

June 20, 2025

Submitted via Website

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

Re: Special Purpose Broker-Dealers and Financial Responsibility Matters

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**”).¹ In particular, this letter addresses Questions 24 and 26 of the Statement, broker-dealer custody and other requirements, including questions relating to Special Purpose Broker-Dealers (“**SPBDs**” and each an “**SPBD**”), the net capital treatment of non-securities crypto assets and whether broker-dealers can rely on the blockchain for purposes of meeting their recording obligations. 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 (1) how SPBDs and all other registered broker-dealers may custody crypto asset securities and non-security crypto assets consistent with their regulatory obligations, and (2) the scope of activities that SPBDs and all other broker-dealers may engage in with respect to securities and non-security crypto assets. For the avoidance of doubt, TDC’s assumption for purposes of this Response is that the term “crypto asset securities,” as used in the Statement, refers to tokenized securities, which are securities under US securities laws that can be issued or transferred on chain and are natively represented on a blockchain.

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

Question 24:

Should the Commission modify its Special Purpose Broker-Dealer Statement (“SPBD Statement”) or formally withdraw it? If the former, what should those modifications be? For example, should the Commission expand the SPBD Statement to cover broker-dealers that custody crypto asset securities alongside crypto assets that are not securities? If the Commission decides to eliminate the SPBD Statement, should the Commission propose any modifications to the customer protection rule (17 CFR 240.15c3-3) to address crypto assets?

Following the recent issuance of Frequently Asked Questions (“FAQs”) by the Commission’s Division of Trading and Markets (the “**T&M FAQs**”),² the only path for broker-dealers to establish direct “possession or control” over crypto asset securities, without a third-party good control location, is the temporary safe harbor in the Commission’s Statement on Custody of Digital Asset Securities by Special Purpose Broker-Dealers (the “**SPBD Statement**”).³ It is of critical importance for the Commission to establish permanent guidance and amend existing rules to clearly set forth the manner in which broker-dealers may take direct custody of crypto asset securities. As a guiding principle for establishing these rules, TDC believes that all broker-dealers, including SPBDs, should be subject to the same regulatory regime, as well as a clear and manageable approval and vetting process, with respect to custody and transaction activities, irrespective of whether those activities involve crypto asset securities, traditionally represented securities,⁴ or non-security crypto assets. Consistent with the preceding, and as discussed in our letter dated May 12, 2025 responding to questions 21 and 22 of the Statement (the “**TDC Custody Letter**”),⁵ the Commission should take a technology-neutral, principles-based approach to broker-dealer custody of crypto assets securities that requires the broker-dealer to maintain exclusive control of such assets.

A. Custody

a. Securities

The terms of the Commission’s five-year SPBD pilot program launched in 2020 limits approved SPBD’s custodial services to crypto asset securities. It is TDC’s understanding that only two broker-dealers were approved as SPBDs under the pilot program. Approved SPBDs are prohibited from custodying traditionally represented securities under the terms of the SPBD Statement and through additional restrictions imposed by FINRA during the SPBD approval process.⁶ Conversely, broker-dealers that were not approved by FINRA as SPBDs under the

² Division of Trading and Markets: Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology, FAQ2, available [here](#).

³ 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>.

⁴ The term “traditionally represented” means either certificated or uncertificated book-entry securities.

⁵ <https://www.sec.gov/files/response-letter-digital-chamber-051225.pdf>.

⁶ Statement on Custody of Digital Asset Securities by Special Purpose Broker-Dealers, Release No. 34-90788 (Dec. 23, 2020), available [here](#).

pilot program are limited to custodying traditionally represented securities and prohibited from custodying crypto asset securities by direct possession or control under the terms of the SPBD Statement.

As an initial matter, we request that the Commission issue guidance that permits approved SPBDs to custody traditionally represented securities in compliance with the requirements of Rule 15c3-3 under the Securities Exchange Act of 1934 (the “**Exchange Act**”).⁷ In the T&M FAQs, the staff of the Commission’s Division of Trading and Markets issued guidance permitting broker-dealers to establish control of—*i.e.*, custody of—crypto asset securities via paragraph (c) of Rule 15c3-3. All broker-dealers may therefore custody both traditionally represented securities and crypto asset securities under Rule 15c3-3. The Commission should issue guidance clarifying that SPBDs may likewise custody traditionally represented securities in accordance with the possession or control requirement of Rule 15c3-3 under the Exchange Act, just as all other broker-dealers may.⁸

Similarly, all broker-dealers should be able to establish direct possession or control of crypto asset securities in the same manner and subject to the same requirements as recommended in the TDC Custody Letter. In the TDC Custody Letter, we took the position that the Commission should incorporate the following elements of the SPBD Statement into the existing Rule 15c3-3 framework to set forth the manner in which all 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.
- 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

⁷ 17 CFR §240.15c3-3.

