

FINANCIAL INFORMATION FORUM

January 31, 2025

By electronic mail

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Attn: Michael A. Macchiaroli, Associate Director, Division of Trading and Markets, Office of Broker-Dealer Finances
Thomas K. McGowan, Associate Director, Division of Trading and Markets, Office of Broker-Dealer Finances

Re: Extending and Updating the Commission’s Statement on Custody of Digital Asset Securities by Special Purpose Broker-Dealers

Dear Mr. Macchiaroli and Mr. McGowan,

Financial Information Forum (“FIF”)¹ members would like to discuss with you and your colleagues at the Securities and Exchange Commission (the “Commission”) extending the Commission’s statement titled “Custody of Digital Asset Securities by Special Purpose Broker-Dealers” (the “Commission statement”),² with two proposed modifications:

- Removing the requirement that a special purpose broker-dealer (“SPBD”) limit its business to digital asset securities
- Authorizing SPBDs to hold digital asset securities in street name.

These two modifications are necessary to allow for the development of an efficient trading market for digital asset securities.

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include broker-dealers, exchanges, back office service bureaus, and market data, regulatory reporting and other technology vendors in the securities industry. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

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

The references to SPBDs in this letter refer to broker-dealers that custody digital asset securities, as opposed to referencing a distinct registration category. Consistent with the first proposed modification, FIF members believe that SPBD activity should be permitted within an existing broker-dealer (subject to approval by the Financial Industry Regulatory Authority (“FINRA”) on a firm-by-firm basis as part of FINRA’s standard membership application approval process) as opposed to requiring a separately-registered entity for this activity.

This letter is specifically focused on custody issues, which are fundamental to the development of an efficient trading market for digital asset securities. Other regulatory changes by the Commission are needed to facilitate the development of an efficient trading market for digital asset securities.³ FIF members intend to raise these other issues through separate communications and discussions with Commission representatives. The recommendations set forth in this letter are not intended to represent the only approach to address the challenges described, but these recommendations represent one approach that should be considered.

A. Extending and Modifying the Commission Statement

Current Status

The Commission statement was published on December 23, 2020 and became effective on April 27, 2021.⁴ The Commission statement will terminate on December 23, 2025, the fifth anniversary of its publication.⁵ Given that the Commission and FINRA have authorized two SPBDs to date, with the second SPBD being approved during September 2024,⁶ FIF members assume the Commission intends to extend the authorization for SPBDs beyond December 23, 2025. FIF members expect that, as part of this extension, the Commission will seek input from market participants on the operation of SPBDs and approaches to enhance their effectiveness.

Executive Order on Digital Financial Technology; Commission Crypto Task Force

An extension of the Commission statement -- with modifications to enhance effectiveness -- is supported by the January 23 Executive Order titled “Strengthening American Leadership in Digital Financial Technology.”⁷ The objective of the Executive Order is to protect and promote “... the ability of individual citizens and private-sector entities alike to access and use for lawful purposes open public

³ As one example, there are certain requirements of Commission Rule 15c2-11 (Publication or submission of quotations without specified information) that present challenges for trading digital asset securities. 17 CFR §242.15c2-11.

⁴ Commission Statement, at 86 FR 11627.

⁵ Id. at 86 FR 11631.

⁶ tZero, “tZERO Receives Landmark Approval To Custody Digital Securities and Support End-to-End Digital Securities Lifecycle in the United States”, available at <https://tzero.com/press-releases/tzero-receives-landmark-approval-to-custody-digital-securities-and-support-end-to-end-digital-securities-lifecycle-in-the-united-states/>.

⁷ Executive Order, “Strengthening American Leadership in Digital Financial Technology” (Jan. 23, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/strengthening-american-leadership-in-digital-financial-technology/>.

blockchain networks ...”⁸ The Executive Order establishes a President’s Working Group on Digital Asset Markets and requires the Commission and other financial regulators to (i) identify to the President’s Working Group regulations, guidance documents and orders that affect the digital asset sector, and (ii) submit recommendations for modifications to such regulations and guidance to support the objectives of the Executive Order.⁹

On January 21, Commission Acting Chair Mark T. Uyeda announced the formation of a new crypto task force to be led by Commissioner Hester Peirce.¹⁰ FIF members request that the issues raised in this letter be included in the task force discussions.

Focus on Two of the Nine SPBD Conditions

The Commission statement sets forth nine conditions for SPBDs to maintain custody of digital asset securities.¹¹ This letter is focused on proposed modifications to two of these nine conditions. The fact that the Commission has only approved two SPBDs to date (as compared to the significant number of broker-dealers that custody traditional securities) illustrates that there are challenges with the current regulatory framework for SPBDs that are important to address.

Timing for Modifications to the Commission Statement

While FIF members request that the Commission adopt modifications to the Commission statement as part of an extension, FIF members also request that the Commission implement these changes on an expedited basis. In other words, the requested extension and modification could be adopted and become effective during 2025, prior to the current expiration date of the Commission statement.

