

May 12, 2025

**Submitted via Website**

Commissioner Hester M. Peirce  
Chair of SEC Crypto Task Force  
[crypto@SEC.GOV](mailto:crypto@SEC.GOV)  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, D.C. 20549-1090

**Re: Broker-Dealer Custody and Other Requirements**

Dear Commissioner Peirce and Members of the SEC Crypto Task Force:

On behalf of The Digital Chamber (“**TDC**”), we respectfully provide this submission in response to Commissioner Hester M. Peirce’s February 21, 2025 statement soliciting public input on regulatory issues related to blockchain technology and crypto assets (the “**Statement**”).<sup>1</sup> In particular, this letter addresses Questions 21 and 22 of the Statement, broker-dealer custody and other requirements. TDC will also be providing responses to many of the other questions posed by the Statement in separate submissions.

This response (the “**Response**”) provides TDC’s views on guidance and rule amendments that the U.S. Securities and Exchange Commission (the “**Commission**”) could issue and adopt clarifying how registered broker-dealers may custody crypto asset securities consistent with their regulatory obligations. Although the focus is on custody of crypto asset securities, we note that the framework for custody of crypto asset securities described below would apply to non-security crypto assets as well and, in our view, broker-dealers should be permitted to custody both security and non-security crypto assets, both on a proprietary basis and for third parties.

**Question 21:**

**Should the Commission amend existing rules, propose new rules, or provide guidance to facilitate custody arrangements for crypto assets? If so, what rule amendments or new rules would be appropriate, and to which types of activities should they apply? Should the Commission propose any specific changes to its rules to accommodate the self-custody of crypto assets by entities registered with the Commission? If so, what conditions should apply to self-custody arrangements to mitigate any related risks? Should the requirements for crypto assets that are securities and those that are not differ?**

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<sup>1</sup> Comm’r Hester M. Peirce, *There Must Be Some Way Out of Here*, U.S. Sec. & Exch. Comm’n (Feb. 21, 2025), available [here](#).

Custody of digital assets by a broker-dealer can be, and has been, accomplished in a secure and responsible manner. Rule 15c3-3 under the Securities Exchange Act of 1934 (the “Exchange Act”) is the broker-dealer custody rule.<sup>2</sup> Paragraph (b) of Rule 15c3-3 requires a broker-dealer to obtain and maintain “physical possession or control of fully-paid securities and excess margin securities” that it carries for “the account of customers.”

### **Broker-Dealer Self-Custody of Crypto Asset Securities**

TDC believes that the Commission should take a technology-neutral, principles-based approach to broker-dealer custody of crypto assets that requires the broker-dealer to maintain exclusive control of such assets. As an initial matter, we request that the Commission issue guidance confirming that a broker-dealer can establish possession or control of its customers’ crypto asset securities for purposes of Rule 15c3-3 under the Exchange Act, as described below. Ultimately, a broker-dealer establishes possession or control over a crypto asset by demonstrating exclusive control over such asset through technology-neutral secure key management practices to ensure that the private keys governing the crypto asset in its custody are in the broker-dealer’s exclusive control and cannot be accessed by any third party. The Commission’s Statement on Custody of Digital Asset Securities by Special Purpose Broker-Dealers (the “SPBD Statement”) provides a framework for how this can be done in a workable and evergreen manner.<sup>3</sup> Specifically, the Commission should adopt the following elements of the SPBD Statement to set forth the manner in which broker-dealers can establish possession or control of crypto asset securities:

- Condition 4: The broker-dealer should be required to establish, maintain, and enforce reasonably designed written policies and procedures to conduct and document an assessment of the characteristics of a crypto asset security’s distributed ledger technology and associated network prior to undertaking to maintain custody of the crypto asset security and at reasonable intervals thereafter.
- Condition 5: The broker-dealer should not undertake to maintain custody of a crypto asset security if the firm is aware of any material security or operational problems or weaknesses with the distributed ledger technology and associated network used to access and transfer the crypto asset security, or is aware of other material risks posed to the broker-dealer’s business by the crypto asset security.
- Condition 6: The broker-dealer should be required to establish, maintain, and enforce reasonably designed written policies, procedures, and controls that are consistent with industry best practices to demonstrate the broker-dealer has exclusive control over the crypto asset securities it holds in custody and to protect against the theft, loss, and unauthorized and accidental use of the private keys necessary to access and transfer the crypto asset securities the broker-dealer holds in custody.

