May 9, 2025

By electronic submission

Commissioner Hester M. Peirce and Members of the SEC Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-0213

RE: Request for Comment on *There Must Be Some Way Out of Here*

To The Crypto Task Force:

The Securities Industry and Financial Markets Association[1] and its Asset Management Group[2] (collectively, "SIFMA") provide this letter in response to the recent Statement by Commissioner Hester M. Peirce entitled "***There Must Be Some Way Out of Here***" (the "Statement") requesting information from stakeholders on activity involving blockchain-based digital assets.[3] SIFMA welcomes the efforts of the Securities and Exchange Commission (the "SEC") to engage with all market participants interested in the ongoing development of these technologies, as well as its creation of the Crypto Task Force (the "Task Force"). SIFMA shares the SEC's and the Task Force's goal of providing greater clarity to market participants engaged in digital assets activities through frameworks that balance responsible innovation and protecting investors.

SIFMA's comments in this letter are focused on three broad topics raised in the Statement: securities status and scoping; issues related to the safekeeping of digital assets, including broker-dealer, investment adviser, and investment company custody; and areas where modernization of the regulatory framework is needed to support the development of tokenized securities markets and related derivatives markets. SIFMA and its members have spent a significant amount of time studying these issues, with the feedback in this letter reflecting the lessons learned from a variety of industry reports, proofs of concept and real-world applications. SIFMA intends to provide additional written feedback soon on the other issues raised in the Statement and looks forward to continued engagement with the SEC and the Task Force on these important issues over the coming weeks and months. Furthermore, SIFMA recommends that the SEC broaden the scope of its analysis to also cover down-the-road implications for security-based swap markets.

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation, and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association.

[2] SIFMA AMG brings the asset management community together to provide views on policy matters and to create industry best practices. SIFMA AMG's members represent U.S. and multinational asset management firms whose combined global assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

[3] As is our convention when commenting on these topics, we refer to "digital assets" throughout this letter; however, we recognize that the term "crypto assets" is also frequently used (including in the Statement) and for purposes of this letter intend these two terms to be viewed interchangeably.

I. Executive Summary

As explained throughout this letter, any new law, regulation or guidance impacting digital asset activity in the securities sector should be designed with the following core principles in mind:

- ***Importance of Robust Investor Protections:*** The same robust investor protections that have long underpinned the strength of the U.S. securities markets must be extended to digital assets market participants.
- ***Build on Existing Regulatory Principles:*** To the extent possible, the SEC should apply existing and well-understood securities regulatory principles to digital assets, rather than creating a distinct architecture for this class of assets and transactions. Given that we are still in the early stages of the development of digital asset markets, SIFMA encourages the SEC to do this primarily through the issuance of flexible, principles-based guidance following engagement with market participants, rather than through prescriptive mandates.
- ***Apply a Technology-Neutral Approach:*** Innovation and flexible risk-mitigation will be hindered if the SEC mandates specific technologies or architectures. Instead, rules, guidance and other policies should broadly be "technology neutral," meaning that the regulatory treatment should be determined by the underlying risks of a given asset or transaction rather than the underlying technology that is used.
- ***Avoid Regulatory Arbitrage:*** Policies should follow the "same risk, same activity, same regulatory outcome" principle, ensuring that digital assets and market participants are subject to regulatory outcomes that are risk appropriate and broadly equivalent to those that apply to traditional assets and market participants.

With these principles as a guide, SIFMA makes the following recommendations in this letter:

Securities Status

- ***Adopt Clear and Consistent Taxonomies***: The SEC should adopt clear, consistent and consensus-driven taxonomies and classification approaches, such as those described in this letter, as a crucial first step in the development of effective digital assets regulation.
- ***Securities Status Should be Based on Economic Characteristics:*** The determination of whether a digital asset is a security should be based upon the intrinsic economic characteristics of an asset or transaction rather than through a technology-driven approach that depends on mutable factors extrinsic to the asset or transaction.
- ***Supplement Existing Case Law:*** The SEC should build on the existing corpus of case law in determining securities status, supplementing as appropriate through the issuance of flexible, principles-based guidance that considers industry input, and FAQs specific to digital assets.
- ***Scoping-Out:*** SIFMA supports the SEC's efforts to provide guidance scoping-out non-securities digital assets and digital asset activities. However, guidance should be based on a technology-neutral approach and avoid adopting classifications that may create conflicts with terminology in potential future legislation on payment stablecoins and digital assets market structure.

