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VIA E-MAIL

September 30, 2025

RE: Request for No-Action Relief Under Section 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-2 thereunder and Sections 17(f) and 26(a) of the Investment Company Act of 1940 with Respect to State Trust Companies that Provide Crypto Asset Custody Services

Holly Hunter-Ceci
Chief Counsel, Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0213

Michael Selig
Chief Counsel, Crypto Task Force
Senior Advisor to Chairman Paul Atkins
U.S. Securities and Exchange Commission
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Dear Ms. Hunter-Ceci and Mr. Selig:

We write on behalf of our clients that are: (i) investment advisers registered under the Investment Advisers Act of 1940, as amended (the "***Advisers Act***" and such advisers, "***Registered Advisers***"); or (ii) issuers registered as investment companies under the Investment Company Act of 1940, as amended (the "***1940 Act***"), or that have elected to be regulated as business development companies under the 1940 Act (such issuers, collectively, "***Regulated Funds***"). The Registered Advisers serve as investment advisers to a variety of clients, including Regulated Funds, natural persons, pooled investment vehicles that are private funds (as such term is defined in Section 202(a)(29) of the Advisers Act) or are otherwise not required to register as investment companies under the 1940 Act, corporations, foundations, trusts, and other types of individual and institutional accounts (such clients other than Regulated Funds, collectively, "***RIA Clients***"). RIA Clients and Regulated Funds pursue a variety of investment strategies, which currently include, and may include in the future, direct investments in assets that are digital representations of value that are recorded on a cryptographically secured distributed ledger ("***Crypto Assets***") and which may be subject to the Custody Provisions (as defined below).

We respectfully request assurance that the staff of the Division of Investment Management (the "***Staff***") of the U.S. Securities and Exchange Commission (the "***Commission***" or the "***SEC***") will not recommend enforcement action under: (i) Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder ("***Rule 206(4)-2***") or (ii) Section 17(f) ("***Section 17(f)***") and Section 26(a) of the 1940 Act and the rules thereunder (such statutory provisions and rules in clauses (i) and (ii) of this sentence, collectively the "***Custody Provisions***") against Registered Advisers or Regulated Funds, respectively, for treating a State Trust Company (as defined below) as a "bank", as defined in the Advisers Act and the 1940 Act (and, therefore, an institution permitted to custody assets), with respect to the placement and maintenance of Crypto Assets and cash and/or cash equivalents reasonably necessary to effect transactions in Crypto Assets ("***Related Cash and/or Cash Equivalents***"). As used in this letter, the term "***State Trust Company***" refers to a legal entity organized under state law that is: (i) supervised and examined by a state authority having supervision over banks (each, a "***State Banking Authority***"); and (ii) permitted to exercise fiduciary powers under applicable state law.

I. Custody Requirements under the Advisers Act and the 1940 Act

Section 206(4) of the Advisers Act makes it unlawful for an investment adviser to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative and authorizes the Commission to adopt rules and regulations to define and prescribe means reasonably designed to prevent acts, practices, and courses of business that are fraudulent, deceptive, or manipulative. Rule 206(4)-2, adopted by the Commission pursuant to Section 206(4) of the Advisers Act,[1] makes it a fraudulent, deceptive, or manipulative act, practice, or course of business for a Registered Adviser to have custody of "client funds or securities" unless, among other things, a "qualified custodian" maintains such funds or securities in a separate account for each client under that client's name or in accounts that contain only the Registered Adviser's clients' funds and securities, under the Registered Adviser's name as agent or trustee for the clients. Rule 206(4)-2 defines the term "qualified custodian" to include any "bank", as defined in Section 202(a)(2) of the Advisers Act.

Section 17(f) sets out the custody requirements that apply to Regulated Funds. It provides, in relevant part, that a Regulated Fund[2] "shall place and maintain its securities and similar investments"[3] in the custody of a bank or banks having the qualifications prescribed in Section 26(a)(1) of the 1940 Act for the trustees of unit investment trusts.[4] Although Regulated Funds may

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1 Advisers Act Rel. No. 123 (Feb. 27, 1962).

2 Although Section 17(f), by its express terms, applies only to "registered management investment companies," it is made applicable to business development companies pursuant to Section 59 of the 1940 Act.

3 15 U.S.C. § 80a-17(f).

