

UPDATES

SEC Paves the Way for Crypto Asset Activities by Broker-Dealers and Transfer Agents

May 19, 2025

On May 15, 2025, the staff of the SEC's Division of Trading and Markets (Staff) provided significant guidance in the form of [Frequently Asked Questions](#) (FAQs) to address various considerations for (i) SEC-registered broker-dealers¹ and (ii) SEC-registered transfer agents, in each case, with respect to certain activities thereby involving "crypto assets." Concurrent with the issuance of such FAQs, the Staff, together with FINRA staff, [withdrew](#) the [Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities](#) that was issued in July 2019 (Joint Statement). The FAQs address the application of certain broker-dealer financial responsibility rules and transfer agent regulations to crypto asset activities and distributed ledger technology (DLT). In particular, the FAQs provide significant easing from the guidance set forth in the Joint Statement regarding the ability of a broker-dealer to carry crypto assets — both securities and non-securities — for the account of any customer. In this regard, the FAQs could be viewed as welcomed change by many blockchain market participants and traditional financial institutions, including those looking to expand or establish services related to crypto assets. Although the SEC's 2020 statement on "Custody of Digital Asset Securities by Special Purpose Broker-Dealer" (SPBD Statement)² has not been rescinded, the FAQs provide a path for broker-dealers that are not SPBDs to engage in the same activities as an SPBD within an existing broker-dealer (although doing so may require review or approval by FINRA through an informal materiality consultation or a more formal continuing membership application).³

The FAQs address both crypto assets that are securities and those that are not, and discuss (i) the applicability of SEC Rule 15c3-3 to crypto asset securities, (ii) the permissibility of broker-dealers to facilitate in-kind creations and redemptions in connection with spot crypto exchange-traded products (ETPs), (iii) the applicability of the U.S. Securities Investor Protection Act of 1970 (SIPA) to crypto asset securities in a broker-dealer insolvency, (iv) broker-dealer recordkeeping practices for crypto asset securities and non-securities crypto assets, and (v) obligations of transfer agents engaged in crypto-related activities or using DLT.

The Staff notes that the FAQs represent the view of the Staff and are not a rule, regulation, or statement of the SEC. The Staff further notes that the SEC has neither approved nor disapproved their content and "have no legal force or effect" and "do not alter or amend applicable law." As practical matter, however, it would, presumably, be unlikely that the SEC would recommend enforcement action if a broker-dealer or

transfer agent followed the guidance in the FAQs, and, presumably, such FAQs will be respected, and followed, by FINRA.⁴

The Application of Rule 15c3-3 to Crypto Assets

SEC Rule 15c3-3(b)(1) requires a broker-dealer to promptly obtain, and thereafter maintain, the possession or control of all “fully-paid” securities and “excess margin” securities⁵ “carried for the accounts of customers.”⁶ If a broker-dealer is carrying a fully-paid (or excess margin) security for the account of a customer, the broker-dealer is required to either maintain (i) the possession of such security or (ii) the “control” of such security in accordance with SEC Rule 15c3-3(c) (which specifies certain “good control locations”).⁷ The FAQs clarify that with respect to the carrying of crypto assets for a customer, the requirements set forth in SEC Rule 15c3-3(b)(1) and (c) apply only to crypto assets that are securities, and, thus, such requirements do *not* apply to crypto assets that are not securities. Moreover, in contrast to the SPBD Statement, the same broker-dealer is permitted to carry for the account of a customer (i) crypto assets that are securities, (ii) crypto assets that are not securities, and/or (iii) traditional securities that are not crypto assets.

For crypto assets that are securities, the FAQs state that broker-dealers may establish control in accordance with paragraph (c) of Rule 15c3-3, in particular via SEC Rule 15c3-3(c)(5) where the custodian is a “bank” as defined SEC Rule 15c3-3(a)(7) (essentially, a “bank” as defined in Section 3(a)(6) of the Exchange Act).⁸ In contrast to the Joint Statement, the Staff clarified in the FAQs that a broker-dealer may now establish control over crypto assets that are securities, for the purposes of SEC Rule 15c3-3(b)(1), by ensuring that such securities are held, or custodied, in a control location specified in SEC Rule 15c3-3(c), such as a bank (subject to a “no-lien” agreement as noted at footnote 8). The Joint Statement had previously cast doubt on the ability of broker-dealers to demonstrate good control of crypto asset securities lodged in, or custodied by, a bank, which is now clearly permitted under the FAQs.⁹ As also noted above, the FAQs clarify that the 2020 SPBD Statement is a “safe harbor” and that SPBD status is not mandatory for broker-dealers seeking to custody crypto asset securities for customers.

The FAQs also note that the Staff expects broker-dealers to maintain accurate books and records for any non-security crypto asset activities. The FAQs state that this could be accomplished by the broker-dealer in the same manner as for its securities activities.

