

Crypto assets disclosures

Building a framework towards a gold standard for disclosure





At the heart of global securities laws are information requirements, including details about their business, principals (i.e., directors and officers), financials and their risks, that entities undertaking securities offerings need to provide to potential investors.

Such information is fundamental to the integrity of capital markets. As financial products evolve with advances in information technology and investor needs, so do regulatory requirements on what information is disclosed, and how. These disclosures are important — not just at the time of a security offering, but throughout the life of each security as it is traded on secondary markets.¹

This information is at the core of capital markets regulations, even as financial products have evolved with advances in information technology and digital services. And the principle of investor protection has guided securities regulators as they have grappled with instruments, ranging from common equity to derivatives. Accordingly, as new financial products have been introduced, securities disclosures have consistently evolved in turn, and regulators have long evolved disclosures to meet the risks and opportunities of the moment.²

Crypto assets comprise the latest chapter in the evolution of financial markets and operate in ways not wholly anticipated by disclosure frameworks, or securities law more generally. For example, crypto assets may not be managed or operated by a single entity or a centralized management team that is accountable to the holders of crypto assets, which we will call “investors.”³ In projects that issue tokens, the value proposition associated with investing centers on the technology, rather than past financial performance or earnings.

Further, it is possible that the purchase of the crypto asset could have been made to utilize the crypto asset token rather than resell or receive a stream of assets. Additionally, in many cases, important information concerning tokens and projects may already be available to anyone through publicly available white papers or on public blockchains. But the information may not be standardized, making comparison across crypto asset projects difficult. The information may be in the form of a programming code focused on technical aspects of the project that may be difficult for average investors to understand.

So, what is the best policy approach to deploy at a time of both technological and informational disruption? The stakes are high. Many legislatures and regulators are working to determine if crypto assets should be classified as securities, commodities, or a new type of financial product. However, identifying which crypto assets are securities is but one step in a longer journey; proper disclosures must also be tailored in ways to ensure that investors understand what they're buying, including the most pertinent risks associated with the crypto assets they hold — regardless of whether the assets are securities or not.

Against this backdrop, this white paper provides a model for devising crypto asset disclosures that hew to longstanding principles of securities law, and, at the same time, accounts for some of the particularities of blockchain infrastructures. It views the unique features of blockchain-based investment instruments as sources of risk and opportunity for regulators. It also constructs a model that accounts for identifying key areas for disclosure and risk mitigation while highlighting some features of public blockchains and crypto asset infrastructures that offer opportunities to advance public policy goals.

FIRST PRINCIPLES FOR DISCLOSURE POLICY

Four key principles can be considered the foundation of trusted and efficient disclosure frameworks for investors. These principles rest on longstanding expectations driving disclosure mandates, and help guide disclosure strategies for accounting for the properties of crypto assets:

1. Investors should be afforded all relevant and necessary information for making investment decisions. A new disclosure framework should, by extension, harness on-chain and off-chain information;
2. Information should be provided in user-friendly, easy-to-read summary formats that provide access to more detailed information;
3. The disclosed content should be standardized so that investors can easily compare risks and opportunities across different crypto assets; and
4. The information should be “pushed” electronically⁴ and directly to investors on a timely basis so that investors do not need to take steps to be aware of it or to search for it.

The first principle, a staple of securities law, requires that investors receive the information needed to make a well-informed decision. In the context of blockchains, this means taking data not only available in the press, media, and online, but also on-chain, and identifying and distilling the most important elements to ensure that they are available for investors.

The second principle highlights longstanding norms that information should not only be available, but also accessible and comprehensible. As we detail below, this presents special challenges in technology spaces that should be addressed head on when crafting useful disclosure policy.

The third principle, standardization, long a feature of securities law, emphasizes the need for information to ultimately have utility for investors in their decision-making process. In a vacuum, data elements have limited use with standardization, information can be given context to help guide and inform reasonable investment decisions.

The last principle underscores the importance of meeting investors where they are to ensure that information is not only promptly received, but also read. New technology offers new tools — from digital wallets to tokenized data — which may enable interactive disclosures beyond what's provided through standard document filings. Transparent, continuously operating blockchains also present unique opportunities for providing investors with key information on securities offerings, whether they are crypto assets or tokenized securities. Real-time, on-chain data enable the receipt of information, that when properly standardized and well written, can improve the functioning of efficient markets and protect investors.

We provide a brief overview below of how these principles can be applied in practice to address the unique characteristics of crypto assets, including potential disclosure requirements, how disclosures might be delivered to participants, and which market participants are in the best position to provide relevant disclosures.

GUIDEPOSTS FOR INFORMATIONAL UTILITY AND IMPACT

Information is useful when it is used. And disclosure frameworks should optimize the likelihood of that happening.

Knowing the end user is important. Recent industry data suggest that a large number of retail investors have now purchased crypto assets, with the highest percentage ownership in the 18-25 age group.⁵ Given the attributes and preferences of this digitally-native demographic, it is essential that disclosures use clear language that is engaging, readable, and easy to understand and digest. This attribute can be elusive. Despite their prevalence and centrality in the industry, many popular disclosure tools, like white papers, are highly technical and difficult to parse and verify. The indecipherability of such disclosures is contrary to the investor protection expectation that disclosures should be useful to investors.