B. Removing the Requirement that an SPBD Limit its Business to Digital Asset Securities

The Current Requirement Impedes the Development of an Efficient Trading Market for Digital Asset Securities

The Commission statement provides as a condition for an SPBD to custody digital asset securities that the SPBD “limits its business to dealing in, effecting transactions in, maintaining custody of, and/or operating an alternative trading system for digital asset securities.”¹² FIF members recommend that this condition be removed. With the removal of this condition, a broker-dealer that trades and has custody of other types of securities, including Regulation NMS securities, would also be permitted to trade and have custody of digital asset securities.

⁸ Id. at Section 1(a)(i).

⁹ Id. at Section 4.

¹⁰ Commission Press Release 2025-30, “SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force” (Jan 21, 2025), available at <https://www.sec.gov/newsroom/press-releases/2025-30>.

¹¹ Commission Statement, at 86 FR 11631-11632.

¹² Id. at 86 FR 11631.

Traditional securities (i.e., securities other than digital asset securities) are typically purchased and sold for cash (also referred to as “fiat currency”). If the Commission were to restrict broker-dealers that custody traditional securities from participating in transactions that involve the purchase and sale of securities for cash, this would obviously impede trading for these securities. In the same way, digital asset securities are often exchanged for other digital assets, including stablecoins. In many cases, these other digital assets (including many stablecoins) are not securities. The current requirement that an SPBD limit its business to trading in digital asset securities restricts an SPBD from engaging in these typical transactions and thereby impedes the development of an efficient trading market for digital asset securities.

The Current Requirement Impedes Real-Time Settlement

The current restriction impedes the ability for an SPBD to provide real-time settlement (through the blockchain) for the common transaction where a digital asset security is exchanged for a digital asset that is not a security (including many stablecoins).

The Current Requirement Imposes an Unreasonable Compliance Burden on SPBDs

The structure of the SPBD registration imposes an unreasonable and unnecessary burden on an SPBD to determine whether each digital asset that it seeks to trade is a security. Given the fact that the question of when a digital asset is a security is highly fact-specific and requires subjective analysis, some broker-dealers have taken a broader interpretation of when a digital asset is security to avoid regulatory challenges. The problem is that the current SPBD registration conditions impose regulatory risk if an SPBD takes an overly broad interpretation on this issue. In other words, SPBDs must “thread the needle” and are at risk whether they adopt a broader or narrower interpretation of when a digital asset is a security. If an SPBD adopts a narrower interpretation, the SPBD risks running afoul of the securities registration rules; if an SPBD adopts a broader interpretation, the SPBD risks running afoul of the Commission statement. This is unreasonable and unfair given that this question is highly fact-specific and requires subjective analysis. It could also be contrary to the Commission’s regulatory interests to incentivize SPBDs to take an overly narrow interpretation of when a digital asset is a security.

The Commission’s Stated Concerns can be Addressed Through Other Requirements in the Commission Statement

The Commission statement highlights various risks relating to the trading and custody of digital asset securities and sets conditions to address these risks. These risks can be addressed without requiring that a broker-dealer custody digital asset securities through a separately-registered entity. For example:

- ***Control mechanism.*** The Commission identifies the risk that “.. it may not be possible for a broker-dealer to establish control over a digital asset security with the same control mechanisms used in connection with traditional securities.”¹³ From a technical perspective, this risk can be addressed through the other conditions established by the Commission in the

¹³ Id. at 86 FR 11628.

Commission statement¹⁴ (and the associated FINRA approval process). From a legal perspective, U.C.C. Article 8 applies the same control provisions to digital asset securities as are applied to other securities and applies the same control provisions to digital assets as are applied to other financial assets.¹⁵

- **Clearing.** The Commission identifies the risk that digital asset securities are not cleared in the same manner as traditional securities.¹⁶ Digital asset securities currently clear in the same manner as many private securities, through direct registration with the issuer. As discussed below, the Commission should allow for the holding and clearing of digital asset securities in street name.
- **Customer protections (for example, SIPC).** The Commission highlights that customers do not have the same protections (for example, SIPC protections) for digital assets that are not securities.¹⁷ This issue can be addressed through the disclosure conditions established by the Commission in the Commission statement (and the associated FINRA approval process). If customers do not have the same protections for digital assets, this would not impact the existing customer protections for assets such as cash and securities that are held by a broker-dealer.
- **Theft or loss of assets.** The Commission highlights that a “... broker-dealer could be victimized by fraud or theft, could lose a ‘private key’ necessary to transfer a client’s digital assets, or could transfer a client’s digital assets to an unintended address without the ability to reverse a fraudulent or mistaken transaction.”¹⁸ These risks can be addressed through the other conditions established by the Commission in the Commission statement (and the associated FINRA approval process). As one example, the Commission could require as a condition for approval that an SPBD have the ability to reverse a fraudulent or mistaken transaction.

