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Submitted electronically through <https://www.sec.gov/about/crypto-task-force/submit-written-input#no-back>

SEC Crypto Task Force  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

Re: **Request for Information on *There Must Be Some Way Out of Here***

Dear Members of the SEC Crypto Task Force:

Fidelity Investments (“Fidelity”)<sup>1</sup> appreciates the opportunity to provide comments in response to certain aspects of Commissioner Hester M. Peirce’s statement “*There Must Be Some Way Out of Here*”<sup>2</sup> and the digital asset questions posed by the Securities and Exchange Commission (“SEC” or “Commission”) Crypto Task Force (“Task Force”).

We commend the Task Force’s proactive efforts to engage with stakeholders and develop a regulatory framework that fosters responsible innovation while protecting market integrity. We agree with and are guided by Chairman Paul Atkins’s statement: “I would like the Commission to allow SEC registrants to custody and trade both securities and non-securities under one roof.”<sup>3</sup>

### **Executive Summary**

We support the Financial Industry Regulatory Authority (“FINRA”) and the SEC staffs’ withdrawal of the Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities<sup>4</sup> and the SEC Division of Trading and Markets Staff Frequently Asked Questions<sup>5</sup> (“FAQs”)

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<sup>1</sup> Fidelity is one of the world’s largest providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing, and many other financial products and services to more than 50 million individuals and institutions, as well as through 13,500 financial intermediary firms. <https://www.fidelity.com/about-fidelity/our-company>. Fidelity submits this letter on behalf of Fidelity companies that are registered broker-dealers or are otherwise impacted by the Request for Information.

<sup>2</sup> See Statement by Commissioner Hester M. Peirce, “There Must Be Some Way Out of Here,” (Feb. 21, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125>.

<sup>3</sup> Statement by SEC Chairman Paul S. Atkins, “Prepared Remarks Before SEC Speaks,” (May 19, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-prepared-remarks-sec-speaks-051925>.

<sup>4</sup> See Withdrawal of Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities, available at <https://www.sec.gov/newsroom/speeches-statements/withdrawal-joint-staff-statement-broker-dealer-custody-digital-asset-securities>.

<sup>5</sup> See SEC Division of Trading and Markets Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology, available at <https://www.sec.gov/rules-regulations/staff-guidance/trading->

relating to crypto asset activities and distributed ledger technology. As the Task Force develops a regulatory framework for broker-dealers to offer, custody, and trade crypto assets, we recommend the following:

1. Identify best practices for broker-dealers that custody digital assets.
2. Ensure that there is no material impact to the broker-dealer's net capital requirements for custodying digital assets for its customers.
3. Clarify that a broker-dealer may offer its customers a fully-paid lending program for digital assets.
4. Establish a safe harbor to support secondary trading of digital assets that are not investment contracts.
5. Coordinate with other regulators to help ensure a comprehensive regulatory framework for digital assets.

### **1. Identify Best Practices for Broker-Dealers that Custody Digital Assets**

We appreciate Chairman Atkins's recent statement clarifying that a broker-dealer may act as a custodian for digital asset non-securities or digital asset securities.<sup>6</sup> This confirms that a broker-dealer may carry both digital asset non-securities and digital asset securities, alongside traditional securities, within a single brokerage account. We also appreciate the FAQs that clarified that Rule 15c3-3(b) of the Securities Exchange Act of 1934 ("Exchange Act") (requirement that a broker or dealer obtains and maintains physical possession or control of securities) applies only to securities carried by a broker-dealer for a customer account or for a proprietary securities account of another broker or dealer.<sup>7</sup> However, we urge the SEC to identify investor protection best practices for broker-dealers that custody digital assets that are not securities. Best practices should include segregating customer digital assets from digital assets held by the firm subject to appropriate "no-lien" language, maintaining custody of digital asset non-securities at a location that qualifies as a good control location under Rule 15c3-3(c) (defines securities under the control of a broker or dealer), or holding the digital assets in a manner that provides an analogous level of protection for such customer assets.

In addition, while the FAQs addressed Rule 15c3-3(b), the FAQs did not address other sub-parts of Rule 15c3-3 or the application of other securities statutes, regulations, and rules to digital asset securities and digital asset non-securities.<sup>8</sup> With respect to Rule 15c3-3, the SEC

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[markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology](https://www.sec.gov/newsroom/frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology).