The principle of clarity is embedded in global norms and expectations across the world and across disciplines. The SEC's plain English rule, Rule 421(b) under the Securities Act of 1933, for example, already provides norms for drafting disclosures, including "descriptive headers," "bullet" points, and instructions to avoid "vague boilerplate" and "excerpts from legal documents" in disclosures.⁶

Additionally, key sections of a prospectus, including cover pages, the summary, and risk factors must use plain English principles.⁸ The Consumer Financial Protection Bureau has similarly adopted plain language as a core principle for all consumer-facing content. The same concept occurs internationally, including in the ESMA's Issuer Disclosure Rules.⁹

Standardization is also an element of sound disclosure. The same principle should be applied to all crypto asset disclosures so that individuals can view key information in a user-friendly manner with links or other mechanisms to access and request additional, more detailed information. It creates clear guardrails for what information should be shared and builds common expectations for investors, issuers of crypto assets, and regulators. It also introduces opportunities to compare and contrast data elements in ways that provide broader information for investors and informational efficiency to the market.

Finally, disclosure frameworks must be fit for purpose. In order to protect investors, it is important to ensure that disclosure rules and practices identify (i) information required to be provided under existing rules that may not be beneficial to investors in crypto assets, and (ii) information that would be beneficial to investors in crypto assets and, therefore, should become part of required disclosures for crypto assets that are or become subject to SEC registration requirements.



CRYPTO ASSET DISCLOSURES

CRYPTO ASSETS: CREATING A FIT FOR PURPOSE DISCLOSURE REGIME

The centerpiece for U.S. securities registration disclosures resides in mandated initial (e.g., Form S-1, Form 10) and periodic (e.g., Forms 10-Q, Form 10-K) disclosures. Prospective investors, owners who are monitoring their investments, and investment analysts rely on data in these disclosures to make reasonable assessments about how an investment is performing, its risks, and its value as an investment. The importance of this data is emphasized by the fact that such information is required to be audited or reviewed by independent auditors and certified by CEOs and CFOs under the Sarbanes-Oxley Act.¹⁰ It is subject to regular examination by the SEC and others.

Crypto assets possess many of the features common to traditional securities, often because they may be part and parcel of investment contracts. However, the data informing valuations for many initial coin offering tokens (ICO tokens) can differ considerably from what is relevant for traditional securities.¹¹ For example, ICO tokens may permit founders to raise capital through a token sale while preserving economic ownership and control.¹² By contrast, investors in traditional securities may require managers of publicly-held companies to relinquish various rights or control over their corporation's assets in order to access capital. Issuance of common stock generally requires disclosures related to governance and to obtaining shareholder approval for certain decisions affecting the value of the business. Similarly, disclosures related to debt securities typically require issuers to disclose governance and other arrangements that impose limits on them.

Technology, and how it operates, can also play an outsized role in impacting the decision to purchase a crypto asset. For instance, for utility tokens that allow holders to access assets on particular blockchains, it is critical to understand how the underlying blockchain works, the security of that blockchain, the overall number of tokens available, and the governance around the creation of additional tokens. Moreover, different technologies can trigger very different sets of considerations. For governance tokens, protocols may include layer one blockchains and a

decentralized autonomous organization (DAO). For decentralized assets, a decentralized protocol may indeed comprise the focal point for understanding basic details, like the purpose of a token. All the while, financial details may still be essential, including how and whether fees are shared with native token holders through buybacks or other means.

Moreover, the factors and inputs that directly impact crypto asset valuations can differ considerably from valuations of traditional equities. For example, the supply of tokens is most directly impacted by the founders' initial decision as to the number of tokens that will be minted, the divisibility of the tokens, and whether the founder has the right to issue more tokens, or to redeem or burn them. Smart contracts may be involved as a means to lock up founder tokens, limit future minting, or take tokens out of circulation. In the case of a traditional equity security, the decision to issue new shares generally rests with a board of directors or a vote by security owners.

These factors, commonly understood as the crypto asset "tokenomics" — along with the rights of token holders and the quality of the technology of the project — will be more relevant to the investment decision than evaluating past financial statements and performance, especially in light of the short operating history of many issuers.¹³

As with other assets (see our discussion of asset backed securities [on the following page](#)), it is important that the required disclosures are appropriately tailored to the financial product and the investor base. Some jurisdictions have already proposed what they believe is relevant for crypto asset investors. In the European Union, the Markets in Crypto Assets (MiCA) proposal would require issuers to publish a white paper describing the issuer, the project, rights of the crypto asset, the underlying technology, and risks, and provide the white paper to the relevant financial regulator.¹⁴ In Canada, regulators require all Crypto Asset Trading Platform (CTPs) to provide clients with information about the products that they offer as part of its "know your product" requirement.¹⁵

In all cases, disclosures should have information necessary for investors to understand the material risks associated with the asset and its underlying venture or project. This includes general risks (including intellectual property rights and bankruptcy risks), risks from relationships with affiliates, and security risks (including smart contract risks, operational risks, and cybersecurity risks).

