2025 Safe Harbor Framework Overview

I.   Introduction

In response to some of the questions posed in Commissioner Peirce's [There Must Be Some Way Out of Here](#) and [The Journey Begins](#) posts, we propose an interim relief framework that (1) solves 'go to market' for token projects while more permanent guidance is developed and (2) is aligned with current legislative efforts.

We are part of a working group that includes representatives from 20+ crypto foundations, labs teams, venture capital firms, staking providers, advocacy organizations, and law firms, who share the position that incentivizing decentralization in policy will be critical to building a flourishing and sustainable blockchain industry. The majority of this group will be in attendance at the 2025 Decentralized Tech Summit.

We are submitting the attached 2025 Safe Harbor Framework as a discussion draft to begin the conversation, and hopefully receive your feedback, so that we can present you with a final work product endorsed by a wide range of industry stakeholders. To that end, the attached updated safe harbor includes a number of changes in the text of our recommendations as well as some alternatives and additional information in footnotes. We hope this is useful for the purposes of your team evaluating a number of different options and viewpoints.

We know this subject matter is novel and nebulous at times, and different organizations within the industry have vastly different recommendations. So we hope to help by herding the cats and

ultimately providing you with a clear set of recommendations that has achieved some amount of consensus.

Our updated version of the safe harbor, which we refer to as the "**2025 Safe Harbor Framework**", is based on Commissioner Peirce's Safe Harbor 2.0, provides prospective and retroactive relief for token projects, and consists of: (1) Rule 195 - Prospective Relief and (2) Rule 195T Retroactive and Transitional Relief. We designed the 2025 Safe Harbor Framework to:

- Provide different paths for a broad range of different types of crypto projects to opt-in to a regulatory framework and signal good faith intent to comply;
- Provide the SEC with disclosure that enables it to harness data, learn about the market, and inform rulemaking;
- Be used as a sandbox to iterate on rulemaking, develop a comprehensive taxonomy for the industry, and create positive feedback loops that provide guidance for how the SEC should refine and/or expand the relief offered and harmonize other guidance;
- Be easily administered with paths for both retroactive and proactive relief sharing a unified test with discrete requirements to exit the reporting framework;
- Be synergistic with exemptive offering frameworks that can be used for pre-token offerings, token distributions that are not eligible for the safe harbor; and,
- Scopes Network Maturity such that, once achieved, the Initial Development Group lacks the control to alter the fundamental characteristics of the Network and Token.

Terms appearing below in **bold** have the definitions set forth in the 2025 Safe Harbor Framework, which we have attached as a separate document. We have updated some defined terms and concepts to align those in FIT21.[1]

II.   Safe Harbor Relief Types

1.   Rule 195 - Prospective Relief

This safe harbor provides prospective relief for new distributions of **Tokens** on a transaction-by-transaction basis. Eligibility is measured at the time of the proposed distribution, contingent on the project meeting the requirements for a **Qualifying Distribution**.

These requirements include having an eligible **Token** with a use case on a **Functional Network** and not being subject to disqualification from using the safe harbor under paragraph (k), which deals with the composition of the **Initial Development Group**.

Our eligibility criteria ensure the safe harbor is being applied to **Tokens**[2] that need network effects and to be in the hands of end users, instead of disguised fundraising and/or exclusively speculative use cases, by (i) limiting eligible **Tokens** to those which have a use case within a

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[1] Available at https://www.congress.gov/118/bills/hr4763/BILLS-118hr4763rfs.pdf

[2] NTD: The working group discussed whether both 'network' and 'app' tokens should be eligible for the safe harbor and decided to provide a wide funnel to 'opt-in' to the safe harbor while having appropriate thresholds in the exit test to reflect risk. We imagine the exit test will be subject to further refinement and guidance once the safe harbor is live.

Network (which is intended to encompass a broader swath of concepts in line with FIT21's 'Blockchain System'); and (ii) ensuring there is live functionality for the **Token** within the **Network** at the time of the distribution. We think further limits on eligibility are warranted to ensure the **Tokens** are intrinsically linked to, and are designed to primarily derive their value from, the programmatic functioning of a Functional Network; rendering company-backed Tokens ineligible.