⁸ Rule 15c3-3(b)(1).

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 a broker-dealer maintains exclusive control over the private keys that govern crypto asset 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 a single wallet or in individual customer wallets, as the broker-dealer deems appropriate so long as customers' crypto asset securities are segregated from proprietary and non-customer crypto assets consistent with the requirements of Rule 15c3-3.

TDC further requests that the Commission amend paragraphs (b) and/or (c) of Rule 15c3-3 under the Exchange Act, as necessary, to permit all broker-dealers, whether approved SPBDs or not, to establish direct possession or control over crypto asset securities consistent with the framework described above.

Approved SPBDs that wish to establish control over traditionally represented securities would need to file a continuing membership application with FINRA for approval to do so. All other broker-dealers would have to do the same with respect to establishing direct possession or control over crypto asset securities and/or to engage in crypto asset business generally consistent with current FINRA guidance.

b. Non-Security Crypto Assets

TDC requests that the Commission issue guidance confirming that all broker-dealers, including approved SPBDs, may custody non-securities crypto assets.

FAQ 1 of the T&M FAQs states that paragraph (b) of Rule 15c3-3 under the Exchange Act does not apply to non-security crypto assets. FAQ 1 can be reasonably read to permit all broker-dealers to custody non-security crypto assets, but we request that the SEC confirm this reading because the SPBD Statement prohibits approved SPBDs from custodial non-security crypto assets.⁹

B. Securities Transactions

TDC requests that the Commission issue guidance confirming that all broker-dealers may facilitate trading in securities, whether crypto asset securities or traditionally represented securities. FAQs 2 and 3 of the T&M FAQs clarify that all broker-dealers may custody crypto asset securities at a control location designated in paragraph (c) of Rule 15c3-3 under the Exchange Act. It is reasonable to infer from those FAQs that all broker-dealers are therefore permitted to facilitate trading in crypto asset securities, subject to FINRA approval. Approved SPBDs should likewise be permitted to facilitate trading in traditionally represented securities, subject to FINRA approval.

It will be critically important for the Commission to work with FINRA to provide whatever guidance is necessary to accommodate new and continuing membership applications from broker-dealers (whether an approved SPBD or otherwise) seeking permission to custody and facilitate trading in traditionally represented securities, crypto asset securities, and/or non-security crypto assets. We note, however, that if an approved SPBD or any other broker-dealer is permitted under its FINRA membership agreement to facilitate trading in a particular category of security, *e.g.*, equity securities traded on an over-the-counter basis, that broker-dealer should also be able to facilitate trading in such securities irrespective of they are in traditionally represented or blockchain represented form.

C. Alternative Trading Systems

TDC requests that the Commission clarify that an Alternative Trading System (“ATS”) operated by a non-SPBD broker-dealer is not required to comply with terms of the “Three-Step Process” in facilitating trading of crypto asset securities.¹⁰ The Three-Step Process Letter permits an ATS operated by a non-SPBD broker-dealer to engage in specified, very limited settlement activity. After the ATS matches a crypto asset securities trade, it is permitted to notify the buyer and seller and their respective custodians of the matched trade; the custodians settle the trade per instructions that the buyers and sellers communicated to the custodians pre-trade. The ATS may not otherwise engage in any settlement activity. This limitation on settlement functions is intended to ensure that “the broker-dealer operator does not guarantee or otherwise have responsibility for settling trades and does not at any time exercise any level of

⁹ SPBD Statement at 1-2.

