NSCP
NATIONAL SOCIETY OF
COMPLIANCE PROFESSIONALS

September 8, 2025

Via SEC Comment Submission Portal and email to: crypto@sec.gov

Hon. Hester Peirce, Commissioner
Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street, NE Washington, DC 20549

Re: NSCP's W*ritten Input to the SEC's Crypto Task Force*

Dear Commissioner Peirce:

The National Society of Compliance Professionals ("NSCP") appreciates the opportunity to provide input to the Crypto Task Force of the United States Securities and Exchange Commission (the "Commission") regarding its regulation of digital asset[1] markets and intermediaries.

Since its founding in 1987, NSCP has been the leading non-profit membership organization dedicated to supporting compliance professionals in the financial services industry focusing primarily on broker-dealers, investment advisers, investment funds, bank and insurance affiliated firms, as well as third-party service providers that serve them. Our members are responsible for implementing and maintaining policies and procedures that are reasonably designed to ensure compliance with many laws and rules enacted by federal and state regulators and self-regulatory organizations. With our members and their clients increasingly participating in digital asset markets, we applaud the Commission's efforts to engage with industry participants and provide guidance for compliance within the existing regulatory framework. We also appreciate this opportunity to provide feedback on existing compliance challenges as well as potential future concerns as digital asset legislation makes its way through Congress and future rulemaking efforts follow. We believe that regulatory oversight is most effective when regulators and compliance professionals view each other as having the same objectives of investor protection, market integrity and the promotion of capital formation. As an advocate for compliance professionals, we endeavor to provide insight that is compliance-oriented—neutral as to policy and politics but biased as to clarity and feasibility. Accordingly, outlined below are our feedback and recommendations pertaining to digital assets.

1. Classification of Digital Assets as Securities or Commodities

Regardless of how digital assets will be classified by Congress through legislation, compliance professionals need clarity on how digital assets fit within the existing regulatory framework and risk-based principles. To the extent asset classification is to be based on facts and circumstances or definitions requiring subjective interpretation, compliance officers should not be responsible for making those determinations or otherwise establishing their firm's litmus test. NSCP is concerned compliance professionals will be left with the responsibility of developing policies and procedures based on

[1] For purposes of this letter, we use the terms "digital assets" and "crypto assets" interchangeably.

subjective determinations.
Facts and circumstance tests, such as whether an asset is a security, are by definition subjective in nature. Under current law, firms struggle to determine whether a crypto asset is a security under the U.S. Supreme Court's Howey test. On May 29, the SEC's Division of Corporation Finance issued a staff Statement on Certain Protocol Staking Activities providing the Staff's opinion that many proof-of-stake activities do not involve the offer or sale of securities. The SEC found that these activities do not satisfy the "efforts of others" prong of the *Howey* test used to determine whether an investment contract exists.

We believe there are other status determinations that could be problematic for compliance. For example, the Commission's Division of Corporation Finance Staff February 27, 2025 Statement on Meme Coins provided the Staff's opinion on whether a transaction in crypto assets involves the offer or sale of a security under federal securities laws. In the Staff's opinion, transactions in meme coins do not. However, the statement does not provide an objective definition of meme coins. According to the statement, individual meme coins may have unique features, despite meme coins typically sharing certain characteristics, such as being purchased for entertainment, social interaction, and cultural purposes, having a value that is driven primarily by market demand and speculation and having limited or no use or functionality. This definition leaves open to interpretation whether certain digital assets would be viewed in the eyes of the Commission as meme coins excluded from the federal securities laws and SEC jurisdiction. How does a CCO determine and monitor (and tailor policies and procedures about) "cultural purposes" or "entertainment value"? Although we thank the Staff for its statement on meme coins, as well as on certain crypto-related activities,[2] including the Commission's Division of Trading and Markets for its May 15, 2025 confirmation that Exchange Act Rule 15c3-3 does not apply to crypto assets that are not securities.[3] We note these statements are non-binding and cannot address the myriad activities that occur within the crypto ecosystem, underscoring the need for well drafted, market structure legislation.

On July 17, 2025, the U.S. House of Representatives passed H. R. 3633, the Digital Asset Market Clarity Act of 2025 (or the ''CLARITY Act"), which, if enacted, represents a significant step towards providing a statutory framework for digital assets, moving beyond reliance solely on interpretive guidance and enforcement actions. The CLARITY Act provides initial definitions of terms, including "digital commodity" and "digital asset," and delineates SEC and CFTC jurisdiction. For example, the CLARITY Act excludes from the definition of digital commodity, digital assets that have inherent value, utility, or significance beyond their mere existence as digital assets, including goods, collectibles, merchandise, virtual land, video game assets and other non-commodity assets. However, the CLARITY Act directs the CFTC to issue rules, including some of those rules jointly with the SEC, to further define new terms and concepts.

