

MEMORANDUM

To: Crypto Task Force Meeting Log
From: Crypto Task Force Staff
Re: Meeting with Representatives of Phantom Technologies, Inc., BGR Group, and Wilmer Cutler Pickering Hale and Dorr LLP

On July 2, 2025, Crypto Task Force Staff met with representatives from Phantom Technologies, Inc., BGR Group, and Wilmer Cutler Pickering Hale and Dorr LLP.

The topic discussed was approaches to addressing issues related to regulation of crypto assets. Phantom Technologies, Inc., BGR Group, and Wilmer Cutler Pickering Hale and Dorr LLP representatives provided the attached documents, which were discussed during the meeting.

DATE: Wednesday June 18, 2025

RE: Phantom Meeting Request with SEC Crypto Task Force

Attendees:

- Kevin Jacobs, General Counsel, Phantom
- Daniele Harrison, Head of Communications, Phantom
- Matt Hoffmann, Principal, BGR Group

Agenda:

- Introduction and review of Phantom to include a discussion of wallet providers, their role in the ecosystem, and issues facing adoption;
- Review Phantom SEC Comment Letter (submitted); and
- Discuss DeFi provisions in HR 3633, the CLARITY Act to include a discussion around activities that should and should not be carved out.

MEMORANDUM

To: Crypto Task Force Meeting Log
From: Crypto Task Force Staff
Re: Meeting with Representatives of Phantom Technologies, Inc. and Wilmer Cutler Pickering Hale and Dorr LLP

On April 29, 2025, Crypto Task Force Staff met with representatives from Phantom Technologies, Inc. and Wilmer Cutler Pickering Hale and Dorr LLP.

The topic discussed was approaches to addressing issues related to regulation of crypto assets. Phantom Technologies, Inc. and Wilmer Cutler Pickering Hale and Dorr LLP representatives provided the attached documents, which were discussed during the meeting.



VIA SEC.GOV

April 18, 2025

Tyler Asher
Chief Policy Advisor, SEC Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-0213

Dear Tyler:

Phantom Technologies, Inc. (“Phantom”), is writing to request a meeting with the U.S. Securities and Exchange Commission’s (“SEC”) Crypto Task Force to discuss the application of the broker-dealer regulatory framework to self-custody crypto wallets. As discussed in the enclosed submission Phantom is a software developer and supplier that provides an unhosted, non-custodial wallet application and browser extension (the “Phantom Wallet”) that allows users to self-custody crypto assets on their own personal devices. The Phantom Wallet also includes certain functionality that allows users to link to third-party decentralized exchanges to swap crypto assets on a peer-to-peer or person-to-protocol basis.

Set forth below is a proposed agenda, which lists the specific topics that Phantom would like to discuss with members of the SEC Crypto Task Force, and a list of proposed meeting attendees.

A. Proposed Agenda:

1. Overview of self-custody crypto wallets—and, specifically, the functionality of the Phantom Wallet—including the role of third-party services.
2. Overview of the broker-dealer regulatory framework and its application to self-custody crypto wallets, like the Phantom Wallet.
 - a. The SEC’s past efforts to apply the broker-dealer regulatory framework to self-custody crypto wallets.

- b. Relevant broker-dealer precedent from the traditional securities markets, including no-action action relief provided by the SEC staff to technology service providers and bulletin board services.
 - c. Relevant federal court precedent considering the application of the broker-dealer regulatory framework to self-custody crypto wallets.
- 3. Developing a regulatory framework that is appropriately tailored to the unique characteristics of fully decentralized, disintermediated, and technologically driven DeFi markets.

B. Proposed Meeting Attendees:

- **Kevin Jacobs** – General Counsel, Phantom Technologies, Inc.
- **Jasneet Aulakh** – Assistant General Counsel, Phantom Technologies, Inc.
- **Tiffany J. Smith** – Partner, Securities and Financial Services Department; Co-Chair of the Blockchain & Cryptocurrency Working Group, WilmerHale

* * *

We look forward to discussing these important issues with you. If you have any questions, please contact me at kjacobs@phantom.app

Sincerely,

Kevin Jacobs
General Counsel
Phantom Technologies, Inc.



VIA EMAIL

April 17, 2025

Commissioner Hester M. Peirce
Chair of SEC Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-0213

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

Phantom Technologies, Inc. (“Phantom”), appreciates the opportunity to provide input and recommendations regarding the application of the broker-dealer regulatory framework to self-custody crypto wallets. Phantom is a software developer and supplier that provides an unhosted, non-custodial wallet application and browser extension (“Phantom Wallet”) that allows users to self-custody crypto assets on their own personal devices. Phantom respectfully submits this letter to provide its input and views on whether certain functionality allowing Phantom Wallet users to link to third-party decentralized exchanges (“DEXs”) to swap crypto assets on a peer-to-peer or person-to-protocol basis triggers broker-dealer registration requirements under Section 15 of the Securities Exchange Act of 1934 (“Exchange Act”).