Custody

- ***Apply Traditional Custody Principles:*** Traditional regulatory principles around custody and the role of the custodian, including the separation of financial activities, segregation of client assets, and ensuring proper control of assets, should be applied to the custody of digital assets, whether in the broker-dealer, registered investment adviser ("RIA"), or investment company context.
- ***Rely on Existing Custody Frameworks and Do Not Adopt Safeguarding Proposal:*** The SEC should neither develop a new custody framework solely for digital assets nor proceed with its unworkable 2023 Safeguarding proposal. Instead, the SEC should ensure that existing regulatory

perimeters with respect the regulation of custodial activity do not expand to include asset types beyond securities and funds, and that where clarification regarding how these regulations will apply to digital asset securities and funds may be appropriate, the SEC should engage in an iterative dialogue with industry participants to develop updated guidance on specific topics *e.g.,* on the subject of "private keys."

- ***Custody Requirements Should be Technology Neutral:*** Custody rules and guidance should adopt flexible frameworks that accommodate evolving technologies and avoid favoring specific technological characteristics, including the network type (*e.g.,* public versus private) and its configuration (*e.g.,* permissioned versus permissionless).

- ***Replace the Special Purpose Broker-Dealer Framework:*** The SEC should formally withdraw the Special Purpose Broker-Dealer ("SPBD") Statement and replace it with a framework that would enable broker-dealers to custody digital asset securities in compliance with applicable regulations alongside traditional assets within their established entities.

- ***Custody of Non-Security Digital Assets:*** For digital assets that are not securities, the SEC should carefully assess its existing authorities in consultation with other regulators and avoid prescriptive mandates that may be difficult or impossible for custodians to implement. Any rules related to the custody of such assets should be based upon key traditional custody principles including sufficient separation of activities, segregation of client assets, and proper control. Any rules or guidance should also be technology neutral and treat the non-security digital asset in the same manner as a traditional asset with the same economic function.

Tokenization

- ***Targeted Clarifications Are Needed to Help Tokenized Asset Markets Develop:*** The SEC should make targeted policy changes to promote the development and expansion of tokenized securities markets. This includes clarifying how existing requirements apply to tokenized securities in areas such as recordkeeping, possession and control, and clearing and settlement.

- ***Modernize Transfer Agent Regulations for Tokenized Assets:*** The SEC should modernize its transfer agent regulations as they apply to tokenized asset transactions, recognizing that key features of blockchains and smart contracts can allow the transfer agent to fulfil many, if not all, of its core functions, including recordkeeping, settlement facilitation, and compliance enforcement.

- ***Do Not Move to T+0 or "Atomic" Settlement:*** Regulatory modernization to promote tokenized asset markets should not include any attempt to move to T+0 settlement cycle on an industry-wide, mandatory basis, given the significant risks, costs, and additional complexity it would create for traditional markets after the recent successful transition in the United States to T+1 settlement, and the fact that other major jurisdictions have not yet completed their process of transitioning from a T+2 to a T+1 settlement cycle.

Our responses to the relevant questions posed in the Statement are below. The numbered questions follow the ordering of topics contained in the Statement.

II. Security Status

1. *What type of regulatory taxonomy would provide a predictable, legally precise, and economically rational approach to determining the security status of crypto assets and transactions in such assets without undermining settled approaches for evaluating the security status of non-crypto assets and transactions?*

Building on Existing Work

SIFMA believes that a clear, consensus-driven approach to classifying digital assets underpins robust markets and effective regulation. The evolving digital asset ecosystem has led many to develop proprietary taxonomies to classify digital assets and their related technology. One approach that has been widely vetted by market participants is the taxonomy originally developed by SIFMA's global affiliate, the Global Financial Markets Association ("GFMA"),[4] which was subsequently adopted as a recommendation by the Commodity Futures Trading Commission's Global Markets Advisory Committee's Digital Asset Markets ("CFTC GMAC DAM") Subcommittee.[5] The CFTC GMAC endorsed this classification and approach (hereafter "DAM Taxonomy Approach") following engagement with stakeholders across the broader digital asset ecosystem.

The DAM Taxonomy Approach aims to set out consistent language to promote innovation, identify and address risk considerations, and enable effective regulatory understanding. With this objective in mind, the Approach builds upon the considerable classification efforts of standard setters and regional authorities, including the Bank for International Settlements ("BIS"), the Financial Stability Board ("FSB") and others, to create the initial basis for a consensus-driven functional taxonomy. While the DAM Taxonomy Approach was drafted as an aid in the drafting of future legislation, regulations, policies, and procedures, it is written in a jurisdictionally agnostic manner and does not attempt to clarify defined terms in any specific existing published legislative or regulatory text.

