

Investment Adviser and Regulated Fund Custody Rules; Crypto Custody Rules



On Oct. 1, 2026, the Securities and Exchange Commission proposed new rules and amendments under the Investment Advisers Act of 1940 (Advisers Act) and Investment Company Act of 1940 (Investment Company Act) that would:

- Permit advisers and regulated funds to self-custody crypto assets in certain circumstances and subject to conditions.
- Permit advisers and regulated funds to maintain client or regulated fund crypto assets with a state trust company, subject to conditions.
- Modernize the custody rules to better address current industry practices and feedback, and implement certain conforming amendments, including:
 - Advisers Act custody rule – amendments to redesignate the rule, to provide an exception based on discretionary trading authority, to eliminate Public Company Accounting Oversight Board requirements, to amend certain requirements of the audit provision, to provide an exception based on standing letter of authorizations, and to provide an exception based on inadvertent custody.
 - Investment Company Act custody rules – amendments to the rule related to broker-dealer custodians.
- Update the recordkeeping and disclosure requirements for advisers and regulated funds related to the proposed custody rules.

Background

The current custody rules under the Advisers Act and the Investment Company Act were designed to protect adviser client and regulated fund assets from risk of loss, theft, misuse, and misappropriation. They also were designed to address the custody and safekeeping of traditional assets. Since the advent of Bitcoin in 2008, there has been significant growth in the crypto asset market, with investors increasingly seeking investment exposure to crypto assets. However, unlike more traditional assets, a permitted custodian under the current custody rules may not be readily available to hold certain crypto assets.

Some state-chartered limited purpose trust companies have sought to provide crypto asset custody services to fill this gap. While banks are permitted custodians under the Advisers Act and the Investment Company Act, assessing whether a state trust company satisfies the statutory definition of “bank” under the current custody rules involves a fact-specific analysis of state and federal law.

Custodians, including state trust company custodians, that do offer custodial services for crypto assets have not been able to support all crypto assets given the large and continuously growing number of crypto assets in the market. In particular, custodians may not yet offer custodial services for nascent or novel assets.

In order to enhance investor protection and promote investor choice, the Commission's proposed rules and amendments to the custody rules are tailored to address existing limitations that may inhibit advisers' ability to provide investment advice related to certain crypto asset-related investment strategies and inhibit regulated funds' ability to invest in them.

Additionally, the amendments to modernize the custody rules are designed to better address current industry practices and feedback from industry participants, and implement certain conforming amendments.

Highlights of the Proposing Release

The Advisers Act custody rule applies to funds and securities over which the adviser has custody, as defined under that rule. The Investment Company Act custody rules apply to a regulated fund's securities and similar investments. The proposing release includes the following key elements:

Self-Custody. Amendments to the Advisers Act custody rule would add a new provision to permit advisers to hold crypto assets for advisory clients (including regulated funds) for which they provide investment advice in self-custody subject to certain conditions. A new custody rule under the Investment Company Act would permit a regulated fund to maintain its crypto assets in self-custody through the regulated fund's adviser if the adviser complies with the adviser self-custody rule, and if the regulated fund's board of directors engages in oversight of the custody arrangement. Under the proposed amendments, an adviser would be permitted to hold a client's crypto asset in self-custody if:

- The adviser determines that a permitted custodian is not available to maintain the crypto asset prior to taking self-custody of the crypto asset and on a quarterly basis thereafter.
- The adviser has expertise regarding the safeguarding of each crypto asset (and documents the basis of its determination that it has the safeguarding expertise); adopts, implements, and maintains the systems to safeguard each crypto asset against loss, theft, misuse, and misappropriation; and reviews its safeguarding systems and the effectiveness of their implementation no less frequently than annually. The adviser's safeguarding systems would be required to address private key management and joint authorization of any crypto asset transactions by at least two people.
- The adviser maintains each client's crypto assets in one or more crypto asset addresses on the crypto network storing only such client's crypto assets.
- The adviser mitigates cybersecurity risks associated with safeguarding clients' crypto assets held in self-custody and, at a minimum, annually reviews its cybersecurity controls and the effectiveness of their implementation.
- Within six months of taking self-custody of crypto assets and on an annual basis thereafter, the adviser obtains internal control reports from an independent public accountant concerning its control objectives relating to custodial services, including the safeguarding of crypto assets.
- Account statements are sent at least quarterly to each of the adviser's clients for whom the adviser is self-custodying crypto assets.