As discussed in more detail in this letter, Phantom does not currently support or otherwise provide services for crypto assets that are offered and sold as securities, and neither Phantom nor the Phantom Wallet performs broker activities requiring registration with the U.S. Securities and Exchange Commission (“SEC” or “Commission”) under the Exchange Act. The position that neither Phantom nor Phantom Wallet perform broker activities is consistent with no-action relief granted by the SEC staff (“Staff”) to technology service providers and would align with applicable federal court precedent. Moreover, the Exchange Act should not be applied to decentralized financial markets (“DeFi”) because its requirements are premised on a model that contemplates a centralized intermediary that is responsible for handling customer transactions while DeFi is premised on fully disintermediated transactions that are carried out on a peer-to-peer or person-to-protocol basis in a fully transparent manner that mitigates the risks customary in the traditional centralized intermediary model. For this reason, a more nuanced approach is warranted for DeFi markets.

Phantom would welcome any opportunities for further engagement with the SEC Crypto Task Force related to the issues discussed in this letter.

I. Overview of the Regulatory Framework for Broker-Dealers.

Section 15(a) of the Exchange Act provides that any person acting as a “broker” must register with the SEC or otherwise operate pursuant to an applicable exemption from registration.¹ Section 3(a)(4)(A) of the Exchange Act defines “broker” to mean “any person engaged in the business of effecting transactions in securities for the account of others.”² Whether a person acts as a broker depends on a two-part test: (1) whether the person is “engaged in the business,” and (2) whether the person “effect[s] transactions in securities.”

The Exchange Act does not define what it means to be “engaged in the business” or to “effect[] transactions in securities,” but the Staff has provided relevant guidance in various no-action letters illustrating that those terms should be construed broadly. More specifically, the Staff has explained in no-action letters that a person is “engaged in the business” when he or she *participates* in key parts of securities transactions with a certain degree of regularity. The following factors may indicate that a person is “engaged in the business”: (1) receipt of transaction-based compensation; (2) holding oneself out as a broker, as executing trades, or as assisting others in settling securities transactions; (3) soliciting securities transactions; and (4) participating in negotiations for the sale of securities.³

In addition, the Staff has explained that a person “effect[s] transactions in securities” by participating in a meaningful way in the purchase or sale of securities at “key points” in the securities distribution chain. These “key points” include, among others, (1) soliciting securities transactions; (2) participating in negotiations for the sale of securities; (3) participating in the order-entry, order-taking, or order-routing process or otherwise facilitating the execution of securities transactions (*e.g.*, taking transaction orders from customers); (4) handling customer funds or securities; and (5) providing investment recommendations.⁴

While the Staff’s no-action guidance is informative, the SEC and federal courts analyzing broker status issues have made clear that determining whether a person is a broker and, therefore, required to register with the SEC under the Exchange Act depends on the totality of the facts and circumstances presented with no single factor being dispositive. In addition, while the Staff’s no-action guidance has never been formally applied to a self-custody crypto wallet, it informs

¹ 15 U.S.C. § 78o(a).

² 15 U.S.C. § 78c(a)(4)(A).

³ See *BondGlobe*, SEC No-Action Letter (Feb. 6, 2001); *MuniAuction, Inc.*, SEC No-Action Letter (Mar. 13, 2000); *Progressive Technology, Inc.*, SEC No-Action Letter, 2000 WL 1508655 (Oct. 11, 2000).

⁴ See, *e.g.*, *BondGlobe*, *supra* note 3; *MuniAuction, Inc.*, *supra* note 3.

how the Staff might analyze whether an entity providing a self-custody crypto wallet falls within the Exchange Act definition of “broker.”

