

To:

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

October 20, 2026

**Re: Regulation Crypto Assets, Release Nos.
33-11434; 34-106150 (File No. S7-2026-27);
Proposed Rules Regarding a Tailored Offering
Framework for Covered Investment Contracts**

Coinbase Global, Inc. (together with its subsidiaries, "**Coinbase**") appreciates the opportunity to comment on the Securities and Exchange Commission's (the "**Commission**") proposed Regulation Crypto Assets ("**Reg CA**" or "**Proposal**").

Coinbase is the most trusted provider of crypto trading, custody, and infrastructure in the world. Founded in 2012 and publicly listed on Nasdaq, Coinbase offers a secure, user-friendly platform relied on by millions of verified retail and institutional customers globally. We are committed to building an open financial system and are doing so with the strongest regulatory compliance and security protocols available.

Coinbase applauds the Commission for its efforts to build a tailored offering framework for covered investment contracts ("**CICs**") involving non-security crypto assets ("**Tokens**"). To ensure market adoption of the Proposal, it is essential that this framework enables the broad distribution of Tokens to facilitate network participation.

Coinbase looks forward to working with the Commission to refine and implement the Proposal to ensure its success.

Yours sincerely,



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Introduction

The current Commission's efforts to build a tailored offering framework for CICs is a significant and long-awaited step to bring clarity around initial coin offerings ("**ICOs**"), and Coinbase welcomes the Commission's use of its existing statutory authority to take this step.¹ Regulatory ambiguity around token fundraising in the U.S. has persisted since the Commission issued the DAO Report on the securities law implications of token sales in 2017.² Existing exemptions from registration under the Securities Act of 1933 (the "**Securities Act**") are not fit-for-purpose; they were adopted to regulate capital raising through the offer and sale of conventional securities, such as debt and equity. CICs are different and we appreciate that the Commission is taking steps to recognize those differences in Reg CA.

Coinbase has over a decade of experience in the crypto ecosystem, dating back to the early days of blockchain technology. We firmly believe that establishing an exemptive framework for the offer and sale of Tokens through CICs will promote their safe use and adoption. But, a workable framework requires rules that enable broad distribution and network participation on which a Token's value, use, and security depend.³

The Commission has already made progress to this end in its March 2026 interpretive release by acknowledging the critical distinction that investment contracts are securities, while the underlying Tokens offered through the investment contract are not.⁴ However, the Proposal falls short of carrying this distinction through to the aftermarket. Because Tokens are not securities, the securities laws are not implicated by an aftermarket Token

¹ See Regulation Crypto Assets, Securities Act Release No. 33-11434, Exchange Act Release No. 34-106150, 91 Fed. Reg. 54,510 (Aug. 21, 2026) (citing Securities Act of 1933 §§ 3(b), 18(b)(3), 19(a), 28, 15 U.S.C. §§ 77c(b), 77r(b)(3), 77s(a), 77z-3; Securities Exchange Act of 1934 § 36, 15 U.S.C. § 78mm); *see also* *Lindeen v. SEC*, 825 F.3d 646, 654 (D.C. Cir. 2016).

² Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934, Release No. 34-81207, issued July 25, 2017.

³ See Proposal at 8-9 ("[t]he Commission's existing exemptions have features that may impede such network effects"); *id.* at 184 (the value of crypto assets "typically depends on their utility and security," which "often benefit from network effects"); *see also id.* at 217 (unrestricted covered investment contracts would allow "faster diffusion of the subject crypto assets across potential users and network participants, thereby bolstering an issuer's ability to achieve network effects").

⁴ See Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, Securities Act Release No. 33-11412, Exchange Act Release No. 34-105020, 91 Fed. Reg. 13,714 (Mar. 23, 2026) (the "**Interpretive Release**") at 13 & n.47 (digital commodities, digital collectibles, and digital tools "are not themselves securities," and "[t]he fact that a non-security crypto asset is subject to an investment contract does not transform the non-security crypto asset itself into a security"); *see also id.* at 27; *see also* proposed 17 CFR 228.100 (defining "covered investment contract" and "subject crypto asset"); *see also* Proposal at 38 & n.127 ("the 'security' at issue is the covered investment contract... rather than the crypto asset itself").

purchase from a holder unaffiliated with the issuer without any contractual assignment of rights under the CIC.

Coinbase has long sought this clarity, including in our July 2022 petition to the Commission for clear and workable rules⁵ and our March 2025 response to former Commissioner Peirce's open request for comments in her "There Must Be Some Way Out of Here" speech.⁶ We therefore welcome the Proposal and set forth below our recommendations on how the final rules can more effectively give U.S. retail purchasers access to Tokens on commercial terms and timing comparable to those currently only available to accredited investors and to retail purchasers elsewhere in the world.

Adopting a rule that delivers this clarity will help further the recent trend led by Chair Atkins to bring crypto innovation back to the U.S. This trend is a welcome development that cannot be taken for granted. The ICO era began in the U.S. in 2014 and peaked around 2018 before encountering an increasingly unwelcome and, at times, hostile U.S. regulatory environment that drove crypto projects offshore. Too much time was then spent by entrepreneurs to structure projects across various jurisdictions, rather than building better, safer, easier-to-use products under the supervision of U.S. regulators. Reg CA will help make the U.S. a leader in crypto.

I. Current U.S. Practices Limit Distribution and Network Effects

In 2017, the Commission issued The DAO Report, which was later followed by a statement from then Chairman Clayton on the impact of ICOs on main street investors.⁷ Since then, projects seeking to raise capital from U.S. investors via Token sales prior to the public launch of networks have primarily done so in private markets. The most common path is by offering simple agreements for future tokens ("**SAFTs**") or equity paired with Token warrants, sold to accredited and institutional investors under Regulation D.

To manage the uncertainty about how the securities laws apply to these sales, projects typically wait to make their Tokens available to retail purchasers until the network or application on which they function is operational.⁸ The theory is that once a network is functional, the value of associated Tokens no longer depends primarily on the efforts of

⁵ See Coinbase Global, Inc., *Petition for Rulemaking – Digital Asset Securities Regulation* (July 21, 2022) (cited in Interpretive Release at 6 n.9); see also Coinbase Global, Inc., *Letter to Commissioner Hester M. Peirce, Chair, SEC Crypto Task Force* (Mar. 19, 2025) (the "**There Must Be Some Way Out of Here Response**"), at 2.

⁶ See Hester M. Peirce, Comm'r, U.S. Sec. & Exch. Comm'n, *There Must Be Some Way Out of Here* (Feb. 21, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125>.

⁷ https://www.sec.gov/newsroom/speeches-statements/statement-clayton-2017-12-11#_ftn5

⁸ See Proposal at 197-204 & nn.430-36 (discussing the decline in ICO activity after 2018, the use of SAFTs, and crypto asset-related offerings under Regulation D); see also Interpretive Release at 30 (describing delayed-delivery sales "through a 'simple agreement for future tokens'").

the team that initially created the network and Token, meaning that the Token would then lack a key characteristic of a traditional security.

This is in stark contrast to successful early Token projects, such as Ethereum, which allowed the public purchase Tokens through ICOs before the network was functional. While the ICO era included offerings⁹ that raised consumer- and investor-protection concerns and drew enforcement scrutiny, earlier public distribution of Tokens from credible projects accelerated the decentralization of network development and security. The endogenous participation and development by a supporting community was a defining feature of early projects.

This benefit has since been lost. The U.S. market has moved almost exclusively to private capital raises, delaying retail participation until after network launch.¹⁰

This shift has had several costly knock-on effects; it:

- Impedes network effects. Private capital raises lead to concentrated ownership at network launch, particularly among a small number of project-affiliated “insiders” and professional investors, many of whom are subject to contractual and/or smart-contract-based lockups and not otherwise active network participants. This creates a cold start for developing the network effects required for network and Token success.¹¹
- Generates excessive fully-diluted valuation. Public purchasing and trading of Tokens in secondary markets by retail users of the network begins only after the network launch, typically leading to a small initial public float relative to the total supply, with substantial allocations still locked or otherwise not yet transferable.

The market price established by that limited float may then be imputed to the entire supply, producing a high fully-diluted valuation that reflects the views of a relatively small set of holders rather than broad input from the users who will use the network. In this scenario, a Token’s price does not necessarily reflect the value a network’s user base places on it.

⁹ References in this letter to historical token sales, offerings, or listings activity do not express a view that any identified asset or transaction is a security or securities transaction.

¹⁰ See Lewis Rinaudo Cohen, *What We Talk About When We Talk About (Tokens), Comments to the SEC Crypto Task Force*, at 6-8 (Mar. 20, 2025) (explaining that, after the ICO era, project teams increasingly relied on institutional risk capital and private structures that paired equity financing with rights to existing or future crypto assets).

¹¹ See Proposal at 184 (existing exemptions “may limit the extent to which an issuer may sell securities to retail investors, which could result in concentrated (rather than widespread) holdings, impeding the accretion of desired network effects”); *see also id.* at 194 (existing exemptions that rely on accredited investors “could inhibit the development of many networks or applications, which require broad distribution of the related crypto asset among users who may be anonymous, global, and retail”).

As locked allocations become transferable, the resulting increase in circulating supply can create sell pressure and price volatility. Volatility can, in turn, discourage users, developers, and other network participants and make it harder for the network to sustain the usage, security, and development on which its long-term durability depends.¹²

- Creates unfair treatment for retail purchasers. By limiting their initial purchase opportunity to after the Token generating event ("**TGE**"), this both prevents retail users from earning returns from participating early in a project's development and puts them in a position of being used as the first source of exit liquidity for the accredited investors who were permitted to benefit from early exposure. And, the result is also a weaker foundation for the value discovery, use, and security that Tokens and their related networks and applications require.
- Engenders uncertainty around non-pecuniary distributions. Airdrops, participation and usage rewards, testing incentives, and ecosystem grants are among the primary tools for placing Tokens with actual network participants, but uncertainty about whether those distributions also implicate the federal securities laws has led many projects to narrow or restructure them or exclude U.S. recipients altogether.
- Promotes offshore innovation. Because U.S. rules have made Token distribution harder to achieve, projects seeking broad distribution are incentivized to launch offshore or exclude U.S. purchasers entirely. Network effects, liquidity, and interoperability therefore tend to develop first outside the United States, and U.S. participants can enter only later through secondary markets, if at all, with less disclosure and recourse and fewer consumer protections.

The Proposal, if adopted with further refinements, can meaningfully improve access to U.S. retail participants and unlock the innovation promised by Tokens and their networks by providing a pathway for broader, disclosure-backed Token distributions. And, projects could engage in airdrops, rewards, and grants alike, including where the project's goal is broad Token distribution and network participation rather than raising capital.

II. What the Proposal Gets Right

The Proposal already reflects the critical judgment that existing registration and exemption frameworks are not fit-for-purpose, and the better path for securities

¹² See Cohen, *supra* note 8 (because only a small portion of supply was available to third parties, prices for that float were "imputed to the value of all minted crypto assets, resulting in a pattern of 'low public float – high fully diluted value' assets with volatile prices and often very limited end-user input on the value of the overall blockchain system"); see also Gabriel Shapiro, Comment on File No. S7-2026-27, at 9-10 (Sept. 24, 2026) (where most supply is locked, "the small float that trades at launch may be priced as though it represented the whole," and "the public buys at that price and then absorbs the unlocks").

transactions involving Token sales is a tailored, principles-based disclosure regime. Coinbase shares that view and the core regulatory choices in the Proposal, including:

- Disclosure architecture. Coinbase supports a principles-based disclosure approach tailored to the project, the Token, and the associated network, and supports the website-hosted disclosure model under Rule 200(d) for the startup exemption. Section IV describes refinements that would make this architecture work in practice.
- Crypto-specific exemptive pathways. Coinbase supports the startup exemption's light-touch notice mechanic, website-hosted disclosure, limited compliance costs, flexible issuer eligibility, and the decision not to require audited financial statements, and supports building a purpose-built path for larger offerings rather than retrofitting Regulation A to CICs.

As proposed, however, each would benefit from refinement, including: narrowing the "covered transaction" definition so that staking for consensus, governance, gas, protocol emissions, and airdrops do not consume the offering cap, and recalibrating the fundraising exemption's limits and conditions so that issuers will use it. Section IV sets out those changes.

- The *Howey* interpretation and the investment contract safe harbor. When applying *Howey*, Coinbase supports tying the investment contract to the issuer's representations or promises rather than to the asset itself, and supports the self-executing Form TR mechanic under Rule 400(b), which requires no advance Commission review. Section IV asks the Commission to codify this in rule text.
- Preemption of state registration and qualification (proposed Rule 500). Coinbase supports the definition of "qualified purchaser" and supports preemption of state registration and qualification requirements.¹³ Preemption is important for CIC offerings, and under Coinbase's primary position it is unnecessary for aftermarket Token transactions because those transactions are not securities transactions.

Coinbase supports each of these choices. However, to achieve the Commission's goals of broad participation, capital formation, and investor protection we recommend the improvements set out in the sections that follow.

