Response to the SEC on Regulation Crypto Assets

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Global Digital Finance
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About Global Digital Finance

Global Digital Finance (GDF) is a global digital assets membership organisation bringing together financial institutions, payment companies, digital asset firms, market infrastructure providers, technology companies and other participants operating across the global digital finance ecosystem. GDF develops industry-led policy positions and best practices through collaboration between members, policymakers and regulators.

Our membership includes organisations operating across the United States, United Kingdom, European Union, Asia Pacific and other major financial markets, with experience in issuance, trading, custody, payments, compliance and financial market infrastructure.

GDF welcomes the opportunity to engage with the Securities and Exchange Commission and would be pleased to discuss this response or provide further information from our members.

Purpose of this response

This response sets out GDF comments on the proposed offering regime and investment contract safe harbour.

1 Executive summary

GDF welcomes the Commission's proposed tailored offering regime. A clearer route to lawful capital raising would help responsible firms invest in the United States and give investors more useful information about the rights and risks attached to their holdings. The framework should combine practical access with clear accountability and effective investor protection.

Our central recommendation is to make the regime usable throughout a project's lifecycle. Firms need to understand the initial regulatory treatment, the information they must provide, the conditions for moving between routes and the consequences when an investment contract ends. Trading platforms and custodians also need a reliable basis for their own compliance decisions.

The final rules should provide durable classification boundaries and predictable compliance routes, supported by clear coordination with other offering exemptions and related market regulation. Comprehensive legislation would give the framework a firmer statutory foundation; meanwhile, rulemaking should resolve uncertainty within the Commission's authority.

We support principles-based disclosures, proportionate compliance and coordination between the SEC and CFTC. Requirements should attach to the activity and the person controlling the relevant risk. Relief from offering registration should not be presented as approval of an asset, an exemption from all financial regulation or a guarantee of investment performance.

Summary of recommendations

1. Clarify the boundary between a crypto asset and the investment contract under which it is offered, and put the intended limits of the regime in the operative rule text.

2. Require accessible, tailored disclosures that explain holder rights and risks and support effective oversight by boards and advisers.

3. Make the startup route proportionate and provide an orderly path to further fundraising, including clear interaction with other available offering exemptions.

4. Calibrate fundraising requirements to investor risk and the amount raised, with predictable filing processes and protection against misleading promotion.

5. Make the investment contract safe harbour objectively assessable, clarify treatment of functioning networks and protect appropriate good-faith reliance without removing investor remedies for misconduct.

6. Clarify intermediary responsibilities, reliance on public filings and the treatment of open orders, existing holdings and pending transactions during a change in classification.

7. Permit eligible foreign issuers to qualify through enforceable safeguards and supervisory cooperation, clarify Regulation S treatment of offshore transactions and cross-border transfers, and coordinate implementation with related federal and state frameworks.

We do not recommend a different dollar limit or a longer exemption period without supporting evidence. We ask the Commission to assess whether the proposed settings work for different project types and to explain the basis for the final calibration.

2 Scope and regulatory classification

Relevant proposal provisions: release Sections II.A.1 and II.D; proposed Rules 100 and 400 (17 CFR 228.100 and 228.400).

GDF supports a clear distinction between an underlying asset and the contract, transaction or scheme through which it is offered. The proposal is directed at investment contracts involving underlying crypto assets that are not themselves securities. It should not be read as a general route for tokenised shares, bonds or fund interests.

This distinction matters for members providing several services across different asset categories. A firm may support payment stablecoins, native crypto assets and tokenised securities through related technical infrastructure, while the legal rights and applicable rules differ materially.

2.1. Publish practical perimeter examples covering a token sold with development commitments, a functioning network token, a tokenised security and a payment stablecoin used as settlement consideration.

Examples should explain which facts determine the analysis, rather than giving an asset label permanent legal significance. They should address arrangements involving more than one entity and clarify how obligations are allocated where developers, foundations and commercial operators perform different roles.

The definition of a crypto asset should not make the use of distributed ledger technology the sole determinant of regulatory treatment. The final rules should distinguish assets integral to a network or application from assets merely recorded on it. They should explain why a tokenised ticket, loyalty point or digital access tool does not become a security solely because it uses a ledger, while preserving investment contract analysis where the surrounding arrangement warrants it.

2.2. Explain how the offering regime interacts with other securities law obligations and the treatment of separate investment products involving the same token.