The Commission Should Adopt a Regulatory Approach that is Technically Neutral

The Commission should adopt a regulatory approach that is technically neutral. To the extent there are specific concerns relating to digital asset securities (for example, with respect to the protection of private keys), the Commission can address these concerns through existing conditions in the Commission statement (and the associated FINRA approval process).

¹⁴ See, for example, Condition 6 of the Commission Statement: “The broker-dealer establishes, maintains, and enforces reasonably designed written policies, procedures, and controls that are consistent with industry best practices to demonstrate the broker-dealer has exclusive control over the digital asset securities it holds in custody ...” Id. at 86 FR 11631.

¹⁵ See, for example, U.C.C. §§ 8-102(a)(7), (9), (14), (15), (17) and (18), 8-106, and 8-301.

¹⁶ Commission Statement, at 86 FR 11629.

¹⁷ Ibid.

¹⁸ Ibid.

C. Authorizing SPBDs to Hold Digital Asset Securities in Street Name

Challenges with the Current Process for SPBDs in Holding and Trading Digital Asset Securities

The Commission statement outlines various conditions for the operation of an SPBD.¹⁹ One condition is that, “The broker-dealer has access to the digital asset securities and the capability to transfer them on the associated distributed ledger technology.”²⁰ The Commission should clarify that this condition could be satisfied through the holding of digital asset securities in street name.

Currently, digital asset securities owned by customers of an SPBD (or customers of a broker-dealer customer of the SPBD) are held through direct recording of the customer’s ownership with the issuer (in a similar manner to the typical holding of private securities). This creates two significant challenges to the efficient trading of digital asset securities:

1. Requirement for Introducing Brokers to Disclose Customer Names to SPBD ATSS

When a customer of an introducing broker (“IB”) trades traditional equity securities on an exchange or alternative trading system (“ATS”) or through another downstream party, such as a market maker or routing firm, the IB is not required to disclose the customer identities to the downstream firm. IBs maintain proprietary interest in their customer lists and have significant privacy concerns regarding such disclosure.

Equity securities held in street name allow IBs to trade on behalf of their customers without disclosing individual customer identities. This is facilitated by a tiered structure involving The Depository Trust Company (“DTC”), which records the IB (or the IB’s clearing firm) as the holder, and the IB (or the IB’s clearing firm), which manages customer-level records.

In contrast, for digital asset securities, direct recording of customer ownership with the issuer forces IBs to disclose their customers to the SPBD. This requirement hinders efficient trading and raises privacy and competitive concerns.²¹

2. Challenges for SPBDs in Trading with Each Other

With traditional equity securities, a broker-dealer can route a customer order to another broker-dealer (such as a market maker), an ATS or an exchange for execution. Settlement is conducted in street name through the National Securities Clearing Corporation (an affiliate of DTC), while each broker-dealer (or its clearing firm) handles settlement with its respective customers.

This process is not feasible for digital asset securities without disclosing the customer to every involved party, as this disclosure is necessary for trade settlement. This creates inefficiencies

¹⁹ Id. at 86 FR 11631-11632.

²⁰ Id. at 86 FR 11631.

²¹ Market participants have explored ways to address this challenge based on the current direct registration process, but this continues to be a challenge.

that are not present for trading other asset classes, such as equities, fixed income securities, or digital assets that are not securities.

Addressing These Challenges by Authorizing SPBDs to Hold Digital Asset Securities in Street Name

Both challenges could be resolved by authorizing SPBDs to hold digital asset securities in street name.²² In this model:

- SPBDs could be recorded as owners on the blockchain, with customer ownership represented through the books and records of SPBDs, upstream broker-dealers and other regulated entities.
- A clearing agency like DTC could act as a record holder on the blockchain. Alternatively, token issuers could record SPBDs as direct token holders in place of a registered clearing agency.

FIF members understand that this solution would involve designating a token issuer as a good control location for purposes of the Commission's customer protection rule. The Commission has provided similar designations in the past. For example, the Commission has authorized broker-dealers to treat the general partner of a non-registered private limited partnership as a good control location.²³ This authorization for private limited partnerships is subject to a series of conditions that could be applied to token issuers.²⁴

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FIF members believe the Commission is aware of these issues and encourage constructive dialogue between Commission representatives and market participants to explore solutions. FIF members would like to schedule a call to discuss the issues presented in this letter. Please contact me at howard.meyerson@fif.com after you have had an opportunity to review this letter.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

cc: Shawn Sloves, Chief Executive Officer, Fundamental Interactions (Chair of the FIF Working Group on Digital Asset Securities)

²² This is not intended to be the only means to address this issue, but it is an important means that should be available to SPBDs.

²³ Commission letter to Wilmer, Cutler & Pickering (July 30, 1997), NYSE Interpretation Memo 98-5 (May 1998).

²⁴ Ibid.