Avoiding Inconsistent Terminology

We note there has been some confusion among certain terms that the SEC has used with respect to digital asset activity, including when a digital asset should be considered a "crypto asset security" and when a digital asset is "offered and sold as a security." In addition, the myriad terms market participants use more generally to refer to various types of digital assets, including "utility tokens," "governance tokens," "liquid staking tokens," "meme coins" and "stablecoins" only exacerbate the confusion. This can hinder regulatory clarity and, by extension, can deter market adoption.

SIFMA believes that adopting a suitable taxonomy that implements a "same activity, same risk, same regulatory outcome" approach, such as the DAM Taxonomy Approach, is a foundational precursor to establishing effective regulation. The taxonomy should build on classifications from domestic and international authorities and standard setters, be jurisdictionally agnostic, and be grounded in key features of digital assets, including identifying: whether there is an "issuer" of the assets; the mechanism underpinning value of the asset; how any rights conferred against an identifiable entity (if any) are documented; whether there is fungibility with other assets; whether the issuer or another person has agreed to redeem the asset; and the nature of the record (*i.e.,* whether the asset is a "digital twin" of a traditional asset or is "digitally native"). Critically, the focus of the SEC's taxonomy should be whether the digital asset by its terms (or contractual undertakings associated with the digital asset by the asset's issuer) conveys or provides *observable* features (such as providing an ownership interest in, or creating a legal obligation of, a legal entity) that would cause the asset to be classified as a security under US federal securities laws.

The SEC should also illuminate a pathway for SEC-regulated entities to provide digital asset services through a classification standard that does not result in varying outcomes based on factors extrinsic to the asset. Such an approach would allow market participants to readily classify digital assets

[4] GFMA Response re: International Regulation of Crypto-Asset Activities: a Proposed Framework (December 15, 2022), available at https://www.gfma.org/wp-content/uploads/2022/12/gfma-response-to-fsb-crypto-asset-consult-15-december-2022.pdf.
[5] CFTC Global Markets Advisory Committee, Digital Asset Markets Subcommittee, Digital Assets Classification Approach and Taxonomy (March 6, 2024), https://www.cftc.gov/media/10321/CFTC_GMAC_DAM_Classification_Approach_and_Taxonomy_for_Digital_Assets_030624/download.

into financial assets that are securities; money-like digital assets that are not securities (*i.e.,* central bank digital currencies ("CBDC"), certain tokenized deposits, stablecoins); cryptocurrencies that are not securities; alternative digital assets that are not securities (*e.g.,* tokenized art, meme coins, intellectual property rights, carbon credits); functional digital assets that are not securities (*e.g.,* utility tokens, governance tokens); and settlement controllable electronic records that are not securities (*e.g.,* settlement tokens). Further, for digital assets that are tokenized versions of traditional securities (such as equity and debt), the SEC should distinguish between: "tokenized securities"– digital assets that are a "digital twin" intended by the issuer or a custodian of a non-tokenized underlying security to represent that security, where such representation itself satisfies the definition of a security under federal securities law; and "security tokens"– a native digital asset that satisfies the applicable regulatory definition of a security under federal securities law.

2. *Should the Commission address when crypto assets fall within any category of financial instruments, other than investment contracts, that are specifically listed in the definition of "security" in the federal securities laws?*

Broadly speaking, SIFMA supports technology-neutral outcomes that are aligned with the principle of "same activity, same risk, same regulatory outcome." To this end, existing interpretations of the categories of financial instruments, other than SEC's previous overly-broad interpretation of "investment contracts," that are specifically listed in the definition of "security" in the federal securities laws should apply to digital assets in the same way that they apply to traditional (non-digital) assets. Assets (regardless of technological frameworks underpinning them) should further be classified based upon their economic function and characteristics along with whether the asset creates a legal relationship with an entity properly characterized as an issuer under the federal securities laws.

However, SIFMA recognizes that the computer code underlying blockchain technology allows issuers to create a nearly infinite variety of asset types, some of which may raise questions about whether or not a particular asset fits within the existing statutory definition of a security. An example would be the Division of Corporation Finance's recent statement on "Covered Stablecoins."[6]

3. *Certain crypto assets are used in a variety of functions inherent to the operation of a blockchain network, such as mining or staking as part of a consensus mechanism or securing the network, validating transactions or other related activities on the network, and paying transaction or other fees on the network. These technology functions may be conducted directly or indirectly, such as through third-party service providers. What types of technology functions are inherent to the operation of a blockchain network? Should the Commission address the status of technology functions under the federal securities laws and, if so, what issues should be addressed?*

4. *Users of liquid staking applications receive a so-called "liquid staking token." This token represents their staked crypto asset, and the token can be used in other activities, all while continuing to participate in the proof-of-stake protocol. Should the Commission address the status of liquid staking tokens under the federal securities laws, and, if so, what issues should it address?*

<u>Note</u>: We are providing a response addressing both Question 3 and Question 4 together as we view the subject matter of these questions to be closely related, and we believe our feedback is responsive to both of these questions.