II. The SEC Has Previously Alleged that Firms Offering Self-Custody Crypto Wallets Acted as Unregistered Brokers.

The SEC previously brought enforcement actions against certain crypto firms—namely, Coinbase, Inc. and Coinbase Global, Inc. (together, “Coinbase”) and Consensys Software, Inc. (“Consensys”)—alleging that they acted as unregistered brokers by offering self-custody crypto wallets that provided an interface allowing users to swap crypto assets through the use of third-party services.⁵ In particular, the SEC alleged that Coinbase and Consensys performed the following activities that required broker registration: (1) solicitation of investors to participate in securities transactions; (2) holding oneself out as a place to buy and sell securities; (3) making investment recommendations by highlighting the DEX with the best price or best value for the crypto asset; (4) routing customer orders to DEXs; and (5) otherwise facilitating trading in crypto asset securities (*e.g.*, by opening customer accounts). The SEC also noted that both Coinbase and Consensys received transaction-based compensation for order routing and execution. A federal court plainly rejected this position in the SEC’s action against Coinbase, finding that Coinbase did not “perform[] any key trading functions on behalf of its users in connection with” providing an interface linking or providing users access to DEXs and other third-party services.⁶ The SEC has since dropped its lawsuit against Consensys “in light of” the SEC’s formation of “a crypto task force dedicated to helping the Commission further develop the regulatory framework for crypto assets.”⁷

Consistent with these recent developments and longstanding Staff no-action guidance, neither Phantom nor Phantom Wallet perform any activities requiring registration as a broker. As a threshold matter, Phantom does not support or otherwise provide services for crypto assets that are offered and sold as securities, which is a pre-requisite for satisfying the definition of “broker” under the Exchange Act.⁸ More critically, even if some of the crypto assets that the Phantom Wallet supports were offered and sold as securities, the Phantom Wallet is nonetheless not a broker because its activities do not satisfy the definition of broker provided in Section 3 of the Exchange Act. In particular, the activities of Phantom Wallet are consistent with prior no-

⁵ See *Securities and Exchange Commission v. Coinbase, Inc. and Coinbase Global, Inc.*, No. 1:23-cv-04738, Complaint (S.D.N.Y.); *Securities and Exchange Commission v. Consensys Software Inc.*, No. 1:24-cv-04578, Complaint (E.D.N.Y.).

⁶ *Securities and Exchange Commission v. Coinbase, Inc. and Coinbase Global, Inc.*, No. 1:23-cv-04738-KPF, Opinion and Order at 82 (S.D.N.Y. Mar. 27, 2024).

⁷ See *Securities and Exchange Commission v. Consensys Software Inc.*, No. 1:24-cv-04578, Joint Stipulation to Dismiss, and Releases (E.D.N.Y. Mar. 27, 2025).

⁸ 15 U.S.C. § 78c(a)(4)(A) (providing that a “broker” is any person “engaged in the business of effecting transactions in *securities* for the account of others” (emphasis added)).

action relief provided by the Staff to technology service providers and bulletin board services. Phantom Wallet does not: (1) hold itself out as a broker; (2) engage in targeted solicitation of crypto asset transactions; (3) provide investment advice or make investment recommendations; (4) route customer orders to DEXs; or (5) actively facilitate trading in crypto assets.

Phantom Wallet also operates in a manner that is consistent with recent federal court precedent in the Coinbase case that is directly analogous.⁹ Phantom Wallet is passive software that displays pricing information to users, allowing them to take self-directed action to initiate and execute transactions with third-party DEXs. The Phantom Wallet does not: (1) actively facilitate or exercise control over user transactions; (2) provide investment advice or recommendations; or (3) engage in targeted solicitation of user transactions or otherwise prompt users to initiate individual swap transactions. Instead, users have complete autonomy and are solely responsible for all investment decisions, including whether to transact and the DEX(s) with which to transact.

For these reasons, and additional reasons discussed herein, neither Phantom nor any other provider of a self-custody crypto wallet that operates in a manner similar to Phantom Wallet should be required to register with the SEC as a broker under Section 15 of the Exchange Act.

III. Phantom’s Activities Fall Within the Scope of No-Action Relief Granted by the Staff to Technology Service Providers, and the Mere Fact that Phantom Receives Transaction-Based Compensation Should Not Alone Trigger Broker Status.

The Staff has issued no-action relief to certain technology companies that provided services in connection with the routing of securities orders (collectively, the “Technology Service Provider Letters”).¹⁰ In each instance, the Staff’s determination to grant no-action relief was based on: (1) the scope of the technology service provider’s activities; and (2) the terms of the technology service provider’s compensation.

We discuss both factors in more detail below.

A. The Scope of Phantom’s Activities

With respect to the first factor, technology service providers that were granted no-action relief routed order messages and other order information, but they did not handle customer funds or securities. For example, the Staff granted no-action relief to Evare LLC (“Evare”), which proposed to offer an online communication system linking professional money managers,

⁹ See *Coinbase*, *supra* note 6.