III. Where Clarification is Needed

¹³ See 17 CFR 228.500. In the 2015 Regulation A releases, the Commission grounded Tier 2 preemption in the national character of those offerings. See Proposal at 184-85. That reasoning applies with greater force here: a Token offering has no local character, and a permissionless Token cannot be geofenced after distribution, so the single most restrictive state would effectively govern every holder. We fully support the Commission's authority to define "qualified purchaser" by rule, and to define it differently for different categories of securities, a position sustained in *Lindeen v. SEC*, 825 F.3d 646 (D.C. Cir. 2016).

Coinbase's position has always been that: (1) Tokens are not securities; and (2) aftermarket transactions in Tokens are not securities transactions. The Commission has already made clear that a CIC is a security, and a Token is not. But the Commission has only implicitly recognized that an aftermarket purchase of a Token from a holder unaffiliated with the issuer, where the purchaser obtains no forward-looking contractual rights against the issuer, does not constitute an "investment contract" (and hence, a security). While this is the logical conclusion, the Commission should state this explicitly in the text of the rule.

The Commission has been clear that a Token is not a security and that the CIC is separate from the Token. This started with the Interpretive Release, which classifies digital commodities, digital collectibles, and digital tools as assets that are not themselves securities, and it further states that "the fact that a non-security crypto asset is subject to an investment contract does not transform the non-security crypto asset itself into a security."¹⁴

Reg CA reaffirms this premise. Proposed Rule 100 defines a "subject crypto asset" as "a crypto asset that is subject to a covered investment contract," and the Commission explains that this definition reflects "a key principle:" "the 'security' at issue is the covered investment contract (to which the subject crypto asset is subject) rather than the crypto asset itself."¹⁵

We strongly agree with this view. A Token cannot qualify as an "investment contract," which requires (at a minimum) a "contract," a scheme of contractual arrangements, or a transaction that entails contractual rights.¹⁶ An "investment contract" is a particular type of contract — namely, one that grants the purchaser a contractual claim related to the future income, profits, or assets of a business enterprise.¹⁷ That plain-language accords with Congress's decision to regulate "investment contract[s]" as "securit[ies]." Congress's aim was not to expand Commission jurisdiction to any "investment" writ large, but rather to focus the term "investment contract" on only those arrangements that "embod[y] the essential attributes" of a security.¹⁸ An "investment contract" must accordingly confer upon the investor something beyond mere ownership in a commodity; it must grant a financial stake in a business, just as all securities do.

The Interpretive Release also makes clear that a Token's non-security status continues into the aftermarket. The Token is still not an "investment contract," and neither is an aftermarket purchase of a non-security Token. Aftermarket Token purchases are almost always made from an unknown counterparty in a peer-to-peer transaction or through an anonymous order book, so they involve no investment of capital in an issuer at all, let

¹⁴ See Interpretive Release at 27.

¹⁵ See Proposal at 39.

¹⁶ See 15 U.S.C. § 77b(a)(1) (defining security to include an "investment contract").

¹⁷ See *SEC v. W.J. Howey Co.*, 328 U.S. 293, 299 (1946) (an investment contract requires the "invest[ment] [of] money in a common enterprise" in exchange for the "expect[ation] [of] profits").

¹⁸ See *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 852 (1975).

alone in exchange for a claim on future profits — and hence no “investment contract.” Indeed, such aftermarket transactions generally occur with no engagement with the issuer, no assignment of contractual CIC rights, and no provision to the buyer of any issuer’s original representations or promises. There are therefore no forward-looking obligations between issuer and aftermarket purchaser at all, much less the kind required to give rise to an “investment contract.”¹⁹

The Proposal correctly, but only implicitly, acknowledges this understanding. Specifically, the Proposal never suggests that a CIC would “travel” with a fungible Token in an anonymous trade, such that an aftermarket purchaser would gain forward looking contractual rights against the issuer. And the Proposal acknowledges that a purchaser who lacks the protection of a filed transition report may “seek[] contractual arrangements with their transactional counterparties that provide them with potential recourse,”²⁰ which would be unnecessary if the issuer’s original investment-contract rights passed automatically with the Token.

Doing so would bring the following key benefits:

- Projects could distribute Tokens and engage active participants earlier in the development cycle, building network effects. The Commission proposes to remove restricted-security treatment and resale restrictions from both exemptions precisely because those features would slow a Token’s diffusion across potential participants, and a trading restriction would have the same effect.²¹
- U.S. retail purchasers could access Tokens earlier, on terms closer to those available to professional investors, rather than only after price discovery has occurred offshore or in private hands.
- Issuers would be incentivized to stay in the disclosure regime, which would provide ongoing benefit to investors, rather than seek a premature exit due to residual legal ambiguity over the status of a Token.

¹⁹ For the same reasons, aftermarket purchasers “could not reasonably expect” the Token issuer to generate profits using the proceeds of their aftermarket purchase. SEC v. Ripple Labs, Inc., 682 F. Supp. 3d 308, 328 (S.D.N.Y. 2023).

²⁰ See Proposal at 166 & n.371 (after a Form TR filing informs the public “that the protections of the Federal securities laws are no longer applicable,” purchasers “may choose to take other steps to protect themselves, including seeking contractual arrangements with their transactional counterparties that provide them with potential recourse”).

²¹ See Proposal at 240 (unrestricted covered investment contracts would enhance tradability and liquidity, attract more participants, and facilitate scaling of the associated network or application); see also *id.* at 193 (restricted treatment “would likely slow down the diffusion of the underlying crypto asset across potential users and other network participants, thus impeding the issuer’s ability to achieve network effects”).

In its final rule, the Commission should explicitly recognize this understanding: the only contract involved in an aftermarket transaction is one between the aftermarket purchaser and aftermarket seller; there are no obligations running between aftermarket purchaser and issuer, and hence no “investment contract” that could constitute a security.²²

Explicitly adopting this logical inference would leave intact the protection of investors that participate in the original CIC, and an issuer would remain liable for any potential earlier violation of securities laws. As the Interpretive Release explains, an issuer that failed to register or use an available exemption remains subject to Securities Act liability, and antifraud liability applies to material misstatements or omissions made in connection with the creation of, or at any time during the existence of, the investment contract — even after the Token separates from the issuer’s representations or promises.²³ CIC investors thus retain the full protection of the federal securities laws for as long as the CIC is outstanding, while later Token sales are analyzed on their own terms as non-securities.²⁴

Without giving this clarity — that a CIC does not travel with a Token in aftermarket transactions — Token sales will migrate to jurisdictions like the E.U. where, under MiCA, secondary market transactions are clearly treated as non-securities transactions. Put differently, development teams will seek to raise capital where secondary markets can simultaneously flourish without legal uncertainty.

To ensure the recent trend of sales of Tokens returning to the U.S. is not a temporary development, the Commission should confirm that transactions in Tokens are not securities transactions for purposes of the Exchange Act, including as that term relates to the definitions of an “exchange,” “broker,” and “dealer.” These confirmations would provide clarity to persons facilitating aftermarket Token transactions initially sold pursuant to CICs. As proposed, Reg CA expressly declines to address these recommendations, leaving the platforms, market makers, custodians, decentralized finance (“DeFi”)

²² The Commission should resolve the question of its position on this issue by rule in Regulation Crypto Assets as well as by modification of its Interpretive Release. See *SEC v. Ripple Labs, Inc.*, 682 F. Supp. 3d 308, 329 (S.D.N.Y. 2023) (holding that programmatic sales in blind bid-and-ask transactions did not satisfy Howey, while primary sales to institutional purchasers did); see also *SEC v. Binance Holdings Ltd.*, 738 F. Supp. 3d 20 (D.D.C. 2024) (rejecting the theory that a crypto asset embodies an investment contract for all purposes and requiring a transaction-specific analysis); but see *SEC v. Terraform Labs Pte. Ltd.*, 684 F. Supp. 3d 170 (S.D.N.Y. 2023).

²³ See Interpretive Release at 33-34 (an issuer that fails to register or use an exemption “will violate the Securities Act,” and an issuer that “makes material misstatements or omissions in connection with the creation of the associated investment contract or at any time during the existence of that investment contract” may be liable under the antifraud provisions, “even if the non-security crypto asset subsequently separates”).

²⁴ Importantly, as the Commission notes in the Proposal, its position on CICs, including any eventually adopted final rules, would control the Commission’s administration of the federal securities laws alone. It would not limit assertions to the contrary by other parties. For this reason, we ask the Commission to lead on this issue and to clearly state its view as to what is (and is not) reasonable to expect with respect to CICs in relation to aftermarket Token purchases, while recognizing other parties retain their remedial rights under the federal securities laws. See Proposal at 168; see also Interpretive Release at 8.

interfaces, and non-custodial wallet providers that facilitate Token trading before CIC cessation without tailored relief.²⁵

IV. Additional Recommendations

In addition to explicitly recognizing that aftermarket Token transactions are not “investment contracts” and hence do not implicate the securities laws, we also recommend the Commission exercise its statutory authority to adopt the following recommendations to further clarify and strengthen the final rule’s framework.

A. Codify the Boundary for Post-Launch Activity and Distributions

We recommend that the Commission adopt a rule or nonexclusive safe harbor codifying the principles articulated in the Proposal, the Interpretive Release, and related staff FAQs concerning when post-launch activities — including maintenance, security, upgrades, and efforts to facilitate network effects — do not, standing alone, constitute “essential managerial efforts” for purposes of *Howey*.

Codifying these principles would give issuers greater confidence that they may continue supporting and improving functional networks without inadvertently extending an existing investment contract or creating a new one, while providing purchasers, trading platforms, and other market participants with clearer and more consistent expectations regarding the regulatory significance of those activities. Greater certainty would facilitate responsible network development, reduce unnecessary legal and transaction costs, and promote more efficient capital formation and secondary-market participation.

Moreover, adopting these principles as rule text — whether as an affirmative rule or as a nonexclusive safe harbor — would also make them more durable. Rule text enacted by the Commission under notice-and-comment rulemaking pursuant to the Administrative Procedure Act (“**APA**”) is less susceptible to reinterpretation than Commission-level interpretive positions. Additionally, a future Commission, private plaintiff, state regulator and/or court would assign less weight to Commission interpretations relative to rule text adopted pursuant to the APA. As the Chairman has acknowledged, “there will always be risk that a future Commission could reverse course” and has described the goal as “durable clarity under existing law.”²⁶ Rule text advances that goal in a way that an Interpretive Release alone cannot.

The final rule should adopt the following, each drawn from the Proposal, the Interpretive Release, and the staff FAQs:

²⁵ See Proposal at 73 n.192 (noting Commissioner Peirce’s recommended exemptions from the definitions of “exchange,” “broker,” and “dealer” and stating that “[t]his proposal does not address those recommendations”).

²⁶ See Atkins *supra* note 6 (“there will always be risk that a future Commission could reverse course”); see also Atkins *supra* note 5 (rules must be “durable enough to protect the work we are undertaking today from being unwound by a future rogue regulator”).

- Functionality. A crypto system is “functional” if the system’s native crypto asset can be used on the system in accordance with the programmatic utility of the system. Governance, staking for consensus, gas fees, fostering network effects, and use as an incentive mechanism to reward participation or use of the system are examples of such functions — not elements that every system must satisfy.²⁷
- Qualifying Promise. A representation or promise can create a CIC under *Howey* only if it is explicit and unambiguous as to the essential managerial efforts to be undertaken by the issuer, contains sufficient details demonstrating the issuer’s ability to implement the proposed project, explains how the issuer’s efforts will produce the profits that purchasers reasonably expect, is made or authorized by the issuer, is conveyed to the purchasers or recipients, and is conveyed before or contemporaneously with the transaction (a “**Qualifying Promise**”).²⁸
- Post-functionality efforts. Once the associated crypto network or application is functional, services to secure, maintain, improve, or enhance the network or application or its functionality, or to facilitate network effects, should not be essential managerial efforts, unless the issuer makes a new Qualifying Promise. The staff FAQs confirm that, after functionality, these services — including sponsoring or funding development projects — do not involve essential managerial efforts and that representations or promises to continue them do not satisfy the *Howey* test. After functionality, a Token’s value should come from the programmatic operation of the network or application and from supply and demand, rather than from the issuer’s essential managerial efforts.²⁹
- Ordinary post-launch activity. Absent a new Qualifying Promise, the following activities should be outside the boundary: publishing a roadmap of contemplated improvements to a functional network; protocol upgrades and maintenance after functionality; ecosystem business development, grants, and funding of third-party

²⁷ See Interpretive Release at 14 & n.49 (a crypto system is “functional” if its native crypto asset “can be used on the system in accordance with the programmatic utility of the system”); see also *id.* at 14-16 (describing governance, staking for consensus, gas fees, and incentive mechanisms as attributes of a functional crypto system).

²⁸ See Interpretive Release at 26-27 (representations or promises more likely to create reasonable expectations of profit when they are explicit and unambiguous, contain sufficient details, and explain how the issuer’s efforts will produce profits); see also Atkins, Inside *supra* note 6 (“these representations or promises must be explicit and unambiguous”).