A U.S. EXAMPLE OF TAILORING DISCLOSURES TO FIT THE PRODUCT: ASSET-BACKED SECURITIES

Creating fit for purpose regimes is not easy, especially for novel products, but there is historical precedent. Regulation AB, for example, provides disclosure requirements for asset-backed securities. It is a particularly interesting model for creating purpose-built disclosures that do not mimic those of a typical company's equity securities offering and for situations where centralized actors might be absent. In a Regulation AB offering, because asset-backed securities essentially have no management, there is no requirement to file the Management's Discussion and Analysis information on the issuing entity. The SEC noted that asset-backed securities issuers differ from corporate securities and operating companies because "there is generally no business or management to describe."¹⁶ Instead, information about the transaction structure and the characteristics and quality of the asset pool and servicing are often what is more important to investors.¹⁷

Consequently, the registration prospectus (e.g., Forms SF-1 and SF-3) under Regulation AB incorporates relevant Items from Regulation S-K (e.g., Use of Proceeds, Plan of Distribution),¹⁸ omits unrelated Items from Regulation S-K (e.g., Description of Business, Locations, and Management's Discussion and Analysis),¹⁹ and adds new requirements specific to the financial product (e.g., Information on the Transaction Parties and Static Pool).²⁰ Regulation AB led to the creation of a modified annual report focused on (i) a servicer's statement of compliance with its servicing obligations, and (ii) a report by an independent public accountant regarding compliance with particular servicing criteria.²¹

The Regulation AB disclosure approach is tailored to the asset-backed securities investors' need to understand the legal and structural nature of the issuing entity and the assets in the entity's pool. Similarly, the equity focused quarterly periodic report requirements of Form 10-Q have been replaced with Form 10-D, which provides the report for the periodic distribution information. Form 10-D is designed to provide relevant periodic disclosures to investors of asset-backed securities and includes relevant asset-level information as well as distribution and pool performance.



WHAT INFORMATION IS “MATERIAL”?

While securities law is a natural starting point for identifying principles and frameworks for disclosures for crypto assets, allied fields offer additional concepts that could be helpful in modifying current disclosure frameworks so that they are most fit for purpose. In the world of derivatives law, for example, the Commodity Futures Trading Commission’s (CFTC) core principles for new products require that information be provided to show that the product is not readily susceptible to manipulation, especially where tokens trade on thin or illiquid markets.²²

Other consumer protection rules, like the Truth in Lending Act, emphasize that creditors “clearly and conspicuously” disclose the costs and terms of financial instruments.

The standard measure of what should be disclosed is information that a reasonable investor would find to be material to making an investment decision. But in a novel industry with novel financial products, it may not be entirely clear what a “reasonable investor” may want; additionally, even reasonable retail investors may not have sufficient information to know just what information is most relevant to holding a crypto asset. As a result, their priorities may or may not align with what experts may suggest.

Still, understanding what retail investors think is material is a critical exercise. It helps to uncover areas that investors may naturally cling to, and highlight for founders, companies, and regulators, issue areas that will be especially important for disclosure. And they may highlight issue areas missed or underappreciated by government regulators and the private sector. At the same time, identifying where retail investors may have misplaced or erroneous assumptions can help illuminate the level of sophistication of investors and pinpoint opportunities for upgrading financial literacy.

Thus, to get a sense of today’s investors of crypto assets, Broadridge conducted a survey of 2,000 crypto asset investors, past investors, and prospective investors in Canada, the UK, and the United States.²³ The goal was to get a sense as to what these categories of investors think is material information to purchasing a crypto asset, which types of material information (i.e., factors) are drivers of their decision to make a purchase or sale, and among those things, what is the relative sense of priority.

The survey found that investors and prospective investors of crypto assets typically prioritize conventional metrics when making decisions, such as risks factors and security at 54%, financial overview (e.g., cash flows) at 52%, and holdings of the management team at 43%. However, critical crypto-specific metrics such as tokenomics at 13% and network performance at 19% did not even make it to the top five of their concerns, which could highlight a lack of awareness among investors and perspective investors alike.

The survey results indicate that many investors prefer traditional finance metrics, and emphasize them over the factors that tend to impact crypto specifically. This preference likely reflects the overall penetration and business expectations generated by financial and, especially, securities law disclosures. Yet building a fit-for-purpose disclosure framework will require consideration of operational structures that are native to the ecosystem for crypto assets. Disclosures need to account for features and institutional players unanticipated by traditional disclosure rules, such as on-chain service providers, miners, governance participants, and more. Additionally, decentralized crypto assets may not have identifiable or centralized parties responsible for their operations; some may not necessarily comprise securities, and even when they are determined to be securities, new solutions will have to be devised for identifying to whom disclosure requirements should be directed. As a result, more research will be required to identify which legacy requirements are optimal for addressing the risks and opportunities of crypto assets, and which are irrelevant or in need of repurposing.

WHEN SHOULD DISCLOSURE BE PROVIDED?