4 Section 26(a)(1) of the 1940 Act generally provides that a bank serving as a trustee or custodian of a unit investment trust "shall have at all times an aggregate capital, surplus, and undivided profits" of not less than $500,000. The legislative history and requirements of Section 17(f) indicate that Congress intended a Regulated Fund's assets to be kept by financially secure entities that have sufficient safeguards against misappropriation. *See* Investment Trusts and Investment Companies: Hearings on

also use broker-dealers to custody assets or may self-custody assets, in practice Regulated Funds almost exclusively use banks as custodians.[5]

For all purposes relevant to this letter, the term "bank" is defined in Section 2(a)(5) of the 1940 Act in a substantially identical manner as Section 202(a)(2) of the Advisers Act, which, in turn, defines the term to include:

> (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 1462(5) of title 12, (B) a member bank of the Federal Reserve System, (C) any other banking institution, savings association, as defined in section 1462(4) of title 12, or ***trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of [the Advisers Act]***, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.[6]

National banks and state-chartered banks that are members of the Federal Reserve System meet the definition of "bank" pursuant to clauses (A) and/or (B) of the definition above. As a result, such banks can serve as qualified custodians under Rule 206(4)-2 and permissible custodians for Regulated Funds under Section 17(f). State Trust Companies, on the other hand, must have additional characteristics to be considered "banks" for these purposes. For a State Trust Company to meet the definition of "bank" under clause (C) of either statute, the following conditions must be satisfied:

(a) it must do business under the laws of any State or of the United States;

(b) a substantial portion of its business must consist of receiving deposits or exercising fiduciary powers similar to those permitted to national

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S. 3580, Before a Subcomm., of the S. Comm. on Banking and Currency, 76th Cong., 3d Sess. 264 (1940); c*f*. 10 SEC ANN. REP. 169 (1944) (discussing Section 17(f) and its protections against theft and embezzlement by affiliated persons).

[5] Rules 17f-1 and 17f-2, respectively, prescribe the conditions that apply when a Regulated Fund engages a broker-dealer custodian or self-custodies assets. Rule 206(4)-2 permits a Registered Adviser to self-custody certain client funds and securities that are "privately offered securities," as defined in Rule 206(4)-2 and related Staff guidance. *See* Rule 206(4)-2(b)(2) under the Advisers Act, and Div. of Inv. Mgmt., Sec. Exch. Comm'n, IM Guidance Update No. 2013-04, Privately Offered Securities under the Investment Advisers Act Custody Rule (Aug. 2013).

[6] 15 U.S.C. § 80b-2(a)(2) (emphasis supplied).

banks under the authority of the Office of the Comptroller of the Currency (the "***OCC***");

(c) it must be supervised and examined by State or Federal authority having supervision over banks or savings associations; and

(d) it must not be operated for the purpose of evading the provisions of the Advisers Act or the 1940 Act, as applicable.

II. Institutional Interest in Crypto Assets and Demand for State Trust Company Crypto Asset Custody Services

Following the advent of bitcoin in 2009, Registered Advisers, Regulated Funds, and RIA Clients have increasingly deployed investment strategies that provide exposure to Crypto Assets. In recent years, investor interest has only increased in light of the promise of blockchain-enabled solutions for challenges posed by legacy financial systems, an ever-evolving number of use cases for Crypto Assets, the maturation of Crypto Asset trading infrastructure, and significant appreciation in market prices. As an illustration, according to a January 2025 survey of 352 institutional investors—which prioritized firms with assets under management exceeding $1 billion—86% of surveyed firms reported exposure to Crypto Assets or indicated that they plan to make Crypto Asset allocations in 2025.[7] Nonetheless, while the demand for Crypto Asset investment strategies has grown considerably over the last decade, the number of institutions providing Crypto Asset custody services to Registered Advisers and Regulated Funds has not kept pace. The current dearth of institutions that offer Crypto Asset custody services is due in part to limitations imposed by the federal and state regulatory framework applicable to different types of financial services intermediaries.

For example, we understand that broker-dealers, which are eligible to serve as permissible custodians under Rule 206(4)-2 and Section 17(f), have generally not offered Crypto Asset custody services partly as a result of the limited circumstances addressed in the Commission's December 2020 "Special Purpose Broker-Dealer" framework (the "***SPBD Framework***").[8] In particular, the relief provided by the SPBD Framework is restricted to a broker-dealer that, among other things, limits its business activities to "digital asset securities" and does not engage in activities related to non-security Crypto Assets or traditional securities. This relief appears to have dissuaded broker-dealers from offering Crypto Asset custody services or participating in Crypto Asset markets more generally. At the same time, the willingness of national banks and full-service state-chartered banks to provide Crypto Asset custody services was previously limited by a perception that the federal banking regulators would criticize the perceived risk profile, or "reputational risk," associated with those activities. The banking industry's views were influenced by several letters issued by the federal banking regulators cautioning banks about the risks associated with Crypto Asset-related activities and requiring them to obtain "non-objection" from their primary federal

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[7] *See*, Coinbase & EY-Parthenon, 2025 Institutional Investor Digital Assets Survey (Jan. 2025), https://coinbase.bynder.com/m/8362167ae26ecf/original/EY-CB-Institutional-Investor-Survey.pdf.