- The adviser and the client agree, in writing, to treat each crypto asset that is in the adviser's self-custody as a "financial asset," to provide additional protections under applicable state law.
- The advisory client is a regulated fund, the regulated fund's board oversees the adviser's custody of a regulated fund's crypto asset by: (1) reviewing (initially and quarterly thereafter) the investment adviser's written report documenting the basis for the adviser's determination for believing that no qualified custodian is available to maintain the crypto asset; and (2) determining prior to the investment adviser maintaining the crypto asset (and annually thereafter) that the crypto asset of the regulated fund would be subject to reasonable care if self-custodied with the regulated fund's investment adviser.

State Trust Company Custody. Amendments to the Advisers Act and Investment Company Act custody rules would permit custody of advisory client and regulated fund crypto assets by state trust companies, subject to the following requirements:

- That prior to engaging a state trust company as a permitted custodian and annually thereafter:
 - The adviser or regulated fund must have a reasonable basis, after due inquiry, for believing that the state trust company is authorized by the relevant state banking authority to provide crypto asset custody.
 - The adviser or regulated fund must have a reasonable basis, after due inquiry, for believing that the state trust company maintains and implements written policies and procedures reasonably designed to safeguard crypto assets and related cash and/or cash equivalents from the risk of theft, loss, misuse, and misappropriation.
 - The adviser or regulated fund must receive and review the state trust company's most recent annual audited financial statements.
 - The adviser or regulated fund must receive and review the state trust company's most recent internal control report.
- That all advisory client and regulated fund crypto assets be segregated from the state trust company's proprietary assets.

Fund Custody Modernization. The Investment Company Act custody rules would be modernized by, among other things:

- Removing antiquated conditions currently required for broker-dealer custody.
- Rescinding a rule regarding free cash accounts that is no longer used.
- Specifying that business development companies may use the Investment Company Act custody rules.

Adviser Custody Modernization. The Advisers Act custody rule would be redesignated under Section 223 of the Advisers Act and modernized by, among other things:

- Specifying circumstances under which authorized discretionary trading authority is excepted from the requirements of the Advisers Act custody rule.

- Eliminating the requirement that the independent public accountants engaged to perform services under the Advisers Act custody rule be registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board.
- Extending the audited financial statements delivery deadlines for funds of funds and funds of funds by modifying the timing requirements for delivery of audited financial statements for pooled investment vehicles that are formed toward the end of their fiscal year. Additionally, the rule would provide that all audited financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles, with an exception for foreign pooled investment vehicles.
- Providing an exception from the independent verification requirement for an adviser that has custody of client funds and securities solely because of a standing letter of authorization.
- Requiring that the client notice sent by an adviser upon opening an account with a qualified custodian includes the client's account number.
- Excepting an adviser from the requirements of the Advisers Act custody rule under specified circumstances when it has inadvertent custody of client funds or securities.
- Specifying that the Advisers Act custody rule's exception for registered investment companies also includes business development companies that elect to be regulated as investment companies under the Investment Company Act.

Recordkeeping. Amendments to the recordkeeping rules under the Advisers Act and the Investment Company Act would add corresponding recordkeeping requirements for the proposed self-custody, state trust company, and modernization rules, and would allow records maintained and preserved on a crypto network to satisfy the recordkeeping requirements under Advisers Act and Investment Company Act recordkeeping rules, subject to certain conditions.

Accounting Guidance. The proposing release outlines certain revisions the Commission expects to make to the 2009 [Commission Guidance Regarding Independent Public Accountant Engagements](#).

Form Amendments. The proposal would amend Form ADV and Form N-CEN to collect additional information regarding the custody of crypto assets and tokenized fund shares as well as make certain conforming amendments.

What's Next?

The public comment period will remain open for 60 days after the proposing release is published in the Federal Register.