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March 5, 2025

Via mail and electronic transmission

David Sacks  
Special Advisor for Artificial Intelligence and Crypto  
Chair, Presidential Working Group on  
Digital Asset Markets  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Acting Chairman Mark Uyeda  
Commissioner Hester Peirce  
U.S. Securities and Exchange  
Commission  
100 F Street, NE  
Washington, DC 20549

Re: SEC Crypto 2.0: Formation of New Crypto Task Force

Dear Mr. Sacks, Acting Chairman Uyeda and Commissioner Peirce:

tZERO Group, Inc. (“tZERO Group”) and its broker-dealer subsidiaries (collectively, “tZERO”) appreciate this opportunity to provide input to the U.S. Securities and Exchange Commission’s (the “SEC” or the “Commission”) new crypto task force (the “Task Force”).<sup>1</sup> We are grateful to President Trump for establishing the Presidential Working Group on Digital Asset Markets (the “PWG”), and enthusiastically support the President’s objectives for the PWG and stand ready to assist as it executes the workplan outlined by the President’s Executive Order of January 23, 2025.<sup>2</sup> To that end, and in furtherance of the President’s Executive Order of February 18, 2025,<sup>3</sup> we are also addressing this letter to Mr. Sacks, as Special Advisor for Artificial Intelligence and Crypto and Chair of the PWG.

We are grateful for the Commission’s recognition that a comprehensive and clear regulatory framework and approach for crypto assets is necessary for the United States to be the global leader in the digital evolution, particularly in the financial markets. tZERO, a long-standing advocate in this space, has consistently been a voice for responsible change<sup>4</sup> and has created compliant end-to-end solutions for issuance and secondary

<sup>1</sup> See Press Release, SEC, SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force (Jan. 21, 2025), <https://www.sec.gov/newsroom/press-releases/2025-30>; Hester M. Peirce, Comm’r, U.S. Sec. & Exch. Comm’n, The Journey Begins (Feb. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-journey-begins-020425>.

<sup>2</sup> Exec. Order No. 14,178, 90 Fed. Reg. 8,647 (Jan. 23, 2025).

<sup>3</sup> Exec. Order No. 14,215, 90 Fed. Reg. 10,447, (Feb. 18, 2025).

<sup>4</sup> See tZERO Group, Inc., Comment Letter on Custody of Digital Asset Securities by Special Purpose Broker-Dealers (Apr. 7, 2021), <https://www.sec.gov/comments/s7-25-20/s72520-8648975-231028.pdf> (*hereinafter*, tZERO Comment Letter); tZERO Group, Inc., *An Open Letter to the Digital Asset Community Regulation and the Secular Shift to Digital Assets* (June 15, 2021), [https://www.linkedin.com/posts/tzero\\_tzero-open-letter-recent-policy-developments-activity-6810544773842137088-5CFp/](https://www.linkedin.com/posts/tzero_tzero-open-letter-recent-policy-developments-activity-6810544773842137088-5CFp/); tZERO Group, Inc., Ten-Point Digital Assets Regulatory Reform Proposal (July 26, 2023), <https://www.linkedin.com/pulse/ten-point-digital-assets-regulatory-reform-proposal-tzero/>.

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trading of digital assets through its investments in innovative technologies and regulated infrastructure, including tZERO Securities, LLC (“tZERO Securities”), an SEC registered broker-dealer that operates an alternative trading system (“ATS”) that is permitted to quote digital asset securities pursuant to the three-step process set forth in the SEC’s no-action letter to FINRA,<sup>5</sup> and tZERO Digital Asset Securities, LLC (“tZERO Digital”), one of only two SEC registered special purpose broker-dealers (“SPBD”), which is permitted to custody digital asset securities for tZERO Securities’ customers pursuant to the Commission’s Statement on Custody of Digital Asset Securities by Special Purpose Broker-Dealers (the “SPBD Statement”) issued on December 23, 2020.<sup>6</sup> We welcome a refined, pragmatic and focused approach to rulemaking and regulatory guidance, in line with the President’s Executive Orders and the recently refined scope of administrative agency authority.<sup>7</sup>

As an initial step, we offer the following input to the Task Force, with the ultimate goal of establishing a clear framework for broker-dealers that wish to engage in a full service digital asset business in a responsible manner. Investors will benefit if broker-dealers are able to offer their customers a uniform way to trade and custody a variety of assets, including digital asset securities, other securities, and non-security digital assets under one umbrella, and to fund and settle such trades with non-security digital assets. We hope to be a trusted partner of the Task Force on this journey and will provide more in-depth feedback on the questions with which the Task Force is examining in the near term.<sup>8</sup>

