

SEC Clarifies Disclosure Requirements for Crypto Asset Offerings and Registrations

April 15, 2025

On April 10, 2025, the Division of Corporation Finance (the “Division”) of the Securities and Exchange Commission (the “SEC”) [released guidance](#) clarifying the application of existing disclosure requirements under the federal securities laws to offerings and registrations of securities in the crypto asset¹ market. The Division’s statement is meant to provide guidance for companies while the SEC develops a formal regulatory framework for crypto assets.

As noted in a [statement by Commissioner Hester Peirce](#) on the same day, the Division’s guidance may be helpful for a company “whose operations relate to networks, applications or crypto assets” or a company that is offering crypto assets “as part of or subject to an investment contract.”² However, Commissioner Peirce made clear that the Division’s statement does not address whether a crypto asset is or is not a security.

Background. The Securities Act of 1933, as amended (“Securities Act”), and the Securities Exchange Act of 1934, as amended (“Exchange Act”), require certain disclosures in connection with offerings and registrations of securities. Companies operating in the crypto asset market that are contemplating registering offerings of securities under the Securities Act, such as on a Form S-1, or registering a class of securities under the Exchange Act, such as on a Form 10, will need to comply with such disclosure requirements.

Disclosure Guidance. The Division’s statement provides guidance about certain disclosure items, including the description of business, risk factors, description of securities and information about management as well as exhibit requirements, but does not address all relevant disclosure items. A company should consider the applicability of

¹ The Division defines a “crypto asset” as “an asset that is generated, issued, and/or transferred using a blockchain or similar distributed ledger technology network (‘crypto network’), including, but not limited to, assets known as ‘tokens,’ ‘digital assets,’ ‘virtual currencies,’ and ‘coins,’ and that relies on cryptographic protocols.”

² Commissioner Peirce believes the guidance may be helpful for a company that is “developing a blockchain and issuing debt or equity; registering the offering of an investment contract in connection with an initial coin offering; issuing a crypto asset that itself is a security because, for example, it provides a revenue stream based on the issuer’s performance; or integrat[ing] non-fungible tokens into video games and is issuing debt or equity.”

the Division's guidance to its own facts and circumstances when preparing relevant disclosures.

- **Description of Business.** Item 101 of Regulation S-K requires a company to provide a description of its business. The company should tailor its disclosure to the material aspects of its business and use clear, concise and understandable language. Disclosure regarding current or proposed business plans and activities may include disclosure about: (1) the current stage of development of the business; (2) whether the company intends to continue to operate its business following the launch of a network or application; (3) milestones, including technology development milestones, needed to fully implement the business; (4) how the company generates or expects to generate revenue or increase profitability and/or value; and (5) whether the security or crypto asset has any functions in the operation of the company's business.

The Division has also observed crypto asset companies that are developing or acquiring a network or application disclose, among other things: (1) the objectives of the network or application and how the technology of the network or application functions and accomplishes its objectives, including its architecture, software, cryptographic key management and functionality; (2) the process for validating transactions, the consensus mechanism, the block size, the transaction speed and the transaction (or "gas") fees and reward mechanism, if any; (3) a description of any products and services that will be offered through the network or application; and (4) a description of the network or application's governance system, as applicable.

- **Risk Factors.** Item 105 of Regulation S-K requires a discussion of the material factors that make an investment in the company or offering speculative or risky. For example, a company should disclose risks related to its planned business operations, such as risks relating to technology and cybersecurity, as well as reliance on another network or application, if material. The company should disclose material risks relating to the security, such as risks relating to the security's form, price volatility, the rights of holders, valuation and liquidity, supply and custody. The company should also disclose legal and regulatory risks, such as whether the company's activities may require it to register with (or be regulated by) certain agencies or regulatory authorities. In addition, the company should address risks relating to an associated network or application, if material.
- **Description of Securities.** Item 202 of Regulation S-K requires a materially complete description of the company's securities. In the context of securities in the crypto asset market, companies have provided a description of, among other things: (1) the rights of holders, including if the holders have voting rights; (2) the characteristics of the securities, such as term, maturity, restrictions on

transferability, how they can be accessed and whether they can be loaned or pledged; (3) the technical specifications of the securities, including the associated network or application, the technical requirements for holding, accessing and transferring the securities and where the definitive record of ownership is maintained; and (4) the supply of securities, including rules governing the total supply of the securities. The Division notes that if a company's business involves crypto assets that themselves are not securities, similar disclosures may be relevant for the description of the company's business.

- **Information About Management.** Item 401 of Regulation S-K requires disclosure about the company's directors and executive officers, including persons who perform policy-making functions or similar functions as directors. The Division has observed companies in the crypto asset market include disclosure about third parties who are performing such functions that satisfy the disclosure requirements. For example, certain trusts, such as spot crypto exchange-traded products, have a sponsor with directors and executive officers who perform functions like directors or executive officers of the trust, and therefore, disclosure was provided with respect to the directors or executive officers of the sponsor.
- **Exhibits.** Item 601 of Regulation S-K requires a company to file as an exhibit any instrument that defines the rights of security holders. The Division has observed companies filing as exhibits the code of smart contracts and/or the network or application when the rights of holders are memorialized in such contracts or otherwise programmed directly into the code of the network or application. These exhibits were then updated in response to subsequent changes in the code.

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While the Division's statement will be useful for existing and future registrants operating in the crypto asset market, the crypto industry still awaits definitive guidance from the SEC on when a crypto asset is a security. We are available to discuss these updates and other considerations related to disclosure requirements in connection with offerings and registrations of securities in the crypto asset market. Please do not hesitate to contact us with any questions.



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