[8] Custody of Digital Asset Securities by Special Purpose Broker-Dealers, Exchange Act. Rel. No. 90788 (Dec. 23, 2020).

bank regulator prior to commencing such activities.[9] The federal banking regulators have more recently rescinded or withdrawn those letters.[10] These regulatory dynamics have led State Trust Companies to become critical providers of Crypto Asset custody services.

III. State Trust Companies, Crypto Asset Custody Controls, and Common Diligence Practices

State Trust Companies have long provided financial services within the American dual banking system, which, for more than two centuries, has consisted of separate and parallel federal and state laws, regulatory bodies, and charter types. Federal banking laws provide for the organization of national banks under the National Bank Act, set out the activities they may conduct, and establish a framework for their examination and supervision by the OCC. State banking laws provide for the organization of state-chartered banking institutions, set out the activities they may conduct, and establish a framework for their examination and supervision by State Banking Authorities.[11] The dual banking system has promoted innovation and facilitated competitive equity between national banks and state-chartered banking institutions.[12] As an example of the competitive parity within the dual banking system, many state banking laws expressly permit state-chartered banking institutions, which include State Trust Companies, to engage in the same types of activities and investments permitted by the OCC for national banks. In that regard, many State Trust Companies provide custody services that cover a wide array of asset classes.

The laws and regulations governing State Trust Companies vary by state, but each state's regulatory framework generally includes the following common components: (i) eligibility requirements for licensing and comprehensive reviews of licensing applications; (ii) ongoing supervision and periodic examination by State Banking Authorities; (iii) minimum capital requirements; (iv) restrictions on activities and balance sheet investments; (v) periodic reporting requirements as to its financial condition and/or business operations; (vi) comprehensive

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[9] Bd. of Governors, Fed. Rsrv. Sys., Letter No. SR 22-6, CA 22-6, Engagement in Crypto-Asset-Related Activities by Federal Reserve-Supervised Banking Organizations, Aug. 16, 2022 (withdrawn); Fed. Deposit Ins. Corp., Letter No. FDIC FIL-16-2022, Notification and Supervisory Feedback Procedures for FDIC-Supervised Institutions Engaging in Crypto-Related Activities, Apr. 7, 2022 (content has expired or been rescinded); and Office of the Comptroller of Currency, OCC Interpretive Letter 1179, (Nov. 18, 2021) (rescinded).

[10] Press Release, Fed. Rsrv. Bd., Federal Reserve Board announces the withdrawal of guidance for banks related to their crypto-asset and dollar token activities and related changes to its expectations for these activities, (Apr. 24, 2025); Press Release, Fed. Deposit Ins. Corp. FDIC FIL-7-2025, FDIC Clarifies Process for Banks to Engage in Crypto-Related Activities (Mar. 28, 2025); and Office of the Comptroller of Currency, OCC Interpretive Letter 1183, (Mar. 7, 2025).

[11] Some State Banking Authorities maintain a department, division, bureau, or office dedicated to the supervision and examination of State Trust Companies. Depending on their characteristics (*e.g.*, FDIC deposit insurance, membership in the Federal Reserve System, status as a bank holding company), many state-chartered banking institutions and their parent companies are also subject to a federal regulatory overlay.

[12] *See*, *e.g.*, Tiffany v. National Bank of Missouri, 85 U.S. 409, 412 (1874).

recordkeeping requirements; and (vii) supervision by State Banking Authorities having authority to bring enforcement proceedings for non-compliance with minimum financial conditions and other regulatory requirements. Within these regulatory frameworks, State Trust Companies that provide Crypto Asset custody services have implemented sophisticated controls to ensure safekeeping of Crypto Assets. These controls typically include, among others: (i) so-called "deep" cold storage of Crypto Assets; (ii) third-party annual audits of financial statements; (iii) third-party reports regarding financial, governance, and information technology processes and controls, including system and organization controls reports (*e.g.*, SOC-1 and/or SOC-2 reports); (iv) cybersecurity, physical security, and business continuity policies and procedures; (v) complex encryption protocols and Crypto Asset movement verification controls; and (vi) policies and procedures concerning private key generation and storage.