<sup>6</sup> See Statement by SEC Chairman Paul S. Atkins, "Keynote Address at the Crypto Task Force Roundtable on Tokenization," (May 12, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-crypto-roundtable-tokenization-051225> ("Broker-dealers are not and never were restricted from acting as a custodian for non-security crypto assets or crypto asset securities....").

<sup>7</sup> See "Division of Trading and Markets: Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology," SEC (May 15, 2025), available at <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology> ("Trading and Markets Staff FAQs").

<sup>8</sup> See Trading and Markets Staff FAQs, Question 1.

should clarify that the other provisions of the rule that relate to 15c3-3(b), such as 15c3-3(d) (requirement to reduce securities to possession or control under certain circumstances) and 15c3-3(h) (requirement to buy in short security differences which are not resolved within 45 days), also do not apply to digital asset non-securities. Furthermore, the SEC should review the rules and regulations under its purview and continue to provide clarification regarding the application of these rules (or lack thereof) when a broker-dealer transacts in or custodies digital asset securities or digital asset non-securities.

## 2. **Ensure No Material Impact to a Broker-Dealer’s Net Capital Requirements for Custodying Digital Assets for its Customers**

As the FAQs clarify, if a broker-dealer maintains custody of digital asset non-securities or digital asset securities for its customers and does not hold proprietary positions in the digital assets, there should be no material impact to the broker-dealer’s net capital requirements under Rule 15c3-1 of the Exchange Act.<sup>9</sup> Also, while we appreciate the SEC’s withdrawal of Staff Accounting Bulletin 121,<sup>10</sup> we recommend that the SEC clearly articulate in rulemaking that, similar to any other asset class, (i) a broker-dealer should not be required to include *customer* digital asset non-securities or digital asset securities on the broker-dealer's balance sheet, and (ii) such *customer* balances should not result in a capital charge to the broker-dealer.

With respect to broker-dealer proprietary positions in digital assets, the FAQs noted that the Staff would not object if a broker-dealer treats a proprietary position in bitcoin or ether as being readily marketable for purposes of determining whether the “haircut” applicable to commodities under Appendix B of Rule 15c3-1 applies.<sup>11</sup> With respect to proprietary holdings in other digital assets (securities and non-securities), the SEC should issue guidance that identifies the factors that a broker-dealer would consider to determine if those assets are readily marketable. Such factors could include the market capitalization of the digital asset, the number of exchanges the digital asset trades on, and data regarding the average trading activity and volume of trading of the digital asset on the secondary market. If the SEC were to identify factors by which firms can determine if assets are readily marketable, each firm could create a documented analysis supporting its view of the appropriate “haircut” for each digital asset for which it maintains a proprietary position, without the need for the SEC to address each digital asset through guidance or revisions to Rule 15c3-1. The SEC could review this analysis during routine examinations.

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<sup>9</sup> See Trading and Markets Staff FAQs, Question 4 (specifically noting that “broker-dealers taking proprietary positions ... would need to account for those assets as part of their net capital calculations”).

<sup>10</sup> See Staff Accounting Bulletin No. 122, available at <https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-122>.

<sup>11</sup> See Trading and Markets Staff FAQs, Question 4. Appendix B of Rule 15c3-1 outlines specific adjustments to a broker or dealer’s net worth calculation related to commodity futures or options contracts.

**3. Clarify that a Broker-Dealer May Offer its Customers a Fully-Paid Lending Program for Digital Assets**

The SEC should clarify that a broker-dealer may offer its customers a fully-paid lending program through which it can lend fully-paid customer digital asset non-securities and digital asset securities. A fully-paid lending program for digital asset securities should be structured and treated like a non-digital asset fully-paid securities lending program: offered pursuant to a fully-paid lending agreement and generate a fee, which would then be allocated between the broker-dealer and its customer. With respect to digital asset non-securities, the SEC should confirm that, if a fully-paid lending program for such assets is structured in the same manner as a fully-paid securities lending program, it would be treated the same as a fully-paid lending program for securities. Such a fully-paid lending program for digital asset non-securities would create neither an “investment contract” nor a “note” under the federal securities laws that would require registration under Section 5 of the Securities Act of 1933 absent an exemption.<sup>12</sup>

**4. Establish a Safe Harbor to Support Secondary Trading of Digital Assets That Are Not Investment Contracts**

We echo the numerous commentors who have asked for clarity regarding bright line criteria for determining if a digital asset is a security.<sup>13</sup> Once new assets are created, broker-dealers require assurance that they can legally trade in the secondary market those digital assets that may be subject to the federal securities laws but, that are not themselves investment contracts. This is because the broker-dealer would need to rely on a registration statement or a valid exemption from registration to engage in secondary trading, but in many instances, there is no registration statement because the digital asset issuer did not believe the assets were securities or would be offered and sold in a securities transaction. We therefore urge the SEC to consider a safe harbor to support secondary trading of digital assets.