¹⁰ See, e.g., *Neptune Networks Ltd.*, SEC No-Action Letter (Mar. 4, 2020); *See S3 Matching Technologies LP*, SEC No-Action Letter (July 19, 2012); *Swiss American Securities, Inc. and Streetline, Inc.*, SEC No-Action Letter (May 28, 2002); *Broker-to-Broker Networks, Inc.*, SEC No-Action Letter (Dec. 1, 2000); *Evare LLC*, SEC No-Action Letter (Nov. 30, 1998); *Charles Schwab & Co., Inc.*, SEC No-Action Letter (Nov. 27, 1996); *Quick America Corporation*, SEC No-Action Letter (Jan. 29, 1993).

broker-dealers, and custodians in a way that would allow money managers to obtain quotes from, and enter orders with, broker-dealers and to communicate information to custodians for settlement of trades.¹¹ While the proposed system would be used to execute securities transactions, Evare itself did not participate in the transactions, leaving all aspects of the transactions up to the money managers and participating broker-dealers, including the decision of whether to engage in a transaction.¹² In particular, the Staff highlighted that Evare would not, among other things: (1) hold or have access to money managers' funds or securities; (2) recommend or endorse specific securities; (3) become involved (other than by routing messages) with financial services offered by broker-dealers, including among others, the opening, maintenance, administration, or closing of accounts, or the solicitation, processing or facilitation of transactions of any kind relating to accounts; or (4) directly or indirectly make any statement about, or endorsement or recommendation of any kind of, any broker-dealer to any money manager.¹³

The activities performed by Phantom through the Phantom Wallet are consistent with Evare's activities and, therefore, fall within the contours of the no-action relief granted by the Staff to Evare and other firms subject to the Technology Service Provider Letters. Namely, the Phantom Wallet provides an interface through which users can obtain pricing information for swap transactions from third-party DEXs,¹⁴ just like Evare proposed to provide an online desktop application allowing money managers to obtain quotes from and transact with third-party broker-dealers. Further, just like with Evare's proposed system, Phantom does not itself participate in user swap transactions—it merely provides the interface through which users can initiate and execute their own transactions with third-party DEXs. All aspects of those transactions are left to, self-directed by, and at the sole discretion of users. For example, users are solely responsible for deciding whether to initiate a transaction. In addition, once a user initiates a transaction, the Phantom Wallet displays the most price-competitive execution pathway identified by a DEX aggregator by default,¹⁵ but users always have the ability to override the default execution pathway to select an execution pathway identified by another DEX aggregator.¹⁶ Phantom does

¹¹ See *Evare LLC*, *supra* note 10.

¹² *Id.*

¹³ *Id.*

¹⁴ The Phantom Wallet displays pricing information in real time, defaulting to the top quote based on currently available information. However, users can view quotes from alternative liquidity providers with one click.

¹⁵ DEX aggregators collect swap rates and prices currently available on third-party DEXs for the crypto assets that the user has indicated an interest in swapping, identifying the DEX(s) currently providing the best price for the user's transaction. An execution pathway may provide available pricing information on a single DEX or may involve a user splitting up its transaction for execution on multiple DEXs to obtain the best price.

¹⁶ DEX aggregator APIs only return the most price-competitive execution pathway identified. Because Phantom uses multiple DEX aggregators, users have the option to choose from the other execution pathways identified by other DEX aggregators. Note, however, that for some blockchain networks Phantom only leverages one DEX

not make any statement endorsing or recommending the default execution pathway or a particular DEX. In this way, users retain full discretion and control over whether and how to execute their swap transactions, meaning that Phantom has no discretion or intervention with respect to order routing. Moreover, Phantom does not handle or otherwise exert control over users' crypto assets, nor does it facilitate clearance and settlement. Instead, all swap transactions are settled via autonomous smart contracts—peer-to-peer or person-to-protocol—outside of the Phantom platform.

In the Technology Service Provider Letters, key aspects of transactions were carried out by registered broker-dealers while technology service providers supplied an interface or means of communication without themselves executing transactions.¹⁷ For example, Evare's platform proposed to connect money managers to third-party broker-dealers to obtain quotes from, submit orders to, and execute securities transactions with those broker-dealers. Similarly, in no-action relief granted to Swiss American Securities, Inc. ("SASI"), the Staff permitted a web developer to provide a website that would route orders from foreign financial institutions to SASI, a registered broker-dealer. In both cases, a broker-dealer was involved because it was the relevant liquidity source for executing securities transactions. By contrast, the relevant liquidity source for user swap transactions is third-party DEXs rather than broker-dealers. Further, in the Evare and SASI no-action letters, all transaction negotiation and execution took place at the end points of the transaction directly between the money manager or foreign financial institution, as applicable, and the broker-dealer. In the same way, Phantom Wallet users' swap transactions are executed directly between the user and a third-party DEX. While the end points in the Evare and SASI no-action letters were registered entities, that was due to the structure of traditional securities markets, as compared to on-chain crypto markets, which are fully decentralized and disintermediated, with transactions taking place on a peer-to-peer or person-to-protocol basis. As discussed in more detail in Section V, the fully transparent, auditable, and immutable nature of DeFi protocols mitigates the risks customary in the traditional centralized intermediary model that justify the Exchange Act's broker registration requirements. Therefore, we believe that a broker-dealer does not need to participate in user swap transactions for Phantom to operate consistently with the Technology Service Provider Letters and the spirit of the Exchange Act.