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<sup>2</sup> 17 CFR §240.15c3-3.

<sup>3</sup> Statement on Custody of Digital Asset Securities by Special Purpose Broker-Dealers, Release No. 34-90788 (Dec. 23, 2020), available [here](#).

- Condition 7: The broker-dealer should be required to establish, maintain, and enforce reasonably designed written policies, procedures, and arrangements to: (i) specifically identify, in advance, the steps it will take in the wake of certain events that could affect the firm's custody of the crypto assets, including, without limitation, blockchain malfunctions, 51% attacks, hard forks, or airdrops; (ii) allow for the broker-dealer to comply with a court-ordered freeze or seizure; and (iii) allow for the transfer of the crypto assets held by the broker-dealer to another broker-dealer, a trustee, receiver, liquidator, or person performing a similar function, or to another appropriate person, in the event the broker-dealer can no longer continue as a going concern and self-liquidates or is subject to a formal bankruptcy, receivership, liquidation, or similar proceeding.

Consistent with a technology-neutral, principles-based approach to custody of crypto asset securities, we ask that the Commission permit a broker-dealer to reasonably demonstrate that broker-dealer maintains exclusive control over the private keys that govern crypto assets securities through a variety of approaches and technologies, including technologies provided by third-party vendors. By way of example, a broker-dealer should be permitted to be the sole holder of the private keys; to use key sharding; to utilize multiple-signature wallets; and to use multi-party computation to secure crypto asset wallets, among other approaches.

The broker-dealer would bear the burden of reasonably demonstrating that its chosen approaches and technologies (whether developed in-house or provided by a third-party vendor) ensure the broker-dealer's operational independence and exclusive authority over customer crypto asset transfers. This technology-neutral, principles-based framework accommodates the diverse characteristics of crypto asset securities and the various approaches to private key management that provide the broker-dealer with exclusive control, while protecting customer crypto asset securities consistent with the intent of Rule 15c3-3.

TDC also requests that the Commission permit broker-dealers to maintain possession or control of customers' crypto assets securities both in omnibus wallets where the broker-dealer maintains the crypto assets holdings of multiple customers in single wallet, or in individual customer wallets, as the broker-dealer deems appropriate.<sup>4</sup>

While this framework was drafted for crypto asset securities, it can also be applied to non-security crypto assets as well. The legal classification of a crypto asset does not change the manner in which a broker-dealer would undertake secure key and wallet management practices. In our view, the Commission's guidance on custody should permit a broker-dealer to custody non-security digital assets, both on a proprietary basis and for third parties, provided that such custody complies with the framework described above.

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<sup>4</sup> Omnibus wallets would hold only customers' crypto asset securities. The broker-dealer would not commingle proprietary or non-customer crypto asset securities in omnibus wallets maintained for customers.

We also request that the Commission amend Rule 15c3-3 under the Exchange Act to allow a broker-dealer to establish possession or control in accordance with the terms set out above.

### **Broker-Dealer Control of Crypto Asset Securities**

A broker-dealer may establish control of a customer's securities by demonstrating that the broker-dealer maintains such securities at one or more control locations designated in paragraph (c) of Rule 15c3-3. We request that the Commission, as an initial matter, issue guidance confirming that a broker-dealer may establish control of crypto assets securities held at bank under paragraph (c)(5) of Rule 15c3-3. Paragraph (c)(5) provides that securities are under the control of a broker-dealer if those securities:

Are in the custody or control of a bank as defined in section 3(a)(6) of the [Exchange] Act, the delivery of which securities to the broker or dealer does not require the payment of money or value and the bank having acknowledged in writing that the securities in its custody or control are not subject to any right, charge, security interest, lien or claim of any kind in favor of a bank or any person claiming through the bank.<sup>5</sup>

Section 3(a)(6) of the Exchange Act defines a bank as follows:

(A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act, (B) a member bank of the Federal Reserve System, (C) any other banking institution or savings association, as defined in section 2(4) of the Home Owners' Loan Act, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. 92a), and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.<sup>6</sup>

A broker-dealer should be permitted to treat crypto asset securities as under its control if such crypto asset securities are in the custody or control of an entity identified in Section 3(a)(6) of the Exchange Act (a "**Section 3(a)(6) Bank**") and such entity is (1) subject to the supervision of either (i) a federal regulatory authority or (ii) a state banking regulatory authority, and (2) the preceding regulatory authority has approved the Section 3(a)(6) Bank to custody crypto asset securities. For the avoidance of doubt, a state-chartered entity would not be considered a Section 3(a)(6) Bank for purposes of serving as a control location for crypto asset securities of a broker-dealer's customers if the state regulatory authority charged with supervising such entity is not a state banking authority.