That said, there are important ramifications for a broker-dealer that elects to carry crypto asset securities for the account of a customer. Once the securities are reflected on the broker-dealer’s stock record, per SEC Rule 17a-3(a)(5), the broker-dealer is subject to a quarterly count/verification/examination obligation per SEC Rule 17a-13. The failure to comply therewith can have adverse impact to the broker-dealer under the customer reserve formula and the SEC’s net capital rule (for “short security differences”) and could require the broker-dealer to “buy in” securities that are the subject of a short security difference. Also, pursuant to SEC Rule 17a-5(d)(3), as part of the requirement for a broker-dealer to file annual audited financial statements, and an annual audited compliance report, with applicable regulators (and filing related requirements of other regulators), a broker-dealer’s outside/external auditor must be able to audit the broker-dealer’s internal financial controls in accordance with PCAOB requirements to ensure against any “material weakness” with respect to, among other things, the broker-dealer’s possession or control obligation under SEC Rule 15c3-3(b)(1) as well as with respect to the broker-dealer’s quarterly count obligation under SEC Rule 17a-13. A

broker-dealer that elects to proceed with maintaining custody of a customer's crypto assets that are securities in accordance with the FAQs may want to, first, vet their processes and controls/procedures with their auditor (and may want to also discuss those processes and controls/procedures with FINRA).

In-Kind Creations and Redemptions in Connection With Spot Crypto ETPs

The FAQs also address whether broker-dealers are permitted to facilitate in-kind creations and redemptions involving crypto assets in connection with spot crypto ETPs. To date, existing spot crypto ETPs use a cash-only creation and redemption structure, despite the stated preference of many sponsors during the listing approval process to permit the creation and redemption of shares by broker-dealers using crypto assets. The SEC has previously advised broker-dealers against receiving and transmitting crypto assets (in particular, bitcoin) in connection with the ETP creation/redemption process. So the FAQs also provide a significant easing for broker-dealers to, now, engage in such activities.¹⁰

According to the FAQs, broker-dealers may facilitate such transactions, including by taking proprietary positions in crypto assets underlying ETPs — bitcoin or ether — as long as those positions are properly reflected in their net capital calculations under Exchange Act Rule 15c3-1.¹¹ In this regard, the FAQs state that the Staff would not object if broker-dealers were to treat proprietary positions in bitcoin or ether — the assets underlying the ETPs — as “readily marketable” commodities for purposes of applying the 20% haircut required under Appendix B to Rule 15c3-1, although it is not clear from the FAQs if such guidance is limited only to situations where the broker-dealer acquires bitcoin or ether in connection with ETP creations/redemptions and is, in effect, “flat” or in a “riskless principal” position. That said, this position provides helpful guidance as the status of crypto assets under the net capital rule, and whether such positions would be subject to the 100% haircut applied to non-marketable securities under Rule 15c3-1(c)(2)(vii), had heretofore been unclear. By permitting application of the standard 20% haircut for commodities, the Staff has opened the door to greater broker-dealer participation in crypto ETP markets.

Importantly, although the FAQs state that bitcoin and ether can be treated as “readily marketable” as described above, this guidance appears to be limited to situations where the broker-dealer acquires bitcoin or ether to facilitate creations/redemptions of ETPs and not necessarily broader proprietary trading activity by the broker-dealer.

SIPA Protection

The FAQs reaffirm the Staff's prior position that SIPA protection does not extend to investment contracts that are not registered under the Securities Act of 1933 and that SIPA would probably not support a customer “net equity” claim in the event of a broker-dealer's insolvency and liquidation under SIPA for certain crypto assets that are not securities, including bitcoin and/or ether (even if the bitcoin or ether is deposited with the broker-dealer for the purpose of purchasing securities). However, the FAQs suggest that broker-dealers may mitigate the risk of loss of customer assets in an insolvency by contractually agreeing with customers to “opt-in” to Article 8 of the Uniform Commercial Code such that customer assets do not become part of the broker-dealer's estate if the broker-dealer is placed in a liquidation under SIPA or the Bankruptcy Code.

Transfer Agent Activities

The FAQs also discuss how the SEC's transfer agent rules apply to crypto asset securities and the use

of DLT by transfers agents.

The FAQs confirm the ability of registered transfer agents to rely on DLT for maintaining their master securityholder file.¹² Notably, the FAQs clarify that transfer agents are not required to maintain a duplicate or “digital twin” of their master securityholder files exclusively off-chain, provided applicable requirements under the federal securities laws are met.