A transaction involving lending, pooling, a managed strategy or a return promise may require a separate analysis even where the underlying token qualifies for relief. Investor materials should explain this distinction. Equally, use of a token as payment should not by itself imply that an investment contract has been created.

2.3. Coordinate SEC and CFTC guidance on classification changes and the regulatory responsibilities that follow.

The agencies should provide a consistent account of the relevant transaction, responsible entities and effective dates. A change in securities treatment should not leave firms uncertain about applicable market conduct or intermediary requirements. Any legislative changes should be reflected through clear updates and transition provisions.

2.4. Keep definitions technology-neutral and responsibilities linked to actual control or undertaking.

Publishing software, providing technical tools or maintaining an open network should not automatically be treated as assuming issuer or intermediary responsibilities. Conversely, decentralised terminology should not prevent identification of people making material promises or controlling investor funds. The final guidance should allow both propositions to be applied to the facts.

2.5. Codify clear classification boundaries and maintain consistent treatment across related frameworks.

The Commission should set out the relevant asset categories and the limits of this offering regime in the rules, with consistent SEC–CFTC terminology. Tokenised securities should retain their treatment according to the rights conveyed, and qualifying payment stablecoins should retain their applicable statutory treatment. Clear boundaries should be capable of consistent application under future administrations. A broad umbrella definition must not be mistaken for a finding that every asset within it is a security.

3 Meaningful disclosures and investor protection

Relevant proposal provisions: proposed Rules 101(d), 103, 104, 200(d) and 305(a); Form 1-CRYPTO, Part II, for fundraising disclosures and financial statements.

GDF supports a tailored disclosure regime that builds on established disclosure architecture while addressing the risks of these products and markets. Investors should understand what they are buying, what the issuer has promised, who can change the system and what happens if the project fails. Existing corporate disclosures alone may not explain these matters adequately, but familiar structures can make information easier to compare.

3.1. Provide a short investor summary supported by a consistent set of material disclosures.

The summary should explain holder rights and their enforceability, the intended use of the token, material development commitments, the use of proceeds and the principal loss scenarios. It should distinguish ownership of a token from ownership of the issuer or a claim on its assets. Technical documentation can support this account but should not substitute for it.

3.2. Make token supply, insider interests and governance understandable.

Disclosures should identify allocations to founders and related parties, vesting and unlock arrangements, material treasury holdings and powers to alter supply. They should explain governance rights, concentrated voting power, conflicts of interest and any arrangements for market making or liquidity support. Wallet data should be used only where it conveys reliable information and does not expose unnecessary personal or security-sensitive details.

3.3. Explain material technical dependencies and the limits of assurance.

Investors should understand material dependencies on bridges, oracles, administrators, validators and service providers. Disclosures should explain upgrade powers, security controls and recovery arrangements. A smart contract audit should not be described as a guarantee. Firms should explain its scope and material unresolved findings without publishing information that would facilitate an exploit.

3.4. Require timely updates for material changes and retain accessible disclosure histories.

Examples include a change in development commitments, a serious security incident, a material change in governance or an unexpected insider release. The SEC should allow concise updates and links to unchanged information. Archived versions should remain available so investors and intermediaries can identify what was represented at the relevant time.

3.5. Preserve effective anti-fraud protection and proportionate treatment of errors.

Offering materials and promotions should not suggest that a filing means SEC endorsement. Bad actor controls should apply to relevant responsible persons. Building on proposed Rule 101(d)'s limited protection for insignificant deviations, the Commission should distinguish deliberate concealment from a promptly corrected administrative error and consider a defined correction process where legally permissible. Corrections should never excuse material misleading statements or investor harm.

3.6. Ensure disclosures support effective governance and oversight.

Disclosures should identify accountable decision-makers, material control rights and the information available to boards and advisers to discharge their applicable duties. Governance arrangements should explain how development commitments, treasury resources, conflicts and material incidents are monitored. Requirements should recognise different organisational models and should not presume that every network has a corporate board. Commercial failure does not, by itself, demonstrate misconduct. The framework should allow responsible experimentation while requiring honest disclosure of risks, setbacks and the use of investor funds.

4 Startup and fundraising routes

Relevant proposal provisions: release Sections II.B and II.C; proposed Rules 100 (offering amounts), 101(b) (integration), 102 (inflation adjustments), 200 and 300 to 307; requests for comment 47 and 51 to 55.

The proposal provides a startup exemption of up to $5 million over four years and a fundraising exemption with annual tiers of $20 million and $75 million. GDF supports differentiated routes in principle, provided their conditions are practical and the transition between them is clear.