²⁹ See Proposal at 56-57 (stating the Commission’s view that, after functionality, services to secure, maintain, improve, or enhance a network or application or facilitate network effects do not constitute essential managerial efforts, and that representations or promises to continue those services do not satisfy the *Howey* test); see also Interpretive Release at 14 & n.51, 16 (value of a digital commodity derives from programmatic operation of a functional crypto system and supply and demand); see also *id.* at 19 n.65, 21 n.72 (facilitating network effects does not constitute essential managerial efforts); Division of Corporation Finance, *Frequently Asked Questions on the Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets*, Question 2.3 (Sept. 28, 2026) (reiterating the Commission’s view and citing the Proposal at 56).

development; airdrops, bug bounties, and liquidity and usage rewards; marketing, community, and developer relations; ordinary-course engineering, security, and operational maintenance; and operating validator, node, or indexing infrastructure. None should, by itself, constitute essential managerial efforts, count toward the offering limits, or require a filing.

- Distributions for value. Where a recipient provides something of value — services, testing, liquidity, governance participation, or other network activity — the question should be whether, in connection with that distribution, the issuer made a Qualifying Promise. The Interpretive Release resolves only the no- or nominal-consideration airdrop case and expressly does not address distributions for value. If a distribution merely rewards or recognizes activity on a functional network and carries no Qualifying Promise, it should not create a new CIC or consume the offering cap.³⁰
- Digital Collectibles. In superseding the the Staff Statement on Meme Coins,³¹ the Interpretive Guidance clarified that “meme coins” do not implicate the securities laws where their value “depends on the subject matter, popularity, or scarcity of the digital collectible.”
- Issuer-defined commitments. The separation and cessation analysis should turn on the issuer’s own defined commitments, not a generalized market conception of functionality or decentralization.³²

Codifying this boundary, whether as a rule or as a non-exclusive safe harbor, would allow ordinary activity to continue, and would support the intermediary relief sought in Section V.

B. Codify That a CIC Is Not an Equity Security

We agree with the Commission’s view that a CIC is not an “equity security” under Section 3(a)(11) of the Securities Exchange Act of 1934 (the “Exchange Act,” and, together with the Securities Act, the “Acts”), Exchange Act Rule 3a11-1, or Securities Act Rule 405, and recommend that the Commission codify that conclusion in operative rule text.

³⁰ See Interpretive Release at 58-61 (addressing only airdrops to recipients who provide no money, goods, services, or other consideration, for which there is no “investment of money”); *see also* Division of Corporation Finance, *Frequently Asked Questions on the Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets*, Question 2.3 (Sept. 28, 2026) (stating the staff’s view that, after functionality, services to secure, maintain, improve, or enhance a crypto system or facilitate network effects do not involve essential managerial efforts, and that representations or promises to continue those services do not satisfy *the* Howey test); *id.* introductory note (stating that the FAQs have no legal force or effect and do not alter applicable law).

³¹ See Staff Statement on Meme Coins, available at

<https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins>.

³² See Interpretive Release at 29-30 & n.96 (whether an issuer achieved functionality or decentralization is measured by how the issuer defined those terms, not a general market conception); *accord* Proposal at 73-74 & n.193.

To ensure this view results in consistent treatment across the entirety of the Commission's regulatory frameworks, the Commission should amend Rules 3a11-1 and 405 to state expressly that a CIC is not an equity security for purposes of the respective Acts and rules thereunder. Codification at the definitional level would promote consistent treatment and avoid applying to CICs regulatory regimes designed for securities that confer conventional equity rights, such as ownership, voting, dividend, or liquidation rights. For the reasons described above, a definitional amendment adopted through notice-and-comment rulemaking would provide a more durable and administrable basis than guidance included in the Proposal preamble alone.

To give that classification practical effect, the Commission should also adopt any necessary conforming amendments, exemptions, and form revisions.³³ Those measures would reduce interpretive gaps, improve the accuracy and comparability of Commission filings and market data, and give issuers, investors, and intermediaries greater certainty in determining the obligations applicable to transactions involving CICs.

C. Non-Pecuniary Distributions Should Not Count Against the Offering Limits

As proposed, the offering limits are consumed not only by capital-raising sales but also by distributions made for no or nominal consideration and by distributions that foster network activity — airdrops, participation and usage rewards, testing incentives, ecosystem grants, staking for consensus, governance, gas, and protocol emissions. As a consequence of this treatment, a project that seeks to raise funds alongside non-pecuniary distributions that promote functional activity on the network will force tradeoffs that unduly impact capital raising.

This is the same uncertainty that currently leads many projects to narrow or restructure distributions or exclude U.S. recipients altogether. Moreover, this treatment is inconsistent with the intent of a conventional offering exemption because none of these activities entail capital formation. The purpose of the offering limits should be to limit the capital an issuer may raise from the public under a tailored disclosure regime, and not limit how widely a Token may be distributed.

The Interpretive Release confirms that an airdrop to recipients who provide no money, goods, services, or other consideration involves no investment of money, and the Commission has confirmed that no- or nominal-consideration airdrops and ecosystem grants do not involve essential managerial efforts and would not otherwise satisfy *Howey*. Counting those same distributions against the offering limits would penalize the broad participation on which a Token's value, use, and security depend.

³³ The Commission should adopt any necessary conforming amendments or relief under the Exchange Act rules (e.g., Section 12(g); Section 13; and any other provision whose application turns on equity-security status).

Given this, the final rule should exclude from “covered transaction” any distribution in which the issuer receives no consideration, or receives only network activity (e.g., services, testing, security, governance participation, or use of the network) rather than capital. Such a distribution should not create a new CIC, should not consume the offering limits, and should not require any filing. That change would let the exemptions simultaneously serve capital-raising offerings and network effects, without narrowing the disclosure that purchasers in capital-raising offerings receive and that is otherwise made publicly available to market participants.

D. Calibrate the Exemptions To Encourage Issuers To Use Them

The Commission should calibrate the exemptions to encourage development teams to launch their networks in the U.S. As proposed, based on historical data, the \$5 million startup exemption is too low to be practical. For raises below \$20 million, requirements for Commission qualification before any sale, ongoing reporting, financial statements, and a legality opinion³⁴ are likely to lead many issuers to conclude the costs outweigh the benefits when compared with available private and offshore alternatives. We therefore suggest the following changes.

The Commission should raise the startup exemption ceiling to \$20 million.

The startup exemption is built for early-stage projects that need a regulatory runway, but the \$5 million ceiling is too low. A \$20 million ceiling would better fit the exemption’s purpose and is supported by data of historical Token fundraises.

The economic analysis in the Appendix analyzes 962 Token sales between January 2012 and September 2026 reflecting \$8.87 billion in total capital raised. The vast majority of capital raises are for smaller amounts, but a \$5 million cap would have excluded 278 offerings (28.4% of all offerings) during that period. As Figure 6 and the accompanying text of the economic analysis in the Appendix show, increasing the startup exemption ceiling to \$20 million would have reduced that exclusion number to 6.3%. For those projects, raising the limit to \$20 million would lower the risk that they opt to raise funds outside the Reg CA framework, particularly from retail purchasers outside the U.S. — for example, in the E.U. under MiCA rules which do not impose offering limit restrictions commensurate with Reg CA.

Raise the Tier 1 fundraising ceiling to \$120 million and remove the cap for Tier 2.

The proposed Tier 1 and Tier 2 ceilings of \$20 million and \$75 million are carry-over limits from Regulation A, which was designed for small operating-company offerings, not for

³⁴ See Proposal at 96-161; see also proposed 17 CFR 228.300-.307; see also Proposal at 146 (“Commission action would be required to qualify the offering statement”); see also *id.* at 137-38 (Tier 2 audit requirement); *id.* at 143-44 (legality opinion); see also *id.* at 151-55 (ongoing reporting). Issuers relying on the fundraising exemption remain subject to the antifraud and antimanipulation provisions, including Securities Act Section 17 and Exchange Act Section 10; see Proposal at 96-97.

Token offerings. These ceilings are too low to fund the development of technical, global networks, and we recommend that the final rule recalibrate them: Tier 1 should permit offerings of up to \$120 million in any twelve-month period without audited financial statements, and as we explain in more detail next, Tier 2 should permit offerings without any offering ceiling, subject to the project providing audited financial statements.

As we report in Figure 4 of our economic analysis, only 6.2% of Token sales between January 2021 to September 2026 raised between \$20 million and \$120 million, but those sales accounted for 31.3% of the total proceeds. Only a handful raised more than \$120 million — some raising close to \$1 billion — but the natural historical cutoff for the majority of sales is around \$120 million. This is where we recommend the Commission set the Tier 1 fundraising exemption threshold, which would appropriately address the majority of the market's historical capital needs without undue burden.

Regulation A's own history points the same way. The Commission has repeatedly raised Regulation A's ceilings to keep pace with issuers' capital needs — lifting the Tier 1 limit from \$5 million to \$20 million and establishing a \$50 million Tier 2 in 2015, with Tier 2 later increased to the \$75 million the proposal now borrows — and commenters have urged the Commission to raise the Regulation A Tier 2 limit to \$250 million to align it with modern capital needs. An exemption's ceiling should be calibrated to its asset class if larger projects are to use the framework rather than raise privately or offshore.

Without higher offering limits, large projects looking to raise capital in excess of the limits would be forced to register their CICs on an ill-suited Form S-1 or, as they have done in the past, raise capital privately and/or offshore. The most promising projects are also the largest projects, and pushing them outside of Reg CA and forcing them to raise offshore or from accredited investors would create an adverse selection problem for U.S. retail investors, who would then only have access to projects that are unable to attract larger interest.

This outcome is also unnecessary, particularly because of other conditions of the proposed exemptions: tailored disclosure, financial statements, ongoing reporting, bad-actor disqualification, and the federal antifraud and antimanipulation provisions. Each of these would continue to apply at a higher ceiling. Additionally, as written, issuers would still cap purchases by non-accredited investors at 10 percent of the greater of net worth or income, which would provide an extra layer of investor protection — to guard against extreme loss — relative to registered offerings.³⁵

Audited financials are only appropriate for the largest raises.

In the Proposal the principal difference between the Tier 1 and Tier 2 offerings is the audited financial statement requirement for the larger offerings. Under our recommendation, that distinction would remain, but at recalibrated thresholds: issuers raising up to \$120 million could rely on Tier 1 without audited financial statements, and

³⁵ See Proposing Release at 173-7.

issuers seeking to raise more could rely on Tier 2, without an offering ceiling, by providing audited financial statements. We believe this is appropriate because, consistent with the non-equity classification discussed above, for CIC sales audited financial statements do not matter to investors in the same way as for an equity security offering. For all but the very largest offerings the costs of procuring audited financial statements exceed the benefit of providing them.

CICs differ materially from equity securities because they have no claim on the issuer's assets or cash flows, and as the Proposal acknowledges, purchasers of CICs will not have the ownership rights that equity holders have.³⁶ The economics of the CIC depend on the prospective utility of the underlying token, and as a result, makes issuer audits less relevant to the purchase decision when compared to traditional equity securities.

What matters most to a CIC purchaser is the asset and the network, not the development entity's balance sheet. As the Interpretive Release recognizes, the value of a digital commodity derives from the programmatic operation of a functional crypto system and from supply and demand — not from the issuer's essential managerial efforts. The Rule 103 tokenomics and network disclosures, including supply, lockups, insider holdings, release schedules, use of proceeds, governance, and network mechanics, speak directly to those economics, and much of this information is independently verifiable onchain.

The Proposal itself cites Regulation AB as a model in which disclosure is directed at the assets whose performance determines what the holder receives, with entity-level financial statements required only where investors are exposed to the entity's own credit. A CIC purchaser has no such exposure, and an audit of source code, smart-contract permissions, and security history tells a purchaser more than an audit of the development entity's balance sheet.

Requiring audited financials on top of the Rule 103 disclosures for offerings of up to \$120 million would add a fixed cost that would likely act as a material deterrent for projects considering all but the very largest raises. The Proposal itself estimates compliance costs of approximately \$455,531 per issuer for Form 1-CRYPTO (i.e., over 2% of the capital raised in a \$20 million offering), including audit costs. By contrast, as the Commission recognized in adopting the 2015 Regulation A amendments, the fixed costs of an audit become relatively less burdensome as offering size increases, so an issuer raising capital in an uncapped Tier 2 offering can reasonably be expected to bear them.

For these reasons, we recommend raising the cap for Tier 1 offerings to \$120 million and removing the cap for Tier 2 offerings.

E. Allow Issuers to Include a Removable Delaying Legend on Form 1-CRYPTO

We are concerned that the proposed qualification requirements, which appear to be modeled after those under Regulation A, give the Commission and its staff the ability to

³⁶ See Proposal at 184-85.

unduly prevent issuers from selling CICs simply by declining or delaying qualification of an offering, which was widely understood to have occurred with registered and Regulation A offerings under previous administrations.³⁷

In place of the proposed qualification process, we recommend the Commission adopts a process that, like with registered offerings, allows for issuers to retain greater control over the timing of qualification. This could be done with the inclusion of a delaying legend on an issuer's Form 1-CRYPTO that (1) prevents the Form 1-CRYPTO from being qualified by virtue of the passage of time alone and (2) once removed at the issuer's own election would permit the offering to proceed after a 20-day period. As with registered offerings, the Commission would retain the ability to issue a stop order if, in its view, the legend was removed prematurely. This preserves issuer control, consistent with the statutory procedure under the Securities Act, while preserving the Commission's existing oversight.