This position would be consistent with a separate line of Staff no-action relief granted to bulletin board services, which facilitated peer-to-peer transactions. Specifically, the Staff has allowed firms to operate platforms that provide information about potential investment opportunities to other persons without registering as broker-dealers where any resulting

aggregator provider, which means that only one execution pathway is provided to the user. Still, the Coinbase decision supports the position that the use of a single DEX aggregator may not "rise to the level of routing [orders]." See *Coinbase*, *supra* note 6 at 83.

¹⁷ See *Evare LLC*, *supra* note 10.

transactions were effected directly between two peers outside of the bulletin board's platform.¹⁸ For example, the Staff granted no-action relief to Investex Investment Exchange Incorporated ("Investex"), allowing it to offer a computer database providing information to subscribers about investment opportunities in limited partnerships involved in a variety of enterprises.¹⁹ If a subscriber elected to invest in a limited partnership, all transactions, including negotiations, took place outside of the Investex platform directly between the counterparties to the transaction without requiring Investex to register as a broker-dealer.²⁰ Similarly, the Staff allowed Petroleum Information Corporation ("Petroleum") to operate an online information system providing information about investment opportunities in oil and gas properties constituting securities under the Exchange Act.²¹ Petroleum's system returned investment opportunities based on parameters entered by users, and all negotiations and transactions took place directly between users and their chosen counterparties without requiring Petroleum to register as a broker-dealer.²²

In the same way, the Phantom Wallet allows users to take self-directed action by inputting swap parameters, viewing available pricing from third-party DEX aggregators, and then executing their swap transactions with third-party DEXs wholly outside of the Phantom platform.²³ While the technological means are different, the operational aspects of Phantom Wallet are consistent with Staff no-action guidance to bulletin board services. Accordingly, Phantom Wallet should be permitted to operate as described herein without becoming, and without otherwise requiring the participation of, a registered broker-dealer.

B. The Terms of Phantom's Compensation

With respect to the second factor, the compensation arrangements varied in each of the Technology Service Provider Letters, but the Staff has not permitted a fee paid to an unregistered technology service provider to be based, directly or indirectly, on the size, value, or completion of a securities transaction. This is consistent with the more general Staff no-action guidance on broker status, which has created a presumption in the securities industry that the receipt of transaction-based compensation is, on its own, enough to trigger broker-dealer registration requirements. For example, the Staff has previously stated that the receipt of transaction-based

¹⁸ See *Portland Brewing Co.*, SEC No-Action Letter (Dec. 14, 1999); *Flame-master Corp.*, SEC No-Action Letter (Oct. 29, 1996); *PerfectData Corp.*, SEC No-Action Letter (Aug. 5, 1996); *Real Goods Trading Corp.*, SEC No-Action Letter (June 24, 1996).

¹⁹ *Investex Investment Exchange Inc.*, SEC No-Action Letter (Apr. 9, 1990).

²⁰ *Id.*

²¹ *Petroleum Information Corp.*, SEC No-Action Letter (Nov. 28, 1989).

²² *Id.*

²³ Phantom's Terms of Service reflect that user swap transactions are self-directed and include disclosures, representations, and warranties to that effect. See Terms of Service, Phantom Technologies, Inc. (effective as of March 24, 2025) <https://phantom.com/terms#changes-to-terms-or-services-third-party-services>.

compensation is a “hallmark” of broker activity²⁴ and is “a key factor in determining whether a person or entity is acting as a broker-dealer.”²⁵ The Staff has also denied no-action requests from persons receiving transaction-based compensation because it viewed the receipt of transaction-based compensation as giving the person a “salesman’s stake” in the transaction in a way that provides an incentive to engage in high-pressure sales tactics or to otherwise try to influence transactions in a way that would increase their compensation to the detriment of investors.²⁶ For this reason, the Staff has historically required persons receiving transaction-based compensation to register as broker-dealers to “ensure that [they] operate in a manner that is consistent with customer protection standards governing broker-dealers and their associated persons.”²⁷