SIFMA favors greater regulatory clarity. In particular, SIFMA commends the guidance published by the SEC's Division of Corporation Finance[7] which provided clarification that certain activities inherent to the operation of a proof-of-work blockchain network commonly referred to as "mining" do not involve the offer and sale of securities.

[6] SEC Division of Corporation Finance, Statement on Stablecoins (April 4, 2025), available at https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425.

[7] SEC Division of Corporation Finance, Statement on Certain Proof-of-Work Mining Activities (March 20, 2025), available at https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025.

Where new technology and related applications introduce new processes and involve functionalities that go beyond existing regulated market activity, clarification from regulators can be helpful to market participants. This would include blockchain activities such as "staking" digital assets to secure a blockchain network and running a computer "node" on such a network to validate transactions proposed by users. These and other activities heretofore have been addressed through enforcement actions, rather than proactive guidance. Our members do not generally view these functions as traditional securities activities and, absent certain factors, should be understood to be outside of the traditional federal securities law framework. SIFMA emphasizes that the broad permutations on what some consider to be "staking" activities highlights the importance of the SEC's establishing parameters and frameworks for identifying when such activity would constitute securities activity as compared to when such activity would be recognized as solely a technology function.

Providing guidance on these and other points would assist market participants in reducing uncertainty or ambiguity, leading to more robust participation and further professionalizing the digital asset space, as well as reducing risk. Market participants would also benefit from guidance on gradations with respect to these and other activities, which could be accomplished in clear definitions, regulations and more informal "FAQs." Specifically with respect to staking, this guidance should take into consideration the economic nature of staking as a reallocation of network value along with the legal relationship, or lack thereof, involved in the relevant activity.

III. Scoping Out

5. *Should the security status of certain categories of crypto assets be addressed, such as stablecoins, wrapped tokens, and NFTs?*

Consistent with the response to Question 1, SIFMA supports a consensus-driven taxonomy based on the intrinsic characteristics of digital assets and would support additional clarity from the SEC regarding additional categories of digital assets**.**

SIFMA commends such efforts made by the SEC to date, such as the Statement on Stablecoins, which clarified that "Covered Stablecoins" are not securities.[8] In connection with any such clarification provided, however, SIFMA would note potential issues associated with the SEC's introducing new defined terms that may cross jurisdictional boundaries without first aligning such terms with other definitional sources – whether those definitions come from legislative frameworks or other regulators. In the Statement on Stablecoins, for instance, the SEC created the defined term "Covered Stablecoins" to refer to digital assets that are more commonly understood as "payment stablecoins." As explained in SIFMA's response to Question 1, the creation of new terminology not aligned with existing terms commonly used in the digital markets may create confusion and interpretive challenges for market participants. Regardless, we appreciate that certain efforts may be intended to facilitate industry discussion at this stage and, when legislation progresses, the required jurisdictional alignment and definitional clarity will occur.

Nevertheless, in areas that are highly technology-sensitive, such as wrapped tokens, we urge the SEC to proceed with caution to avoid prematurely categorizing assets based primarily on highly mutable technology characteristics. Such an approach could inadvertently create greater confusion for market participants when subtle permutations on these technologies are introduced; prior guidance may become out of step with industry practice.

6. *How can the Commission establish a workable taxonomy while remaining merit- and technology-neutral?*

In responding to this question, SIFMA incorporates by reference its response to Question 1, as we believe adhering to the classifications set out therein will contribute considerably to the SEC's establishing a workable taxonomy for digital assets. SIFMA underscores the importance of adopting a principles-based approach that is merits-based, technology-neutral, focuses on the economic substance and risks of specific

[8] *See* supra, note 5.

digital assets (rather than their technological form), and primarily considers an asset's function as the basis of determining its status as a security. References in regulation to blockchain or other technology may be needed for descriptive or clarification purposes, but as a general rule, SIFMA would expect that the SEC will achieve this objective by focusing on the legal characteristics of an asset (including associated rights against the entity that is the issuer of the asset, as that term is used in the Securities Act of 1933,[9] rather than on the technology used to create or maintain the asset).

