Regulatory Update:
What the SEC's New Crypto Proposal Means for RIAs

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INTRODUCTION:

On August 18, 2026, the Securities and Exchange Commission proposed Regulation Crypto Assets[1] that proposes the creation of a tailored offering regime for certain investment contracts involving crypto assets. The proposal builds on March 17, 2026, SEC and CFTC joint interpretive release[2] clarifying how federal securities laws apply to digital assets. Although the proposal is directed primarily at issuers, it carries meaningful implications for registered investment advisers that recommend, hold, or advise on crypto assets for clients whether directly, through a private fund, or through a client's self-directed account. Advisers should begin considering how the proposed framework, if adopted, would affect fiduciary due diligence, custody arrangements, conflicts of interest, and Form ADV disclosures.

KEY TAKEAWAYS:

- The proposal is intended to facilitate capital formation and accommodate innovation within the crypto asset markets while, at the same time, ensuring that investors are adequately protected and provided with the information they need to make informed investment decisions.[3]
- The proposal would create two offering exemptions from the securities Act of 1933, a "startup exemption" that would exempt offerings of up to $5 million from the registration requirements of the Securities Act of 1933 ("Securities Act") during a four-year period and a "fundraising exemption" that would exempt offerings of up to $75 million from the registration requirements of the Securities Act during each 12-month period.
- The proposal would create an "investment contract safe harbor," which would provide a conditional safe harbor from the term "investment contract" in the definitions of "security" in the Securities Act and the Securities Exchange Act of 1934.
- The proposal would add a definition of "qualified purchaser" under the Securities Act that would preempt that state securities law registration and qualification requirements for offers and sales of covered investment contracts pursuant to an exemption
- The proposal does not address custody. Advisers holding client crypto assets remain subject to existing Advisers Act custody obligations and should not treat safe-harbor status as resolving qualified-custodian or safekeeping requirements.
- Advisers should begin considering how the proposed framework, if adopted, would affect fiduciary due diligence, custody arrangements, conflicts of interest, and Form ADV disclosures.

[1] https://www.sec.gov/files/rules/proposed/2026/33-11434.pdf
[2] https://www.sec.gov/files/rules/interp/2026/33-11412.pdf
[3] https://www.sec.gov/newsroom/press-releases/2026-76-sec-proposes-new-regulation-crypto-assets

THE DETAILS:

The Commission has described the proposal as an effort to create "fit to purpose" rules for offerings of crypto assets intended to facilitate capital formation and accommodate innovation within the crypto asset markets while, at the same time, ensuring that investors are adequately protected and provided with the information they need to make informed investment decisions. The proposal includes:

- A "startup exemption" that would exempt offerings of up to $5 million from the "startup exemption" which would exempt qualifying offerings of up to $5 million from Securities Act registration requirements of the registration requirements, provided certain requirements are met.
- A "fundraising exemption" that would exempt qualifying offerings of up to $75 million from Securities Act registration requirements during each 12-month period, provided certain requirements are met.
- An "investment contract safe harbor" that would provide a conditional safe harbor from the term "investment contract" in the definitions of "security" under the Securities Exchange of 1934.
- A definition of "qualified purchaser" for purposes of the Securities Act, which would preempt state securities law registration and qualification requirements with respect to offers and sales of "covered investment contracts "issued pursuant to Regulation Crypto Assets, as well as certain secondary market transactions.

For advisers, the proposal's significance lies less in the mechanics of issuer registration and more in what it changes, and does not change, about the adviser's own obligations to clients.

Fiduciary Duty and Enhanced Due Diligence

The proposed safe harbor would allow a crypto asset to fall outside the "investment contract" definition once an issuer has completed, or permanently ceased, the essential managerial efforts it promised investors. That determination is fact-specific, made by the issuer in the first instance, and can change over time if an issuer resumes managerial activity. For advisers, this means safe-harbor status is not something to take at face value.

An adviser recommending or holding crypto assets in client accounts should be able to show why it reasonably concluded the asset qualifies (or does not) for the safe harbor and should revisit that conclusion periodically rather than treating it as a one-time determination. Relying solely on an issuer's own representations, without independent diligence, is unlikely to satisfy an adviser's fiduciary duty of care.

Custody Considerations

Notably, the proposal does not address custody. Advisers that hold, or have discretion over, client crypto assets remain fully subject to existing Advisers Act custody obligations, including the requirement to maintain client assets with a qualified custodian. A crypto asset's eligibility for the new registration exemptions or qualification as a "covered investment contract" under the safe harbor will not necessarily determine whether it can be properly custodied consistent with the Custody Rule. Advisers should continue to apply heightened scrutiny to custodial arrangements for any crypto assets held for clients, particularly where a custodian's capabilities or qualifications for digital assets have not been independently verified.

Conflicts of Interest and Compensation

Advisers or their affiliates that sponsor a fund or vehicle relying on the new startup and fundraising exemptions have an incentive to recommend an affiliated or compensated offering to clients. As with the fee and revenue-sharing conflicts the SEC has pursued in recent RIA enforcement actions, advisers should fully disclose any compensation, referral arrangements, or affiliate relationships tied to a crypto offering, and should not rely on hedged language (e.g., disclosures stating the firm "may" receive compensation when it, in fact, does).

Form ADV and Policies and Procedures Updates

Regardless of whether the proposal is ultimately adopted, firms with any crypto asset exposure, whether recommending crypto assets directly, offering an affiliated fund, or simply permitting clients to hold crypto assets, should review Form ADV Part 2A and internal policies and procedures to confirm they address:

- Valuation methodology for crypto assets, including the impact of limited liquidity or trading markets on pricing and client reporting.
- Custody arrangements and the qualifications of any custodian used for client crypto asset holdings.
- Conflicts of interest arising from any affiliated crypto offering, referral arrangement, or compensation tied to client investments in crypto assets.

Because the rule is only a proposal no immediate action is required. That said, the due-diligence, custody, and disclosure questions it raises already apply to advisers with any crypto exposure. Firms should use this comment period to inventory client exposure to crypto assets, test their diligence and disclosure practices, and consider whether to submit comments on provisions that would materially affect their business or their clients.

About Randy Randall: *Randy is a Senior Partner at Helios advising registered investment advisers on SEC regulatory matters, fiduciary duty, custody, and compliance program design. Randy counsels clients on complex and emerging regulatory issues affecting the investment management industry, including the evolving framework for crypto assets.*