Rule 17Ad-9 states that the master securityholder file of a registered transfer agent may consist of multiple linked, automated files in the limited context of uncertificated securities of companies registered under the Investment Company Act of 1940.¹³ However, in an expansion of this concept the FAQs explain that the master securityholder file may also comprise multiple files or systems in the context of DLT. The transfer agent may choose to record certain of the required information “on-chain,” while recording other parts of the required information “off-chain.” The FAQs state that this bifurcated model is acceptable, provided the transfer agent complies with applicable rules, including ensuring that its records are at all times secure, accurate, up-to-date, and produceable to the Commission and Staff in an easily-readable format.

The FAQs also clarify that persons acting as a transfer agent with respect to crypto asset securities may not be required to register with the SEC in all cases, depending on the services performed and whether the securities are “Section 12” securities.¹⁴ This is the same analysis for transfer agent registration that applies for traditional securities that are not crypto assets.

Takeaways

In a statement issued alongside the FAQs, Commissioner Hester Peirce described the FAQ as “incremental, not comprehensive.”¹⁵ While the FAQs do not carry the force of law and are not binding, they are suggestive of a new openness by the Staff to adopting a more constructive regulatory posture with respect to crypto asset activities. This marked change in tone may portend increased engagement by existing and new-entrant securities intermediaries with the SEC and FINRA, including registration of new broker-dealers and transfer agents that integrate blockchain infrastructure in securities markets and crypto assets into traditional financial services operations.

¹ In 2019, Sidley published a proposal addressing key questions under Rule 15c3-3. See Lilya Tessler, David Katz, Steffen Hemmerich & Daniel Engoren, *Custody of Digital Asset Securities: A Proposal to Address Open Questions for Broker-Dealers Under the SEC’s Customer Protection Rule*, Sidley (Mar. 18, 2019), <https://www.sidley.com/-/media/publications/custody-of-digital-assets.pdf>. The FAQs align with our recommendations set forth in the proposal.

² See *Custody of Digital Asset Securities by Special Purpose Broker-Dealers*, Exchange Act Release No. 90788 (Dec. 23, 2020), 86 FR 11627 (Feb. 26, 2021).

³ See FINRA Rule 1017(a)(5) and Notice to Members 00-73 of the former National Association of Securities Dealers, Inc., the predecessor to FINRA.

⁴ State securities or “Blue Sky” laws are preempted by federal requirements regarding, among other things, customer protection, net capital, and books and records established under the Exchange Act.

⁵ The term “fully-paid securities” is defined in SEC Rule 15c3-3(a)(3) to contemplate securities carried long in a customer’s brokerage account, that is, which securities are not collateralizing a margin debit balance. The term “excess margin securities” is defined in SEC Rule 15c3-3(a)(5),

and related guidance, to mean, in general, securities carried for the account of a customer that have a market value in excess of 140% of the customer's "net" or adjustment margin debit balance across all of the customer's security accounts carried by the broker-dealer. Because crypto asset securities are, generally, not "margin securities" under Section 220.2 of Regulation T, as promulgated by the Federal Reserve Board under Section 7(c) of the Exchange Act, as a practical matter, a broker-dealer's obligation to comply with SEC Rule 15c3-3(b)(1) for these purposes is with respect to crypto asset securities that are fully-paid securities.

⁶See SEC Rule 15c3-3(a)(2).

⁷Under SEC Rule 15c3-3(c)(7), the SEC may specify any other locations as good control locations for these purposes.

⁸Importantly, SEC Rule 15c3-3(c)(5) requires that the bank-custodian acknowledge in writing to the broker-dealer that the securities in question are not "subject to any right, charge, security interest, lien or claim of any kind in favor of the bank or any person claiming through the bank." As noted above, pursuant to SEC Rule 15c3-3(c)(7), a broker-dealer may make application to the SEC to designate other good control locations that are not specified in SEC Rule 15c3-3(c).

⁹See Div. of Trading and Mkts., SEC & Off. of Gen. Couns., FINRA, *Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities* (Jul. 8, 2019), <https://www.sec.gov/newsroom/speeches-statements/joint-staff-statement-broker-dealer-custody-digital-asset-securities> (withdrawn May 15, 2025).

¹⁰A broker-dealer should also consider the impact of state money transmitter requirements to any such proposed activities.

¹¹17 C.F.R. § 240.15c3-1.

¹²Defined in Rule 17Ad-9(b) as the "official list of individual securityholder accounts."

¹³17 C.F.R. § 240.17Ad-9.

¹⁴That is, securities registered under Section 12 of the Exchange Act or that would be required to be registered except for the exemption from registration provided by Section 12(g)(2)(B) or Section 12(g)(2)(G) of the Exchange Act (i.e., certain securities issued by a registered investment company or an insurance company).

¹⁵Comm'r Hester M. Peirce, *An Incremental Step Along the Journey: The Division of Trading Markets' Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technologies* (May 15, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-tm-faq-051525>.

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Thank you to Sidley knowledge management lawyer Daniel Engoren for his significant contributions to this Sidley Update.

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