

6 October 2026

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

**Re: Regulation Crypto Assets
Release Nos. 33-11434; 34-106150; File No. S7-2026-27**

Dear Ms. Countryman:

Infinilex welcomes the opportunity to comment on the Commission's release proposing Regulation Crypto Assets (the "Proposing Release").¹

I. Introduction and interest of the commenter

Infinilex is a cross-border legal, compliance and structuring consultancy for founders building across India, the United Arab Emirates and the United States, with a Web3 practice. Infinilex counsel qualified in India, the UAE and the US sign opinions for those jurisdictions, and Infinilex works with local counsel elsewhere.

Our perspective is that of non-US founders whose tokens reach US persons. In our experience, many Indian and UAE teams deal with US persons today by exclusion: they sell offshore under Regulation S, with geo-blocking and residence checks built around the Commission's 1998 guidance on offshore internet offers.² The Commission has said the proposal aims to "reduce incentives for issuers to create and operate offshore",³ and the Proposing Release treats offshore activity as a cost to US investors.⁴ We suggest targeted changes that would bring these teams' US-facing offerings within the Commission's framework without reducing investor protection.

We support the proposal's core design: principles-based disclosure, a startup exemption that does not turn on where a team is located, and a safe harbor that codifies part of the separation analysis of the Commission's March 2026 interpretation, Release No. 33-11412 (the "2026 Interpretation").

¹Release Nos. 33-11434; 34-106150 (18 August 2026), 91 FR 54510 (21 August 2026). Page references are to the SEC-issued version (<https://www.sec.gov/files/rules/proposed/2026/33-11434.pdf>), which includes Forms 1-CRYPTO and TR. The 2026 Interpretation is at 91 FR 13714 (23 March 2026); page references to it are also to the SEC-issued version.

²Release No. 33-7516 (23 March 1998), section III.B, 63 FR 14806, 14808.

³SEC Press Release No. 2026-76 (18 August 2026).

⁴Proposing Release, section I, p.9.

II. Summary of recommendations

“RFCs” are the Proposing Release’s numbered requests for comment.

1. **Eligibility.** Admit non-US entities to the fundraising exemption on conditions that answer the Commission’s concerns or, at a minimum, admit Canadian issuers as Regulation A does and apply the business-contact tests in the alternative; keep the startup exemption open to non-US teams (RFCs 41, 49, 50, 61, 73, 85, 86, 98, 105).
2. **Regulation S.** Add a note modelled on Rule 500(g) excluding a disclosed, flowback-guarded offshore Regulation S tranche from the offering limits; confirm that it is not integrated; and give guidance on a single global website (RFCs 9, 14, 16).
3. **Legality opinion.** Follow Staff Legal Bulletin No. 19: counsel for the jurisdiction of organisation opines on existence, power and authorisation, and counsel for the governing law on enforceability (RFC 112).
4. **Rule 400 and Form TR.** Adopt the safe harbor with a no-admission provision, a clear certifier and a defined analysis, and confirm its availability to non-US issuers that sold only offshore (RFCs 74, 124, 125, 128, 130, 134).
5. **Disclosure reuse.** Let an issuer answer Rule 103(b) items with its MiCA white paper or VARA whitepaper and risk disclosure statement, plus a reconciliation table and a US supplement (RFCs 28, 29, 30, 32).

III. Discussion

Recommendation 1: Admit non-US entities to the fundraising exemption on conditions, and keep the startup exemption open

The proposal. Proposed Rule 300(b)(1) limits the fundraising exemption to an entity “organized under, and subject to, the laws of the United States” whose executive officers or directors are mostly US citizens or residents, with more than 50 percent of its assets in, and its business administered principally in, the United States.⁵ The stated reasons include financial statements, recourse for fraud, information asymmetries and reversing the move of projects overseas, and the considerations behind the 2015 decision not to extend Regulation A to non-Canadian foreign issuers are said to “apply with equal force”.⁶ RFCs 85 and 86 ask whether eligibility should be expanded, including to “other types of foreign issuers”.⁷ The startup exemption, by contrast, is open to “an entity, an individual, or a group of individuals or entities”, and RFCs 49 and 50 ask whether to require US formation or add the fundraising exemption’s US tests.⁸

The problem from cross-border practice. A Delaware subsidiary of an Indian or UAE group, with its engineers, managers and treasury in Bengaluru or Dubai, fails the officer and

⁵Proposed 17 CFR 228.300(b)(1), p.333; Proposing Release, section II.C.2.a.ii, p.109.