4.1. Explain the calculation and aggregation of offering amounts and the one-time startup condition.

Guidance should address non-cash consideration, development services, token distributions and related projects. The anti-circumvention objective should be preserved without automatically excluding a genuinely independent project merely because an entrepreneur or investor has participated in another venture. Firms need examples they can apply before commencing an offering.

4.2. Provide an orderly route when a project reaches the end of the startup period or its funding limit.

The final rules should explain movement to the fundraising exemption, registration or another available route, including treatment of existing holdings and disclosures. An exemption should not be assumed to turn a token into a non-security when time expires. Where a project is delayed, the issuer should communicate its status and lawful next steps before the deadline. Any extension mechanism would need defined conditions and evidence of a genuine compliance need.

4.3. Calibrate financial reporting and assurance to the information investors need.

For a development-stage project, cash resources, expenditure and remaining commitments may be particularly useful. The Commission should avoid collecting the same information in several forms where cross-reference can achieve the same result. Assurance should be credible and proportionate, and must distinguish issuer financial statements from technical assurance about a network or application.

4.4. Make filing and qualification processes predictable.

Clear filing instructions, worked examples and indicative processing expectations would reduce avoidable cost. Firms should be able to identify which changes require an amended filing and when an offering may proceed. Small issuers should have access to practical guidance without relying on bespoke engagement for routine questions.

4.5. Protect retail investors through understandable risk information and evidence-based limits.

Where investment limits apply, their calculation and verification should be workable across distribution channels. The SEC should assess whether additional protections are needed in the startup route, with attention to the different risks and investor populations. GDF does not propose a numerical change without supporting evidence on project costs, investor losses and compliance burdens.

4.6. Clarify the interaction with Regulations A and D and Regulation Crowdfunding.

Issuers should be able to use different lawful fundraising routes over a project's lifecycle without avoidable uncertainty about whether offerings will be combined for exemption purposes. The SEC should provide worked examples of Rule 152 as applied through proposed Rule 101(b), including sequential and concurrent offerings and changes in investor eligibility or disclosure requirements. It should consider targeted safe harbours where appropriate, while preserving safeguards against artificially dividing one offering to evade registration or fundraising limits. The final rules should also explain implementation of the periodic inflation adjustments proposed in Rule 102 and avoid disproportionate Tier 1 reporting burdens relative to comparable offerings.

4.7. Align payment stablecoin consideration with the GENIUS Act.

Where payment stablecoins are accepted as consideration in offerings under Regulation Crypto Assets, the framework should ensure consistency with applicable GENIUS Act requirements, including issuance by permitted payment stablecoin issuers or access through the Act's lawful foreign-issuer pathway, subject to applicable effective dates and transitional arrangements. Offering disclosures should identify the stablecoin, its issuer and regulatory status, and material redemption and settlement risks.

5 Investment contract safe harbour

Relevant proposal provisions: release Section II.D; proposed Rule 400(a) and (b), and Form TR, Part I (17 CFR 239.604). Related transition filings: Rules 200(e) and 305(c) and (d).

GDF supports a mechanism for demonstrating when an investment contract has ended. Proposed Rule 400 requires completion or permanent cessation of all promised or represented essential managerial efforts, no current or intended new representations or promises of such efforts, and filing a transition report on Form TR with the Commission. Part I requires a certification and supporting analysis. The resulting legal certainty must be usable by holders and intermediaries as well as issuers.

5.1. Provide objective guidance on essential managerial efforts and continuing activity.

The SEC should distinguish essential managerial efforts from routine maintenance, security patches, upgrades, open-source contributions and work supporting a functioning network. Guidance should apply to established projects that raised funds under earlier exemptions as well as users of the new offering routes. It should explain when continuing work, new features or later statements change the analysis, taking account of actual control, promised efforts and reasonable investor expectations. Necessary security work should not have to stop solely to support a change in classification.

5.2. Require a reasoned public explanation of the basis for reliance.

The explanation should identify the original commitments, evidence of their completion or cessation, remaining operational and governance powers and material continuing dependencies. A bare assertion that a project is decentralised would be insufficient. Evidence should explain who can alter the system, relevant concentrations of control and how the network operates in practice. Voluntary legal or technical assurance could strengthen the evidence, but the SEC should assess the cost before making an independent opinion universally mandatory.

