Investment Management Update

July 2025

SEC Issues Statement on Disclosures for Crypto Asset ETP Registrations

Key Notes:

- The SEC's Statement highlights observations made by the Division of Corporation Finance regarding specific disclosures included in registration statements of crypto asset ETPs that have completed the registration process.
- The SEC's observations cover a range of disclosures, including disclosures relating to cover page and prospectus summary requirements, risk factors, description of the business, description of the securities offered, plan of distribution, management, conflicts of interest, financial statements, and filing fee tables.
- Although not formal SEC guidance, such observations provide insight into the disclosures that the SEC expects to see in crypto asset ETP registrations.

Sponsors of crypto asset ETPs have an opportunity to leverage the SEC's recent Statement as a valuable resource during the registration process and as a means to help expedite the listing of their products.

On July 1, 2025, the Division of Corporation Finance of the Securities and Exchange Commission (SEC) issued a statement (Statement) addressing common disclosure issues observed during its review of filings for non-securities-based crypto asset exchange-traded products (ETPs). The Statement focuses on the quality and content of disclosures required under Regulations S-K and S-X and should be regarded as critical guidance for sponsors seeking successful registration.

Crypto Asset ETPs

Crypto asset ETPs are often structured as trusts that hold various spot crypto assets or derivative instruments referencing crypto assets not typically considered securities. These products are generally subject to the registration and reporting requirements under both the Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act), but not under the Investment Company Act of 1940. Consequently, these offerings must comply with the anti-fraud provisions of federal securities laws, which impose a range of disclosure requirements for listing on a national exchange.

Registration Statement

As with other public securities offerings, sponsors of crypto asset ETPs offered in the United States must file a registration statement (typically on Form S-1) with the SEC. Importantly, the SEC's Statement does not establish a new regulatory framework or separate requirements for crypto asset ETPs. Instead, it offers specific insights into how such products have successfully registered under the existing registration framework generally applicable to all publicly traded securities. Accordingly, the Statement aims to facilitate the listing process by reinforcing a familiar and established registration pathway for market participants.

Cover Page

In the Statement, the SEC noted that successful registrations of crypto asset ETPs included disclosure of the initial offering price of the securities being issued and identified as underwriter either (i) the initial authorized participant[1] or (ii) the initial purchaser.

Prospectus Summary

The SEC noted that effective prospectus summaries highlight the most material aspects of the offering and avoid duplicating language from the full prospectus. Examples of key disclosures include:

- A clear overview of the trust, including its investment objective, and any tracking index or benchmark;
- Description of the underlying crypto assets and associated networks;
- The issuer's policies regarding the management and use of underlying assets and any limitations on how such assets are held or used;
- The issuer's approach to policies concerning incidental rights associated with underlying assets (e.g., forks, airdrops, and similar events); and
- A statement that the amount of crypto assets per share held by the trust will decline over time as assets are sold to cover trust fees and expenses.

Risk Factors

The SEC advises that risk factor disclosures should be tailored to the specific issuer and product, rather than relying on overly broad or generalized risk factors. The content and scope of the risk disclosures in a crypto asset ETP's filing will vary depending on several factors, including but not limited to, the nature and characteristics of the security offered, the issuer's business model, the underlying crypto assets, the tracking index or benchmark, shareholder rights, insurance coverage, valuation and liquidity concerns, technological infrastructure, cybersecurity measures, and legal, regulatory, or tax considerations.

Examples of risk factor disclosures observed in successful listings include:

- Risks related to the underlying crypto assets and markets that pose a risk of investor losses, such as price volatility, theft of private keys, hacking incidents, and exposure to volatility in other segments of the crypto asset market;
- Risks of fraud, manipulation, front-running, wash trading, security failures, or operational issues on crypto asset trading platforms;
- Risks of cyberattacks or other malicious activity targeting associated networks;
- Risks stemming from concentrated ownership of the underlying crypto assets;
- Risks related to declining incentives for miners or validators supporting the underlying networks;
- Competitive risks from similar products, particularly those with lower fees or earlier market entry; and
- Risks associated with authorized participants, counterparties, or other service providers who may also serve competitors.

Description of the Business

The Statement encourages issuers to provide clear and concise descriptions of their business, avoiding excessive technical jargon. The SEC noted that effective filings typically include disclosure regarding the trust's assets, including, but not limited to, the characteristics of the underlying crypto assets, the applicable index or benchmark methodology, and the approach used to calculate net asset value (NAV).

Examples of disclosures observed in the business section of a crypto asset ETP's prospectus include:

Underlying Crypto Assets

- Material information about underlying crypto assets and associated networks, such as the launch of the crypto assets, identity of the development team, minting and staking mechanisms, locking and burning processes, transaction validation methods, consensus protocols, use cases, and any associated fees for using the crypto networks or applications;
- Discussion of total supply metrics, including outstanding, issued, and burned amounts; market capitalization; supply caps (if any); minting and burning schedules; and material supply-impacting events, such as protocol modifications, halving events, or forks (planned or recently planned); and

[1] "Authorized participants" are generally financial intermediaries that provide liquidity for crypto asset ETPs by placing orders to facilitate the creation and redemption of shares (often referred to as creation and redemption units or creation and redemption baskets).

- Description of the spot and/or futures markets for the underlying crypto assets, including how those markets are regulated.

Tracking Index or Benchmark

- Tabular disclosure of constituent trading platforms used to calculate the index or benchmark price, including market share and volume;
- Methodologies for selection and index or benchmark price calculations;
- Oversight committee structure; and
- Sponsor discretion to change benchmark and disclosure procedures, and how investors will be informed of any material changes.

