
Cahill Submits Comment Letter to SEC's Proposed "Regulation Crypto Assets"

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On October 20, 2026, CahillNXT submitted a comment letter to the U.S. Securities and Exchange Commission ("SEC") on its proposed Regulation Crypto Assets. The letter proposes an Independent Participant Safe Harbor to provide regulatory certainty for independent market participants, so that their registration and related compliance obligations do not turn on facts they cannot reliably determine. Critically, the Independent Participant Safe Harbor would work within the SEC's existing interpretive guidance on the application of the well-known *Howey* test to activity involving crypto assets, creating a clear pathway for providing needed protection to market participants while respecting the extensive work already done and decided by the SEC in the area.

The letter welcomes the Commission's recognition that a non-security crypto asset is distinct from the investment contract through which it may be offered and sold, as well as its efforts to establish a workable capital-raising framework. At the same time, it urges the Commission to address the practical consequences for secondary markets. Trading platforms, market makers, custodians, funds, and other independent participants cannot reliably determine whether an issuer has fulfilled its commitments, abandoned its efforts, or made new promises that could change the securities-law treatment of their activities.

Advocating that the burden of assessing an issuer's promises should rest with the issuer and those on its side of the transaction, the proposed safe harbor would:

- Provide meaningful relief across the secondary-market ecosystem: Exempt eligible transactions and activities from registration requirements and related exchange, broker-dealer, clearing-agency, and other securities-market rules;
- Make protection independent of issuer conduct: Ensure that eligible participants do not lose protection because an issuer misses a filing, changes its development plans, undertakes new fundraising, or faces a challenge to its determination that an investment contract has ended;
- Preserve accountability without imposing a new duty to investigate: Retain core federal securities antifraud protections, holding eligible participants accountable for their own statements and trading conduct without requiring them to investigate the issuer's promises or compliance. The issuer's own obligations would remain intact;
- Align federal and state treatment: Extend state registration preemption to transactions within the safe harbor, without conditions tied to issuer compliance, requirements to trace fungible tokens to a particular offering, or deadlines linked to issuer filings.

Read the full comment letter [here](#).

The views expressed in the comment letter are solely those of Cahill Gordon & Reindel LLP and do not necessarily reflect the views of any of the firm's clients.

Attorneys

- Lewis Rinaudo Cohen
- Sarah Weiyang Chen

Practice

- CahillNXT – Digital Assets, AI, and Frontier Technology