Since the passage of the Clarity Act in the House, the Senate has continued its Committee work on its

[2] *See, for example,* the August 5, 2025 Statement by the Division of Corporation Finance Staff, SEC.gov | Statement on Certain Liquid Staking Activities, the July 9, 2025 Statement by Commissioner Peirce, SEC.gov | Enchanting, but Not Magical: A Statement on the Tokenization of Securities, and the May 29, 2025 Statement by the Division of Corporation Finance Staff, SEC.gov | Statement on Certain Protocol Staking Activities.

[3] We note that without a brightline test for determining whether crypto assets are securities, broker dealer compliance officers are left responsible for developing and implementing sufficient means for ensuring their firms can comply with the financial responsibility rules.

version of digital asset market structure legislation. The Senate Banking Committee, which has oversight of the Securities and Exchange Commission (SEC), released a discussion draft of the Responsible Financial Innovation Act of 2025 (the "Senate Draft") along with a broad Request for Information (RFI) to solicit feedback from the public. Unlike the CLARITY Act, the Senate Draft provides the SEC with primary regulatory authority over "ancillary assets," which would not be considered securities under federal securities laws. However, similar to the CLARITY Act, the Senate Draft introduces new terms and concepts, including the terms "digital asset" and "ancillary asset" and directs the SEC to finalize the definition of "investment contract" based on certain enumerated criteria. We understand the Senate Agriculture Committee, which has oversight of the CFTC, is also expected to introduce draft language focused on digital commodities in early September 2025. The two Senate Committees will need to reconcile questions about jurisdiction between the SEC and CFTC as well as other key concepts prior to a comprehensive legislative package advancing to the Senate floor and ultimately being reconciled with the Clarity Act. While it is too early in the legislative process to know what will be included in the final version of the digital asset market legislation, it appears that it will indeed introduce new terms and concepts, which may not be fully defined by Congress.

NSCP is concerned about the ultimate clarity of new terms and concepts included in any final digital asset market legislation, and particularly that compliance will be left with the task of developing policies and procedures for determining when a digital asset falls within a definition or exclusion (*e.g.*, when a digital asset has sufficient commonality with real-world and meme coin type assets to fall outside the securities framework and, therefore, out of scope of their compliance program). NSCP notes that while compliance is and should remain the responsibility of the firm, most often compliance officers are tasked with reasonably designing the compliance program to prevent violations of applicable federal securities laws. The sufficiency of their work in this regard has at times been the subject of regulatory scrutiny with the benefit of hindsight as well as numerous enforcement actions against firms, and in some cases, their chief compliance officers individually.[4]

Digital asset classification could trigger interpretive concerns regarding the application of a firm's existing securities compliance policies and procedures.[5] We urge the Staff to proactively provide compliance officers examples of policies and procedures that the Staff expects from registrants for this purpose. Without such guidance, we fear registrants will be left to learn from SEC enforcement for failing to adopt reasonably designed policies and procedures.

The classification of a digital asset as a security affects various compliance issues, including, but not limited to:

- *The applicable standard of care for investment advisers, broker dealers and dual registrants providing services or products involving digital assets.* For example, would Regulation BI apply differently to recommendations of direct investments in digital assets versus indirect investments through securities of issuers that invest in underlying digital assets?

[4] NSCP notes our chief compliance officer ("CCO") members are subject to personal and professional liability. In support of our members, NSCP has developed and issued a framework to help regulators analyze firm and CCO liability in a way that provides a real-world perspective regarding the impact of perceived CCO liability on the profession. NSCP Firm and CCO Liability Framework

[5] We note there are significant compliance concerns regarding the status of crypto assets aside from the application of rules regarding registration of digital asset issuances and intermediaries.