We propose that a **Qualifying Distribution** include all manner of offering **Tokens** or making[3] **Tokens** available for public sale to users in a broad distribution, provided that proceeds from the sale be in line with Reg A caps [$25M-$75M].[4]

Key compliance obligations for projects that have opted into, but not yet exited from, the safe harbor include:

- Maintaining a US nexus, but which can contractually fulfill token issuance obligations through tax efficient vehicles;[5]
- Providing required disclosures prior to commencement of sales;
- Complying with disclosed offering terms and conditions;
- Implementing certain lockups and restrictions on sales consistent with the conditions of the safe harbor; and
- Continuing to report and comply until Network Maturity is met.[6]

Projects that have met the Network Maturity test and exit the safe harbor must continue to meet certain ongoing compliance conditions.

2. Rule 195T - Retroactive & Transitional Relief

This safe harbor provides retroactive and transitional relief for historical distributions of **Tokens.** For historical distributions, there are two potential paths:

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[3] NTD: Intended to include all CEX listings here but more thinking should be done whether US or Non-US (this belongs in the context of the offshore vs 'regulated' exchange discussion)

[4] NTD: We would like the Commission to consider lower requirements where no monetary compensation is exchanged (such as End User Distributions and for certain Eligible Airdrops that are defined as "the distribution" of Eligible Digital Assets to a broad set of recipients without monetary consideration based on uniform eligibility criteria to bootstrap user adoption, incentivize experimentation, or retroactively reward certain behaviors." [Designed such that airdrops can have multiple prongs in a campaign and vesting/other conditions. You just can't prime the market to work for free by announcing eligibility criteria before it closes; a well designed program can reward participants in line with lift (linearly related to activity)].

[5] NTD: We think there should be greater leniency around the issuer for the types of airdrops described in FN 4 above. In other words, where we draw the line for US nexus should be the inverse of the meme that has applied historically – US users should have access to the broadest swath of opportunities to participate while being a little more cautious of how non-US teams access US markets/users when they are required to expend capital or there is capital at risk.

[6] NTD: The working group had significant discussion around the scope of the safe harbor as a vehicle for regulatory relief – there are mixed views on whether the safe harbor should offer prospective relief for projects that never intend to reach Network Maturity but there is the potential that a project could enter to signal good faith and opt-in to the disclosure regime while seeking exit through Expansive Relief…for purposes of this discussion draft, we have limited the availability of the prospective relief to tokens seeking Network Maturity while making transitional relief available for a broader sub-set of projects.

- If the **Initial Development Group** intends to meet **Qualifying Distribution** requirements on a go-forward basis, they can use the transitional safe harbor to elect into **Transitional Relief** until the [third][7] anniversary of the effective date of the safe harbor framework, upon which time they must meet the **Qualifying Distribution** requirements; or

- If the **Initial Development Group** does not intend for **Tokens** to be eligible for use within a **Functional Network**, the **Initial Development Group** can elect for "Post-Hoc Relief" and meet the below requirements while seeking **Expansive Relief** from the SEC to conduct further distributions. Specifically, the **Initial Development Group** must:
  - Opt-in within 6 months of publication;
  - Be available to a broad set of issuers, including non-US teams;
  - Submit a report describing the distribution for which relief is sought (transitional or post-hoc) and whether it would otherwise constitute a **Qualifying Distribution**[8];
  - Keep current with **Reporting Framework** until **Exit Reporting Criteria** met[9];
  - Ensure go-forward distributions are done in accordance with Rule 195 unless exit criteria are met or able to transition out via **Expansive Relief**.
    - Non-US teams can opt in until **Exit Reporting Criteria** met or reciprocity conditions are otherwise developed.

3. Exit Test and Implications

Once a project meets the **Network Maturity** test, the team can file an exit report and exit the safe harbor. That exit report consists of updated disclosures as at the time of filing, certifies compliance with the conditions for exit, gives an attestation on why each of the elements of Network Maturity were met and affirms the SEC's jurisdiction for fraud.

Once the project has exited the safe harbor successfully, the non-securities designation applies broadly to the **Tokens,** provided that the project continues to meet certain conditions on an ongoing basis.

Both Rule 195 and Rule 195T contemplate the possibility of failing to meet Network Maturity at exit, in which case the **Initial Development Group** agrees to comply with any conditions applicable to their exit, including without limitation, registration under 12(g) or otherwise transitioning into a form of relief that is developed at a later date.

III.   Material Changed from Safe Harbor 2.0

1. Definitions

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[7] <u>NTD</u>: There was discussion that the three year window was too permissive and this should be shortened but for purposes of this discussion draft, we have left the time periods the same as in Safe Harbor 2.0 but have bracketed for further discussion.