⁶Proposing Release, section II.C.2.a.ii, pp.111-113.

⁷Id., RFC 85, p.113; RFC 86, p.114.

⁸Proposed 17 CFR 228.200(b)(2), p.330; Proposing Release, section II.B.2.b, RFCs 49 and 50, pp.82-83.

administration tests. The Proposing Release accepts that ineligible issuers may have to “alter their organizational structure in order to qualify”,⁹ but for these teams that means moving the management and the business to the United States.

The record suggests the test is broader than its purposes require. First, the business-contact tests come from the “foreign private issuer” definition,¹⁰ where they operate in the alternative (“Any of the following”) and only when more than 50 percent of the voting securities are held of record by US residents;¹¹ the proposal makes all three cumulative. Second, the criteria are said to be modelled “in large part” on Regulation A,¹² yet Regulation A admits Canadian entities, requires only a principal place of business in the United States or Canada, has no officer or asset test, and addresses recourse through an irrevocable consent and power of attorney on Form F-X.¹³ The proposal has no Form F-X counterpart, and Form 1-CRYPTO omits as “not applicable” an agent-for-service exhibit that the Proposing Release lists on p.143.¹⁴ Third, the economic analysis neither estimates how many issuers the test would exclude nor analyses an alternative to it.¹⁵ The financial statement rationale explains why the issuer should be an entity, not why it must be organised in the United States.

Recommendation. We recommend admitting non-US entities on conditions that each answer a stated concern:

- *Recourse.* The issuer files Form F-X with Form 1-CRYPTO and keeps its US agent for service current, as Rule 263 requires of non-US Regulation A issuers, and the agent-for-service exhibit is restored to Item 15. RFC 98 already contemplates disclosure of an agent’s address.
- *Enforceability.* The offering circular gives the disclosure that Regulation S-K Item 101(g) requires of foreign private issuers in registered offerings: whether investors can serve process in the United States, enforce US judgments and bring original actions abroad against the issuer and its non-US officers and directors.¹⁶
- *Financial statements.* US GAAP or IFRS as issued by the IASB, which the Commission accepts from Canadian Regulation A issuers,¹⁷ with Tier 2 audits as proposed. The Proposing Release considers alternatives to US GAAP “would not be appropriate”,¹⁸ but the nearest precedent accepts IFRS (RFC 105).
- *Reporting.* Forms 1-KC, 1-SC and 1-UC apply as proposed.

⁹Proposing Release, section IV.B.3.a, p.246.

¹⁰Id., section II.C.2.a.ii, p.112 and n.269.

¹¹17 CFR 230.405, definition of “foreign private issuer”, paragraph (1).

¹²Proposing Release, section II.C.2.a.ii, p.111.

¹³17 CFR 230.251(b)(1), 230.263(a) and 239.42(f).

¹⁴Proposing Release, section II.C.2.b.iv, pp.143-144 and n.335; Form 1-CRYPTO, Part III, Item 15, pp.371-373.

¹⁵Proposing Release, sections IV.A.2 and IV.D, pp.199-200 and 264-277.

¹⁶17 CFR 229.101(g).

¹⁷Release No. 33-9741 (25 March 2015), 80 FR 21806, 21835.

¹⁸Proposing Release, section II.C.2.b.iii, p.141; RFCs 104 and 105, pp.141-142.

- *Disqualification.* The regulator-order triggers in Rule 262(a)(3) to (8), which Rule 104 incorporates with the rest of Rule 262, name only US authorities.¹⁹ Rule 104 should add final orders of a foreign securities, financial services or virtual asset regulator where the issuer is organised or has its principal place of business, or where a person listed in Rule 262(a) resides, that would be disqualifying if entered by a comparable US authority, narrowing the bad-actor gap that admitting foreign issuers would open (RFC 41).