We believe that this presumption is outdated and based on markets where participants interacted face-to-face such that a person receiving transaction-based compensation had an opportunity to exert undue influence on investors. On-chain crypto markets, on the other hand, are fully decentralized, disintermediated, and technology-driven, meaning that there is no intermediary with a “salesman’s stake” in user swap transactions, and counterparties to those swap transactions never meet face-to-face. More specifically, a Phantom Wallet user can execute a swap transaction entirely from their own personal device without ever interacting with another person. The user can indicate an interest in swapping a particular asset, review pricing information from DEX aggregators, decide whether to transact, and initiate a swap transaction all through the Phantom Wallet interface. Further, if the user decides to transact, then the swap transaction is settled directly on-chain without the swapped assets ever flowing through a Phantom-hosted wallet or otherwise through the Phantom platform. In this way, Phantom merely provides an interface linking users to liquidity sources and does not *participate* in key parts of user transactions in a way that would trigger broker status.²⁸

Because Phantom merely provides an interface through which users can execute swap transactions, it does not intermediate or otherwise participate in user transactions in a way that would allow it to influence the amount of compensation that it receives in connection with user swap transactions. Further, the fee that Phantom collects for each transaction is collected automatically, at the smart contract level. All swap transactions are initiated and carried out solely by the user. In other words, the concerns that have historically led the SEC to require persons receiving transaction-based compensation to register as broker-dealers are not present here because on-chain crypto markets are fully decentralized, disintermediated, and

²⁴ *BD Advantage, Inc.*, SEC No-Action Letter (Oct. 11, 2000) (denying requested no-action relief).

²⁵ *Birchtree Financial Services, Inc.*, SEC No-Action Letter (Sept. 22, 1998) (denying requested no-action relief).

²⁶ *Herbuck Alder & Co.*, SEC No-Action Letter (June 4, 2002) (denying requested no-action relief). *See also 1st Global, Inc.*, No-Action Letter (May 7, 2001); *Birchtree Financial Services, Inc.*, *supra* note 25.

²⁷ *Herbuck Alder & Co.*, *supra* note 26.

²⁸ *See BondGlobe*, *supra* note 3; *MuniAuction, Inc.*, *supra* note 3; *Progressive Technology, Inc.*, *supra* note 3.

technologically driven. For this reason, the Staff’s historical guidance—suggesting that the receipt of transaction-based compensation requires registration as a broker-dealer—should not apply to Phantom. We respectfully submit that Phantom should not be required to register as a broker-dealer solely because it receives transaction-based compensation in a manner not previously considered by Staff no-action guidance.

IV. Concluding that Phantom Is Not a Broker Would Be Consistent with the Court’s Decision in the SEC’s Lawsuit Brought Against Coinbase.

While the Staff has historically required entities that receive transaction-based compensation to register as broker-dealers with the SEC when considering requests for no-action relief, federal courts have taken a different approach to the issue. These courts have found that broker-dealer registration is not applicable to firms providing self-custody crypto wallets that receive transaction-based compensation but that do not participate in key trading functions. Such key trading functions include providing investment advice or recommendations, soliciting transactions in crypto asset securities, routing customer orders, and otherwise facilitating trading in crypto asset securities.

A. Coinbase

On June 6, 2023, the SEC brought an enforcement action against Coinbase alleging that it acted as an unregistered broker, in part, by offering its wallet application, which routed orders to third-party DEXs and allowed Coinbase to receive a 1% commission on transactions.²⁹ The U.S. District Court for the Southern District of New York granted Coinbase’s motion for judgment on the pleadings, determining that the SEC failed to sufficiently allege that Coinbase acted as a broker with respect to its wallet application.³⁰

Coinbase successfully argued that its wallet application was merely “passive software” that allowed customers to store private keys for their digital assets on their own devices and it maintained no control over users’ assets.³¹ The wallet, Coinbase asserted, functioned solely as a user interface to connect individuals with third-party platforms, much like how physical wallets store and provide access to credit cards or cash.³² Importantly, Coinbase did not directly perform key trading functions nor exercise control over user transactions on third-party DEXs, undermining the SEC’s claim that Coinbase acted as a broker in facilitating those transactions.³³

²⁹ See *Coinbase*, *supra* note 5.

³⁰ See *Coinbase*, *supra* note 6.

³¹ See *Coinbase*, No. 1:23-cv-04738-KPF, Motion for Judgement on the Pleadings (S.D.N.Y.).

³² *Id.*

³³ *Id.*; see also *Coinbase*, *supra* note 5.