NAV Calculation

- The methodology the trust will use to calculate NAV, including applicable policies and procedures if the index or benchmark is unavailable or the sponsor chooses not to rely on it;
- Whether the NAV methodology differs from the fair value methodology used for GAAP purposes, and an explanation of the differences between the two; and
- Whether the sponsor has agreements with third parties for valuation methodologies and holds a license to use any secondary index or benchmark.

Service Providers

- Identify the authorized participants, describe the material terms of the authorized participant agreement, and file the agreement as an exhibit to the registration statement;
- Identify counterparties contracted to assist with the purchase and sale of the underlying crypto assets, describe the material terms of those agreements, disclose any affiliations or material relationships with the authorized participants, explain the criteria for selecting such counterparties, and file any material agreements as exhibits to the registration statement; and
- If the trust has financing arrangements with a counterparty for purchases and sales of the underlying crypto assets, disclose the material terms of the arrangement (including interest rate), describe the mechanics of financing related to creation and redemption orders, and file any material agreements as exhibits to the registration statement.

Custody of Trust Assets

- Identify and describe the material terms of custody agreements;
- Describe storage policies for private keys, including the use of cold, warm, or hot storage; whether the issuer's crypto assets are commingled with assets of other customers; and how transfers between storage types are conducted;
- Identify who will have access to the private key information and any party is responsible for verifying the existence of the crypto assets; and
- Disclose whether the custodian carries insurance for losses of crypto assets held for the issuer, and to what extent that coverage is specific to the issuer versus shared among the custodian's customers.

Fees and Expenses

- Explain how the sponsor fee is calculated, which fees and expenses are assumed by the sponsor, and which are capped or otherwise not covered;
- Describe fee arrangements with third parties, including transaction fees and other related expenses; and
- Disclose any arrangements under which the sponsor fee or other fees may be paid using the trust's underlying crypto asset holdings.

Description of Securities

Issuers must disclose the circumstances under which shareholders have voting rights. The SEC noted relevant disclosures addressing:

- Any limitations or restrictions on voting rights;
- Whether shareholder rights can be modified without a majority vote of the outstanding shares; and
- How shareholders will be informed of material amendments to, or termination of, the trust agreement.

Plan of Distribution

Issuers must disclose how securities will be offered and sold in the registered offering. The SEC noted relevant disclosures that addressed:

- The mechanics of the creation and redemption process among the trust, authorized participants, custodians,

and any other third-party service providers; whether creation and redemption orders will be settled onchain or offchain; and any associated settlement risks;
- The potential impact on the arbitrage mechanism from price volatility, trading volume, and price differentials across crypto asset trading platforms, including scenarios where platforms are closed or otherwise unavailable; and
- Whether and under what circumstances the sponsor may suspend creation and redemption orders, and how shareholders will be notified of such suspensions.

Management

Issuers must disclose the identity and experience of individuals responsible for managing the issuer, including:

- Executive officers, directors, and key employees who have made or are expected to make a significant contribution to the issuer's business;
- Individuals who, while not formally designated as executive officers or directors, perform policymaking functions typically associated with those roles; and
- If the sponsor performs policymaking functions, disclosure regarding the sponsor's directors, executive officers, or employees responsible for those functions is required.

The SEC clarified that while executive compensation disclosures are not required, it has observed disclosure of fees paid to the sponsor or third party for performing management functions (see *Fees and Expenses* above).

Conflicts of Interest

Issuers must disclose material information about transactions with related persons, as well as the policies and procedures for reviewing, approving, or ratifying such transactions. The SEC has observed disclosures addressing:

- Whether the sponsor or any insiders hold the underlying crypto assets or maintain crypto asset-related exposure that could create conflicts of interest;
- Whether the trust has a code of conduct or other pre-clearance requirements for transactions in the underlying crypto assets applicable to its employees, the sponsor, or affiliated parties; and
- The sponsor's prior experience sponsoring other exchange-traded products, including its specific expertise in crypto asset markets.

Financial Statements

For issuers offering multiple series of shares or other interests, the SEC has taken the position that the trust should be treated as the sole registrant, rather than each series. However, the SEC advises that issuers should still provide separate financial statements and materials for each series, in addition to the trust-level financial statements. Recommended materials include:

- Separate financial statements and audit reports for each series;
- Separate interim financial statements; and
- Separate materiality assessments for each series under Regulation S-K and Regulation S-X, including compliance with Rules 3-05, 3-09, and 4-08 of Regulation S-X.

Filing Fee Tables

For issuers registering an indeterminate number of exchange-traded vehicle securities under Securities Act Rules 456(d) and 457(u), the SEC emphasized the importance of correctly tagging filings in EDGAR. Specifically, the "Type of payment" should be coded as "2" and the "Security type" as "Exchange-Traded Vehicle Securities." Failure to include these tags may prevent the issuer from filing a prospectus under Rule 424(i) or paying the registration fee within 90 days following the end of any fiscal year in which securities were publicly offered.

Conclusion

Although uncertainty remains regarding the SEC's broader approach to regulating crypto assets, the Statement offers valuable guidance for sponsors of non-securities based crypto asset ETPs. By aligning their disclosures with the SEC's observations, sponsors can position themselves for a more efficient and successful registration process.

At Thompson Hine, we are well-positioned to assist sponsors of crypto asset ETPs and other crypto-focused strategies and products in navigating the formation and registration processes. Our team brings extensive experience in public markets and cutting-edge capabilities in the crypto asset space. If you have questions about the SEC's guidance or related matters, please do not hesitate to contact one of the authors of this article or another member of Thompson Hine's Investment Management team.

FOR MORE INFORMATION

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