Enabling such a process would be an improvement over the requirement for staff qualification, which we do not believe is fit-for-purpose for two reasons. First, as we highlight above, Regulation A is designed for small operating-company offerings, not Token sales, and focuses on the business prospects of an issuer as opposed to the function and utility of a digital asset. Second, just as importantly, the Regulation A qualification process has historically taken too long to be usable, even following the reforms implemented under the JOBS Act. Prior to the 2015 reform, Regulation A filings took an average of 228 days to qualify, exceeding 300 days from 2012 through 2014. After the JOBS Act reform, which was intended to revitalize Regulation A, the average time from public filing to qualification remains high, at 110 days.³⁸

A delay of that length is material for a Token launch, where the offering, network launch, and distribution to participants are intended to occur close in time to each other and the success of each depends on that of the other.

³⁷ See, e.g., SEC Crypto Task Force Submission of The Digital Chamber (June 26, 2025)(see "Staff Unwillingness to Qualify Tokenized Securities Offerings"), <https://www.sec.gov/files/ctf-tdc-062625.pdf>. See also Hester M. Peirce, Comm'r, U.S. Sec. & Exch. Comm'n, How We Howey (May 9, 2019) ("Unlike a private offering, however, a Regulation A offering must be qualified by the SEC before the issuer can begin raising money. Although several companies seeking to issue tokens have begun the process, none has yet had its Regulation A offerings qualified. The lack of progress is not only difficult for the companies that remain in limbo, unable to move forward with raising capital, but also may scare off other companies. These companies may opt for a private offering instead, depriving the general public of the opportunity to invest, and also depriving the market of the public disclosure of the information included in the Regulation A offering materials."), <https://www.sec.gov/newsroom/speeches-statements/peirce-how-we-howey-050919>.

³⁸ See 2015 Regulation A Release at 252 & nn.896-97 80 Fed. Reg. at 21,869 ("From 2002 through 2011, Regulation A filings took an average of 228 days to qualify. Average time to qualification exceeded 300 days in 2012-2014."); Anzhela Knyazeva, Regulation A+: What Do We Know So Far? (SEC DERA, Nov. 2016), at 9 & tbl. 2 (median time from initial public filing to qualification of 78 days; 104 days for Tier 2; average 110 days).

F. Permit Delayed and Continuous Primary CIC Offerings

Although the proposal permits limited continuous offerings and the omission of final pricing information within a specified range, it requires the offering to commence within two business days after qualification and the omitted information generally to be supplied within 15 business days or through a qualified post-qualification amendment. This is a problem because it would force an issuer to immediately begin an offering on terms framed at qualification and return to the Commission before any later takedown.³⁹ Those constraints are particularly ill-suited to Token offerings, in which the offering, network launch, and participant distribution are often interdependent, ongoing, and not anchored at a particular moment in time. In particular, allowing staff unlimited time to decide whether to qualify an offering can materially impact the timing of a Token launch, which depends on engineering, security, and operational milestones that fluctuate.

The indefinite review period paired with the short windows for commencing the offering or supplying omitted information will leave builders in flux. For example, an issuer awaiting qualification may be disincentivized from continuing project development for an indefinite period of time so as to avoid overhauling the offering circular when the offering is finally qualified. And with limited time post-qualification to begin the offering or supply omitted information, issuers will be left scrambling to update materials with little advance notice.

The final rules should permit issuers to offer and sell CICs on a delayed and continuous basis. Like with shelf registration under Securities Act Rule 415, an issuer should be able to complete qualification once and conduct primary takedowns as conditions and funding needs warrant. This would lower capital-raising costs, reduce the risk that a completed filing becomes unusable, and accommodate financing needs that arise over time.

Allowing delayed and continuous offerings would also advance the Commission's network-effects objectives of (1) allowing an issuer to more easily broaden participation over time and (2) aligning capital formation with network development and adoption, rather than compressing the offering into a single window. The proposal's principal investor protections (including offering and investor limits, current disclosure and ongoing-reporting requirements, bad-actor disqualification, and the federal antifraud and antimanipulation provisions) would continue to apply to each takedown, with appropriate supplements or amendments for material changes.

To permit delayed and continuous offerings, market-referenced pricing should be distinguished from an at-the-market offering of CICs. This does not require the Commission to recognize or require a trading market for CICs. As explained in Section III, the Token — not the CIC — is the asset that may trade, and the CIC does not travel with it. The narrower issue is how to price a new primary CIC sale once an observable market price exists for the associated Token. The final rules should permit the CIC's purchase

³⁹ 17 CFR 230.251(d)(3).

price to reference the prevailing Token market price, which can provide an objective and transparent benchmark without implying that the CIC itself trades or travels with the Token.

Three mechanical changes would implement our recommendation. First, the final rules should remove the two-business-day commencement condition and permit one or more later takedowns while the offering statement remains qualified and the issuer remains current in its required reporting.

Second, the final rules should permit Form 1-CRYPTO to state the maximum aggregate dollar amount of the offering in Form 1-CRYPTO while omitting the final price per Token and the number of Tokens to be sold in each takedown. The base offering circular should disclose the pricing methodology, and a post-qualification supplement modeled on Rules 430B and 424(b) should provide the terms of each takedown.

Third, the final rules should remove the 15-business-day backstop for delayed offerings and confirm that a supplement reporting price, takedown size, or closing information does not require requalification. A post-qualification amendment should instead be required only for a fundamental change, an increase above the maximum aggregate amount or number of Tokens qualified, or another change expressly identified in the final rules. Together, these changes would make delayed offerings workable and prevent routine pricing decisions from triggering requalification.

G. Narrow the Item 15 Opinion to the Issuer's Corporate Power and Due Authorization

The Proposal requires a legality opinion in which counsel must opine that the securities, when sold, will be binding obligations of the issuer. For the reasons below, the required legality opinion should expressly exclude any opinion on the existence, terms, characterization, or enforceability of the CIC.

In a conventional equity or debt offering, counsel can opine on due authorization and valid issuance by reference to a charter, a board resolution, and an executed instrument. A CIC, by contrast, is not an instrument the issuer executes. As discussed in Section III, an investment contract requires a contract, a scheme of contractual arrangements, or a transaction that gives the purchaser forward-looking contractual rights against the issuer; whether such rights arise depends on whether the issuer made a Qualifying Promise in connection with the sale, and the existence and duration of the CIC are addressed later through Form TR.

Tension between a promise-based *Howey* analysis and a legal opinion is therefore inherent in the Proposal. Requiring counsel to opine that the arrangement is a binding obligation would force counsel to resolve the same questions the proposal separately assigns to Rule 103 disclosure and Form TR. The outcome of requiring such opinions

would be either to produce costly opinions that are caveated into insignificance, or to dissuade issuers from pursuing this exemptive path at all.

H. Extend the Proposed Rule 175 Safe Harbor to Website-Hosted Startup-Exemption Disclosures and Confirm the Treatment of Concurrent Offerings

Proposed Rule 175 extends the forward-looking-statement safe harbor to fundraising-exemption documents, but not to the website-hosted disclosures of startup-exemption issuers. The final rule should close that gap and protect a good-faith, principles-based disclosure effort under the startup exemption unless a plaintiff pleads particularized falsity and scienter. The Commission should also confirm, in rule text, that a concurrent offering under a separate exemption is not integrated with an offering under the Regulation CA Proposal, and that restrictions on those other securities do not attach to the Token. For example, the Commission should confirm that raising equity under Rule 506(b) does not jeopardize a concurrent CIC offering and that the restricted-security status of that equity does not attach to the Token.⁴⁰

I. Make the Disclosure Model Work in Practice

Disclosure under the startup exemption should be public, and the EDGAR filing should itself satisfy any delivery obligation (i.e., access equals delivery) of public disclosure. The Commission should also allow hosting on a secondary-market venue to satisfy the public-availability requirement and permit an intermediary, acting at the issuer's direction, to host, format, and transmit issuer-prepared disclosures.

Trading venues are well placed to support disclosure obligations and are an efficient source of network and Token information, particularly after network launch, when any informational advantage held by the original development team has dissipated. Trading venues like Coinbase maintain listing standards that encourage issuer disclosure and the proliferation of interfaces that can surface and standardize issuer disclosures, including a project's notice of reliance and Form TR status. Moreover, trading venues and interfaces can do so at far lower marginal cost than each issuer acting alone, and Coinbase is prepared to do so. This benefit is independent of whether disclosure is mandatory. Venues can host and standardize issuer disclosures whether an issuer discloses under an exemption or voluntarily.

J. Narrow the "Related Person" Definition

Question 11 asks whether the proposed definition of "related person" covers the appropriate scope of persons who may be viewed as insiders of the issuer. We believe it is far too broad: as proposed, the definition reaches every founder, promoter, employee,

⁴⁰ See Proposal at 41-42 (directing issuers to 17 CFR 230.152 to determine whether offers and sales should be integrated). The definition of "covered investment contract" excludes any investment contract involving an asset other than a non-security crypto asset.

affiliate, director, officer, trustee, consultant, contractor, and advisor to a project, together with their immediate family members, without regard to role, control, or access to information.

The proposed related persons definition is broader than the Regulation A provisions on which it is modeled. Regulation A's related-party disclosure reaches roles of those who carry influence or access, including directors, executive officers, ten-percent holders, and promoters, and the bad-actor provision in Rule 262(a) reaches directors, executive officers, officers participating in the offering, twenty-percent beneficial owners, promoters, and paid solicitors.

Adopting a broader definition that sweeps in a part-time contractor's spouse alongside a founder, results in disclosure on so many irrelevant and/or immaterial "related persons" that it masks the value of more targeted related person disclosure. The Commission should adopt a definition focused on role, control, and access to material nonpublic information to better identify the persons who matter, without weakening protections against insider conduct.

We recommend that the Commission define the term by reference to the persons who, at the time of the offering, hold a position of control over the issuer or significant governance power over the network, or who have access to material nonpublic information concerning the issuer or the Token — including founders, officers, directors, key employees, and holders of significant Token positions. Consistent with the purpose of this disclosure, the Tokens held by those persons should be disclosed in the aggregate, together with any restrictions on transferability and any arrangements to provide Tokens to them, which is the information bearing on concentration and potential sell pressure that purchasers actually use.

The scope of the term matters more in light of the alternative described in Question 35. There, the Commission asks whether, instead of requiring disclosure of related person resale or transfer restrictions, it should condition the exemptions on the issuer establishing a minimum holding period for related persons — either a fixed period such as one year or a period keyed to development milestones. We do not support converting this disclosure requirement into a substantive lockup condition. Leaving the decision to the issuer, supported by disclosure, lets each project calibrate restrictions to its own circumstances.

If the Commission pursues that alternative, the breadth of the definition becomes a substantive eligibility problem rather than an issue of disclosure alone. A project would risk losing its exemption because a former contractor, or a family member of one, transferred Tokens the project never tracked and had no means to restrict. That consequence is a further reason to key the definition to control, governance power, and access to material nonpublic information.

K. Replace the U.S.-Organization and U.S.-Nexus Conditions in Rule 300(b)(1)

Questions 85 and 86 ask whether the Commission should expand or modify these issuer-eligibility requirements, including to permit foreign issuers. We believe the Commission should instead provide for a substantial U.S. nexus test, resting on meaningful U.S. operations, personnel, development activity, asset location, participants, or investor-facing activity, with eligibility conditioned on filing in English on EDGAR, appointing a U.S. agent for service of process and consenting to U.S. jurisdiction for the life of the reporting obligations, remaining subject to the Rule 104 disqualification provisions, and designating an identified person responsible for the filings.

Coinbase shares the Commission's objective of bringing crypto asset activity onshore and supports conditions that give U.S. investors and the Commission genuine recourse. But Projects are rarely simply "U.S." or "non-U.S.": as set out in the economic analysis in the Appendix, among token-sale projects that raised at least \$5 million, the United States accounted for 31.0% of fundraising dollars by operating headquarters and 25.6% by founder location, but only 8.5% of projects by primary legal-entity jurisdiction. And U.S. connections are growing without a mandate: among projects disclosing each attribute, the U.S. share of founder location rose from 25.2% in 2021 to 40.8% in 2025, and the U.S. share of operating headquarters rose from 17.5% to 31.0%, while U.S. legal-entity structures moved only from 10.4% to 12.9%.

Rule 300(b)(1) would confine the fundraising exemption to an entity organized under U.S. law, whose executive officers or directors are majority U.S. citizens or residents, whose assets are more than fifty percent located in the United States, and whose business is administered principally in the United States.⁴¹ However, Token projects are often global, using Cayman Islands foundation companies, Swiss associations, Singapore private companies, and comparable structures for governance, tax, talent, immigration, or employment reasons that do not determine whether U.S. purchasers would benefit from tailored disclosure. As proposed, the strict U.S.-organization and U.S.-nexus conditions in Reg CA would force many projects to restructure to be eligible for the fundraising exemption, or raise outside of the Reg CA framework, excluding U.S. retail investors and not required to publish the tailored disclosures required by Reg CA.