Unlike traditional markets, such as equities and or mutual funds, crypto assets trade 24/7, 365 days of the year on exchanges located across the globe. As a result, information and context often is available in a real-time manner either on-chain or through various off-chain reports provided by key stakeholders. An excellent example is voting. A traditional company may schedule and vote on important proposals on an annual basis, but, within the crypto token world, the community of holders is asked to participate through a proposal and voting process that occurs much more frequently, each of which can be argued to be material.

When determining how and when to distribute this information, we must ensure the model is such that investors in crypto assets have access to the information in a timely and possibly real-time manner. Below is a chart illustrating the frequency of update for each of the categories in the Broadridge survey.

To illustrate how the categories from the survey apply to digital assets under the existing disclosure regime, refer to Exhibit A below. It shows how existing securities disclosure frameworks could be modified or enhanced for crypto assets to protect investors and facilitate efficient markets for crypto token securities (some of the items could also be relevant for crypto asset commodities). We recognize that the decision in the Ripple²⁴ case raises jurisdictional questions on SEC oversight, but examining disclosure within the framework of a longstanding disclosure regime is nevertheless useful.

Exhibit A is organized into two sections, one pertaining to the translation of existing disclosure requirements to encompass the unique attributes of crypto asset security offerings and another pertaining to periodic disclosures. These disclosure requirements are organized into 10 categories that match the 10 categories that were used in its survey. For translation, we looked at not only Form S-1 and Regulation AB, but also Form 10, the filing most likely to be used for crypto tokens already deemed to be securities.²⁵ Notably, our list is not exhaustive, but is intended for illustrative purposes. Some concepts, like Total Locked Value, may not neatly correspond to existing requirements, and additional work is necessary to ensure that such issues are addressed.

PERIODIC/MATERIAL EVENTS DISCLOSURE

CATEGORY	DESCRIPTION	UPDATE FREQUENCY
Token description	Information describing the underlying purpose of the asset	Infrequent (white paper)
Financial information	Data providing an update on revenue and collateralization	Real-time (on chain)
Governance	Information about the governance model and ongoing proposals/voting	Model – Infrequent (off chain) Proposals/Voting – Realtime (on/off chain)
Management team	Founder and Insider Holdings	Real-time (on/off chain)
Network & platform activity	Data providing insight into the overall use and health of the platform, including transaction volume, and other changes	Real-time (on/off chain)
Other major holders	Foundation, Partner, Investor, and Other Major Party Holdings & Relationship	Real-time (on/off chain)
Perspective core team of governing body	Discussion and analysis describing the ongoing operations of the asset	Periodic (off chain)
Risk & security	Current risks and security issues related to the project & asset	Periodic (off chain)
Supporting materials	White papers, Patents, Open Source Code Base, Forking, etc.	Infrequent (off chain)
Tokenomics	Economic model and data related to outstanding supply, inflation, and deflation	Model – Infrequent (off chain) Data – Real-time (on chain)



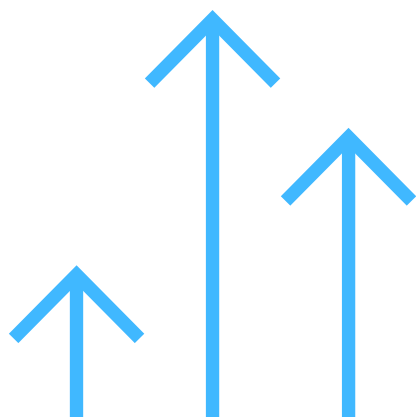
WHO SHOULD FILE PUBLIC DISCLOSURES?

Historically, issuers of securities have prepared most of the disclosures based on the assumption that the issuer is in possession of the information that needs to be disclosed to investors.²⁶ But, in many cases, particularly in the context of decentralized assets, there may not be a management team. Even if there is one, the management team may not be the unique source or even the best suited to provide material information about the crypto asset. SEC Staff recognized in its analysis that after a crypto asset project is operational, that team's control over the protocol and crypto asset may diminish as the protocol becomes more decentralized.²⁷ In the European Union, regulators plan to rely on the issuer to publicly make available a white paper with information about the issuer, the project, rights of the crypto asset and the underlying technology.²⁸ This white paper must be provided to the relevant regulator as well.

Thus, alongside the critical question of what should be disclosed is the deceptively challenging question of just who should file them.

As discussed above, the SEC disclosure regime for asset-backed securities in Regulation AB provides one intuitive framework translatable to decentralized crypto assets. Asset-backed securities transactions involve an affiliated issuer, along with a sponsor, trust, and servicer. In these transaction structures, the issuing entity is generally set up as a trust with an independent trustee that issues asset-backed securities to investors that represent interests in the assets transferred to the trust. Thus, the trustee and servicers provide disclosures as they are in the best position to provide meaningful disclosures to investors.

For some crypto assets, analogic frameworks could help ensure that an appropriate and capable party files mandated disclosures (the “Registrant”). A Registrant could be designated as amongst one of several options, including the party that minted the crypto asset security, an affiliated entity, or a service provider selected by one or more large holder(s) or a dispersed group of “active participants”. The choice could be determined by the legal structure and key holders of the crypto asset, how the crypto asset is utilized, and which investors are incentivized to have the crypto asset trade among U.S. persons and on U.S. regulated exchanges. And the Registrant could be approved by investors on a periodic basis in a similar way to how investors approve a mutual fund’s advisory contract on a periodic basis.