In addition, given that jurisdictional boundaries may need to be straddled in new ways to effectively regulate digital assets, SIFMA would support the SEC developing a taxonomy in cooperation with other domestic and international regulators and standard setters, which would support broader interoperability. This taxonomy should draw from commonly understood industry terms, rather than creating new language to describe existing products and activities.

IV. Custody Generally

21. Should the Commission amend existing rules, propose new rules, or provide guidance to facilitate custody arrangements for crypto assets? If so, what rule amendments or new rules would be appropriate, and to which types of activities should they apply? Should the Commission propose any specific changes to its rules to accommodate the self-custody of crypto assets by entities registered with the Commission? If so, what conditions should apply to self-custody arrangements to mitigate any related risks? Should the requirements for crypto assets that are securities and those that are not differ?

Background on Custody

The custody function is an essential component of the modern financial system, helping to strengthen investor protection and mitigate potential conflicts of interest through the appropriate safeguarding of client assets. History offers some important lessons on the fundamental importance of custody banks in promoting high standards of investor protection. From the collapse of investment trusts in the 1930s, to the Madoff scandal of late-2008, to the collapse of FTX in November 2022, investors are at risk when their assets are not properly safeguarded. These are lessons which are very much relevant today in the context of the rapidly growing digital asset market.

Today, banking organizations provide the majority of custody services for the world's investors.[10] This reflects the robust and comprehensive range of prudential requirements, including ongoing supervisory oversight and orderly resolution mandates, to which banks must adhere to ensure their activities are conducted in a safe and sound manner. In some cases, law encourages or requires using a bank custodian. This includes the requirements that apply to registered investment companies, including mutual funds in Section 17(f) of the Investment Company Act of 1940, as amended,[11] and the obligation under Rule 206(4)-2 under the Investment Advisers Act of 1940, as amended,[12] for registered investment advisers ("RIAs") custodying client assets to use a "qualified custodian," including banking organizations, to maintain those assets.

Key Principles Underlying Custody

There are three key principles that define the organization of the custody function:

- *Separation of Financial Activities*: Safekeeping operations should be maintained and operated separately from trading and other similar market-facing functions;

[9] 15 U.S.C. § 77a *et seq.*
[10] We note that investors that are neither regulated entities (such as a registered investment company or a broker-dealer holding client assets) nor advised by a regulated investment adviser are outside the scope of the federal securities laws and are free to hold and manage crypto assets they own as they see fit (as is the case with securities or other assets these investors may own).
[11] 15 U.S.C. §§ 80a, *et seq.* (the "Investment Company Act").
[12] 15 U.S.C. §§ 80b-1, *et seq.* (the "Advisers Act").

- *Segregation of Client Assets*: Client assets must be appropriately segregated from the firm's proprietary assets at all times, except where a custody bank holds cash; and
- *Proper Control*: The entity responsible for the safekeeping of assets must have control over the assets and the ability to transfer assets held for its clients based on the receipt of proper instructions, with attendant safeguards.

SIFMA strongly believes these core principles must continue to define the requirements that apply to the custody of digital assets that fall within the types of assets currently under the SEC's regulatory mandate and does not believe the development of an entirely distinct custody framework for digital assets is necessary or conducive to the growth and development of the digital asset sector.

Building on these three core principles, the Commission should clarify where necessary existing regulations to address the particular attributes of digital assets, while preserving the underlying principles and controls. This would include guidance relevant to the control of "private keys" used to give transfer instructions for digital assets and the conduct of various activities, such as the staking, voting, or other participatory features that may implicate the asset's economic value. Clear definitions of control for digital assets will help to support safety and soundness for investors.

The Question of Self-Custody

Digital asset technology gives investors the ability to custody digital assets (including digital asset securities) themselves by controlling the private keys to the blockchain addresses at which their assets are recorded and directly executing trades in these assets.[13] While this may be viewed as desirable by some investors (including, in some cases, by investors advised by registered investment advisers), for most institutional investors, such self-custody is unlikely to be viewed as practicable for numerous reasons, including managing the security risks and operational complexities of digital wallets. These risks (including the risk of a complete loss of digital assets where security controls are deficient) makes the role of a third-party custodian equally important (if not more important) with respect to digital assets (including digital asset securities) as compared to traditional securities. Regulatory models based on an expectation of widespread direct holding (*i.e.*, "self-custody") of digital assets by institutional investors (even where not directly subject to regulation) ignore the realities of risk controls and protections, conflicts of interest and investor protection, and the practical convenience provided by an indirect holding system managed by third party entities. As such, the SEC should, therefore, adopt a consistent definition of "self-custody" as referring solely to those situations where a client has custody over its own digital assets, on its own behalf and for which no responsibility would be placed upon a custodian. Similarly, existing concepts applicable to apportioning responsibility where a custodian employs a sub-custodian should translate into equivalent regulations of sub-custody arrangements in the realm of digital assets. This is consistent with the fundamental principle of "same activity, same risk, same regulatory outcome" that should drive the SEC's approach to digital asset regulation.