Form F-X alone secures service of process, not recovery; the enforceability disclosure tells investors in advance how far a US judgment could reach an issuer managed abroad. So that the Commission can “assess new market practices”, non-US entities could be admitted to Tier 1 first, with a staff review before Tier 2 opens; we accept that admitting them would do less than the proposed tests to “encourage domestic innovation”.²⁰ But where a team will not relocate, US investors are better off with access to its offering, with Rule 103 disclosure, reporting and US remedies, than with the limited options or added risks that the Proposing Release attributes to offshore activity.²¹

We suggest keeping Rule 300(b)(1) as proposed and adding: “(7) If the issuer is an entity that does not otherwise satisfy paragraph (b)(1) of this section, the issuer [meets each condition above], in which case it is deemed to satisfy paragraph (b)(1).” A foreign entity, or a Delaware entity run from abroad, would qualify only on these conditions. We would not add a place-of-business test, which would exclude the same teams as the administration test; the conditions above address recourse and information directly. At a minimum, the Commission should match Regulation A by admitting Canadian issuers with a principal place of business in the United States or Canada, and apply the business-contact tests in the alternative.

We also oppose the restrictions raised in RFCs 49 and 50. The startup exemption already carries the protections the Commission relies on: a \$5 million cap, a four-year limit, one-time use, Rule 103 disclosure, certifications by every group member and bad-actor disqualification.²² A domicile test would close the only offering route the proposal leaves open to non-US teams. RFCs 61 and 73 already contemplate an issuer giving the address of its agent for service of process;²³ we would go further and require a non-US issuer to appoint a US agent, name it on Form NOR and Form TR, and consent to service.

Recommendation 2: Coordinate the exemptions with Regulation S

The proposal. Rule 101(b) tells issuers to “see § 230.152” on integration.²⁴ “Aggregate offering price” means all consideration “to be received for the covered investment contracts being offered”.²⁵ RFCs 9, 14 and 16 ask about the aggregate offering price and aggregate sales

¹⁹Proposed 17 CFR 228.104, pp.328-329; 17 CFR 230.262(a)(3) to (8); Proposing Release, section II.A.5.b, RFC 41, p.70.

²⁰Proposing Release, section II.C.2.a.ii, p.113.

²¹See supra note 4.

²²Proposed 17 CFR 228.200(b)(1) to (6), p.330; Proposing Release, section II.B.2.b, pp.78-82.

²³Proposing Release, section II.B.2.c, RFC 61, p.87; section II.B.2.e, RFC 73, p.95.

²⁴Proposed 17 CFR 228.101(b), p.323; Proposing Release, section II.A.2.b, p.42.

²⁵Proposed 17 CFR 228.100, p.321.

definitions, any other general provisions, and Rule 101(b) and Rule 152.²⁶ The Proposing Release does not mention Regulation S.²⁷

The problem from cross-border practice. A non-US team offering in the United States would keep running an offshore Regulation S tranche of the same token. Rule 152(b)(2) provides that Regulation S offers and sales “will not be integrated with other offerings”,²⁸ and the startup cap counts only covered transactions, which are offers and sales in reliance on that exemption. The fundraising exemption, however, does not say whether consideration from a concurrent offshore tranche counts toward the \$20 million and \$75 million limits.²⁹ Regulation D answers that question in Rule 500(g): purchasers and proceeds under Regulation S are excluded.³⁰ Websites also matter: the startup exemption requires website disclosure,³¹ and the Commission has said that one website soliciting US investors under Rule 506(c) and offshore investors under Regulation S “could raise concerns” about directed selling efforts.³²

Recommendation. We recommend three changes, the first conditional: the token is fungible and startup exemption contracts are not restricted securities,³³ so an uncapped offshore tranche could flow back into the United States.