¹⁰ The Three-Step Process is set out in *ATS Role in the Settlement of Digital Asset Security Trades*, No-Action Letter from the Division of Trading and Markets to FINRA (Sept. 25, 2020), available [here](#) (the “**Three-Step Process Letter**”).

control over the digital asset securities being sold or the cash being used to make the purchase.”¹¹

The Three-Step Process Letter is no longer necessary given the issuance of the T&M FAQs. The premise of the letter is that a non-SPBD broker-dealer cannot exercise control over crypto asset securities consistent with the requirements of Rule 15c3-3 under the Exchange Act—a premise based on the now-withdrawn Joint Staff Statement issued on July 8, 2019.¹² However, with the withdrawal of Joint Staff Statement in conjunction with the issuance of the T&M FAQs, this premise no longer holds. In particular, FAQ 2 of the T&M FAQs expressly permits a broker-dealer to establish control over crypto asset securities for purposes of Rule 15c3-3.¹³ An ATS operated by a non-SPBD broker-dealer, therefore, should be permitted to engage in clearing and settlement activities with respect to trades in crypto asset securities that match on the ATS.¹⁴

TDC further requests that the Commission clarify that an ATS operated by a broker-dealer, including an approved SPBD, may facilitate settlement of the cash leg of a crypto asset security trade, or a trade involving a traditionally represented security, using non-security crypto assets. Use of non-security crypto assets will lead to faster settlement of securities trades, and the T&M FAQs confirmed that broker-dealers can mitigate potential risks of involving non-securities crypto assets in their operations.

Question 25:

The net capital rule (17 CFR 240.15c3-1) requires a broker-dealer to maintain sufficient liquid assets to meet all liabilities, including obligations to customers, counterparties, and other creditors and to have adequate additional resources to wind down its business in an orderly manner, without the need for a formal proceeding if the firm fails financially.

- a. Under the net capital rule, assets held by a broker-dealer must be readily convertible into cash to count as allowable for meeting minimum net capital requirements (e.g., intangible assets, furniture, fixtures, equipment, and most unsecured receivables are not readily convertible into cash under the rule and, therefore, do not qualify as allowable net capital). How should a given crypto asset be evaluated to assess whether it is readily convertible into cash?**
- b. Under the net capital rule, securities and commodities are treated as readily convertible into cash. However, they are subject to deductions (known as haircuts) to account for the market, credit, liquidity, basis, and other risks inherent in the instrument. The haircuts range from 0 to 100 percent. For example, exchange-traded equity securities have a 15 percent haircut, while securities without a ready market (e.g., securities that are not exchange traded) are subject to haircuts as high as 100 percent. Commodities are**

¹¹ Three-Step Process Letter at 3.

¹² SEC and FINRA, *Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities* (July 8, 2019) (Withdrawn May 15, 2025), available [here](#).

¹³ T&M FAQ 2.

¹⁴ We note that an SPBD already may be involved in the settlement process for trades in crypto asset securities.

subject to a 20 percent haircut. How should crypto assets be evaluated to determine the appropriate haircut to apply?

A. Ready Market - Crypto Asset Securities

TDC believes that all broker-dealers, whether an approved SPBD or otherwise, should determine whether a crypto asset security is readily convertible into cash within the meaning of the net capital rule, Rule 15c3-1 under the Exchange Act,¹⁵ in the same manner as any other security. The staff of the Commission's Division of Trading and Markets has issued guidance under paragraph (c)(2)(iv) of Rule 15c3-1 for purposes of determining whether a security is readily convertible into cash, as well as a series of "ready market" no-action letters. Such guidance should apply equally to traditional and crypto asset securities.

B. Haircuts on Crypto Asset Securities

TDC believes that broker-dealers should apply haircuts on crypto asset securities in the same manner as to any other security. Haircuts should be applied in compliance with paragraph (c)(2)(vi) of Rule 15c3-1, as well as in line with guidance, including no-action letters, issued by the staff of the Commission's Division of Trading and Markets. Such haircuts should be applied on a technology-neutral basis and thus applied equivalently to both traditionally represented and crypto asset securities.

In addition, a broker-dealer should apply a 20% haircut on proprietary positions in non-security crypto assets in compliance with FAQ 4 of the T&M FAQs. FAQ 4 permits "a broker-dealer [to] treat[] a proprietary position in bitcoin or ether as being readily marketable for purposes of determining whether the 20% haircut applicable to commodities under Appendix B of Rule 15c3-1 applies." A broker-dealer should be permitted to apply the same haircut to a proprietary position in any non-security crypto asset that is readily marketable, as indicated by Commissioner Peirce when commenting on the T&M FAQs.¹⁶

Question 26:

The recordkeeping rules for broker-dealers (17 CFR 240.17a-3 and 17 CFR 240.17a-4) require the creation and maintenance of accounting and operational records designed to assist a firm in tracking and understanding its assets, liabilities, positions, and obligations to customers (e.g., cash owed to customers and securities held for customers).

- a. What challenges, if any, do the requirements of these recordkeeping rules present with respect to crypto assets that are not an issue for traditional securities? What modifications to the rules could address these challenges?**

¹⁵ 17 CFR §240.15c3-1.