5.3. Distinguish completed development from project abandonment or failure.

If promised activity permanently ceases because a project fails, holders need a clear statement of what remains, including funds, contractual claims and any wind-down arrangements. Ending an investment contract should not extinguish liability for earlier misconduct, unresolved contractual obligations or investor remedies. The filing must not imply that cessation is evidence of commercial success.

5.4. Clarify the effective date, intermediary reliance and subsequent representations.

GDF recommends an express safe harbour, within the Commission's authority, for reasonable, good-faith reliance by unaffiliated intermediaries on a publicly available, apparently complete Form TR. Reliance should be subject to specified proportionate checks and should not be available where an intermediary knows of a material inaccuracy or has credible information reasonably available to it that makes reliance unreasonable. The Commission should maintain a public, machine-readable record identifying the relevant network identifiers and, where applicable, contract addresses, the Form TR filing date, the date on which the issuer states that the Rule 400(a) conditions were satisfied, and any Commission objection or status notice. Filing should not imply Commission approval or establish that the safe-harbour conditions have been met. Required checks should not ordinarily oblige an unaffiliated intermediary to reconstruct the issuer's entire communications and development history. The Commission should also explain how errors are corrected, how holders are notified and the respective obligations immediately before, at and after a transition.

Later promises or arrangements should be assessed on their own facts. The SEC should clarify when they create a new investment contract and what follows for earlier holdings, subsequent offers and intermediary obligations. A filing should neither immunise future fundraising nor create an unexplained retrospective change in the treatment of completed transactions.

The recommended reliance protection should address completed transactions undertaken in reasonable, good-faith reliance before the earlier of public notice or the intermediary knowing, or reasonably being expected to know, of a material defect. A later correction, Commission objection or issuer reporting failure should not automatically remove that protection. The Commission should identify the grounds for any objection and its effect on subsequent activity, with reasonable transition arrangements where compatible with investor protection and immediate action where necessary. The protection should preserve enforcement against misconduct and applicable investor remedies, and should not imply that a Commission rule extinguishes private claims beyond its lawful scope.

5.5. Preserve alternative lawful classification analyses.

The safe harbour should remain a usable option without becoming the only means of demonstrating that an asset is outside the securities perimeter. Failure to use it should not itself establish that a token or transaction is a security.

A Form TR filing should not, by itself, be treated as an admission that earlier transactions were securities offerings or that the filer previously acted as an issuer. The SEC should clarify whether a filing serves any purpose where an asset and its transactions already fall outside the securities perimeter, rather than requiring an unnecessary transition process.

5.6. Clarify protection for reasonable reliance on existing Commission positions.

The final framework should explain the protection available to persons who acted in good faith in accordance with applicable Commission rules or reasonably relied on relevant interpretations and guidance. It should distinguish the legal status of Commission rules, Commission interpretations and staff guidance, and identify the limits of any relief within the Commission's authority. A later change in position should not, of itself, be treated as proof of earlier wrongdoing. Any protection should preserve enforcement against fraud, deliberate evasion and materially misleading statements, together with applicable investor remedies.

5.7. Consider an additional objective route for functioning networks without central control.

The Commission should consider whether an additional, non-exclusive route can establish cessation of an investment contract by reference to observable network functionality and the absence of central control. Any such route should distinguish technical functionality from fulfilment of an issuer's represented development objectives. It should define the relevant forms of control, require a reasoned and accessible evidential basis for reliance, address conflicting assessments and preserve anti-fraud protections. Functionality alone should not substitute for examination of the economic arrangement. The relationship with Rule 400, public disclosures and transition filings should be explicit.

6 Secondary markets and cross-border implementation

Relevant proposal provisions: release Section II.E and proposed Rule 500 (state securities pre-emption); Rules 200(b)(2) and 300(b)(1), and requests for comment 49 to 50 and 85 to 86 (issuer eligibility); Rule 305 (reporting). Section 6.5 also addresses Securities Act Regulation S, Rules 902 to 905. Intermediary reliance and coordination recommendations seek additional clarification or relief.

6.1. Explain the limits of offering relief for trading platforms, brokers and custodians.

An issuer's offering exemption does not answer every question about lawful secondary trading or custody. The SEC should identify remaining obligations and publish practical guidance for firms handling several asset categories. Issuers should remain responsible for their disclosures and undertakings; intermediaries should be accountable for risks within their own functions.

The Commission should distinguish the securities-law character of the underlying crypto asset and the relevant transaction from the regulatory status of an intermediary supporting that transaction. A platform's provision of execution, custody, settlement, conversion or withdrawal functionality should not, without more, determine whether a customer's transaction forms part of an investment contract. Any obligations arising because the platform acts as an exchange, broker, dealer, custodian or other intermediary should be assessed separately by reference to the functions it actually performs.