[8] <u>NTD</u>: In which case, the transition to Rule 195 could take place sooner rather than later, but a 12 month period might be required to ensure adherence to the requirements in Rule 195(c).

[9] <u>NTD</u>: One comment we received noted the need for hardship relief if the project stops operating (wind down) which we feel is appropriate with safeguards for preventing the team from exiting off of token proceeds and shutting down after distributing proceeds.

We used existing defined terms where possible while expanding and updating their respective definitions in line with concepts from FIT21, given these definitions have received significant vetting and represent an updated starting point that reflects developments in the market.[10]

2. Eligibility for Safe Harbor

As discussed above, we reconfigured the safe harbor such that Rule 195T fulfills the original purpose of Safe Harbor 2.0 and Rule 195 has slightly higher functionality and eligibility requirements. We tried to set an obtainable bar for the functionality requirement at the outset, as we are optimizing for a wide funnel and to encourage as broad an array of projects to opt in to this disclosure framework as possible.

We kept the mechanics of Safe Harbor 2.0 in place with respect to when teams file notices of reliance, but we have introduced holding requirements that reduce the risk of teams selling **Tokens** to those who otherwise have little structural protection. Outside of transition relief, we intend for projects to continue to comply with the disclosure framework until an exit report pathway is available.[11]

Compliance with the safe harbor is assessed on a transaction-by-transaction basis while encouraging good disclosure in distributing functional **Tokens** to users. It is designed to be used by early stage and later stage teams while not putting new projects at a disadvantage or providing incentives to continue offshoring. It is instead designed to be competitive with foreign regulatory frameworks until: (i) reciprocity regimes and the limits of US nexus over an offering or listing are developed and (ii) firmer standards for resales of **Tokens** by insiders or those issued in private placements or compensatory issuances are implemented.

Given the existence of liquid markets and the need to construct listing standards in parallel, opting into the framework could also serve as a de minimis threshold for the permissibility of an initial listing on a US exchange going forward, and be the basis for any framework to permit trading to continue in the asset (while in compliance with the safe harbor) until more standards are established.

3. Transition Relief

We believe that the original time-bound Safe Harbor 2.0 should be repositioned as a transition relief framework for past distributions. In designing transition relief, there is a delicate balance between being sufficiently permissive to allow a wide range of projects to opt in for purposes of encouraging reporting, facilitating enforcement, and signaling good faith – all while ensuring the safe harbor does not simply become a tool for regulatory arbitrage and scams.

While we debated whether to have broad eligibility going forward, we think a reciprocity regime would have the best anti-fraud protection with enforcement in a home jurisdiction for non-US teams seeking US users. We feel this is the most appropriate avenue to expand the safe harbor for offshore teams where they are required to comply with the laws in their home jurisdiction, and even a fraud opt-in has jurisdictional hurdles to enforce. The Commission will need to issue additional guidance for the measures teams must take to not 'offer/issue' into the US as well.

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[10] Revised Definitions pulled from FIT21. See Definitions for Blockchain, Blockchain Protocol, Blockchain System.

[11] NTD: This is an open question given the number of routes this could take - all we know for certain is that this needs to be interim relief while a more sustainable path is formed, which is likely years in the making.

4. Commitments

Generally speaking, we have increased the commitments required to be made by the **Initial Development Group**, conditioned on meeting the specific requirements for the **Qualifying Distribution**, as well as the following commitments:

- **Acceptance of SEC Fraud Jurisdiction:**[12] We wanted to create a stronger hook here, given the expansion of relief where the relief only applies to the distributions explicitly covered and fraud jurisdiction continues after the exit report.

- **Disclosure Requirements**: Commitment to continuous public availability of information, including source code, transaction history, and governance mechanisms largely in line with the Safe Harbor 2.0 reporting requirements but with expanded coverage and stronger commitments to update for material changes.

- **Caps on Sales and Lock-Ups:** We impose caps on proceeds from the safe harbor, limit the safe harbor for particular disclosed public distribution transaction(s) (to limit use of low float, high FDV models but allow airdrops and other transactions to be included in the plan of distribution for a Qualifying Distribution to receive cover) and also impose lockups and other restrictions on **Tokens** held by **Related Parties** and those issued pursuant to capital raising activities such that they are subject to at least a 12-month transfer restriction following the **Qualifying Distribution**.