Definition of Qualified Custodian

Under Rule 206(4)-2 of the Investment Adviser Act of 1940 a qualified custodian is defined as a Bank or Savings association, a broker dealer, a FCM or a foreign financial institution.[14] The purpose of

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[13] *See supra* note 10. This type of custody is widely referred to as "self-custody." However, we note that in some responses to the Statement already submitted the term "self-custody" is used to refer to custody of a client's digital assets by an investment adviser in a digital wallet controlled by the adviser. We believe the use of the term "self-custody" in this context is inappropriate and runs contrary to generally accepted market practices.

[14] See Rule 206(4)-2 of the Investment Adviser Act of 1940, which defines a qualified custodian as:
(i) A bank as defined in section 202(a)(2) of the Advisers Act (15 U.S.C. 80b-2(a)(2)) or a savings association as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)) that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811);
(ii) A broker-dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(1)), holding the client assets in customer accounts;
(iii) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

allowing these institutions to be qualified custodians is because they are well trusted, highly regulated with strong track record of protecting and safeguarding investors' assets. If the SEC is considering widening the definition of qualified custodians to permit other types of entities to hold investor assets in light of digital asset securities, then the SEC must ensure that any new types of entities which may permitted to provide custody for securities (and funds) through being a qualified custodian must meet the same level of regulatory obligations as those which are met by those qualified custodians under the current regulatory framework. Preserving this level playing field and foundational standards of security, control, and oversight across all entities providing custodial services is critical to protect investors.

State Law Issues under the Uniform Commercial Code

When developing new Uniform Commercial Code ("UCC") Article 12 ("Article 12"), the Uniform Law Commission developed a definition of "control" with respect to what it refers to as "controllable electronic records" ("CERs"), which would include digital assets that are not themselves securities. This state law-based approach can provide a useful starting point as the SEC considers the critical question of control of digital assets in the context of custodial relationships for purposes of federal securities law. Under Article 12, a person has "control" of a CER if:

> [T]he electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded:
>
> > (1) gives the person: (A) power to avail itself of substantially all the benefit from the electronic record; and (B) exclusive power, subject to subsection (b), to: (i) prevent others from availing themselves of substantially all the benefit from the electronic record; and (ii) transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and
> >
> > (2) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in paragraph (1).[15]

Article 12 is in the process of being adopted by the states, [16] and SIFMA would support SEC efforts to encourage its further adoption in those states in which the adoption process has not been finalized. In addition to its definition of the concept of control over CER, Article 12 provides both a clear "take-free" rule for good faith purchasers[17] (similar to what the UCC provides for in transactions in securities) and rules that allow for perfection by control of security interests in digital assets. Both of these state law developments, if widely adopted, would add much needed legal certainty for custodians and other market participants in the digital asset space.

Because Article 12 has not yet been widely adopted, state law issues can arise in the context of grants of security interests over digital assets. In states in which Article 12 has not been adopted, most digital assets would be characterized as "general intangibles," with perfection occurring only through the filing of a financing statement in the office of the secretary of state in the state in which the pledgor is located.[18] While best practice among financial intermediaries holding digital assets for customers seeking to borrow against their digital assets is to "opt in" to the mechanism in UCC Article 8 that allows the parties to treat the digital asset as a "financial asset," the SEC could encourage or even require this approach when a custodian is pledging digital assets on behalf of a customer. This would reduce the risk of inappropriately perfected security interests and therefore potential investor or custodian losses.

(iv) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

[15] *See* Uniform Commercial Code §12-105(a).

[16] To date, over 20 states have adopted Article 12.

[17] *See, e.g.*, 6 Del. C. §§ 12-104(e) and (g).

[18] *See* UCC § 9-310(a).