As the SEC has acknowledged in other contexts, an asset that does not generate yield or convey rights to future income, profits, or assets of a business does not constitute any of the financial instruments identified in the list of securities in Section 2(a)(1) of the Securities Act or Section 3(a)(10) of the Exchange Act, although such asset may be sold as part of an investment contract.<sup>14</sup> In a safe harbor, the SEC should explicitly acknowledge that an asset sold as part of

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<sup>12</sup> *Supra* note 2. (“Participation in traditional securities lending programs, such as fully paid securities lending programs offered by broker-dealers, generally does not represent a new securities transaction or implicate Investment Company Act registration requirements.”).

<sup>13</sup> See SEC Crypto Task Force Written Input, available at <https://www.sec.gov/about/crypto-task-force/crypto-task-force-written-input>; see e.g., Securities Industry and Financial Markets Association comment letter, available at <https://www.sec.gov/files/sifma-sec-crypto-rfi-initial-response-050925.pdf>; PricewaterhouseCoopers LLP comment letter, available at <https://www.sec.gov/files/ctf-written-input-pwc-050225.pdf>; Ripple comment letter, available at <https://www.sec.gov/files/ctf-written-input-ripple-052725.pdf>; Crypto Council for Innovation comment letter, available at <https://www.sec.gov/files/ctf-written-crypto-council-innovation-sec-rfi-response-05292025.pdf>.

<sup>14</sup> See, e.g., Division of Corporation Finance, “Staff Statement on Meme Coins,” SEC (Feb. 27, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins> (“A meme coin does not constitute any of the common financial instruments specifically enumerated in the definition of ‘security’ because,

an investment contract that does not otherwise constitute any of the financial instruments identified in Sections 2(a)(1) or 3(a)(10), is not a security itself, and that the asset is eligible for secondary trading through a broker-dealer subject to robust risk disclosure. Specifically, the safe harbor could be conditioned on the delivery of a risk disclosure document, akin to the Extended Hours Trading Risk Disclosure Statement in FINRA Rule 2265 or the Margin Disclosure Statement in FINRA Rule 2264.15.

**5. Coordinate with Other Regulators to Ensure a Comprehensive Regulatory Framework for Digital Assets**

In addition to the SEC, several other regulators oversee registered broker-dealers, depending upon the nature of the broker-dealer's activities. These regulators include, among others, FINRA and the Federal Reserve Board ("FRB"). These regulators' rules also impact how broker-dealers can offer, custody, and trade digital asset non-securities and digital asset securities. We urge the SEC to coordinate with other regulators to help ensure a comprehensive regulatory framework for digital asset non-securities and digital asset securities in the following areas.

*Account statements*

FINRA Rule 2231 governs the obligations of broker-dealers to deliver account statements to customers. Broker-dealers may include on a customer's account statement digital asset securities that the broker-dealer carries on behalf of the customer. With respect to digital asset non-securities, the SEC should work with FINRA to confirm that a broker-dealer can display on the customer's account statement, in the same manner as securities carried on behalf of the customer, digital asset non-securities that the broker-dealer carries in the customer's brokerage account. This approach is supported by the FAQs, which advised that these assets are not subject to Rule 15c3-3(b) (possession or control). Any investor protection considerations could be addressed by the issuance of the best practices discussed earlier in this letter.

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among other things, it does not generate a yield or convey rights to future income, profits, or assets of a business. In other words, a meme coin is not itself a security. The aforementioned statutory sections also provide that 'investment contracts' are securities. Given that a meme coin is not itself a security, we conduct our analysis of whether a meme coin may be offered and sold as part of an investment contract under the 'investment contract' test set forth in *SEC v. W.J. Howey Co.*<sup>15</sup>; see also Commissioner Hester Peirce, "New Paradigm: Remarks at SEC Speaks," SEC (May 19, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-sec-speaks-051925-new-paradigm-remarks-sec-speaks>.