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<sup>5</sup> 17 CFR §240.15c3-3(c)(5).

<sup>6</sup> 15 U.S.C. §78c(a)(6).

We further request that the Commission amend paragraph (c)(5) to clarify that securities in the custody or control of Section 3(a)(6) Bank may include crypto asset securities.<sup>7</sup> We suggest that the Commission add language to effect of the following as the last sentence of the paragraph: “Securities in the custody or control of a bank as defined in section 3(a)(6) of the Act may include crypto assets securities.”

A broker-dealer dealer using a Section 3(a)(6) Bank as a control location for its customers’ crypto asset securities would need ensure that it maintains a supervisory system, consistent with FINRA Rule 3110, that addresses technology-governance related risks, cybersecurity, business continuity, and protection of customer information under Regulation S-P,<sup>8</sup> among other things.<sup>9</sup> A broker-dealer should also evaluate the efficacy of a Section 3(a)(6) Bank’s approach to custody of crypto asset securities, potentially by applying some or all of the conditions set above applicable to establishing possession of crypto asset securities, as well as others that may be relevant.

### **The Securities Investor Protection Act of 1970**

The Securities Investor Protection Act of 1970 (“SIPA”)<sup>10</sup> helps protect the custodial function of a broker-dealer. Insolvent broker-dealers that hold customer funds and securities are liquidated in accordance with the provisions of SIPA, which makes customers of an insolvent broker-dealer senior creditors in the insolvency proceeding. Among other things, SIPA requires distribution of “customer property” and satisfaction of the “net equity claims” of customers. “Customer property” means, in relevant part, “cash and securities . . . at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer.”<sup>11</sup> “Net equity” means “the dollar amount of the account or accounts of customers” and, includes, among other items, all securities positions held at the insolvent broker-dealer, with some limited exceptions.<sup>12</sup>

Central to each of the preceding concepts is determining which customer assets that the insolvent broker-dealer holds are securities within the meaning of SIPA. We request that the Commission work with the the Securities Investor Protection Corporation (“SIPC”), which administers SIPA, to confirm that any crypto asset security that is of a type identified under the

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<sup>7</sup> Crypto asset securities are a sub-category of uncertificated securities. The Commission staff has suggested from time to time that paragraph (c)(5) permits a broker-dealer to use a bank as a control location only for certificated securities, although neither the plain language of that paragraph nor any written guidance limits the scope of paragraph (c)(5) in this manner. TDC therefore requests that the Commission amend paragraph (c)(5) to make clear that a broker-dealer may use a Section 3(a)(6) Bank as a control location for uncertificated securities generally.

<sup>8</sup> Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Personal Information, 17 CFR §248.1-§248.30.

<sup>9</sup> See FINRA Regulatory Notice 21-29, Vendor Management and Outsourcing (Aug. 13, 2021), available [here](#); FINRA Report on Selected Cybersecurity Practices (Dec. 2018), available [here](#); FINRA Report on Cybersecurity Practices (Feb. 2015), available [here](#); FINRA Notice to Members 05-48, Members’ Responsibilities When Outsourcing Activities to Third-Party Service Providers (July 22, 2005), available [here](#).

<sup>10</sup> 15 U.S.C. §78aaa-lll.

<sup>11</sup> 15 U.S.C. 78lll(4).

<sup>12</sup> 15 U.S.C. 78lll(11).

definition of “security” in SIPA<sup>13</sup> (e.g., an equity security) would likewise be a security for purposes of SIPA.

### **Guidance to FINRA**

TDC assumes that broker-dealers that wish to custody crypto asset securities will need FINRA’s approval to do so. New broker-dealers presumably would receive that approval as part of the new member application process. Existing broker-dealers may need to obtain FINRA approval to custody crypto asset securities as part of a continuing member application process. Although FINRA will be responsible for administering the approval process, the Commission will determine the criteria that apply in evaluating whether a broker-dealer meets the requirements for custodying crypto asset securities. It is important that the Commission communicate these criteria to FINRA so that FINRA can consistently apply the criteria to broker-dealers that apply to FINRA for approval to custody crypto asset securities. We note that the Commission did not provide guidance to FINRA on how to handle applications that special purpose broker-dealers submitted to FINRA, which slowed FINRA’s review of those applications. To that end, TDC requests that the Commission amend Item 12 of Form BD to include crypto asset securities-related business.