This approval of the Registrant could also approve the funds (to be paid from the crypto asset's treasury or sale of tokens) necessary to pay the Registrant for the year. Just as in asset-backed securities, the Registrant filing the disclosures could change due to resignation or removal of the service provider and such change would be disclosed similar to Item 6.02 of Form 8-K.²⁹

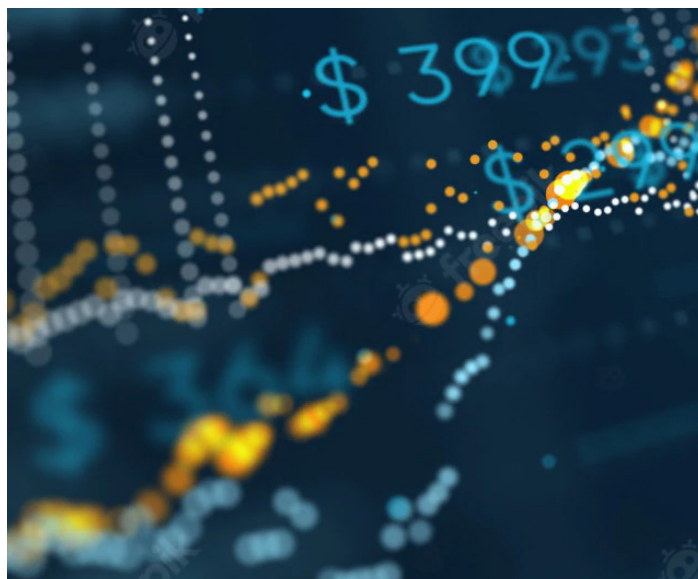
Another reasonable option is to deputize qualified exchanges to act as Registrants for the crypto assets such exchanges want to make available to trade. This option could draw on the experience in the futures markets where designated contract markets (DCMs) submit futures contracts they want to list for trading to the CFTC.³⁰ The CFTC rules for futures contracts could be augmented to require periodic updates that could be reviewed by investors. In other jurisdictions, trading platforms are being designated as appropriate market participants to provide key disclosures. As noted above, Canada requires its Crypto Asset Trading Platform (CTPs) to provide clients with information about the products that they offer as part of its "know your product" requirement.³¹

The Registrant would be responsible for getting information from other parties, as necessary, and filing the required disclosures with the SEC. For example, Regulation AB requires the trustee to have the Form 10-D information signed by the depositor or the servicer since that is the party providing the information to the trustee. Similarly, in crypto assets, a Registrant can have the responsibility for gathering and providing the information to investors. Crypto assets have much of their data on a publicly available blockchain and the Registrant can take that publicly available data and format it in a clear, standardized manner that is easy to read and useful to investors. Given the affiliated nature of foundations, issuers, and large holders, it may be beneficial to have an independent party designated as the Registrant so that it can provide disclosures that are entirely focused on the benefit to the investor. This appointed Registrant would have liability for the accuracy of the disclosures. However, having an independently approved Registrant does not need to limit the obligation of the issuer or any other party to act honestly and responsibly.

HOW SHOULD INVESTORS AND THE PUBLIC RECEIVE DISCLOSURES?

Regulators and the securities industry should look to use new technology to improve the mechanism by which investors and the public receive key information. Disclosures are not always required to be delivered to investors, and SEC reporting, such that it appears on the agency's EDGAR database, is often sufficient to satisfy disclosure requirements. Meanwhile, the EDGAR database, while a tremendous public tool enabling anyone with an internet connection to see the registration and periodic reporting of any issuer of a security, requires users to pull that information from the EDGAR website. And for retail investors, the EDGAR website can be difficult to navigate and not always user friendly.

With this in mind, disclosure regimes could be supplemented for blockchain-based assets by leveraging the actors and tools available. While one can imagine any number of options,³² one path intuitively appropriate for crypto assets might be to allow the Registrant to send important information to digital wallets or exchange/broker provided apps, allowing investors to easily receive disclosures contemporaneous with them being filed with the SEC. Disclosures pushed to investors could have key high level details displayed in a clear, concise, standardized format with links to additional information (i.e., interactive dashboards, disclosures on EDGAR, SEDAR or ESMA). These electronic communications could also contain voting mechanisms that allow investors to vote on key issues related to the crypto token.



By leveraging crypto-native solutions for crypto products, disclosure regimes could help speak to the appropriateness of investor-level disclosure delivery given the high rate of direct retail ownership.³³ Retail investors generally have less access to information than institutional investors, so it is important that retail investors receive material updates on a timely basis. Moreover, though the technology may be novel, doing so would hew to long established practices in areas adjacent to traditional common equity securities, and in ways that could speak to the realities of constantly changing markets. Currently, for example, investors in mutual funds receive a prospectus at the time of sale, as well as semiannual and annual reports. However, given the pace of change of crypto assets and technological innovations for electronic delivery, there is no reason to limit the disclosures to twice per year if such disclosures will reasonably inform investors about new risks, or notify investors to vote on the future direction of the crypto asset. The lower cost of electronic delivery allows for greater engagement between the Registrant and investors. Furthermore, there is also the opportunity to allow potential investors to subscribe to receive disclosures for crypto asset securities they are interested in following.