- *Inclusion of digital asset holdings in the calculation of financial sophistication thresholds, such as the net worth test for qualified clients under Investment Advisers Act Rule 205-3 and qualified purchasers under Section 2(a)(51) of the Investment Company Act.* For this purpose, are digital assets deemed securities, commodity interests, physical commodities, financial contracts or cash equivalents, or does it depend on the facts and circumstances?
- *The types of books and records required to be maintained by registrants*. Since the staff of the Division of Trading and Markets views prudent recordkeeping practices as being essential for investor protection in the operation of a broker-dealer,[6] would registrants conducting a non-security crypto asset business be required to make and keep the same records for its non-security crypto activities as it does for its securities activities?
- *The application of digital assets to outside business activity and personal securities transaction reporting and approval requirements as well as to efforts to prevent the misuse of material nonpublic information.* Under existing federal law, Investment Advisers Act Rule 204(A)-1 requires the reporting of digital assets that are classified as securities and FINRA's Supervision and Responsibility Rules 3270 and 3280 require written notification of associated persons' engagement in a range of digital asset-related activities through outside business activities or private securities transactions. In FINRA Regulatory Notices 20-23 (July 2020) and 21-25 (July 2021), FINRA encouraged member firms to notify FINRA if they or their affiliates engage in, or plan to engage in, activities related to digital assets, including cryptocurrencies and other virtual coins and tokens—***"whether or not they meet the definition of "security" for the purposes of the federal securities laws and FINRA rules."*** Further, if enacted as proposed, the CLARITY Act would amend the Securities Exchange Act to apply rules promulgated under Section 10(b) that prohibit fraud, manipulation, or insider trading (***but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading***), and judicial precedents decided under subsection (b) and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, to permitted payment stablecoin and digital commodity transactions engaged in by a broker or dealer or through an alternative trading system or, as applicable, a national securities exchange to the same extent as they apply to securities transactions.

Without clear guidance on the treatment of digital assets, the burden of developing compliance policies and procedures with respect to digital assets will fall on compliance officers who are already stretched thin managing record-breaking rulemaking, examinations and enforcement activity. We are also concerned generally on resourcing compliance to address this work. Some firms might treat all digital assets as securities for compliance purposes just to avoid challenges in determining policy exceptions, which could stifle firms from entering the crypto markets and reduce competition. Lack of a brightline test would also slow adoption of this innovative investment solution for firms wishing to be compliant and reduce risk.

2. Safekeeping of Digital Assets

Both the CLARITY Act and the Senate Draft direct regulators to issue rules addressing the custody and possession or control of digital assets. However, digital asset safekeeping is a complex web of

[6] See SEC.gov | Division of Trading and Markets: Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology.

technology and operational systems, making it particularly challenging for compliance. Safeguarding digital assets includes using various methods of technology to protect digital assets from misappropriation. Traditional securities, such as securities, are maintained in accounts at SEC registered broker dealers, who register client securities with the issuer (or its transfer agent) in "street name," and keep electronic records of clients' beneficial ownership. Digital assets are maintained in wallets that use private keys to prove ownership and provide cryptographic signature authorization for transactions to and from a specific wallet address. The blockchain contains a public record of digital asset transactions to and from wallet addresses, while the private key controls the digital assets associated with that address. In the world of digital assets, whomever controls these private keys, controls the digital assets.

Unlike traditional securities custodians, digital asset custodians safeguard and manage client's digital asset private keys. Some digital asset custodians retain full control of the private keys, for example, by using Hardware Security Modules (HSMs) that keep the keys offline in air-gapped hardware, but with built-in custom rules that ensure transactions are only signed when specific client-defined criteria are met. Some digital asset custodians use multiple, encrypted shards (fragments) of private keys with multiparty computation (MPC) technology. With MPC technology, no single person holds a full key and no key ever exists in full at any time. Digital asset custodians also manage on behalf of clients the authorization process for their digital asset transactions, for example, by using biometric authentication and quorum-based approvals for transaction validation and smart contract pre-authorization.

Some digital asset custodians hold client assets in segregated on-chain "vaults" (i.e., distinct wallets or smart contracts on a public blockchain, physically and digitally separate from the custodian's own funds and other clients' assets). Alternatively, digital asset custodians can pool the funds of multiple clients into one or more large wallets (similar to a traditional securities omnibus account). The custodian keeps track of each client's individual holdings in the omnibus account using an internal ledger, but this ownership is not reflected on the blockchain.

While digital asset transactions can be settled directly on an exchange using the blockchain to process transactions directly on the public ledger, some digital asset custodians offer off-exchange, off-chain, settlement. Using off-chain representations of clients' digital assets reflected in designated trading accounts (known as "asset mirroring"), digital asset custodians continuously reconcile mirrored positions with the clients' custodied assets. Off-exchange settlement allows clients to trade across multiple exchanges without directly moving their assets out of the custodian's secure control and into the exchanges' wallet infrastructure.