5. Exit Test

The exit test uses an updated **Network Maturity** definition as the means for projects to exit the safe harbor reporting (absent additional **Expansive Relief**), which would be used to establish the outer limit of the securities laws application to a broader portion of supply (which could extend to full supply if holding conditions are met). While we believe the particular test is a matter in need of further discussion, we do believe that:

- **Network Maturity** should occur when the **Network** is no longer 'controlled' by the **Initial Development Group**.
- The factors for when this occurs should be readily ascertainable (i.e., a bright line) but can include a catch-all or the ability to expand the test to soften the rigidity of the bright line test.
- The test should align with the test for CFTC jurisdiction in FIT21.

We have included an example for discussion of such a test for **Network Maturity** which has four components modeled off of the test for a decentralized system in FIT21 as well as, where noted, criteria from a recent Decentralization Research Center (DRC) paper evaluating elements of

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[12] NTD: We are pivoting from requirements around marketing to accepting jurisdiction for fraud as the restraints are too subjective and restrictive given the need to describe ongoing efforts. See additional color below.

control[13], all of which must be met for Network Maturity:[14] The end goal is to ensure that, once **Network Maturity** has been achieved, the fundamental characteristics of the **Network** and **Token** cannot be arbitrarily changed by the **Initial Development Group**.

- The first prong (i) evaluates ownership concentration[15] to measure the **Token** holdings by the **Initial Development Group** and **Related Persons** to ensure no more than [20]% of the **Total Token Supply** is beneficially owned by such persons.[16]

- The second prong (ii) confirms through a design test whether the **Network** is otherwise autonomous or able to be fundamentally changed by the **Initial Development Team**, and, if applicable for the model, measures the ownership concentration for the means of consensus along similar lines (we kept this concept from Safe Harbor 2.0).[17]

- The third prong (iii) evaluates whether any part of the **Network** integral to the **Token**'s functionality or monetary value accrual remains manual or off-chain (i.e., functionality is not dependent on the ongoing efforts of the **Initial Development Team**), whether the team controls the **Token** supply model or if the **Token** supply model operates autonomously and, as of exiting the safe harbor, any ongoing **End User Distributions** are programmatic.[18][19]

- The fourth prong (iv) evaluates the degree of retained control the **Initial Development Group** has built into the **Network** through hard and soft permissioning.[20] The proposed scope seeks to ensure that the **Network** does not entrench control in the **Initial Development Group** and its **Related Persons** by preventing or prohibiting unaffiliated persons from using, earning, or transmitting the **Tokens**, deploying software that uses,

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[13] <u>NTD</u>: These tests are articulated by DRC in the Designing Policy for a Flourishing Blockchain Industry paper (the "DRC Paper"). We feel that the tests articulated in the DRC paper should also strongly be considered within this framework available at https://thedrcenter.org/wp-content/uploads/2025/02/DRC-Designing-Policy-Final.pdf (detailing eight criteria for decentralization blockchain networks, centered around control; the criteria are: open, functional, autonomous, permissionless, non-custodial, distributed, credibly neutral, and economically independent).

[14] <u>NTD</u>: See definition of Network Maturity in Rule 195 proposal.

[15] <u>NTD</u>: The intent is to mirror the requirements in FIT21 but to narrow the group captured. There were discussions as to what degree investors are or should be included but to possibly limit to those with with equity governance rights. In the discussion draft, we treat investors separately and to apply lockups to/safeguards on holding periods but not aggregated in this test for ownership.

[16] <u>NTD</u>: Proposing an additional carve out for Ecosystem Development Arrangements such that foundations and tokens carved out for community governed public goods are not aggregated with the initial development team while controlling for gaming & conflicts of interest. Ecosystem Development Arrangements may need additional safe guards to limit gaming of the carveout, including potential disclosures (reporting as Large Holders to the extent allocated a material portion of the Total Digital Asset Supply) and must disclose Related Party transactions; (ii) any distributions by the Ecosystem Development Arrangement will be subject to the reporting (and compliance) requirements of the Safe Harbor unless the Issuer Group meets the Autonomy Test.

[17] <u>NTD</u>: The language testing this element mirrors the "Autonomous Network" criteria in the DRC Paper.

[18] <u>NTD</u>: This builds off of a more permissive v1 functionality gate at the outset of the relief and for the safe harbor and at exit vis a vis the FIT21 test.