Adopting our recommendation would further promote the onshoring of innovation. As Figure 11 in the economic analysis shows, projects have over the last two years increasingly moved components of their operations to the U.S. in response to the more

⁴¹ See Proposal at 111-13 & nn.269-71 (basing the eligibility criteria in part on the definition of "foreign private issuer" and intended to "facilitate the ability of the Commission and investors to seek recourse"); see also *id.* at 113 & n.274 (noting that the Commission previously sought comment on extending Regulation A to foreign issuers "with a substantial U.S. nexus"). The startup exemption imposes no comparable condition. See Proposal at 82-83.

welcoming U.S. regulatory environment. No prescriptive mandate of U.S. organization or nexus is required for this trend to continue.

L. Confirm That Filing a Form TR Is Not an Admission That a CIC Existed

The final rule should confirm that filing a Form TR is not an admission that a CIC existed and that the absence of a filing is not evidence that one exists. Otherwise, projects with Tokens that are already trading will be disincentivized from making such an admission. Such a confirmation would encourage existing projects to use the safe harbor and provide the Commission with important market data that could inform future rulemakings.

M. Permit Confidential Treatment of the Analysis Supporting a Form TR

The Commission should permit the analysis accompanying a Form TR to be treated confidentially and, where appropriate, FOIA protected,⁴² with only the certification made public. Plaintiffs' counsel will otherwise mine the analysis for facts and theories to use against projects. The Commission retains the ability to review the analysis, and publishing the certification should be sufficient. And this would further encourage participation in and uptake of the Form TR.

V. The Commission Should Exercise Its Exemptive Authority To Exempt Aftermarket Transactions and Protect Intermediaries and Unaffiliated Market Participants

To further buttress the logical conclusion that the Tokens themselves are not securities, the Commission should exercise its exemptive authority, as a matter of its policy discretion, to explicitly exempt aftermarket transactions and protect intermediaries and unaffiliated market participants.

A. Permit Secondary Trading While CIC Disclosure Continues

The Commission should exercise its exemptive authority to permit secondary trading in a Token on centralized and decentralized crypto exchanges while the related CIC remains outstanding. This will achieve the broadest and most lasting impact on the market and on U.S. retail participation.

The Commission anticipates broad use of the framework, estimating roughly 130 offerings per year under the two exemptions and 475 issuers relying on the investment contract safe harbor annually, and continuing, tailored disclosure to the market is one of its central benefits. But if broad trading and usability arrive only once a Form TR is on file, the framework will reward issuers that leave the proposed reporting framework at the earliest opportunity, which is inconsistent with the spirit of Reg CA.

⁴² 5 U.S.C. § 552(b)(5).

Permitting secondary trading while the CIC remains outstanding removes the “quick exit” incentive, allowing issuers to remain subject to ongoing disclosure for as long as their CIC is outstanding without sacrificing the liquidity and network effects their Tokens need. Providing a path for issuers to remain in the reporting regime for longer would unambiguously benefit both the original and new purchasers while allowing more robust development of the network.

The same policy and investor-protection considerations support permitting secondary trading where antifraud liability would continue to apply to material misstatements or omissions made in connection with the creation of, or at any time during the existence of, the investment contract.⁴³ The relief would instead clarify that the CIC’s continuing existence does not disable ordinary aftermarket transfers of the separate Token.

Separately, any trading limitations that come with treating Token transactions as securities transactions should reach only the Tokens the issuer offered and sold under a Regulation Crypto Asset exemption, and not a Token’s entire supply. Rule 100 defines a “subject crypto asset” as “a crypto asset that is subject to a covered investment contract,” and Rule 400 provides that, on separation, “the crypto asset that was subject to the covered investment contract” is deemed no longer subject to it; it is unclear whether this provision is intended to be limited on its face to the Tokens the issuer actually sold or intended to apply to the entire supply. If the latter, that would differ materially from CICs sold pursuant to Regulation D and Regulation S, where trading restrictions on the security apply to the instrument sold in the exempt offering and not the entire Token supply.

Applying the rule to the entire Token supply would reach Tokens for which no CIC was ever created or disclosed. Including Tokens distributed through proof-of-work and proof-of-stake rewards and through no- or nominal-consideration airdrops and ecosystem grants as part of the CIC is inconsistent with the Commission’s position that these transactions do not involve securities. We do not understand the Commission to have intended Rule 100 to be so expansive, and the final rule should confirm as much.

Accordingly, we support permitting secondary trading while the related CIC remains outstanding because that would have the broadest and most lasting impact on the market and on U.S. retail participation.

B. Provide Protection for Intermediaries and Unaffiliated Market Participants

The Commission should also protect the unaffiliated persons who transact in, or facilitate transactions in, a Token in reasonable reliance on a filed Form TR, or on a reasonable belief that the CIC has ceased to exist. As the Commission recognizes in its requests for comment on Rule 500, secondary-market participants may be unable to tell whether an issuer has satisfied an exemption or stayed current in its obligations, and a filed Form TR does not stop private plaintiffs or state regulators from asserting that an asset remains

⁴³ See Interpretive Release at 33-34.

subject to an investment contract.⁴⁴ To ensure greater regulatory clarity and to obviate the need for further rulemaking with respect to these issues, we would recommend that the Commission adopt the following:

- Good-faith reliance. Persons unaffiliated with an issuer should be protected when they reasonably believe a transaction is compliant and, when relying on a Form TR, should be protected when they lack actual knowledge that the filing is false. Federal securities laws routinely protect good-faith participants without making them guarantors of an issuer's certification.
- Availability to already-trading issuers. As proposed, the safe harbor would be available to an issuer whose Token already trades and that never relied on Regulation Crypto Asset. Neither the filing nor the supporting analysis should constitute an admission that the Token or any prior transaction was subject to an investment contract. This protection matters most to projects that launched before the Proposal, which never filed a notice of reliance and would otherwise have to reconstruct the Form TR analysis from their historical statements.⁴⁵
- Indicia of cessation. The Commission should publish non-exclusive, publicly observable indicia of CIC cessation. Relevant indicia could include elapsed time since the issuer's last stated milestone; the absence of communications making or renewing a Qualifying Promise; activity, or absence thereof, in public code repositories and governance forums; changes in operational, economic, and voting control; and the absence of meaningful progress toward publicly stated commitments.
- Exchange Act registration relief. The Commission should exempt the platforms, market makers, custodians, DeFi interfaces, and non-custodial wallet providers that facilitate aftermarket Token transactions from the exchange, broker, and dealer registration requirements of the Exchange Act with respect to those transactions. This is the exemptive counterpart to the confirmation requested in Section III.
- Extension to the Investment Company Act and Investment Advisers Act. The Commission should extend the Rule 400 safe harbor to the Investment Company Act and Investment Advisers Act definitions of "security," or at minimum confirm that a valid Rule 400 separation is not defeated under those Acts, so that a holder

⁴⁴ See Proposal at 166-67 (the Commission may challenge a Form TR certification, and the safe harbor does not prevent other parties from asserting that a crypto asset is subject to an investment contract); *see also id.* at 171 (Section 18 preemption reaches the transaction and the purchaser, while state broker-dealer, agent, and investment-adviser registration requirements rest on separate statutory footing).

⁴⁵ See Proposal at 166 (the safe harbor "also would be available to issuers that have not utilized these proposed exemptions"); *see also* There Must Be Some Way Out of Here Response at 13 (safe harbor "should be made available retroactively so that projects launched before adoption can similarly benefit").

of a substantial CIC position does not face a separate analysis under the nearly identical definitions in those statutes after a Form TR is filed.

Together, these measures would provide much of the legal certainty supplied by the primary position while preserving CIC disclosure and remedies. They would give projects a reason to remain in the disclosure regime and allow U.S. participants to access Tokens on fairer terms.

Conclusion

Coinbase supports the proposal and urges the Commission to adopt it with the changes described above. The framework's success depends most on confirming that a Token is not a security and that aftermarket Token transactions do not carry the related CIC and are not securities transactions, along with commonsense changes to the proposed exemptions to ensure issuers choose them over existing capital-raising pathways. If the Commission declines the aftermarket-trading position, the fallback measures in Section V would preserve secondary trading, continuing CIC disclosure, and meaningful protection for unaffiliated market participants.

Coinbase appreciates the Commission's careful and deliberative approach and welcomes the opportunity to provide further information or technical assistance as the Commission finalizes the rule.

I. Appendix — Economic Analysis

Coinbase, in coordination with the Coinbase Institute, has prepared an economic analysis to support this letter. The analysis draws on a dataset of 962 token sales with documented proceeds from January 2021 through September 2026 and addresses three questions: (i) whether secondary-market tradability supports network participation and project development; (ii) how historical token-sale activity and proceeds would be affected by the sale limits in the Proposal and the limits we recommend; and (iii) how Token projects' connections to the United States, by operating headquarters, legal domicile, investor location, and founder location, have changed over time. The Figures describe historical activity and, while indicative of potential future activity, are not causal estimates of future capital formation.

This analysis evaluates the economic implications of alternative regulatory designs. References to historical token sales, listings, or staking activity do not express a view that any identified asset or transaction is a security or securities transaction.

1. Secondary Trading and Crypto Project Success

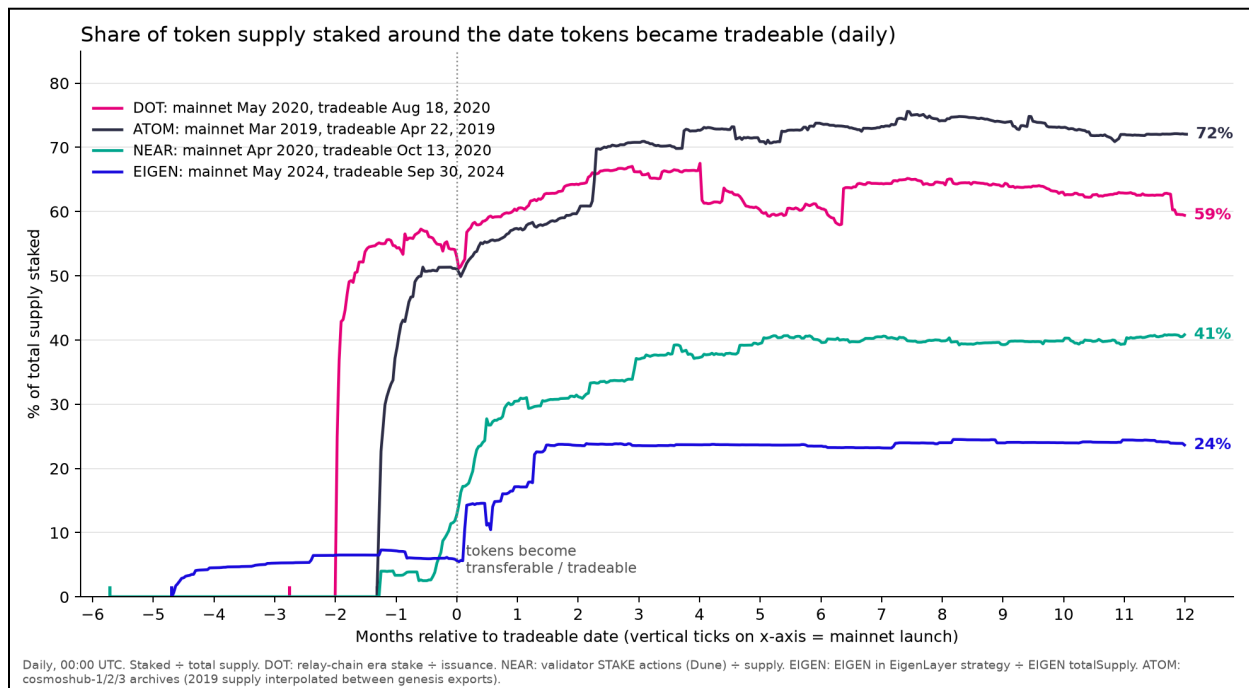
Secondary-market trading of Tokens is critical to a crypto-asset project's success. For example, transfer and trading of network Tokens between purchasers is necessary for them to participate in a network and realize the utility and value of their holdings. Permitting their participation supports price discovery, promotes staking participation to secure the network, and helps projects attract contributors and users.

Token trading is not just speculation. Cong, Li, and Wang, as described in more detail below, explain how expected appreciation (from transactional demand, more distributed participation, or otherwise) can encourage adoption. The analysis in Figure 1 provides evidence of how this works in practice by showing how Token transferability can coincide with increased commitment of capital to network security. This is a distinct and critical dimension of a network's development, and the relationship to tradability depends on Token design, launch conditions, market conditions, and the quality of the trading venue.

Figure 1 compares the Layer 1 networks Cosmos Hub, Polkadot, and NEAR used staged launches in which mainnet operation preceded unrestricted token transfers by approximately six weeks, three months, and six months, respectively. These restrictions allowed projects to establish network operations and validator participation before opening token circulation; Polkadot and NEAR also used initial foundation-controlled validation phases before transitioning toward community-operated consensus. Staking could become available before trading, including for tokens subject to lockups, so transferability was not necessarily a prerequisite for consensus participation. EIGEN provides a related, but distinct, comparison: it is an EigenLayer restaking token rather than an L1 token, and staking opened approximately five months before unrestricted transfers.