1. Security Status. The fundamental question of how to define and classify digital assets remains central and likely requires a holistic approach. We are grateful to the Task Force for working on this issue because we believe continuing uncertainty around the application of the definition of a security under federal law creates ambiguity that discourages innovation – including among broker-dealers who wish to engage in a digital asset securities business. Existing SEC guidance on this topic does not empower registered principals with the necessary clarity to make informed decisions that will not be subject to hindsight scrutiny.<sup>9</sup> While we appreciate that the Commission is bound by existing case law (*i.e.*, the Supreme Court’s decision in *SEC v. W.J. Howey Co.*, the

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<sup>5</sup> Financial Industry Regulatory Authority, SEC No-Action Letter, (Sept. 25, 2020), <https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf> (*hereinafter*, FINRA No-Action Letter).

<sup>6</sup> Custody of Digital Asset Securities by Special Purpose Broker-Dealers, Exchange Act Release No. 90,788, 86 Fed. Reg. 11,627 (Apr. 27, 2021), *available at* <https://www.federalregister.gov/documents/2021/02/26/2020-28847/custody-of-digital-asset-securities-by-special-purpose-broker-dealers>.

<sup>7</sup> *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

<sup>8</sup> 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>.

<sup>9</sup> SEC, *Framework for “Investment Contract” Analysis of Digital Assets* (last updated July 5, 2024), <https://www.sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets>.

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“Howey test”<sup>10</sup>, we agree with calls to withdraw existing guidance interpreting the Howey test. New guidance should be established to provide a clear interpretation of the Howey test as it applies to digital assets, enabling industry professionals to apply it effectively. While the SEC has extensive interpretive and exemptive authority, true reform in that space may require new legislation. We have advocated for a function-oriented approach to the classification and regulation of digital assets across a range of use cases within and beyond financial services.<sup>11</sup> We also support other proposals to bring clarity to markets, like Commissioner Peirce’s token safe harbor,<sup>12</sup> which would be particularly relevant to a subset of market participants that are looking to build a new distributed network, and requests for the publication of the Commission’s Howey analysis for bitcoin and ether. Ultimately, the solution should aim to preserve the technical utility features of certain digital assets, protect investors and innovators, promote disclosure and empower broker-dealers and other regulated entities to make independent and certain determinations of the appropriate classification of an asset.

2. Historical Securities Laws Violations. Due to the uncertainty around the application of the definition of the term “security” to digital assets, many legacy digital assets were not issued in a registered offering or an offering exempt from registration. If it is determined that a subset of these assets are securities, there must also be a clear path for the issuers of such assets to cure historical securities law violations, which may be conditioned upon the absence of fraudulent conduct, coupled with guidance that broker-dealers can support digital assets that have taken the appropriate steps to cure historical securities law violations. To conclude that unclear legal guidance makes a digital asset an after-the-fact security, issued in non-compliance with securities laws, without offering a clear path to resolve the violation going forward, is unreasonable (especially with the benefit of hindsight). This creates significant challenges for broker-dealers trying to bring compliant products and infrastructure to the marketplace. There should be a path for broker-dealers and other regulated financial institutions to bring these assets into a regulated environment once the status of digital assets as securities or non-securities is clear. Remedial actions for an issuer should reflect the severity of the securities law violation. This ranges from issuers that made a good faith effort at compliance but fell short, with no evidence of any investor harm, fraud or intentional misconduct, to those that intentionally defrauded investors and may not deserve to re-enter capital markets. Calibrating the process in this manner would prevent a cure process from becoming a get out of jail free card, while also addressing some of the harm that years of regulatory uncertainty produced.

3. Special Purpose Broker-Dealers. We agree with the Task Force’s recognition that the SPBD Statement is in need of updates so it can achieve its purpose to offer digital assets to investors with the benefits of securities law protections and the

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<sup>10</sup> *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

<sup>11</sup> See Ten-Point Digital Assets Regulatory Reform Proposal, *supra* note 4.

<sup>12</sup> Hester M. Peirce, Comm’r, U.S. Sec. & Exch. Comm’n, Token Safe Harbor Proposal 2.0 (Apr. 13, 2021), <https://www.sec.gov/news/public-statement/peirce-statement-token-safe-harbor-proposal-2.0>.

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utility of blockchain technology, smart contract automation and accelerated settlement. We believe that the SPBD construct needs to be enhanced rather than withdrawn. The latter course of action will perpetuate the deficit of compliant digital infrastructure in the securities space, while unfairly penalizing market participants (beyond our firm) who invested years and millions of dollars in direct and opportunity costs in pursuing an SPBD license and building out the ecosystem the SEC established in 2020. Below we offer suggested updates to the SPBD Statement for the Task Force's consideration. Some of these items harken back to our initial feedback on the proposal four years ago<sup>13</sup>, as well as items raised during our multi-year approval process.

