



NORTHCAPITAL
PRIVATE SECURITIES

623 E Fort Union Blvd. Suite 101
Salt Lake City, UT 84047
www.northcapital.com

May 5, 2025

VIA ELECTRONIC SUBMISSION

crypto@sec.gov

Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-0213

RE: Custody of Tokenized Securities by Clearing and Carrying Broker-Dealers

Dear Commissioner Peirce and Members of the Crypto Task Force:

We appreciate the opportunity to submit these written comments regarding one specific issue in the domain of crypto assets, specifically related to digital asset securities.

North Capital Private Securities Corp. is a registered broker-dealer that operates as a clearing and carrying firm and non-bank trustee for qualified accounts. The Firm also owns and operates the PPEX Alternative Trading System (ATS) for exempt securities, including digital asset securities, and has been involved with digital asset securities since 2017.¹ The Firm's focus is securities issued in exempt offerings and transactions under Regulation D, Regulation S, Regulation A+, Regulation CF, Section 4(a)(2) and Rule 144A where the blockchain token *represents a redundant secondary record* of the securities issuance (often referred to as "Tokenized Securities").² Exempt offerings represent a significant portion of the securities issuances in the United States by number and volume, and we believe this segment of the securities market offers the most potential for the application of blockchain technology in the promotion of security and transparency.

The term "digital asset securities" refers both to Tokenized Securities --- where a blockchain token is a redundant secondary record and the golden record associated with ownership of securities is maintained in a traditional recordkeeping system --- and crypto native assets that are deemed to be securities, which exist in bearer form, and which may or may not be subject to on- or off-chain transfer restrictions ("Bearer Digital Asset Securities"). Most of the Commission's previous guidance for broker-dealers regarding digital asset securities is designed to mitigate risks that are intrinsic to Bearer Digital Asset Securities or BDAS, not Tokenized Securities. The risk of fraud, money laundering, market manipulation, and financial contagion risks are clearly increased by BDAS, while Tokenized Securities operate as digital certificated

¹ The Firm provided investor qualification services, placement agent services, and escrow facilitation for USD fiat subscriptions for several "best efforts" tokenized offerings by offshore private funds.

² Several public securities offerings that have been deemed effective by the Commission have articulated the idea of a Tokenized Security as one which maintains a redundant secondary blockchain record along with the primary golden record, including the Franklin Onchain U.S. Government Money Fund (FOBXX) and a number of funds within the Wisdom Tree Digital Trust (FLTIX, WTSYX, WTTX, WTSTX, WTLGX, TIPX, SPXUX, TECHX, WTSIX, EQTYX, MODRX, LNYVX, WTGXX).

securities and therefore present negligible incremental risk compared to traditional securities maintained in non-blockchain records.

Virtually all of the concerns about digital asset securities articulated by the Commission in its notices and guidance, beginning with *The DAO Report*,³ including the *Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities* (the “Joint Staff Statement”),⁴ and ending with the Commission’s subsequent promulgation of interim regulations for Special Purpose Broker Dealers (SPBDs),⁵ reference risks that are uniquely associated with BDAS and which do not apply to Tokenized Securities. Loss of tokens or failure of the blockchain system on which securities have been tokenized would be treated like the loss or mutilation of a physical certificate. The tokens could be reissued on the same blockchain or on a different blockchain, or they could be maintained exclusively in certificated or uncertificated form with no tokenization. The risk of theft would also be negligible, because the Tokenized Securities could be canceled by the issuer in the event of theft, and any attempted transfer or redemption by a bad actor would be subject to an investor vetting process to ensure appropriate chain of custody through verification of the independent records of the issuer or its transfer agent, just like with traditional securities that have not been tokenized. The Commission seemed to acknowledge this distinction in writing in the Joint Staff Statement:

“As a related matter, the Staffs have received inquiries from broker-dealers, including ATs, wishing to utilize an issuer or transfer agent as a proposed “control location” for purposes of the possession or control requirements under the Customer Protection Rule. As described to the Staffs, this would involve uncertificated securities where the issuer or a transfer agent maintains a traditional single master security holder list, but also publishes as a courtesy the ownership record using distributed ledger technology. While the issuer or transfer agent may publish the distributed ledger, in these examples, the broker-dealers have asserted that the distributed ledger is not the authoritative record of share ownership. To the extent a broker-dealer contemplates an arrangement of this type, the Division will consider whether the issuer or the transfer agent can be considered a satisfactory control location pursuant to an application under paragraph (c)(7) of Rule 15c3-3.”

However, since publishing the Joint Staff Statement, the Division of Trading and Markets has not issued any public no-action letters or, as far as we know, responded to any applications by a broker-dealer for the issuer or transfer agent to serve as a good control location. If broker-dealers cannot rely upon established rules or standards for demonstrating good control of exempt securities, including Tokenized Securities, it will be impossible to for broker-dealers to establish scalable solutions for clearing and custody. This will accelerate the migration of clearing and custody to banks and trust companies, which are not subject to the prescriptive rules of 15c3-3.