As shown in Figure 1, across these four selected cases, the share of total token supply staked increased during the three months following transferability, from approximately 51% to 71% for ATOM, 53% to 66% for DOT, 13% to 37% for NEAR, and 6% to 24% for EIGEN. ATOM and DOT already had substantial staking before trading opened, whereas NEAR and EIGEN experienced larger increases afterwards.

Figure 1. Share of token supply staked around the date tokens became tradeable



While these patterns are consistent with secondary-market access accompanying greater capital commitment to network security, the rollout of staking rewards, delegation infrastructure, token distributions, and decisions by large allocation holders that occurred around the same period and could also contribute to the changes in staking behavior. The comparison therefore offers suggestive evidence of increased security participation around tradability, rather than a causal estimate of platform adoption.

Academic research also provides theoretical and empirical evidence that token tradability can support platform adoption and project development.

Cong, Li, and Wang (2021 - Review of Financial Studies), in *"Tokenomics: Dynamic Adoption and Valuation,"* develop a theory in which token valuation and platform adoption reinforce each other. Users hold tokens to transact on a platform, and network effects make participation more valuable as the user base grows. Expected future adoption supports expected token appreciation, which lowers the effective cost of holding tokens today and encourages earlier participation. Tradable tokens can therefore help a platform overcome its initial coordination problem: early users can benefit from future network

growth rather than waiting for others to join. This mechanism concerns transactional utility and adoption.

2. Crypto-Asset Sale Statistics

In Figure 2 we examine the scale, distribution, and geographic footprint of token-sale fundraising, including how historical raises compare with potential fundraising-exemption thresholds. Our fundraising dataset is drawn from ICO Drops' ended-offering listings, covering January 1, 2021 through September 30, 2026. The source inventory contains 1,704 dated listings, including public token sales, private fundraising, airdrops, staking and launchpool campaigns, crowdloans, and equity financing. Figure 3 shows the total amount of verified token sale proceeds between January 2021 and September 2026 as a subset of the ICO Drops data set.

To arrive at our final sample we separate token-sale proceeds from other forms of financing or token distribution, excluding non-sale events, refunded offerings, identified duplicates, data-error entries, and sales whose closing status could not be established within the cutoff. This results in 1,282 listings. Of these, 962 have documented positive token-sale proceeds supported by project disclosures, launchpad information, press coverage or specialist fundraising databases. We exclude 320 sales with either undisclosed or unverified amounts.

We count accepted proceeds rather than sale targets, oversubscribed commitments or valuations, and combine documented public and private token-sale rounds while excluding equity financing. Because source coverage and disclosure quality vary, the dataset is not a census of all crypto fundraising, and documented proceeds may be incomplete subtotals.

Figure 2 shows the annual number and sector composition of the 962 token sales with documented proceeds. Recorded activity declined from 312 sales in 2021 to 180 in 2022 and 120 in 2023, recovered to 178 in 2024, and eased to 152 in 2025. The 20 sales recorded for January–September 2026 cover only a partial year, and recent listings and amount disclosures may be incomplete.

Across the full sample, Gaming & Metaverse accounts for 250 sales (26.0%), Infrastructure & L1/L2 for 227 (23.6%), and DeFi for 221 (23.0%); together they represent 72.6% of sales. NFT & Social / Consumer contributes another 113 sales (11.7%). The composition changes materially over time: Gaming & Metaverse falls from 75 sales in both 2021 and 2022 to 17 in 2025, while Infrastructure & L1/L2 and DeFi together account for 98 of the 152 sales in 2025 (64.5%). AI grows from four sales in 2021 to 20 in 2025, increasing its share from 1.3% to 13.2%. These patterns suggest a shift in the observed sample away from gaming and NFT/social/consumer projects toward infrastructure, DeFi and AI.

Figure 2. Token sales by year and macro-category, January 2021–September 2026.

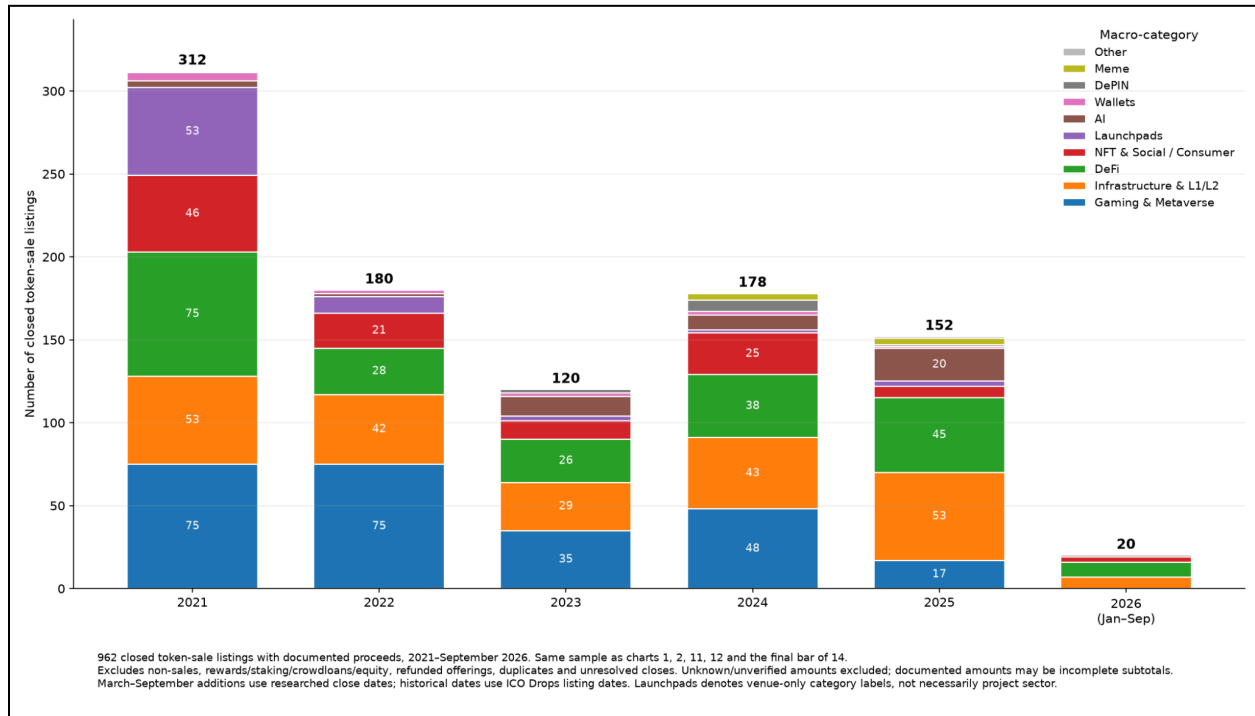
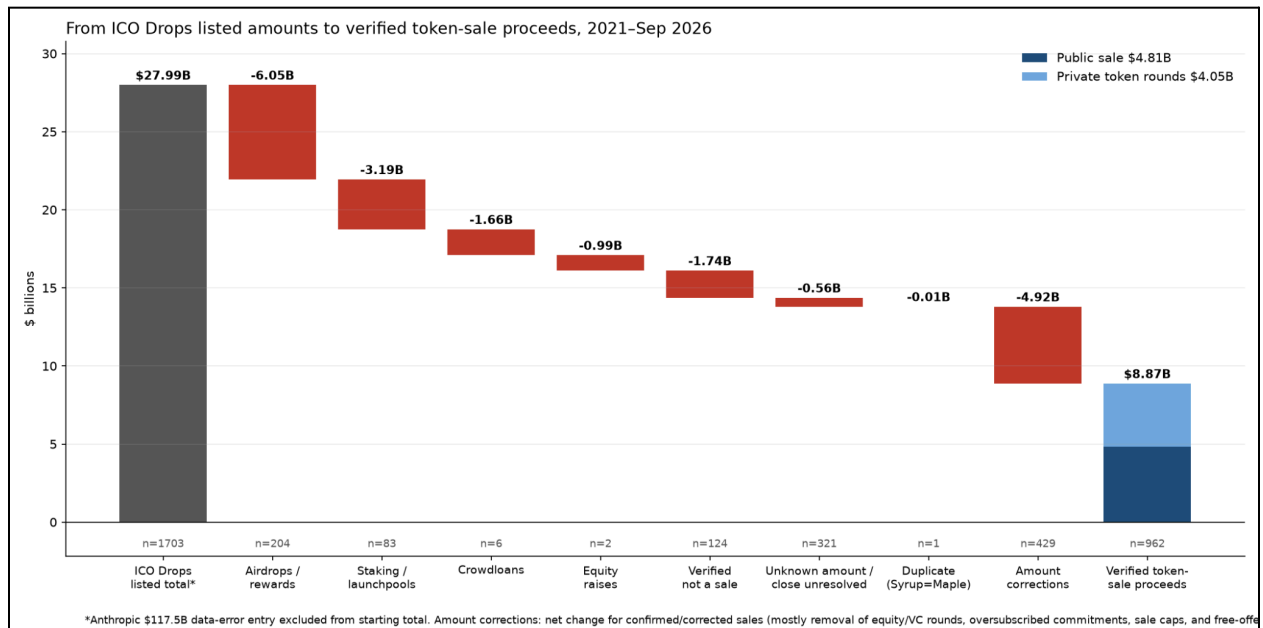


Figure 3. Token sale proceeds, January 2021–September 2026.

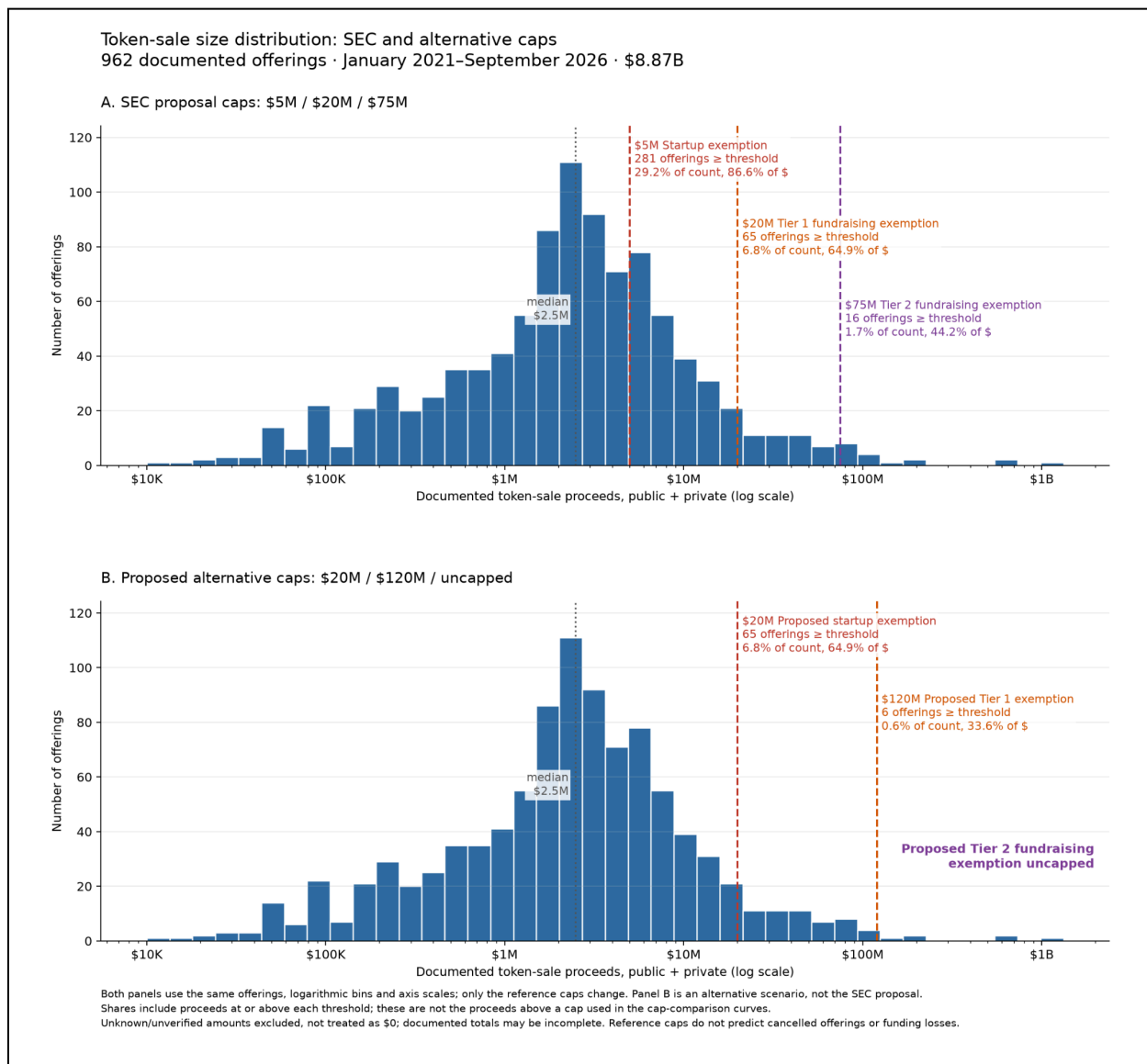


Fundraising-Exemption Thresholds Analysis

During the sample period, the 962 sales accounted for \$8.87 billion in combined token-sale proceeds: \$4.81 billion from public sales and \$4.05 billion from documented private token rounds.