State Trust Company controls and procedures have also evolved in response to the due diligence demands of Registered Advisers and Regulated Funds that seek to utilize them as Crypto Asset custodians. Consistent with their fiduciary obligations and compliance requirements under the Advisers Act and 1940 Act, Registered Advisers and Regulated Funds conduct comprehensive due diligence of all custodians on an initial and ongoing basis to ensure that they maintain adequate controls to safeguard assets from the risk of theft, loss, misuse, or misappropriation. Although approaches differ, a typical due diligence process involves a review of a State Trust Company's regulatory standing, operational capabilities, and financial wherewithal. The process may include, among other things, an assessment of a State Trust Company's (i) management expertise and experience; (ii) financial integrity and capital reserves; (iii) regulatory compliance systems, regulatory disciplinary history, and regulatory licenses; (iv) asset safeguarding controls and technology; (v) cybersecurity controls; and (vi) business continuity and/or contingency frameworks. Due diligence is typically conducted prior to onboarding and thereafter on an ongoing basis.

IV. Request for Relief

Given the demand for Crypto Asset investment strategies, Registered Advisers and Regulated Funds seek clarity as to whether State Trust Companies are permissible custodians under the Advisers Act and 1940 Act because the definition of "bank" under both statutes—as applied to State Trust Companies—presents uncertainty as to whether a "substantial portion" of a given State Trust Company's business consists of receiving deposits or exercising "fiduciary powers similar to those permitted to national banks under the authority of the [OCC]" and inherently involves a facts and circumstances analysis. Furthermore, an assessment as to whether a State Trust Company is a permissible custodian is a critical analysis that carries significant regulatory and commercial consequences.

For these reasons and the other reasons outlined above, we respectfully request assurance that the Staff will not recommend enforcement action under the Custody Provisions against a Registered Adviser or Regulated Fund, as applicable, for treating a State Trust Company as a "bank", as defined in the Advisers Act and the 1940 Act (and, therefore, an institution permitted to custody assets), with respect to the placement and maintenance of Crypto Assets and Related Cash and/or Cash Equivalents, provided that:

1. prior to engaging the State Trust Company and on an annual basis, the Registered Adviser or Regulated Fund, as applicable, has a reasonable basis, after due inquiry, for believing that:

   (a) the State Trust Company is authorized by the relevant State Banking Authority to provide custody services for Crypto Assets and Related Cash and/or Cash Equivalents; and

   (b) the State Trust Company maintains and implements written internal 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, with such policies and procedures addressing, among other topics, private key management and cybersecurity. In making such a determination, the Registered Adviser or Regulated Fund:

      i. receives and reviews the State Trust Company's most recent annual financial statements and confirms that such financial statements have been subject to an audit by an independent public accountant and have been prepared in accordance with Generally Accepted Accounting Principles (GAAP);[13] and

      ii. receives and reviews the State Trust Company's most recent written internal control report prepared by an independent public accountant during the current or prior calendar year (*e.g.*, SOC-1 report or SOC-2 report) and confirms that such internal control report contains an opinion of such independent public accountant that controls have been placed in operation as of a specific date and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of Crypto Assets and Related Cash and/or Cash Equivalents during the year;

2. the Registered Adviser or Regulated Fund, as applicable, enters into, or causes an RIA Client to enter into, as applicable, a written custodial services agreement with the State Trust Company, which provides that:

   (a) the State Trust Company will not, directly or indirectly, lend, pledge, hypothecate, or rehypothecate any Crypto Assets (or Related Cash and/or Cash Equivalents) held in custody for the RIA Client or Regulated Fund, as

[13] Alternatively, in the event that the State Trust Company's financial statements are presented on a consolidated basis with its parent and other affiliates that have substantive activities, the Registered Adviser or Regulated Fund obtains a written certification or representation from the State Trust Company that the most recent annual financial statements of its parent have been subject to an audit by an independent public accountant and have been prepared in accordance with GAAP. The written certification or representation should include information regarding results of the audit.

applicable, without the prior written consent of the RIA Client or Regulated Fund, and then only for the account of such RIA Client or Regulated Fund; and

(b) all Crypto Assets (and Related Cash and/or Cash Equivalents) held in custody for the RIA Client or Regulated Fund, as applicable, will be segregated from the State Trust Company's assets;

3. the Registered Adviser discloses to its RIA Clients (in the case of a Registered Adviser) or the Regulated Fund discloses to the members of its board of directors or trustees (in the case of a Regulated Fund, as applicable) any material risks associated with using State Trust Companies as custodians of Crypto Assets (and Related Cash and/or Cash Equivalents); and

4. the Registered Adviser (with respect to an RIA Client) or the Regulated Fund (and, as applicable, its board of directors or trustees) reasonably determines that the use of the State Trust Company's custody services is in the best interest of the RIA Client or Regulated Fund and its shareholders, as applicable.

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We thank the Staff in advance for its careful consideration of this request. If you have any questions or would like to discuss any of the matters in this letter, please contact me at (202) 636-5990 or justin.browder@stblaw.com.

Sincerely,

Justin L. Browder

cc: Brian Daly, Director, Division of Investment Management, U.S. Securities and Exchange Commission
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