Appropriately regulated broker-dealers and alternative trading systems can support compliant distribution and secondary trading where their services fit the transaction and their permissions. The final framework should recognise this route without requiring an intermediary where the law does not otherwise require one. Guidance should make it practical for existing regulated firms to participate within their approved activities.

6.2. Provide workable treatment of issuer reporting failures and classification disputes.

The Commission should explain how an issuer's missed filing affects holders and secondary transactions, including any notice, correction and orderly exit arrangements. Innocent holders should not face avoidable disruption through an unclear compliance consequence. Where trading must be restricted, firms need guidance on customer notification and lawful custody, withdrawal and disposal options.

Any intermediary framework or transitional relief should preserve customers' lawful ability to hold in custody, withdraw, transfer and use the underlying non-security crypto asset, including for transaction fees and access to network services. Staking and collateral arrangements should remain subject to their own legal analysis and applicable obligations. Once the relevant investment contract has legally ended, securities-market custody and settlement requirements should not continue solely because the asset was previously subject to that contract. Acquisition or withdrawal alone should not be treated as ending an investment contract.

Transition guidance should expressly address open orders, existing holdings, trades awaiting execution, pending settlement and associated custody arrangements. It should identify whether and when orders must be cancelled or re-entered, how customers are notified and which obligations continue until a transaction completes. A change in classification should not leave an otherwise lawful pending transaction without a clear completion or exit route.

6.3. Clarify the reach of state registration pre-emption and surviving state powers.

GDF supports the proposed qualified-purchaser relief from duplicative state securities registration and qualification requirements for covered offerings and eligible secondary transactions, subject to the specified conditions and preservation of state anti-fraud authority. The final rules should explain the boundary with other state requirements, including notice filings and fees where applicable. Relief should not be marketed as displacing all state supervision or conferring payment stablecoin authorisation. A clear national route for securities offerings can coexist with meaningful state prudential pathways for payment stablecoins.

6.4. Permit a safeguarded route for eligible foreign issuers.

Proposed Rule 300(b)(1) restricts the fundraising exemption to US-organised entities satisfying additional US nexus conditions. Rule 200(b)(2) contains no equivalent restriction, and requests for comment 49 to 50 ask whether one should be added. GDF recommends that the Commission permit foreign issuers to qualify where they satisfy equivalent investor-protection and enforcement safeguards and otherwise meet the applicable exemption conditions. Appropriate conditions could include enforceable service-of-process arrangements, accessible English-language disclosures, maintenance of books and records available to the Commission, cooperation with examinations and enforcement, and proportionate financial reporting or assurance.

Where those safeguards can be imposed directly, US organisation should not be required solely as a condition of eligibility. A location-based restriction may create significant restructuring and tax costs and discourage responsible global projects from entering the US market without materially improving investor protection. This recommendation concerns securities offering eligibility and does not assume that GENIUS Act comparability creates an SEC exemption.

6.5. Clarify Regulation S treatment and cross-border transfers.

The Commission should clarify which Regulation S conditions apply to offshore offers, sales and resales of covered investment contracts, including the relevant treatment under Rules 903 and 904. Any

application of Rule 905 should reflect its specific scope concerning equity securities of domestic issuers. Guidance should distinguish restrictions applicable while an investment contract remains outstanding from the treatment of the underlying non-security crypto asset after that investment contract has legally ceased.

The framework should accommodate the fungible and globally transferable nature of crypto assets. A prior US offering or covered investment contract involving other units of the same fungible asset should not, without more, determine the availability of Regulation S for a later offshore transaction. Compliance should turn on the relevant offer, sale, parties and distribution arrangements, without imposing disproportionate token-by-token tracing requirements, while retaining checks necessary to establish compliance. Clarification or relief should preserve applicable distribution compliance periods, resale restrictions, prohibitions on directed selling efforts and anti-evasion safeguards.

6.6. Sequence related reforms and provide clear implementation guidance.

The SEC should coordinate with the CFTC and other relevant authorities on the interaction between capital raising, secondary trading and payment instruments. The final package should include forms, filing instructions, examples and a reasonable period for implementation after these materials are available. Existing projects need clarity on prospective access and outstanding obligations, without any presumption that prior unlawful conduct is excused.

GDF would welcome further engagement with the Commission on the operational application of these recommendations and the evidence supplied by our members.