The Need for Ongoing Dialogue with Market Participants

While there are analogies in existing regulations for assets with certain similar features (*e.g.,* regarding the handling of bearer instruments), we encourage the SEC to work with market participants to better understand what proper control means for purposes of the federal securities laws in the context of digital assets. This process ideally would take into consideration the range of technology and operational models that are broadly subsumed under the category of digital assets, some of which may have distinct considerations around control. Among the potential matters to consider are:

- How does "control" relate to the holding of the private keys by a custodian in order to prevent the creation of a single point of failure?
- What does control mean in connection with the use of a third-party service provider? Are there differences based on individual holding models (*e.g.*, with reference to the transfer agent's books and records versus direct holding of the private keys)?
- What are the challenges of applying requirements around "physical" or "exclusive" possession or control over digital assets and how can these be addressed?

Rather than develop a distinct regulatory framework for the custody of digital assets, SIFMA recommends that where possible the SEC focus on providing guidance and FAQs that clarify the application of existing regulatory frameworks to digital assets. This approach will allow greater flexibility as business and technology models evolve, while avoiding market participants being locked into regulatory frameworks which are difficult to revise as technology develops. However, SIFMA also recognizes that there will be situations where formal rulemaking is preferable in order to give market participants sufficient certainty in particular areas.

SIFMA urges the SEC to develop its approach to digital assets iteratively, through an ongoing dialogue with industry participants. While we welcome further regulatory guidance, especially at this stage of the development of the digital asset sector, we believe that it is equally important that the process benefits from a two-way dialogue with those firms that will be most directly impacted by these new positions. In addition, for the avoidance of doubt, SIFMA urges the SEC to not adopt its proposed Safeguarding Advisory Client Assets rule[19] for the reasons SIFMA and SIFMA AMG have previously conveyed to the SEC.[20]

Coordination Needed

It is also important for the SEC to harmonize its approach with that of other primary regulators of market participants, such as banks, that can permissibly function as custodians under current SEC regulation but are not themselves directly subject to SEC regulation. Lack of harmonization would lead to unnecessary complication, potential regulatory arbitrage, and delays in adoption.

For digital asset securities (whether tokenized or natively digital), the SEC should provide additional guidance after dialogue with market participants regarding how these assets can function in regulated markets, because digital asset securities remain securities.

For digital assets that are not securities, the SEC should carefully assess its authority to promulgate applicable rules and should not seek to implement mandates, such as those in its Proposed Safeguarding Rule, that would require the custodian or registered investment adviser to assume responsibility for assets for which it has no practical means for control, or that would extend to asset types beyond securities and funds.

[19] *See*, Safeguarding Advisory Client Assets, Release No. IA-6240, File No. S7-04-23, 88 Fed. Reg. 14,672 (proposed Feb. 15, 2023) (the "Proposed Safeguarding Rule").

[20] *See*, SIFMA, Comment on Proposed New Rule re: Safeguarding Advisory Client Assets, File No. S7-04-23, SEC (May 8, 2023), https://www.sec.gov/comments/s7-04-23/s70423-186699-340582.pdf; and SIFMA AMG, Comment on Release No. IA-6240, Safeguarding Advisory Client Assets (May 8, 2023), https://www.sec.gov/comments/s7-04-23/s70423-185779-339942.pdf.

22. *Public, permissionless blockchains are being used to tokenize permissioned assets. To the extent the custody rules for broker-dealers, investment advisers, and investment companies are implicated, how should the Commission differentiate between native crypto assets of permissionless blockchains and tokenized permissioned assets? Does either type of crypto asset present greater risks of theft or loss?*

Permissionless and open blockchain networks have many advantages, including interoperability, reduced dependency on third party vendors, and global utility. However, these networks also present unique risks, including greater exposure to cyber threats, and, therefore, appropriate care should be taken when developing regulatory frameworks for custody of assets maintained on open networks. Despite these concerns, SIFMA believes that the SEC should remain technology-neutral and not take an approach to regulating different network configurations that would favor specific technological characteristics such as (i) features of the network type itself (*e.g.,* private vs. public), (ii) the configuration of the network (*e.g.,* permissioned vs. permissionless) or (iii) additional controls added at the application level.

23. *Are there commonly accepted practices and standards for auditing and accounting for crypto asset investments and transactions, including those related to valuation? How about with respect to verifying the existence and valuation of crypto assets, both among auditors and attestation providers (including non-accountant providers)? Should the Commission propose additional or specific requirements to address the unique nature of crypto assets?*

As noted in response to prior questions, SIFMA supports a technology-neutral approach to digital assets regulation focused on accommodating emerging technologies into existing frameworks. To this end, we would advocate for extending the auditing and accounting standards currently in place for traditional assets to digital assets, with only those adjustments necessary to accommodate the unique characteristics of digital assets.