<sup>15</sup> See FINRA Rule 2265 Extended Hours Trading Disclosure and FINRA Rule 2264 Margin Disclosure Statement.

### *Best Execution*

FINRA Rule 5310 outlines a broker-dealer's duty of best execution. FINRA Rule 5310, however, is limited to securities transactions.<sup>16</sup> The SEC should work with FINRA to clarify that FINRA best execution rules apply only to digital asset securities and do not apply to digital asset non-securities. This regulatory approach would be consistent with how other types of non-security assets like spot commodities (*e.g.*, gold and silver) are currently treated. In addition, for digital asset securities, the SEC should work with FINRA to define how best execution principles would apply given the differences between traditional securities markets and digital asset securities markets.

### *Regulation T*

Regulation T is an FRB rule that regulates credit extended by brokers and dealers to purchase securities. It primarily focuses on initial margin requirements and payment rules for securities transactions. Digital assets may implicate certain provisions of Regulation T. For example, broker-dealers would be able to treat digital asset securities like any security and record digital asset securities in a customer's cash account or margin account. If held in a margin account, digital asset securities and digital asset non-securities should be marginable, but the margin supplement in Section 12 of Regulation T may need to be revised to effectuate such transaction.<sup>17</sup> Also, the sections of Regulation T dealing with good faith accounts and cash accounts contain provisions that apply to securities as well as other types of assets.<sup>18</sup> We urge the SEC to work with the FRB to revise Regulation T to reflect consideration of the digital asset securities and non-securities that will be held in the customer's brokerage account.<sup>19</sup>

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<sup>16</sup> See, *e.g.*, FINRA Rule 5310(a) (“In any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market **for the subject security** ...”) (emphasis added). The SEC has also brought best execution enforcement actions under the antifraud provisions of the federal securities laws. The SEC has explained: “Typically, best execution cases have involved overt fraud against the customer and have been brought as omissions of a material fact under Section 17(a)(2) of the Securities Act of 1933 and Sections 10(b) and 15(c)(1) and Rules 10b-5(b) and 15c1-2(b) of the Exchange Act.” Division of Market Regulation, Market 2000: An Examination of Current Equity Market Developments (January 1994). Those provisions are also limited to securities transactions. See 15 U.S. Code § 77q(a)(2) (“It shall be unlawful for any person **in the offer or sale of any securities** ...”) (emphasis added); 15 U.S.C. § 78j(b) (“It shall be unlawful for any person ... [t]o use or employ, **in connection with the purchase or sale of any security** ... any manipulative or deceptive device or contrivance ...”) (emphasis added); 15 U.S.C. § 78o(c)(1)(A) (“No broker or dealer shall ... effect any transaction in, or induce or attempt to induce the purchase of sale of, **any security** ...”) (emphasis added).

<sup>17</sup> See 12 CFR §§ 220.2 (defining “margin security” and “non-equity security”), 220.12 (as a non-equity security, a digital asset security would appear to be subject to good faith margin under 220.12(b)).

<sup>18</sup> See 12 CFR § 220.6 (sub-section (a) pertaining to securities transactions and sub-section (e) relating to transactions in commodities and foreign exchange and the extension of non-purpose credit); 12 CFR § 220.8(a)(1) (“In a cash account, a creditor may ... [b]uy for or sell to any customer any security **or other asset** ...”) (emphasis added).

<sup>19</sup> Corresponding changes would also need to be made to FINRA Rule 4210, which specifies initial and maintenance margin requirements.


SEC Crypto Task Force

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Fidelity would be pleased to provide further information, participate in any direct outreach efforts that the Commission or Task Force undertake, or respond to questions the Commission or Task Force may have about our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "H. Peirce", with a long horizontal flourish extending to the right.

cc: The Honorable Paul S. Atkins, Chairman, SEC  
The Honorable Hester M. Peirce, Commissioner, SEC  
The Honorable Caroline A. Crenshaw, Commissioner, SEC  
The Honorable Mark T. Uyeda, Commissioner, SEC

Jamie Selway, Director, Division of Trading and Markets, SEC

Robert Cook, President & CEO, FINRA  
Robert Colby, Chief Legal Officer, FINRA