¹⁶ Statement of Commissioner Hester M. Peirce, *An Incremental Step Along the Journey: The Division of Trading Markets' Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technologies* (May 15, 2025), available [here](#).

b. Should crypto assets generally be treated as if they are traditional securities for purposes of these recordkeeping rules?

If on-chain records with respect to crypto asset securities are a type of record that a broker-dealer is required to make and maintain pursuant to Rule 17a-3 under the Exchange Act, and to retain for the specified period pursuant to Rule 17a-4 under the Exchange Act, a broker-dealer should be permitted to rely on such on-chain records for purposes of meeting its recordkeeping and record retention obligations. FAQ 10 of the T&M FAQs permits a transfer agent to utilize distributed ledger technology as its office Master Securityholder File, as that term is defined pursuant to Rule 17Ad-9(b) under the Exchange Act, without maintaining an off-chain duplicate or “digital twin.” Consistent with that position, a broker-dealer likewise should be permitted to utilize distributed ledger technology for recordkeeping and retention purposes at the firm’s discretion.

Broker-dealer use of on-chain records should reduce operational risk. If a broker-dealer were required to convert on-chain records into off-chain records, such conversion would introduce complexity and, therefore risk (*e.g.*, software bugs, incomplete data conversions and other potential issues). Additionally, on-chain records are continuously replicated across multiple nodes, effectively eliminating the need for redundant off-chain duplication—this further reduces operational complexity and lowers costs for broker-dealers which, in turn, can lead to lower costs for their customers. Moreover, because the records are on-chain, *i.e.*, on a public blockchain, regulators can access the records directly and at their discretion. A broker-dealer can also provide regulators with the tools to access the on-chain records, as necessary.

For certain types of records, broker-dealers should be permitted to rely on a hybrid recordkeeping approach—permitting use of on-chain records in combination with off-chain records. Such an approach, consistent with the T&M FAQs for transfer agents, would effectively address the detailed recordkeeping requirements under Rule 17a-3 without exposing personally identifiable information to the public and ensure that only those appropriately authorized could connect a customer transaction or account to information on the blockchain, including for trade blotters, ledgers, securities records, and customer account documentation.

In further support of this approach, we note that on-chain records should not be treated differently from other types of electronic records. Paragraph (f) of Rule 17a-4 under the Exchange Act permits a broker-dealer to store its records using an “electronic recordkeeping system,” which is defined as “a system that preserves records in a digital format in a manner that permits records to be viewed and downloaded.”¹⁷ A broker-dealer’s on-chain records can be viewed and downloaded and, therefore, on-chain records should be treated as an electronic recordkeeping system.

Paragraph (f)(2) of Rule 17a-4 imposes specified requirements on an electronic recordkeeping system, including that records be maintained for the applicable duration “in a manner that maintains a complete time-stamped audit trail that includes” specified items, including such as all modification to and deletions of the record or any part of the record; time or

¹⁷ 17 CFR §240.17a-4(f).

creation, modification or deletion; and all information necessary to maintain an audit trail of the record. The record has to be maintained in a non-rewriteable, non-erasable format. The immutable and cryptographically secured nature of distributed ledger technology naturally aligns with, and likely surpasses, the requirements of paragraph (f)(2). The Commission or its staff should issue guidance to confirm that broker-dealers use of on-chain records meets all of the criteria of paragraph (f)(2).

In general, the Commission's approach to considering the use of distributed ledger technology to meet a broker-dealer's recordkeeping requirements should be focused on providing flexibility rather than new prescriptive standards, allowing broker-dealers to exercise discretion to determine the extent to which the firm uses the blockchain to satisfy its recordkeeping requirements. To the extent that the Commission believes a blockchain-specific datapoint should be required to be preserved, the Commission should address such a new requirement through formal notice-and-comment rulemaking. For example, the SEC should clarify explicitly that smart contracts or other inherent blockchain features do not constitute "communications" under current Rule 17a-4(b)(4) and confirm that such classification changes would require a formal rulemaking process.

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TDC acknowledges the significant efforts of Matthew Comstock, Partner, 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, and Vanessa Savino, Deputy General Counsel and Chief of Legal and Compliance Staff, tZERO Group, Inc.

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.

Regards,

Matthew B. Comstock

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cc: Cody Carbone, Chief Executive Officer, The Digital Chamber
Annemarie Tierney, Senior Strategic Adviser, The Digital Chamber