Many investors own their crypto assets through an intermediary. In these situations, crypto brokers could push down data, reports, notifications, and voting rights when such broker is the on-chain holder of a crypto token for the benefit of a client. Existing SEC, NYSE and FINRA rules,³⁴ as well as rules promulgated by regulators in Canada³⁵ and the EU,³⁶ require broker-dealers with respect to the shares of issuers and mutual funds to push down regulatory communications and voting proxies to the ultimate beneficial shareholders. Just as beneficial shareholders (who hold their shares beneficially through their broker's position at the DTCC) are not the official shareholders on the books and records of the issuer or the mutual fund but instead beneficially control their shares through their relationship with their broker, so too are some holders of crypto tokens not the official on-chain holder of certain crypto tokens but instead beneficially control their crypto tokens through their relationship with their broker. Accordingly, rules could be adopted requiring crypto brokers to push down data, reports, notifications, and voting rights to their clients who are not on-chain holders of the applicable crypto tokens. The specific requirements of such pushdown obligations could be tailored for different circumstances, but they could include a voluntary option for brokers to disclose certain data, reports, and notices connected to the initial stages of a crypto token proposal with a mandatory obligation for brokers to send certain other reports and notices, as well as the final vote, on proposals connected to a crypto token.





CONCLUSION

Crypto assets have withstood a number of challenges and continue to excite a broad base of users and investors. It is important that these users and investors are well informed about the crypto assets they are buying and using. Therefore, it is incumbent on the industry and regulators to create standardized, easy-to-read disclosures that clearly inform investors.

We support a purpose-built disclosure regime that focuses on delivering useful information about each crypto asset to investors through the medium of their choice in a clear, easy-to-read format with links to additional information that will educate investors and protect them from fraud. These disclosures should be prepared by an appropriate Registrant, which has clearly defined roles and responsibilities for collecting, preparing, and disseminating disclosures and voting instructions to investors. And the disclosures should not only be made available, but they should also be pushed to investors in ways that make access to disclosures easy and intuitive to how they transact and participate in their chosen markets.

EXHIBIT A: TRANSLATING EXISTING DISCLOSURE REQUIREMENTS FOR CRYPTO ASSET SECURITIES

FORM S-1/FORM 10 REGULATION AB SF-3 REGISTRATION CATEGORY	ITEMS TO BE INCLUDED FOR CRYPTO TOKENS
Crypto Asset Token Description	Name, token symbol, token standard, blockchain, number of tokens created/offered, and offering price (Item 501 of Regulation S-K, Item 1102 of Regulation AB) Description of the crypto token to be registered and protocol, including the genesis of the crypto asset and/or its supporting blockchain. Disclosure should include, in plain English, the purpose of the crypto token, a technical description of the crypto token as well as the protocols where it resides. (Item 202 of Regulation S-K, Item 1113 of Regulation AB) Information about the protocol and how the blockchain is secured, such as the consensus mechanism -proof of work or proof of stake and the related rewards for that activity (e.g., mining/validation rewards), the token's governance mechanism, and the token's relationship to its native network, including the hash rate, and any description of the audit process for the relevant code Description of exchanges where the crypto token would be traded (Item 501 of Regulation S-K)
Financial Overview	Information relating to the revenue generated by token and operational costs (gas fees, payments to miners, etc.). Description of the key factors necessary to understand the financial performance of the crypto token (Item 303 of Regulation S-K) How the offering price was determined (Item 505 of Regulation S-K)
Governance Model	Governance structure of the business including relationship with affiliate entities (sponsors, issuers, foundations, servicers, trustees) and other transactional parties including development and post-launch support, as well as the roles that each of those entities play in the functioning of the token, including in ongoing disclosures and regulatory compliance (Items 1104, 1106-1110, 1112, 1117, and 1119 of Regulation AB) Explanation of the rights conferred by the crypto token (e.g., voting, dividend, or other economic rights)
Management	List ownership of officers, key employees (Items 401, 403 of Regulation S-K) Description of crypto token lock-up period, vesting schedules, and dilution (Item 506 of Regulation S-K) Disclosure of financial-related party transactions (Item 404 of Regulation S-K) Compensation of project sponsor executives (Item 402 of Regulation S-K) Disclosure of any crypto tokens being sold by crypto token holders (Item 507 of Regulation S-K)
Major Holders	List ownership of large holders, affiliated entities, directors of the issuer or affiliated entities (if applicable) (Items 401, 403 of Regulation S-K) Description of crypto token lock-up period, vesting schedules, and dilution (Item 506 of Regulation S-K) Disclosure of financial related party transactions (Item 404 of Regulation S-K) Compensation of project sponsor executives (Item 402 of Regulation S-K) Disclosure of any crypto tokens being sold by crypto token holders (Item 507 of Regulation S-K) Provide all information about crypto tokens sold by issuer within the last 3 years that were not registered (item 701 of Regulation S-K) Description of crypto token sold at different terms than the offering price to insiders or other affiliated or unaffiliated parties (Item 506 of Regulation S-K)
Network/Platform Activity	Information about the volume of transactions over a period of time; number of developers, projects and proposals taking place using the token or platform, as applicable
Perspective of Core Team	Use of proceeds – how issuer intends to use capital raised to assist in adding value to the crypto token (i.e., continued development by issuer) if registration is part of issuance. (Item 504 of Regulation S-K) Information about how/when crypto token holders can expect to earn a return or find more value in use of the crypto asset security (if applicable) Provide information about utilization of the token as well as revenue held for potential payment to token holders (either in the form of fee sharing or “gas” fees) (similar to Items 1111, 1125 of Regulation AB)