### **Qualified Custodians under the Investment Advisers Act of 1940**

Although TDC addresses investment adviser custody issues in a separate response, we believe it is important to emphasize here, given the control location discussion above, that the Commission should provide guidance that Section 3(a)(6) Banks that may serve as control locations for the crypto asset securities of broker-dealers’ customers may likewise be designated as qualified custodians within the meaning of Rule 206(4)-2 under the Investment Advisers Act of 1940 (the “Advisers Act”).<sup>14</sup> Rule 206(4)-2 prohibits an investment adviser registered under the Advisers Act from maintaining client funds or securities unless, among other things:

A qualified custodian maintains those funds and securities:

- (i) In a separate account for each client under that client's name; or
- (ii) In accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients.<sup>15</sup>

Paragraph (d)(6) of Rule 206(4)-2 defines a “qualified custodian” to include:

A bank as defined in section 202(a)(2) of the Advisers Act (15 U.S.C. 80b-2(a)(2)) or a savings association as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)) that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811).

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<sup>13</sup> 15 U.S.C. 7811(14).

<sup>14</sup> 17 CFR §275.206(4)-2.

<sup>15</sup> 17 CFR §275.206(4)-2(a)(1).

Section 202(a)(2), in turn, defines a bank as:

(A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act, (B) a member bank of the Federal Reserve System, (C) any other banking institution, savings association, as defined in section 2(4) of the Home Owners' Loan Act, or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.<sup>16</sup>

Given that the definition of “bank” under Section 202(a)(2) of the Advisers Act largely tracks the definition of “bank” under Section 3(a)(6) of the Exchange Act, we believe that an entity that qualifies as a Section 3(a)(6) Bank and, thus, may be a control location for purposes of Rule 15c3-3 under the Exchange Act, likewise should be a “qualified custodian” for purposes of Rule 206(4)-2 under the Advisers Act.

Further, we note that Paragraph (d)(6) of Rule 206(4)-2 recognizes a broker-dealer as a qualified custodian. We believe that the Commission should therefore confirm that a broker-dealer that may establish possession of its customers crypto asset securities under Rule 15c3-3 may serve as a qualified custodian for purposes of a registered investment adviser establishing custody of its client's crypto asset securities, provided that the investment adviser complies with the other applicable provisions of Rule 206(4)-2.

**Question 22:**

**Public, permissionless blockchains are being used to tokenize permissioned assets. To the extent the custody rules for broker-dealers, investment advisers, and investment companies are implicated, how should the Commission differentiate between native crypto assets of permissionless blockchains and tokenized permissioned assets? Does either type of crypto asset present greater risks of theft or loss?**

We do not believe that the Commission should differentiate between native crypto assets of permissionless blockchains and tokenized permissioned assets for the purpose of custodying crypto assets. In our view, broker-dealers should apply the framework described above in determining how to custody crypto assets consistent with their regulatory obligations, irrespective of whether the relevant blockchain is permissioned or permissionless. We are not aware that either type of blockchain is innately more secure than the other.

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<sup>16</sup> 15 USC §80b-2(a)(2).

Commissioner Hester M. Peirce

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TDC acknowledges the significant efforts of Matthew Comstock, Willkie Farr & Gallagher LLP, towards the preparation of this letter. TDC also thanks the many members that contributed their time and expertise towards the development of this letter, including but not limited to, Alan Konevsky, Executive Vice President, Chief Legal and Corporate Affairs Officer, tZero Group, Inc., Gavin Meyers, Partner, Pierson Ferdinand LLP, Vanessa Savivo, Deputy General Counsel and Chief of Legal and Compliance Staff, tZero Group, Inc., and Bert Stemmler, Shareholder, Polsinelli PC.

If you have any comments or questions relating to the request or would like to arrange a meeting to discuss further, please do not hesitate to contact the undersigned at (202) 303-1257 or [mbcomstock@willkie.com](mailto:mbcomstock@willkie.com).

Regards,

*Matthew B. Comstock*

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