Both the CLARITY Act and the Senate Draft protect a owners' right to self-custody digital assets using a self-hosted wallet or other means on the owner's own behalf. However, neither bill expressly permits the use of those self-hosted wallets by the owner's fiduciaries. Accordingly, NSCP requests clarification on the available types of custody solutions that would meet the requirements under the Investment Advisers Act Custody Rule 206(4)-2 with respect to certain digital assets for which SEC registered investment advisers ("SEC RIAs") are deemed to have custody. NSCP further requests clarification on the following:

- Would SEC RIAs be required to use third party custodian-hosted wallets to hold private keys for clients' digital assets? Would there be any exception for clients who want to self-custody?

- When holding client assets in custodian-hosted wallets, would SEC RIAs be required to use a custodian that maintains client assets in segregated vaults or could the assets be held in a custodian's omnibus account (similar to traditional securities omnibus accounts)?
- Would SEC RIAs be prohibited from maintaining clients' digital assets directly on-exchange or with a custodian affiliated with the exchange upon which it places client trades?
- Whether an SEC RIA, deemed to have custody because of its legal capacity (e.g., its affiliate serves as a general partner to a private fund client), could use cold storage solutions for the private fund's digital assets, and if so, under what conditions?
- Would SEC RIAs be prohibited from holding shards of their clients' keys and thereby be required to use a custodian with exclusive control over client keys?
- Could SEC RIAs maintain assets with custodians that create and use shards held by the custodian and the adviser?
- Would an investment adviser be deemed to have custody if it had access to some, but not all, shards of a private key for a digital asset custodied with MPC technology?
- It is our understanding of industry practices for custodians to use at least three shards, with the third shard held by a trusted third party. Could SEC RIA clients hold the third shard? If the client is a pooled investment vehicle sponsored or managed by the adviser, could the vehicle's investors appoint a third-party representative to hold the third shard? Under what conditions could SEC RIAs allow other third parties to serve in such capacity and hold a shard?

3. Coordination with the CFTC and other Regulators

Overlapping regulations can result in varied regulatory interpretations and requirements, which may expose a firm and its compliance professionals to potential liability. We understand Congress may direct the Commission to issue new rules and/or amendments to existing rules with respect to digital assets. We further understand Congress may direct the Commission to issue joint rules with the Commodity Futures Trading Commission (the "CFTC") and other regulators with respect to digital assets. We believe there is an opportunity to eliminate duplicative regulatory efforts for digital assets and intermediaries under the jurisdiction of another federal regulator. As NSCP members are subject to existing regulatory frameworks, we urge the Commission to coordinate with the CFTC and other regulators in a manner that minimizes the impact of potentially overlapping or duplicative regulatory requirements for those participating in digital asset markets as well as in traditional securities markets.

To assist the Commission, the CFTC and other regulators, we are providing herewith a letter we recently submitted to the Financial Industry Regulatory Authority, Inc. ("FINRA") in response to its request in Regulatory Notice 25-04 for comments related to efforts to modernize its rules (the "FINRA Letter"). In the FINRA Letter, attached hereto as Appendix 1 we outline specific themes that we believe will assist regulators in assessing their rules and guidance to promote effective compliance and help empower compliance professionals to support the shared objectives of investor protection, market integrity and the support of capital formation. We believe the same themes would be instrumental in promulgating rules regarding digital assets. We welcome opportunities to work with the Commission, the CFTC and other regulators to provide input, feedback and data to help support these efforts. To promote this effort, we have provided the CFTC a copy of this letter.

Conclusion

As a compliance industry group, we strongly support the Commission's efforts to protect investors maintain fair, orderly, and efficient markets, and facilitate capital formation. However, without further clarifications and coordinated rulemaking, we believe compliance professionals will face the undue burden of determining how digital assets fit into their compliance programs based on subjective interpretations of a patchwork regulatory framework. Accordingly, we urge the Commission to provide clear guidance and coordinated joint rules to enable compliance professionals to effectively and efficiently execute their responsibilities.

We appreciate this opportunity to respond, and we look forward to continuing to work with the Commission and other regulators to help support our shared objectives. We would be happy to provide any additional information that may be helpful and invite you to contact the undersigned if needed.

Sincerely,

The National Society of Compliance Professionals, Inc.

By: 
Name: Lisa Crossley
Title: NSCP Executive Director and CEO

cc: The Honorable Paul Atkins, *Securities Exchange Commission*
The Honorable Caroline A. *Crenshaw, Securities Exchange Commission*
The Honorable Mark T. Uyeda, *Securities Exchange Commission*
Acting Chairman Caroline D. Pham, *The Commodity Futures Trading Commission*