- a. *Extend the 5 Year Effectiveness of the SPBD Statement.* Limiting the SPBD Statement's effectiveness to five years was "designed to provide market participants with an opportunity to develop practices and processes that will enhance their ability to demonstrate possession or control over digital asset securities" and to "provide the Commission with experience in overseeing broker-dealer custody of digital asset securities to inform further action in this area." tZERO Digital was recently approved by the Commission and FINRA to operate as an SPBD on September 12, 2024 after a multi-year resource-consuming application process. As we refine practices and processes developed during the application process, the effectiveness of the SPBD Statement should be extended or incorporated into SEC regulations.
- b. *Allow SPBDs to Custody Non-Security Crypto Assets.* The Task Force was correct to identify this as an initial update to the SPBD Statement because this update is of critical importance for SPBDs to run a successful digital asset business that actually enjoys in the principal benefits of blockchain technology. At a minimum, SPBDs should be able to receive and custody stablecoins and non-security crypto assets for account funding and settlement purposes. The SPBD Statement currently requires SPBDs to use legacy technology for the funding and settlement phase of a digital asset security lifecycle, eliminating real-time settlement, which is the critical benchmark and benefit of the digital asset securities ecosystem. SPBDs are left to operate between the stark incongruousness of traditional fiat currency and banking systems for the cash leg of transactions (where no organized inter-firm clearing mechanisms exist) and digital asset securities and blockchain technology networks for the securities leg of transactions. Once this inconsistency is eliminated and secure custody of non-security crypto assets is established, there is no reason why SPBDs should be prohibited from engaging in a non-security crypto business alongside their digital asset securities business. With the necessary infrastructure in place to safeguard customers' non-security digital assets used for funding and settlement, the same tools and protocols can be used to safeguard customers' non-security digital assets held for other purposes, provided they are subject to appropriate asset-level due diligence procedures. Additionally, allowing SPBDs

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<sup>13</sup> See tZERO Comment Letter, *supra* note 4.

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to offer their customers stand-alone trading, custody, clearance and settlement services for non-security crypto assets is of critical importance for their commercial viability. The pace of adoption of tokenization of securities is slow and many digital assets are treated as non-security digital assets by the marketplace (setting aside the broader question of whether that is the right conclusion). If SPBDs are not able to access this asset class as well, they will simply be an R&D exercise for a few market participants, rather than a viable business option for the brokerage industry.

- c. *Allow SPBD Customers to Benefit from Smart Contract Functionality.* Enabling investors and issuers to benefit from smart contract technology automation is an essential justification for the transition from legacy to a digital infrastructure. If this functionality is stifled, investors and issuers will be unable to distinguish between legacy technology and blockchain-based ecosystems. This would limit critical product innovation, marketplace competition, and differentiation from legacy assets. Specifically, SPBDs should be able to leverage smart contract technology to automate corporate actions, perform on-chain KYC, verify accredited investors, and provide other compliance services. Additionally, they should track investor attributes for reporting purposes and incorporate AI-driven insights to deliver tangible product improvements. To enable this functionality for investors and issuers, an SPBD would need to be able to offer its customers individual custodial wallets, rather than an omnibus custodial wallet. While we recognize the benefits of an omnibus custodial wallet structure as we explore the benefits of decentralization, including the empowerment of self-regulating smart contract technology, and reexamine the role of intermediaries in such context, updates to the SPBD Statement should clarify that an SPBD may offer its customers individual custodial wallets, with automated smart contract functionality, with the appropriate supervision by registered SPBD personnel. Additionally, such updates should confirm that digital asset securities held in individual custodial wallets will be given the same treatment as traditional securities registered in “street name” on a shareholder register or held by an SPBD in an omnibus wallet, under Section 12(g) of the Securities Exchange Act of 1934 (the “Exchange Act”).
- d. *Allow Digital Asset ATSS to Operate without Inefficient Constraints.* Digital asset securities custodied by an SPBD should be able to trade on an ATS without the unnecessary and inefficient steps set forth in the Joint Statement on Broker-Dealer Custody of Digital Asset Securities<sup>14</sup> (the “Joint Staff Statement”) (four-step process) or the 2020 SEC no-action letter (three-step process)<sup>15</sup>, which

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<sup>14</sup> Div. of Trading & Mkts., U.S. Sec. & Exch. Comm’n, & Off. of Gen. Counsel, Fin. Indus. Regul. Auth., Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities (July 8, 2019), <https://www.sec.gov/newsroom/speeches-statements/joint-staff-statement-broker-dealer-custody-digital-asset-securities>.