Agreeing with Coinbase, the Court noted that the wallet’s function of linking users to third-party DEXs did not equate to providing investment recommendations or facilitating securities transactions. The Court distinguished the wallet application from more active brokerage functions, such as those involving direct control over securities or other user assets. By only offering pricing information and linking users to third-party DEXs, Coinbase did not perform actions that would traditionally be associated with brokerage services. Simply providing a tool for users to discover pricing information did not amount to effectuating a securities transaction.

Furthermore, the Court was not persuaded by the SEC’s argument that Coinbase’s receipt of transaction-based compensation automatically triggered broker status.³⁴ Instead, the Court held that receiving transaction-based compensation does not trigger broker status absent the performance of other key trading functions.³⁵ Importantly, the Court’s holding assumed that the crypto assets being traded were offered and sold as securities.

Therefore, the Court’s decision affirms that—notwithstanding the receipt of transaction-based payments—a firm does not operate as an unregistered broker merely by providing a passive self-custody wallet service that does not actively facilitate transactions.

B. Application to Phantom

Phantom should not be required to register with the SEC as a broker because the Phantom Wallet is directly analogous to Coinbase Wallet, which a federal court found did not trigger broker-dealer registration requirements. The following sections outline the ways in which the Phantom Wallet is analogous to Coinbase Wallet such that Phantom should not be required to register as a broker.

i. *Passive Software*

Phantom develops and supplies passive software, including its unhosted, non-custodial wallet application and browser extension (*i.e.*, the Phantom Wallet), which enables users to self-custody crypto assets on their personal devices. Like *Coinbase*, at no point does Phantom have possession, custody, or control of the crypto assets held in users’ Phantom Wallets.³⁶ Additionally, Phantom does not have access to users’ private keys for any purpose, including recovery purposes. This is a critical distinction from more traditional broker activities.

³⁴ See *Coinbase*, *supra* note 6.

³⁵ *Id.* at 83 (“Merely providing information . . . do[es] not implicit the objectives of investor protection under the Exchange Act and do[es] not constitute effective a securities transaction.” (quoting *Rhee v. SHVMS, LLC*, No. 21-cv-4283 (LJL), 2023 WL 3319532, at *8 (S.D.N.Y. May 8, 2023))).

³⁶ See *Coinbase*, *supra* note 6.

ii. *No Facilitation or Control Over Transactions*

The Phantom Wallet simply provides an interface that displays currently available pricing information to users and allows the users to connect to third-party DEXs to swap crypto assets on a peer-to-peer or person-to-protocol basis. Users' activities are entirely self-directed and at their own discretion without any intervention, influence, or control by Phantom. Phantom also does not participate in key points of user transactions (e.g., execution, settlement) and does not custody user assets. These activities are conducted through third-party functionality beyond Phantom's control and wholly outside of the Phantom platform, illustrating, as noted in *Coinbase*, that Phantom's "participation in the order-routing process is minimal."³⁷

iii. *No Investment Advice or Investment Recommendations*

Phantom does not provide investment advice, make investment recommendations, or otherwise guide users toward specific trading venues or investment decisions.³⁸ Similar to *Coinbase*, users can utilize Phantom Wallet to view pricing information; and as stated in *Coinbase*, providing pricing comparisons does not amount to routing orders or making investment recommendations, which would require broker-dealer registration.³⁹ It follows that Phantom's provision of pricing information should not trigger broker-dealer registration requirements.

iv. *User Autonomy in Investment Decisions*

Users are solely responsible for deciding whether to initiate a transaction after reviewing the pricing information provided through the Phantom Wallet interface. Phantom does not engage in targeted solicitation of user transactions or prompt users to initiate individual swap transactions. Users are also solely responsible for determining the third-party DEX with which they will transact after reviewing the currently available pricing information and, like *Coinbase*, are "the sole decision-maker[s] when it comes to transactions."⁴⁰

v. *Transaction-Based Compensation*

Phantom collects a 0.85% fee on each transaction executed using the Phantom Wallet interface. However, as noted in *Coinbase*, receiving transaction-based compensation, by itself, does not automatically trigger broker status where the firm does not otherwise participate in key

³⁷ *Id.*

³⁸ Phantom does provide a trending tokens list in the Swapper tab and on the Explore page of the Phantom Wallet app, which shows users which tokens are trending based on various metrics (e.g., popularity on Phantom, volume, price, market cap). However, this information is provided to users solely for informational purposes.

³⁹ See *Coinbase*, *supra* note 6.