We urge the Commission to specifically differentiate between BDAS and Tokenized Securities in promulgating new or updated rules and guidance for broker-dealers with respect to custody. Tokenized Securities should be treated like traditional securities if they incorporate the key safety attributes previously articulated by the Staff: (1) the blockchain token is a redundant secondary record and the golden record is maintained in parallel, traditional recordkeeping systems; and (2) the Tokenized Securities

³ U.S. Securities and Exchange Commission (SEC), Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO (July 25, 2017), <https://www.sec.gov/files/litigation/investreport/34-81207.pdf>.

⁴ SEC, Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities (July 8, 2019), <https://www.sec.gov/news/public-statement/joint-staff-statement-broker-dealer-custody-digital-asset-securities>.

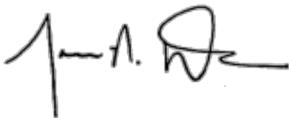
⁵ Custody of Digital Asset Securities by Special Purpose Broker-Dealers, Release No.34-90788, 86 Fed. Reg. 11,627 (effective Apr. 27, 2021), <https://www.sec.gov/rules/policy/2020/34-90788.pdf>.

are *not* issued in bearer form and *are* subject to restrictions and/or registration requirements consistent with other, non-tokenized securities. Tokenized Securities *would still be subject to the possession or control requirements* of SEA Rule 15c3-3, which could accommodate Tokenized Securities through several methods: (1) new interpretive guidance from the Commission that exclusive physical possession of the Tokenized Securities by the custodial broker-dealer is the same as possession of physical certificates; (2) establishing through no-action relief that the issuer or transfer agent can serve as a good control location for Tokenized Securities, as contemplated by the Commission in the Joint Staff Statement and subject to the enumerated conditions outlined in prior no-action letters issued by the Division of Trading and Markets on this topic;⁶ or (3) holding securities with a bank or national clearing agency, in accordance with 15c3-3.

Given the prohibitions delineated in the Joint Staff Statement and the subsequent guidance in relation to SPBDs, the Commission should clarify that its previous guidance does not apply to Tokenized Securities if broker-dealers are to play any role in the clearing and custody process. Notwithstanding the possibility of innovations such as decentralized record keeping, so-called “atomic” settlement, and self-custody by investors, clearing and custody are critical functions in the lifecycle of securities that broker-dealers are well-suited to offer and should provide. Allowing traditional clearing and carrying firms to custody Tokenized Securities, without requiring the promulgation of a new rule set that would take years to implement, will immediately open a gateway to innovation using blockchain systems to automate and standardize clearing and custody in markets like exempt securities, where the need is most acute.

We again thank the Crypto Task Force for the opportunity to submit these written comments, and we look forward to the opportunity to answer any questions related to broker-dealer custody of Tokenized Securities.

Best regards,

A handwritten signature in black ink, appearing to read 'J. P. Dowd', with a stylized flourish at the end.

James P. Dowd, President and Chief Executive Officer

⁶ Through a series of no-action letters dating back to 1986, the Commission consistently has allowed broker-dealers to use certain entities, which were responsible for creating and maintaining ownership records, as good control locations, subject to certain conditions. See, e.g., Wayne Hummer & Co., SEC No-Action Letter, 1986 WL 65387 (SEC) (publicly avail. Apr. 8, 1986); Letter from Marc J. Hertzberg, Division of Market Regulation, to Brandon Becker, Wilmer, Cutler & Pickering (July 30, 1997); Charles Schwab & Co., Inc., SEC No-Action Letter, 1997 WL 438422 (SEC) (public. avail. July 30, 1997); Letter from Mark M. Attar, Division of Market Regulation, SEC, to Brandon Becker, Wilmer, Cutler & Pickering (Sept. 17, 1999); Letter from Bonnie L. Gauch, Division of Market Regulation, SEC, to Michael K. Rafter, Holland & Knight, LLP (Jan. 5, 2000); Letter from Joseph I. Levinson, Special Counsel, Division of Trading and Markets, SEC, to Mark D. Fitterman, Morgan, Lewis & Bockius LLP for Sanford C. Bernstein & Co., LLC (June 9, 2009); FOLIOfn Investments, Inc., SEC No-Action Letter, 2009 WL 58414 (public. avail. Jan. 6, 2009); Letter from Michael A. Macchiaroli, Division of Trading and Markets, SEC, to Peter J. Morgan III, Charles Schwab & Co., Inc. (Feb. 3, 2012); FOLIOfn Investments, Inc. SEC No-Action Letter 2015 WL 307371 (public. avail. Jan. 13, 2015).