**FORM S-1/FORM 10 REGULATION
AB SF-3 REGISTRATION CATEGORY**

ITEMS TO BE INCLUDED FOR CRYPTO TOKENS

Risk and Security	Material risks related to the offering (Items 105 and 503 of Regulation S-K, Item 1103 of Regulation AB) General description of issuer or project sponsor's business, subsidiaries, affiliates and any predecessors (Item 101 of Regulation S-K) Description of material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or its founders are part (Item 103 of Regulation S-K) Geographic dispersion of large token holders, number of staking/mining nodes, largest stakers/miners in terms of transactions processed, affiliation of stakers/miners, geographic dispersion of stakers/miners
Supporting Materials	White paper of the token and protocol (if applicable); block explorer
Tokenomics	Tokenomics – information about the initial supply size, fully diluted supply, release schedules, and ability to change overall supply

PERIODIC/MATERIAL EVENTS DISCLOSURE

PERIODIC DISCLOSURES

MATERIAL DISCLOSURES

Annual Disclosure	Updates to the governance framework that have been discussed or approved
Material Periodic Event	Periodic reports should be electronically delivered to investors when there is a material change including: A change in a director, key officer, servicer or trustee; (Items 5.02 and 6.02 of Form 8-K); A change in ownership from a director, key officer, major holder, affiliate (similar to 13d/g requirements or Item 7 in Form 10-D); An update to the governance framework of the crypto token; An update to the how the consensus mechanism is secured; Material security events (cyberattacks, hacks) that threaten the crypto token security project; and A change in the structure of the tokenomics that could have a material impact on the value of the crypto token.
Voting	A notification should be electronically delivered to investors when holders are requested to vote through the crypto token's governance model