<sup>15</sup> FINRA No-Action Letter, *supra* note 5.

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predate SPBD architecture for broker-dealer custody of digital asset securities. This would also allow an SPBD to support a range of introducing broker-dealers and their customers, enhance its commercial footprint and provide broader infrastructure to a range of market participants. Furthermore, non-security digital assets should be permitted to be quoted on an ATS, which can be done in the same manner as digital asset securities. To facilitate the quotation of non-security digital assets in a responsible and transparent manner, we support policy proposals that call for a streamlined Exchange Act 15c2-11 certification process for crypto assets listed on ATSS, providing mandatory disclosures about such assets' design, purpose, functionality, and risks.<sup>16</sup>

- e. *Allow SPBDs to Engage in Non-Custodial Activities.* The SPBD Statement was originally limited to the manner in which an SPBD could take custody of its customers' digital asset securities. It did not speak to whether SPBDs could engage in other non-custodial activities, such as those described in the Joint Staff Statement.<sup>17</sup> Updates to the SPBD Statement should confirm that SPBDs may undertake non-custodial activities, like over-the-counter secondary market transactions. Current interpretation and application of the SPBD Statement restricts SPBDs to solely custodial vehicles for digital asset securities. As set forth above and demonstrated by their lack of traction to date, this restriction substantially constrains the commercial viability of SPBDs as mono-line businesses, unless they are part of a larger enterprise, which tends to favor more capitalized and larger market participants.
- f. *Crypto-Lending and Staking.* If crypto-lending and staking services are determined to be subject to securities laws, it should be confirmed that SPBDs are permitted to offer these services to their customers. Since many of these programs have not been structured as securities products, any cleansing process for historical securities law violations would need to cover these products as well.
- g. *Allow SPBDs to Custody Conventional Securities.* There is no need to balkanize the brokerage industry based on technology rails. While we understand that the technology that powers digital assets presents different operational and technical risks than the legacy technology powering conventional securities, we believe that these risks can be contained and managed by the regulated environment established by the SPBD Statement. These two worlds can work together to offer customers one touchpoint for their brokerage services, while ensuring investor protection, and driving innovation.<sup>18</sup>

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<sup>16</sup> Scott Walker & Bill Hinman, *A new (digital) age at the SEC*, a16z crypto editorial (Jan. 22, 2025), <https://a16zcrypto.com/posts/article/sec-digital-age/>.

<sup>17</sup> *Supra* note 14.

<sup>18</sup> We elaborate on this position in our comment letter to the Commission on the SPBD Statement. See tZERO Comment Letter, *supra* note 4.

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4. Transfer Agents. Current regulatory guidance makes it impossible for an issuer of a digital asset security to engage an SEC-registered transfer agent and arrange for its digital asset security to be custodied by an SPBD. SPBDs are not permitted to custody securities where transfer agents maintain official off blockchain securityholder registries. Existing rules pertaining to transfer agents are not compatible with maintaining a master security holder file on the blockchain. This creates an ecosystem where SPBDs, as the record holders in “street name” of digital asset securities they custody, have to deal with multiple issuers of digital asset securities when digital asset securities are deposited or withdrawn from their custody. SPBDs should be able to collaborate with transfer agents experienced with transfers of record ownership, for deposits and withdrawals, and distributions, while smart contract technology is perfected to carry out these functions automatically.


5. Ongoing Regulatory Guidance. The SEC, FINRA and other relevant regulatory bodies should establish streamlined processes for addressing regulatory inquiries in the evolving digital asset and blockchain sectors. This will enable U.S. market participants to better serve and protect their customers while fostering innovation and competitiveness with global counterparts. Prolonged regulatory approval processes, particularly for basic adjustments to existing business models, have already harmed U.S. market participants and will continue to do so unless addressed.

6. International Harmonization. As the SEC leads the way for the U.S. to develop the standard for regulating digital assets and the manner in which broker-dealers interact with digital assets, regulators in foreign jurisdictions should be kept abreast of the SEC’s plans and progress so international law can be harmonized and developed in a manner that is compatible with U.S. regulatory infrastructure. This will enable digital assets to be operable on a cross-border basis, which is one of the original core tenants of a distributed ledger technology.

We welcome the opportunity to discuss these topics with the Task Force and PWG. If you would like to schedule a meeting or have follow up questions, please contact me (akonevsky@tzero.com) or Vanessa Savino, tZERO’s Deputy General Counsel (vsavino@tzero.com).

Respectfully Submitted,

Signed by:



Alan Konevsky

Executive Vice President

Chief Legal and Corporate Affairs Officer

cc: David Goone  
(Chief Executive Officer, tZERO Group, Inc.)