finance, (Apr. 10, 2025) ("Statement") The Statement defines a "crypto asset" as an asset that (1) is generated, issued and/or transferred using a blockchain or similar distributed ledger technology network (including, but not limited to, assets known as "tokens," "digital assets," "virtual currencies" and "coins") and (2) relies on cryptographic protocols.
2. *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). The *Howey* test focuses on whether there is an investment of money in a common enterprise with an expectation of profits based on the efforts of others.
3. See, e.g., *SEC's Division of Corporation Finance Clarifies Stance on Meme Coins*, (Mar. 6, 2025), *SEC Staff Issues Statement on Proof-of-Work Crypto Mining Activities*, (Mar. 25, 2025) and *SEC Staff Issues Statement on Stablecoins*, (Apr. 9, 2025).

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