[19] <u>NTD</u>: This mirrors language included to test eligibility of a Qualifying Distribution - that you expect this to be the case as of Network Maturity.

[20] <u>NTD</u>: This element uses the second component of the FIT21 control test, but we believe the first part of the FIT21 control test is too onerous at this stage.

modifies, distributes, or integrates with the **Network**, participating in governance or consensus/providing infrastructure services for the **Network**.

6. **Network Maturity Exit Criteria**

In Safe Harbor 2.0, projects could exit the safe harbor if they were either 'functional' or 'decentralized'; however, to meet the 'decentralized' criteria many projects would also be required to meet the functionality criteria AND a set of requirements that created poor incentives to these teams (such as committing to not continue to work on the network or not having access to MNPI, while no similar imposition was made for 'functional' networks). We feel it is more appropriate to start eligibility at functionality for a safe harbor while offering other avenues for teams to pre-sell tokens through investment contracts and to exit safe harbor participants through a uniform test that contains bright line requirements for ease of evaluation and audit.

Further, in line with a functionality test that measures maturity as an exit, we have created a tailored exit test for **Network Maturity** that measures the level of control retained over the **Network** and **Tokens** to ensure there are minimal trust dependencies and therefore minimal information asymmetry, such that the risk of permitting additional ongoing efforts is greatly reduced. These are required to be disclosed, but the test does not preclude that all efforts with respect to a protocol or network would cease. Many of these factors are intentionally designed to match those in FIT21 while also accommodating early stage projects.

7. **Removal of Marketing Analysis**

We removed the marketing analysis because the safe harbor is intended to also be a sandbox, available on an interim basis and free of securities law limitations around the Tokens. The Commission's jurisdiction for fraud remains, and lifting the requirement on the initial effort could be reversed as the Commission observes the results of the safe harbor and iterates. Removal of this analysis reduces complexity and helps projects better understand whether they are complying with the safe harbor criteria for exit reporting.

8. **Topics for Further Discussion.**

We have included a number of bracketed provisions and footnotes for further discussion in the 2025 Safe Harbor Framework, including expanding the role of exchanges in disseminating disclosure, the role of ecosystem development arrangements and other vehicles to house treasuries, how to better organize, update and disseminate disclosure, among many other topics. We believe a safe harbor framework is crucial for facilitating the near-term transition of the existing market. In addition, any rulemaking efforts aimed at **Tokens** that accrue value within decentralized models should draw from this effort and include a safe harbor mechanism to ensure an orderly, compliant evolution of such models to **Network Maturity**.

We look forward to additional discussion.

IV. **Paths for Ineligible Distributions**

For distributions that are ineligible for the Rule 195 safe harbor, you must meet applicable conditions of sale. Examples of these include:

1. **Token Pre-Sales**

We chose to make the distinction between pre-sales of investment contracts under Rule 195, as these can fall under a crowdfunding exemptive issuance construct going forward with minimal modifications.

Once the **Tokens** are live, the SEC can choose to allow such projects, where eligible, to transition under Rule 195T whereby the Commission would choose to provide securities relief for the **Tokens** that are the subject of the offering while maintaining adequate safeguards around other distributions and insider **Tokens**.

2. **Other Ineligible Tokens**

We believe that the path for collectibles and other **Tokens** without onchain functions can be developed in parallel through no-action relief and other interpretive guidance (such as the recent memecoin guidance). We provide a path from Rule 195T to opting into **Expansive Relief** so that projects can signal their good faith and willingness to comply in the interim.

3. **Distributions Outside Qualifying Distributions.**

Digital Assets with use cases or distribution methodologies beyond those contemplated by the 2025 Safe Harbor Framework can be dealt with via **Expansive Relief**.

Within the 2025 Safe Harbor Framework, we include conditions pursuant to which insider sales and private placements may occur within the safe harbor and eventually flow to **Trading Platforms** while limiting direct unrestricted sales into liquid secondary markets.

4. **Additional Categories of Issuers.**

The Commission will need to examine what additional procedural hurdles should be required for public company issuers/foreign issuers - for now, the relief in Rule 195 is largely limited to those categories of issuers who are eligible to use Jobs Act style crowdfunding (with some loosening of the US nexus requirements). Rule 195T is broadly available to issuers for post-hoc relief but limits future **Qualifying Distributions** absent **Expansive Relief**.