The distribution of sale sizes is shown in Figure 4, using a logarithmic dollar scale given the skewed nature of the data. The median sale raised approximately \$2.47 million. Fundraising is concentrated in a relatively small number of larger sales: 130 projects raised at least \$10 million, accounting for \$6.65 billion, or approximately 75% of documented proceeds; 65 raised at least \$20 million, accounting for approximately 65%; and 16 raised at least \$75 million (i.e. the proposed Tier 2 cap), accounting for approximately 44%.

Figure 4. Distribution of documented token-sale proceeds, January 2021–September 2026.



Using this historical data, we ran a simulation to measure how much less funding firms would have raised using Reg CA's proposed fundraising caps of \$5 million, \$20 million, and \$75 million, and compared this with our proposed caps of \$20 million, \$120 million, and uncapped. Our simulation assumes that each project could retain proceeds only up to the selected cap, with no alternative financing or restructuring.

There are some caveats to our analysis. In particular, our data aggregates documented public and private token-sale rounds, potentially across multiple years, while the proposed startup exemption applies over four years and the fundraising tiers over twelve months. Our sample is global and is not restricted to issuers or transactions eligible for the proposed exemptions. Accordingly, the Figures measure historical proceeds above

illustrative caps, not legally established excess raises or a causal reduction in future capital formation.

Figure 5 compares the historical fundraising distribution with the SEC proposal's \$5 million startup exemption, \$20 million Tier 1 fundraising exemption and \$75 million Tier 2 fundraising exemption. We also provide our own proposed caps for comparison.

Mechanically capping each of the 962 documented project-level token-sale totals at these amounts would reduce aggregate proceeds relative to the \$8.87 billion historical baseline by \$6.27 billion (70.7%) at \$5 million, \$4.46 billion (50.3%) at \$20 million, \$2.72 billion (30.7%) at \$75 million, and \$2.26 billion (25.5%) at \$120 million. The caps would bind for 273 sales (28.4%), 61 sales (6.3%), 16 sales (1.7%), and 6 sales (0.62%) respectively. These comparisons illustrate how a small number of large raises account for a substantial share of fundraising dollars; they do not show that the affected sales would disappear.

Figure 5. Historical proceeds above fundraising caps, January 2021–September 2026.

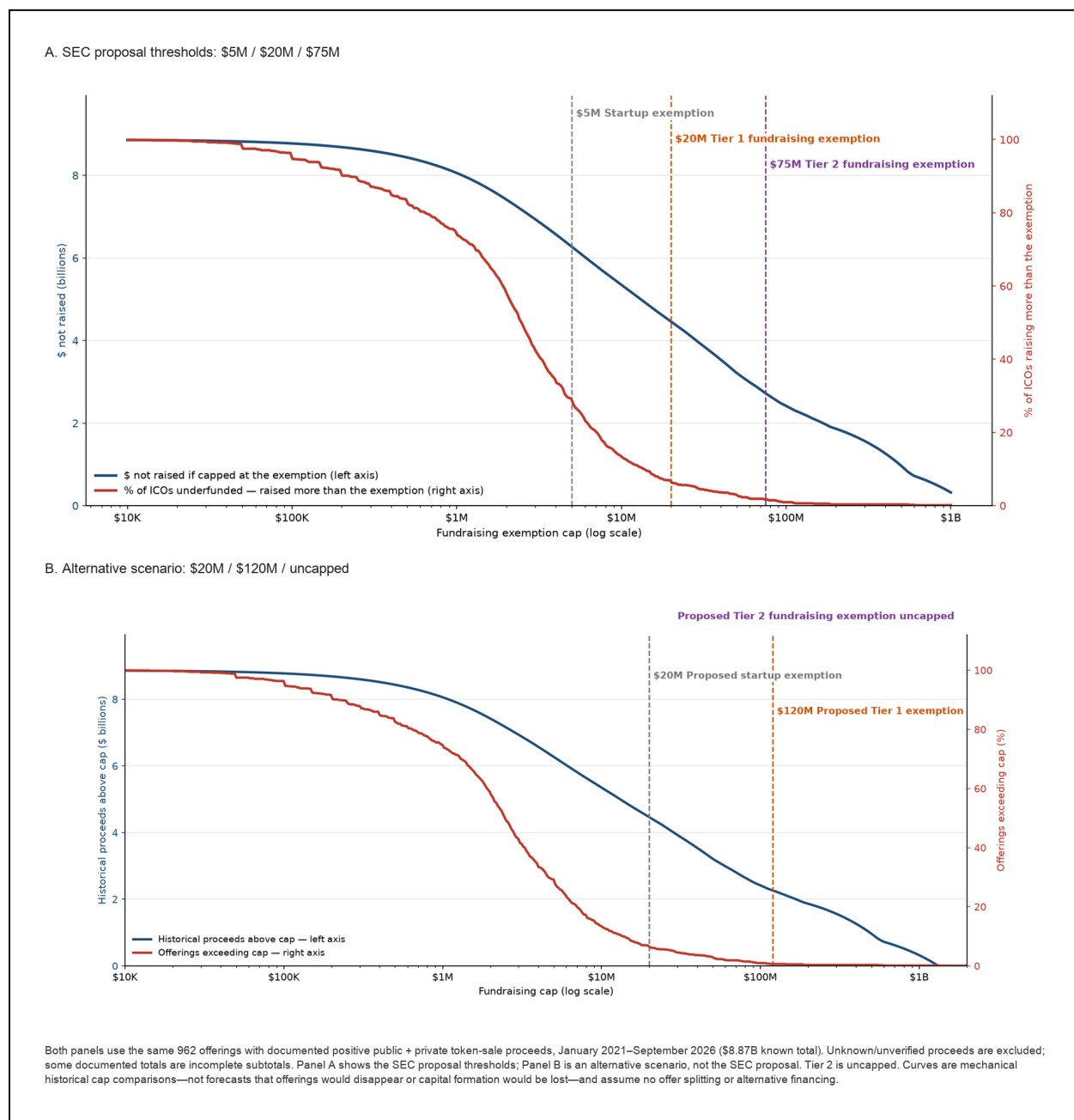
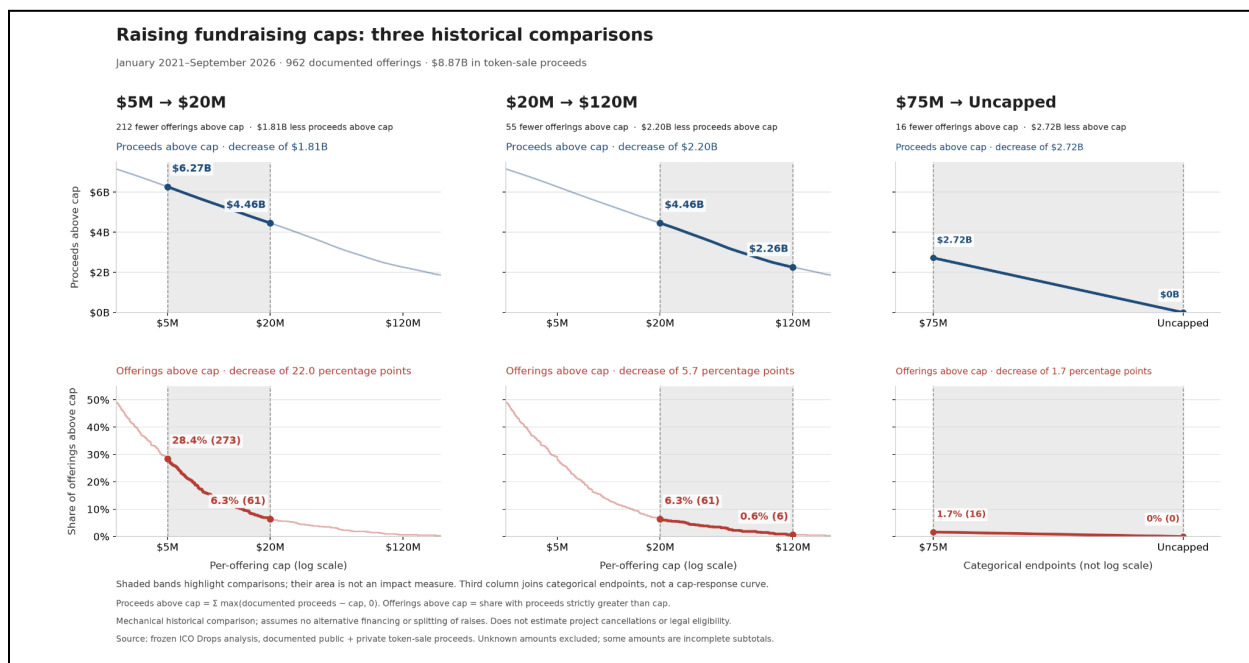


Figure 6 shows the additional proceeds and share of sales that would be captured by each the startup exemption and Tier 1 and Tier 2 of the fundraising exemption when increasing the caps as we propose.

Figure 6. Impact of raising proposed fundraising caps, January 2021–September 2026.

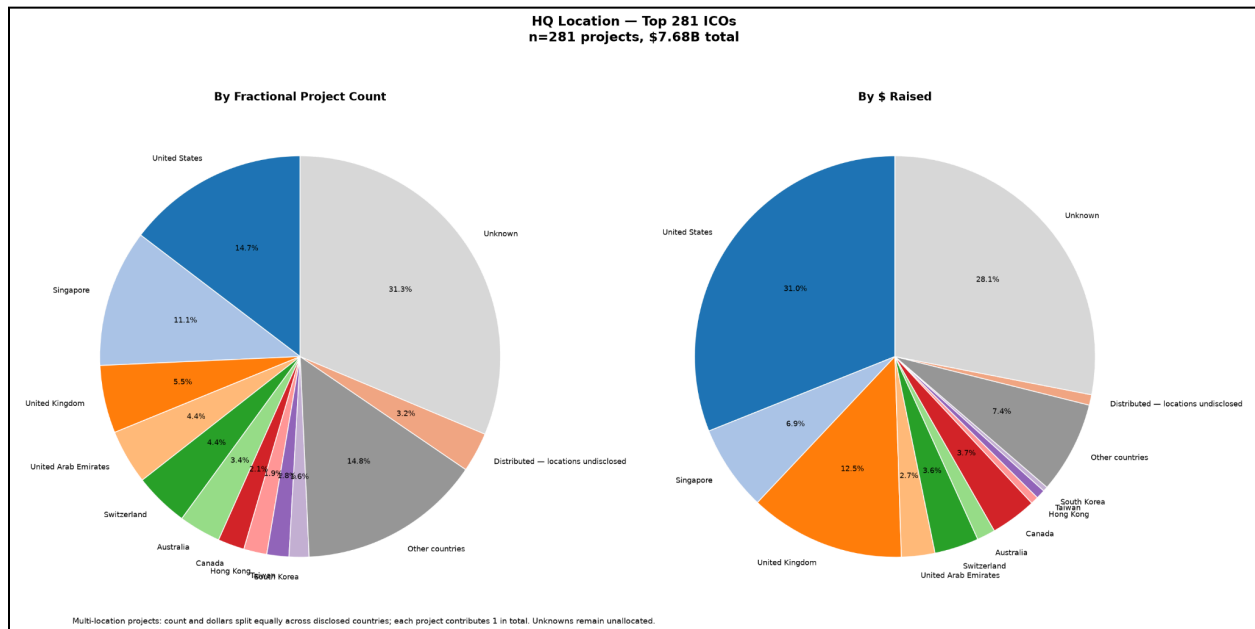


3. Geographic Footprint of Token-Sale Fundraising

The following Figures examine four distinct dimensions of geography in the 281-project sample with at least \$5 million in documented proceeds: operating headquarters, legal-entity jurisdiction, investor location and founder location. Geographic information is current or the last supported location, rather than necessarily the location at the time of fundraising.

As shown in Figure 7, after splitting multi-location projects' counts and proceeds equally across their disclosed operating countries, the United States accounts for 14.7% of the project count but 31.0% of fundraising dollars (\$2.38 billion). Singapore represents 11.1% of the count and 6.9% of dollars, while the United Kingdom represents 5.5% and 12.5%, respectively. The larger US dollar share indicates that the projects allocated to US operating locations are disproportionately large within this sample. Unknown HQs account for 31.3% of the project count and 28.1% of dollars; a further nine projects operate as distributed teams without identifiable operating countries.

Figure 7. Operating HQ geography by fractional project count and documented fundraising dollars.



Legal registration produces a different geographic picture, as shown in Figure 8. The British Virgin Islands is the most common primary or first-listed jurisdiction, with 28 projects (10.0%), followed by the United States with 24 (8.5%), Singapore with 22 (7.8%) and the Cayman Islands with 21 (7.5%). The British Virgin Islands and Cayman Islands together represent 17.4% of projects and 24.8% of documented dollars. The UK accounts for 20.3% of dollars despite representing only 4.6% of projects, illustrating how a small number of large raises can dominate dollar-weighted geography. These results show the importance of distinguishing legal domicile from operating location. Jurisdiction is unknown for 106 projects (37.7%), representing 16.1% of dollars.