- Add to Rule 100 a note modelled on Rule 500(g): “Offers and sales of covered investment contracts made outside the United States in compliance with §§ 230.901 through 230.905 are not counted toward the offering limits in § 228.200(b)(4) or § 228.300(a) if (i) the issuer’s disclosure under § 228.103 describes the offshore offering, including its size and use of proceeds, and (ii) the offshore offering uses measures reasonably designed to prevent crypto assets sold in it from being resold to U.S. persons during the offering period.”
- Confirm that Rule 152(b)(2) covers a concurrent or sequential Regulation S offering of the same subject crypto asset, and that general solicitation in the US offering does not by itself preclude reliance on Regulation S offshore, as the Commission said of domestic exempt offerings in 2020.³⁴
- Give guidance that a single global disclosure website is not directed selling efforts if US visitors are routed only to the US tranche and the offshore tranche uses procedures reasonably designed to guard against sales to US persons.³⁵

²⁶Proposing Release, section II.A.1.b, RFC 9, p.40; section II.A.2.b, RFCs 14 and 16, pp.45-46.

²⁷Based on a full-text search of the SEC-issued version.

²⁸17 CFR 230.152(b)(2).

²⁹Proposed 17 CFR 228.100 (definition of “covered transaction”), pp.321-322; 228.200(b)(4), p.330; 228.300(a)(1) and (2), p.332.

³⁰17 CFR 230.500(g).

³¹Proposed 17 CFR 228.200(d), pp.331-332; Proposing Release, section II.B.2.d, p.88.

³²Release No. 33-10884 (2 November 2020), 86 FR 3496, at 3511.

³³Proposing Release, section II.B.2, n.194, p.74.

³⁴See supra note 32.

³⁵See supra note 2.

Recommendation 3: Adapt the legality opinion to the Staff Legal Bulletin No. 19 model

The proposal. Item 15, exhibit 12 of Form 1-CRYPTO requires “An opinion of counsel as to the legality of the securities covered by the offering statement, indicating whether they will be binding obligations of the issuer.”³⁶ The form omits the words “when sold” that the Proposing Release uses in describing the opinion.³⁷ The exhibits that define holders’ rights include “any whitepaper or similar document published by the issuer”, and the subscription agreement exhibit includes any token purchase agreement or SAFT.³⁸ RFC 112 asks whether “the required opinion(s)” need additional instructions or changes.³⁹

The problem from cross-border practice. A covered investment contract is neither a share nor a debt instrument, and the form does not say what obligation counsel is confirming, under which law, or who may give the opinion. Token purchase agreements used by non-US teams may be governed by the team’s home law or English law. Under Recommendation 1, the issuer itself may be organised abroad. The whitepaper is also listed as an instrument defining holders’ rights, although whitepapers usually describe plans, not contractual undertakings.

Staff Legal Bulletin No. 19 answers these questions for registered offerings. For shares of a foreign corporate registrant, foreign counsel, or US counsel competent in the foreign law, opines “on the laws of the registrant’s jurisdiction of incorporation”. For debt securities, counsel “must opine on the law of the jurisdiction governing the agreement or instrument”, and where the registrant is organised outside primary counsel’s expertise, local counsel may give the opinion on existence, power and authorisation, with both opinions filed.⁴⁰

Recommendation. We recommend an instruction to exhibit 12 along these lines:

“The opinion shall state whether the covered investment contracts, when sold, will be binding obligations of the issuer. The opinion shall address (i) under the law of the issuer’s jurisdiction of organization, whether the issuer is validly existing, has the power to enter into the instrument under which the covered investment contracts are sold, and has duly authorized its entry into that instrument; and (ii) under the law governing that instrument, whether it is enforceable against the issuer. Separate opinions may be given by counsel qualified in each such law and shall each be filed as exhibits. The opinion is not required to address whether any crypto asset is a security or whether the issuer will perform any representation or promise to engage in essential managerial efforts.”

Without that last sentence, the exhibit may be read as a classification opinion or an assurance about promised efforts, neither of which is a legality question. The instruction should also say that exhibit 12 covers the purchase instrument, not the whitepaper, unless the terms of the purchase instrument incorporate the whitepaper.