FOOTNOTES

- 1 Many countries including the United States, Canada, the European Union, Japan, and the UK have periodic reporting requirements for securities. For United States see periodic reporting requirements <https://www.sec.gov/education/smallbusiness/goingpublic/exchangeactreporting>. European Union, see European Transparency Directive, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0109>, Canada, see Continuous Disclosure Obligations. <https://www.osc.ca/en/industry/companies/continuous-disclosure>, Japan see FAQ on Financial Instrument and Exchange Act, https://www.fsa.go.jp/en/laws_regulations/faq_on_fiea/section02.html.
- 2 One example of evolving disclosure is the disclosure for asset-backed securities, Asset-Backed Securities, 70 FR 1505, 1508-1509 (Jan. 7, 2005), available at, <https://www.govinfo.gov/content/pkg/FR-2005-01-07/pdf/05-53.pdf>. Regulation AB is an example of the SEC tailoring disclosures to a specific asset class. The SEC adopted Regulation AB as a principles-based set of disclosures that can be tailored to the particular transaction and the asset type involved.
- 3 See generally Lewis Cohen, The Ineluctable Modality of Securities Law: Why Fungible Crypto Assets Are Not Securities, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4282385.
- 4 Investors should be able to opt-in to paper delivery or other delivery mechanisms to make sure that disclosures are accessible to a broader range of investors.
- 5 20% of Americans and 36% of 18–25-year-old Americans own some type of cryptocurrency as of February 2023, see Crypto Perception Study, Morning Consult, February 24, 2023, https://assets.ctfassets.net/c5bd0wqjc7v0/WvuOkBwNXZsqh-d6EWtkEL/7f94f8b6fbb222f3faf4d0346e473012/Morning_Consult_Cryptocurrency_Perception_Study_Feb2023_Memo__1_.pdf.
- 6 SEC, 17 CFR 230.421(b) (2011), <https://www.law.cornell.edu/cfr/text/17/230.421>.
- 7 SEC, 17 CFR 230.421(d) (2011), <https://www.law.cornell.edu/cfr/text/17/230.421>.
- 8 Plain writing, Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/plain-writing/>.
- 9 Paragraph 30 of Regulation 2017/1129 (2017) states that “The summary of the prospectus should be short, simple and easy for investors to understand. It should be written in plain, non-technical language, presenting the information in an easily accessible way. It should not be a mere compilation of excerpts from the prospectus.” Additional details are available at <https://www.esma.europa.eu/issuer-disclosure/prospectus>.
- 10 15 U.S.C. § 7241 (2002).
- 11 Chris Brummer, et al. What Should Be Disclosed in an ICO, Cryptoassets: Legal, Regulatory, and Monetary Perspectives, in CRYPTOASSETS (Chris Brummer ed, 2019).
- 12 Id.
- 13 Chris Brummer, Disclosure, Dapps and DeFi, 52 Stanford J. of Blockchain L. & Policy, 137, 148-149 (2022).
- 14 Article 5 and Annex 1 of Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (MiCA), available at, <https://data.consilium.europa.eu/doc/document/ST-13198-2022-IN17/en/pdf>.
- 15 The “know your product” sections at the CTPs generally describe the background of the token, how it is used and a link to the white paper. Staff Notice 21-329, Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements, Canadian Securities Administrators, March 21, 2021, https://www.osc.ca/sites/default/files/2021-03/csa_20210329_21-329_compliance-regulatory-requirements.pdf.
- 16 Asset-Backed Securities at 1531.
- 17 Id.
- 18 See requirements for Items 504 and 508 of Reg S-K, 17 CFR 229.504 (2020); 17 CFR 229.508 (2018).
- 19 See requirements for Items 101, 302-305 of Reg S-K, 17 CFR 229.101 (2020); 17 CFR 229.302-305 (2021).
- 20 See requirements for Items 1102-1120 of Reg AB, 17 CFR 229.1102-1120 (2014).
- 21 Asset-Backed Securities at 1506, 1510.
- 22 Designated Contract Markets Core Principle 3, 17 CFR § 38.200.
- 23 Crypto Asset Disclosure Study, Broadridge, July 2023, https://www.broadridge.com/_assets/pdf/broadridge-crypto-asset-disclosure-study-report.pdf.
- 24 SEC v. Ripple Labs, Inc., No. 20-CV-10832 (S.D.N.Y. July 13, 2023) (ECF No. 874).
- 25 This path to registration was followed by a number of OTC listed securities in the late 1990s, under the Exchange Act, in order to continue to be traded on the OTC market. There has been much discussion about the consideration of crypto tokens as “investment contracts” in, e.g., the SEC proposed Framework for “Investment Contract” Analysis of Digital Assets, <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets>.
- 26 Brummer testimony before Ag Committee 6/22/2022, <https://www.agriculture.senate.gov/download/testimony/dr-brummers-testimony>.
- 27 SEC Staff, Framework for “Investment Contract” Analysis of Crypto assets, <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets>.
- 28 Article 5 and Annex 1 of Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (MiCA), available at, <https://data.consilium.europa.eu/doc/document/ST-13198-2022-IN17/en/pdf>.
- 29 This is similarly contemplated in Item 6.02 of Form 10-D, which describes the filing required for a new servicer or trustee, Form 8-K, <https://www.sec.gov/files/form8-k.pdf>.
- 30 The CFTC has allowed certain futures contracts on crypto token, ptc112921c-medcm002.pdf (cftc.gov) (Ether), Bitcoin Euro, ptc081222cmedcm001.pdf (cftc.gov). These certifications show that exchanges have the ability to provide analysis of the underlying crypto token. See CFTC Rules 38.4, 40.2, and 40.3 for CFTC Core Principles for registering new contracts for trading.
- 31 The “know your product” sections at the CTPs generally describe the background of the token, how it is used and a link to the white paper. Staff Notice 21-329, Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements, Canadian Securities Administrators, March 21, 2021, https://www.osc.ca/sites/default/files/2021-03/csa_20210329_21-329_compliance-regulatory-requirements.pdf.
- 32 It is important to not limit options for how disclosures are presented based upon pre-conceived perspectives based upon legacy models. For example, one delivery mechanism is to facilitate the “push” of a specific disclosure to an investor’s account held with a financial intermediary, such as a broker. An alternative requirement could be that investors receive “pushed” notifications on the integrated digital dashboards of the digital wallets where such investors hold the crypto assets. The underlying data in these notifications could be presented in a way that combines disclosed data with holdings information to provide context to the investor, which is often absent of legacy documents.
- 33 20% of Americans and 36% of 18–25-year-old Americans own some type of cryptocurrency as of February 2023, see Crypto Perception Study, Morning Consult, February 24, 2023, https://assets.ctfassets.net/c5bd0wqjc7v0/WvuOkBwNXZsqh-d6EWtkEL/7f94f8b6fbb222f3faf4d0346e473012/Morning_Consult_Cryptocurrency_Perception_Study_Feb2023_Memo__1_.pdf.
- 34 See NYSE Rule 451 (<https://www.nyse.com/regulation/rules>), NYSE Rule 465 (<https://www.nyse.com/regulation/rules>) and FINRA Rule 2251 (<https://www.finra.org/rules-guidance/rulebooks/finra-rules>).
- 35 See National Instrument 54-101 (Communication with Beneficial Owners of Securities of a Reporting Issuer) <https://www.osc.ca/en/securities-law/instruments-rules-policies/54-101> and National Instrument 51-102 (Continuous Disclosure Obligations) <https://www.osc.ca/en/securities-law/instruments-rules-policies/51-102>.
- 36 See Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017L0828&from=EN>.

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