Figure 8. Primary legal-entity jurisdiction by project count and documented fundraising dollars.

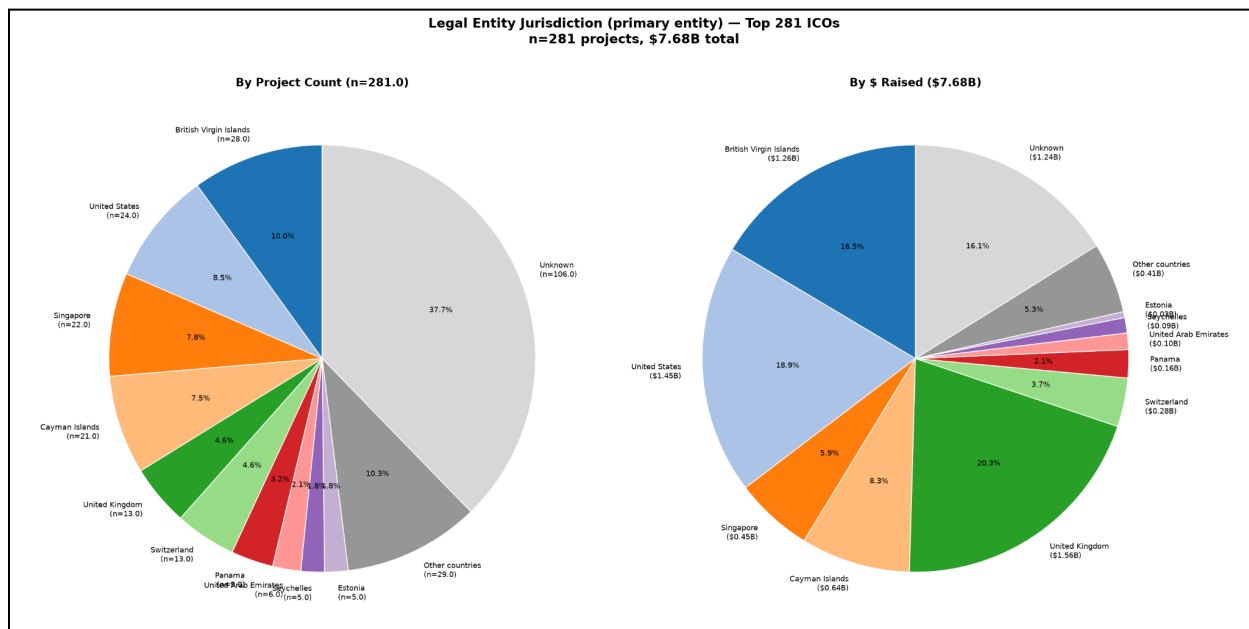


Figure 9 reports the location of the investors. US-located investors receive 26.7% of the fractional project allocation and 27.2% of the allocated fundraising dollars (\$2.09 billion), the largest identified country allocation. Singapore and Hong Kong account for 8.2% and 6.5% of project allocations, respectively, and each with about 5.4% of dollars. Thirty-seven projects have no listed investors, representing 13.2% of projects but 25.8% of dollars.

Figure 9. All-listed-investor geography.

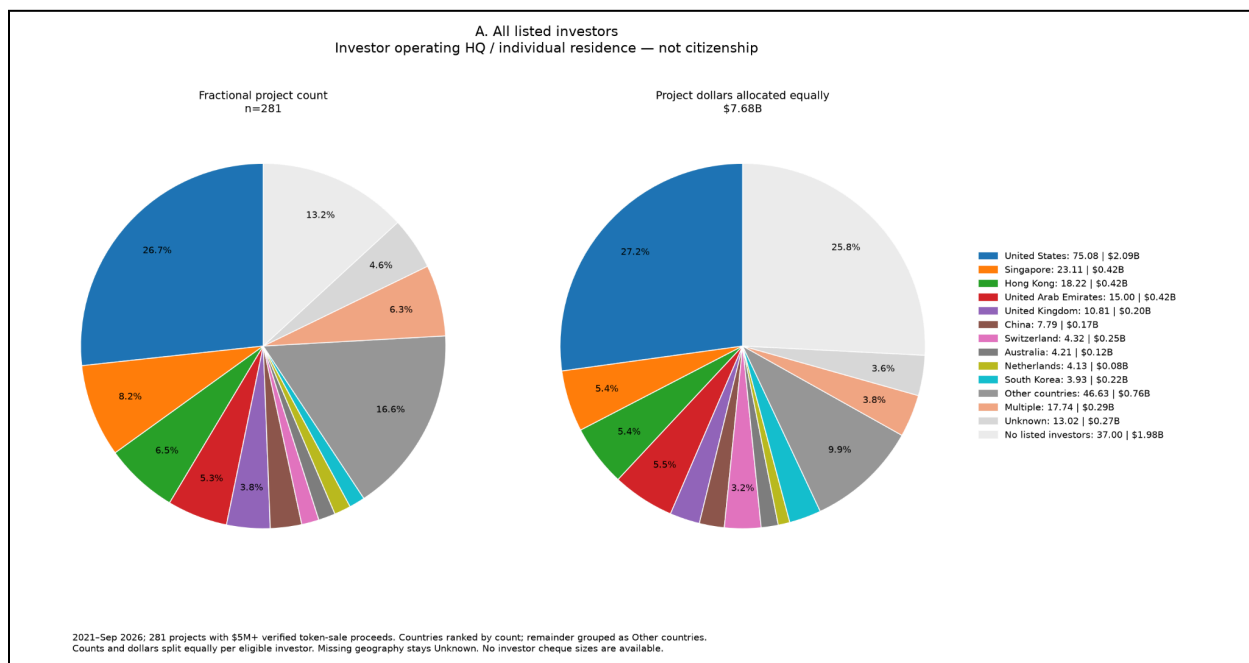
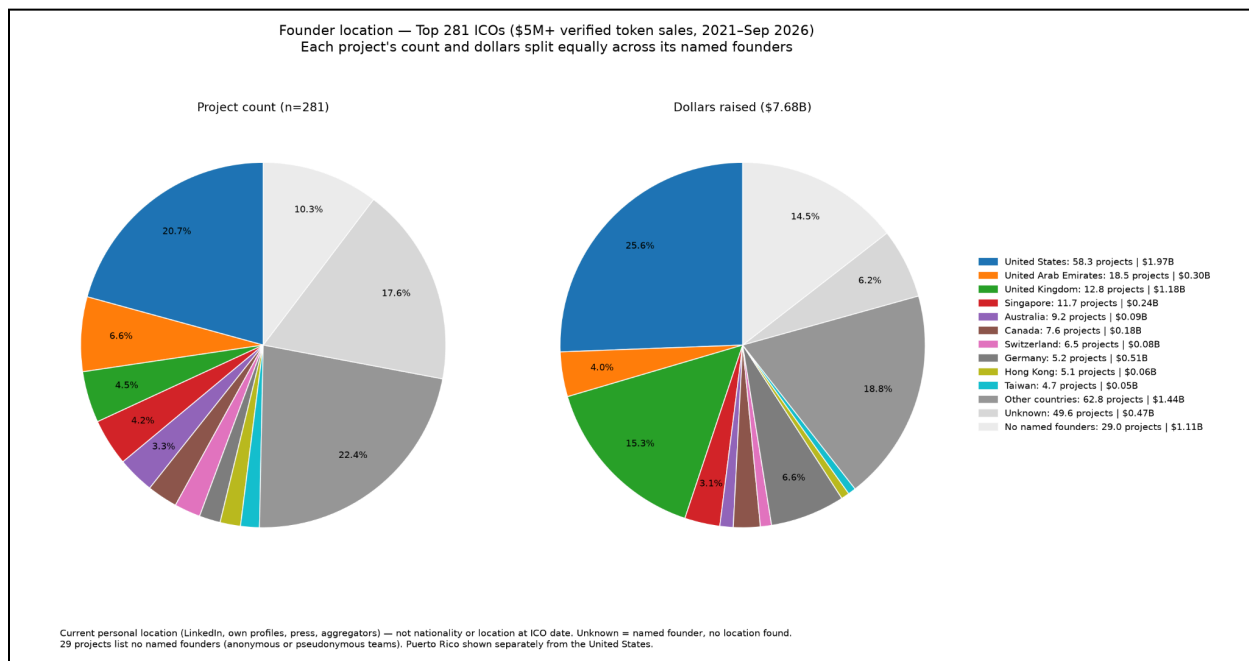


Figure 10 reports the location of the founders. Splitting each project's count and fundraising dollars equally across its named founders gives the United States 20.7% of fractional projects and 25.6% of dollars (\$1.97 billion). The UAE accounts for 6.6% of fractional projects and 4.0% of dollars, and the UK for 4.5% and 15.3%. These are current personal-location measures, not nationality, citizenship, or proof that a project operated in that country at the time of its sale. Named founders whose locations remain unknown account for 17.6% of fractional projects and 6.2% of dollars; another 29 projects disclose no named founders, accounting for 10.3% of projects and 14.5% of dollars.

Figure 10. Founder location by fractional project count and documented fundraising dollars.

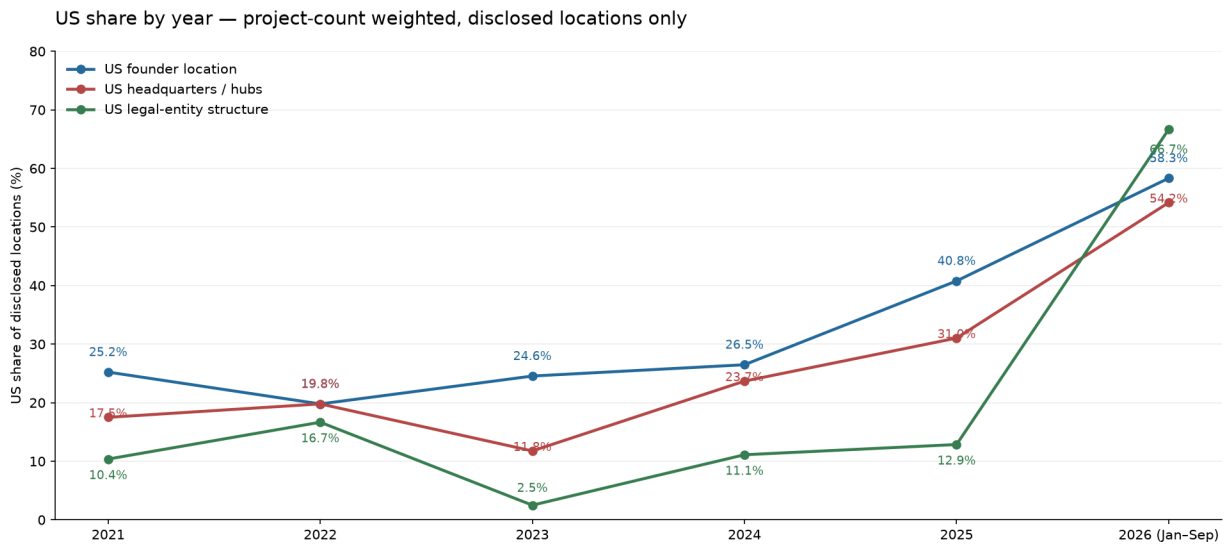


Taken together, Figures 7, 8, and 10 show that currently a larger percentage of founders are located in the U.S. than projects have their headquarters or primary legal entity in the US. This suggests that more U.S. founders structure their projects with headquarters or primary legal entity abroad, than ex-U.S. founders who structure their projects with headquarters or primary legal entity in the U.S.

However, Figure 11 shows that the trend is increasing towards a greater U.S. nexus, particularly over the past two years. U.S. share of founder location increases from 25.2% in 2021 to 40.8% in 2025, while the U.S. share of operating HQ or hubs increases from 17.5% to 31.0%. US legal-entity structure remains less prevalent, moving from 10.4% in 2021 to 12.9% in 2025, with a low of 2.5% in 2023.

These differences are consistent with U.S.-based people and operating activity coexisting with legal entities elsewhere. January–September 2026 shows 58.3% for founders, 54.2% for HQ or hubs and 66.7% for legal-entity structure; however, only ten projects qualify, and just nine, eight and six disclose the respective attributes, making these estimates particularly sensitive to individual projects and incomplete coverage.

Figure 11. US geographic shares by year among projects with disclosed attributes



Disclosed projects (founders / HQ / entity): 2021: 74/60/53 · 2022: 39/32/27 · 2023: 26/17/20 · 2024: 45/38/36 · 2025: 38/29/35 · 2026: 9/8/6

Each eligible project has equal weight. Founders: US-located / located founders; multi-hub HQ: equal shares across listed countries.
 Entity: US-only = 1; US + offshore = ½; foreign-only = 0. Unknowns excluded separately for each line.
 Founder locations are current, not nationality or location at ICO date.
 2026 window: Jan-Sep. Ten qualifying projects; 6–9 disclose each attribute. Small samples warrant caution.