³⁶Form 1-CRYPTO, Part III, Item 15, paragraph 12, p.372.

³⁷Proposing Release, section II.C.2.b.iv, p.143; compare Form 1-A, Part III, Item 17, paragraph 12, and 17 CFR 229.601(b)(5)(i).

³⁸Form 1-CRYPTO, Part III, Item 15, paragraphs 3(a) and 4, p.371.

³⁹Proposing Release, section II.C.2.b.iv, RFC 112, p.144.

⁴⁰Division of Corporation Finance, Staff Legal Bulletin No. 19 (14 October 2011), sections II.B.1.c and II.B.1.e.

Recommendation 4: Adopt Rule 400 with a no-admission provision, a clear certifier and a defined analysis

The proposal. Rule 400 deems a covered investment contract to have ceased to exist where the issuer has completed or permanently ceased all promised essential managerial efforts, is not making and does not intend to make new promises, and files Form TR.⁴¹ Form TR requires a first-person certification (“I certify that I have completed or otherwise permanently ceased all essential managerial efforts ...”) and “an analysis supporting your certification”, signed by an officer or other duly authorised person.⁴² No staff review is required,⁴³ but the Commission may still challenge the filing and others may still assert that the asset is a security.⁴⁴ RFC 130 asks whether a bare certification should suffice, and RFC 134 asks how to address the concern that reliance is “a tacit admission” that an investment contract existed and the filer was its issuer.⁴⁵

The problem from cross-border practice. We support Rule 400 (RFC 124). Non-US issuers that sold tokens only offshore and never took the position that an investment contract existed face the concern RFC 134 describes. The 2026 Interpretation states that separation does not cure earlier violations,⁴⁶ so a filing that looks like an admission is costly. These issuers also have no Rule 103(b)(1) record of promised efforts, which the Commission expects the analysis to draw on.⁴⁷ For an entity, the first-person certification leaves unclear whether “I” is the signing officer or the issuer.

Recommendation. We recommend the following (RFCs 74, 125, 128, 130 and 134):

- Add Rule 400(c): “Neither the filing of a transition report on Form TR nor reliance on this section shall be deemed an admission that the crypto asset was at any time subject to an investment contract, that the filer was an issuer of any security, or that any offer or sale was required to be registered. The fact that a person has not relied on this section shall not create any presumption that a crypto asset is or was subject to an investment contract.” The adopting release should say that the Commission will not treat a Form TR filing as an admission.
- Recast Item 2 so that the issuer certifies through its authorised signatory, to the best of the signatory’s knowledge after reasonable inquiry, and may do so “to the extent any covered investment contract existed”.
- Keep the analysis requirement (RFC 130): a bare certification that the Commission may challenge and others may ignore tells investors little. The analysis should identify each promised essential managerial effort, in the issuer’s own words and with its source, since fulfilment is judged by the issuer’s own description;⁴⁸ the evidence and date of completion

⁴¹Proposed 17 CFR 228.400, pp.353-354; Proposing Release, section II.D.2, pp.163-164.

⁴²Form TR, Part I, Items 2 and 3, p.398; Instruction to Signature and Signature, p.399.

⁴³Proposing Release, section II.B.2.e, n.217, p.92.

⁴⁴Id., section II.D.2, pp.166-167.

⁴⁵Id., RFC 130, p.168; RFC 134, pp.168-169.

⁴⁶2026 Interpretation, section IV.B.3, pp.33-34; 91 FR at 13723.

⁴⁷Proposing Release, section II.D.2, p.165 and n.370; proposed 17 CFR 228.103(b)(1), p.326.

⁴⁸Proposing Release, section II.B.1, n.193, p.73.

or cessation for each; the activities the issuer continues and why they are not essential managerial efforts;⁴⁹ and, for issuers without a Rule 103(b)(1) record, the documents and statements relied on.