⁴⁰ *Id.*

trading functions typically associated with brokerage activity.⁴¹ As discussed in more detail above, despite its receipt of transaction-based compensation, Phantom does not have a “salesman’s stake” in any user swap transaction nor does it participate in key trading functions due to the fully decentralized, disintermediated, and technologically driven nature of crypto markets where all transactions are carried out on a peer-to-peer or person-to-protocol basis.⁴²

V. The Broker Registration Provisions of the Exchange Act Should Not Apply to DeFi Technology Such as the Phantom Wallet.

While prior Staff no-action relief and applicable federal court precedent make clear that neither Phantom nor the Phantom Wallet perform broker activities requiring registration with the SEC, as a policy matter, the Exchange Act should not be applied to DeFi technology. The Exchange Act is premised on the presence of a centralized intermediary (*i.e.*, a broker, dealer, or exchange) that is responsible for handling the customer’s transaction, and the registration requirements of the Exchange Act are designed to address risks related to this model. For example, centralized intermediaries possess the material terms of an order and make decisions about order routing, determine who has access to certain markets and the terms of that access, and custody customer assets. As a result, the federal securities laws are designed to address the risks related to this structure, including conflicts of interest, information asymmetry, and the potential financial failure of a centralized intermediary. DeFi, on the other hand, is premised on fully disintermediated transactions that are carried out on a peer-to-peer or person-to-protocol basis in a fully transparent manner. Transactions executed on-chain are transparent, auditable, and immutable. By their nature, on-chain transactions mitigate the risks customary in the traditional centralized intermediary model noted above. For these reasons, the SEC should not apply the Exchange Act to DeFi markets. Instead, the SEC should consider a regulatory framework that is appropriately tailored to the unique characteristics of DeFi and designed to facilitate compliance in markets without centralized intermediaries.

In addition, there is precedent permitting transactions to occur peer-to-peer without the involvement of an intermediary; thus, there is no reason to require a technology company to register as a broker or dealer simply because there is no other registered party involved in a transaction. Congress has found that, in light of technological developments in “data processing and communications techniques,” the SEC should ensure that users have more options to transact “without the participation of a dealer” where it would be unnecessary for the protection of investors.⁴³ Consistent with that congressional intent, the Staff previously granted no-action relief to bulletin board service providers, allowing them to operate platforms that two peers could

⁴¹ *Id.*

⁴² See *Herbuck Alder & Co.*, *supra* note 26.

⁴³ See Senate Report No. 94-75 at 8 (Apr. 14, 1975).

use to find each other and execute transactions outside of the platform without the participation of a registered broker-dealer.⁴⁴ In that context, the Staff did not require bulletin board operators to register as broker-dealers because they did not participate in key points of securities transactions, meaning that they did not have an opportunity to potentially interfere in transactions in a self-interested manner that would harm investors. In the same way, it is not necessary for a registered intermediary to participate in DeFi transactions, which are fully disintermediated and take place directly between the counterparties to the transaction.

VI. Conclusion

Phantom is a developer and supplier of software, including the Phantom Wallet, which allows users to self-custody crypto assets on their own personal devices. The fact that the Phantom Wallet includes functionality allowing users to link to third-party DEXs should not trigger broker registration requirements because the Phantom Wallet merely provides a passive interface that displays currently available pricing information to users. All investment decisions, including the decision to transact and the counterparty with which to transact, are at the user's discretion. Phantom also does not make investment recommendations or handle users' crypto assets, with all transactions taking place directly between users and third-party DEXs on a peer-to-peer or person-to-protocol basis.

In this way, Phantom does not perform any key trading functions. Because Phantom does not perform key trading functions, the fact that it receives transaction-based compensation should not alone trigger broker registration requirements. This position is consistent with prior no-action relief that the Staff has granted to other technology service providers and aligns with the Court's reasoning in deciding the SEC's enforcement action brought against *Coinbase*. Moreover, the Exchange Act should not be applied to DeFi markets because its requirements are premised on a model that contemplates a centralized intermediary that is responsible for handling customer transactions while DeFi is premised on fully disintermediated transactions that are carried out on a peer-to-peer or person-to-protocol basis in a fully transparent manner that mitigates the risks customary in the traditional centralized intermediary model.

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⁴⁴ See *Portland Brewing Co.*; *Flame-master Corp.*; *PerfectData Corp.*; *Real Goods Trading Corp.*, *supra* note 18; *Investex Investment Exchange Inc.*, *supra* note 19; *Petroleum Information Corp.*, *supra* note 21.

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We appreciate the opportunity to provide input on this matter and would welcome further engagement with the Commission on these issues.

Respectfully Submitted,

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