- The Proposing Release makes the safe harbor available to any issuer that satisfies its conditions, including issuers that have not used the exemptions.⁵⁰ The adopting release should confirm that this includes non-US issuers that sold only offshore under Regulation S, and that filing Form TR is not itself an offer or a directed selling effort.

Recommendation 5: Allow reuse of MiCA and VARA disclosure with a reconciliation

The proposal. Rule 103(a) provides that information “should be consistent with” the issuer’s public statements and “promotional materials (such as whitepapers)”.⁵¹ The Proposing Release describes website posting of disclosure under Rule 200(d)(1) as “compatible with this existing practice” of posting whitepapers.⁵² RFCs 28 to 30 and 32 ask about additional requirements, examples, guidance and delivery.⁵³

The problem from cross-border practice. Teams that also offer in the European Union or Dubai generally must publish a regulated disclosure document. In the European Union, unless an exemption such as MiCA Article 4(2) applies, an offeror to the public of a crypto-asset other than an asset-referenced or e-money token draws up a white paper with the Annex I content, notifies it without prior approval, publishes it, and is liable for it without contractual exclusion.⁵⁴ In Dubai (outside the DIFC), an issuer in the Emirate publishes a whitepaper with the Schedule 1 disclosures and a risk disclosure statement and may not exclude civil liability; a Category 2 token is placed only through a VARA-licensed distributor, which files both documents with VARA and waits 15 working days for any comment or objection, and the issuance is never deemed approved by VARA.⁵⁵ Much of this content overlaps with Rule 103(b), including management, milestones, use of proceeds, rights, technology and risks, but neither regime asks for Rule 103(b)(1) disclosure of promised essential managerial efforts and progress. Separate documents, each carrying liability, invite the inconsistency that Rule 103(a) seeks to avoid. Substituted compliance based on foreign “authorization”⁵⁶ would not fit, because MiCA does not approve these white papers and VARA does not approve Category 2 issuances.

Recommendation. We recommend a note to Rule 103:

“An issuer may provide information required by paragraph (b) of this section by including in its disclosure information prepared in accordance with the disclosure

⁴⁹Id., section II.A.4.b.i, p.56.

⁵⁰Id., section II.D.2, p.166; section IV.B.4, p.253.

⁵¹Proposed 17 CFR 228.103(a), pp.325-326.

⁵²Proposing Release, section II.B.2.d, p.88.

⁵³Id., section II.A.4.b, RFCs 28 to 30 and 32, p.65.

⁵⁴Regulation (EU) 2023/1114 (MiCA), Articles 4(1) and 4(2), 6(1) and Annex I, 6(3), 8(3), 9 and 15.

⁵⁵Dubai Virtual Assets Regulatory Authority, Virtual Asset Issuance Rulebook (version of 19 May 2025, effective 19 June 2025), Rules I.E.1, I.E.2, I.E.5, III.A.1, III.B.1, III.B.3 and III.C.1, and Schedule 1; Broker-Dealer Services Rulebook (same version), Rules IV.D.1 to IV.D.7.

⁵⁶See, for example, letter from Kim Wales (7 September 2026), section 8b.

requirements of another jurisdiction, provided that the disclosure (i) is in English; (ii) includes a table identifying, for each item in paragraph (b), where responsive information appears; (iii) includes all information required by paragraph (b) that the other document does not contain, including the information required by paragraph (b)(1); and (iv) is provided in the manner required by the applicable exemption. Information so included is disclosure of the issuer under this section for all purposes.”

The staff could also publish a non-exclusive crosswalk from MiCA Annex I and VARA Schedule 1 to Rule 103(b) (RFCs 29 and 30). US investors would receive every Rule 103(b) item, in English, under US liability, and the issuer would maintain one core disclosure document across markets, with a US supplement.

IV. Conclusion

These changes would let US investors buy these tokens with Rule 103 disclosure, ongoing reporting and US remedies, rather than face the limited options and added risks the Proposing Release attributes to offshore activity,⁵⁷ while keeping the Commission’s protections. We would welcome the opportunity to discuss these comments with the staff, and can be reached at info@infinilex.io.

Respectfully submitted,

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⁵⁷See supra note 4.