V. Broker-Dealer Custody and Other Financial Responsibility Requirements

24. *Should the Commission modify its Special Purpose Broker-Dealer Statement ("SPBD Statement") or formally withdraw it? If the former, what should those modifications be? For example, should the Commission expand the SPBD Statement to cover broker-dealers that custody crypto asset securities alongside crypto assets that are not securities? If the Commission decides to eliminate the SPBD Statement, should the Commission propose any modifications to the customer protection rule (17 CFR 240.15c3-3) to address crypto assets?*

SIFMA supports the SEC formally withdrawing the SPBD Statement and replacing it with policies that would allow broker-dealers to custody digital asset securities alongside traditional assets in a manner consistent with the Customer Protection Rule (Rule 15c3-3).

The SPBD framework has proved unworkable, as seen by the extremely limited number of firms approved as SPBDs. At a fundamental level, the SPBD framework also presents operational complexities that make it unsuitable for broker-dealers interested in incorporating digital asset securities into their businesses. For example, by requiring the establishment of a separate broker-dealer for digital asset securities activity, the SPBD framework fragments digital security activity from corresponding traditional securities activity (*e.g.*, separating a digital option or repurchase agreement entered into in connection with a traditional security position). Furthermore, the SPBD framework (i) disrupts operational processes, including clearing firm relationships and cross-margining, (ii) disrupts the client experience, and (iii) creates duplicative compliance requirements for the SPBD, which cannot take advantage of the mature risk management and control frameworks already in place at the main broker-dealer. Therefore, SIFMA believes that these flaws necessitate that the SEC withdraw the SPBD Statement and not attempt to rehabilitate it by, for example, expanding the permissible activities that an SPBD could conduct.

25. *The net capital rule (17 CFR 240.15c3-1) requires a broker-dealer to maintain sufficient liquid assets to meet all liabilities, including obligations to customers, counterparties, and other creditors and to have adequate additional resources to wind down its business in an orderly manner, without the need for a formal proceeding if the firm fails financially.*

(a) Under the net capital rule, assets held by a broker-dealer must be readily convertible into cash to count as allowable for meeting minimum net capital requirements (e.g., intangible assets, furniture, fixtures, equipment, and most unsecured receivables are not readily convertible into cash under the rule and, therefore, do not qualify as allowable net capital). How should a given digital asset be evaluated to assess whether it is readily convertible into cash?

As noted in response to prior questions, SIFMA supports a technology-neutral approach focused on accommodating emerging technologies into existing frameworks. To this end, where applicable, we would advocate for treating digital assets under the net capital rule in the same way as their traditional asset equivalents. With respect to natively digital assets that do not have a traditional equivalent, we believe ongoing engagement with market participants is necessary to develop a thoughtful way to treat these assets that does not involve "penalty" risk treatment. Any such treatment would function as a de jure prohibition on regulated firms holding these assets (which may be necessary to engage in activity involving any type of digital assets, such as paying "gas fees" to transfer a digital asset security from one address to another). SIFMA and our members look forward to constructive engagement in this area, including through providing additional data points that may be used by the SEC to develop an appropriate treatment for firms subject to the net capital rule which hold native digital assets.

(b) Under the net capital rule, securities and commodities are treated as readily convertible into cash. However, they are subject to deductions (known as haircuts) to account for the market, credit, liquidity, basis, and other risks inherent in the instrument. The haircuts range from 0 to 100 percent. For example, exchange-traded equity securities have a 15 percent haircut, while securities without a ready market (e.g., securities that are not exchange traded) are subject to haircuts as high as 100 percent. Commodities are subject to a 20 percent haircut. How should crypto assets be evaluated to determine the appropriate haircut to apply?

To remain consistent with the principle of technology neutrality mentioned above, when considering applicable haircuts under the net capital rule, the SEC should treat digital asset securities (whether natively issued or tokenized), tokenized cash, and payment stablecoins the same as their traditional equivalents. There should be no additional haircut for securities or cash which are held in digital form.[21] With respect to payment stablecoin haircuts, SIFMA would advocate for these being determined at a later time, after further regulatory clarity is provided on these digital assets. With respect to native digital assets for which there is no traditional equivalent, SIFMA believe that further engagement with market participants is appropriate to develop an appropriate treatment for purposes of the net capital rule.

26. *The recordkeeping rules for broker-dealers (17 CFR 240.17a-3 and 17 CFR 240.17a-4) require the creation and maintenance of accounting and operational records designed to assist a firm in tracking and understanding its assets, liabilities, positions, and obligations to customers (e.g., cash owed to customers and securities held for customers).*

(a) What challenges, if any, do the requirements of these recordkeeping rules present with respect to crypto assets that are not an issue for traditional securities? What modifications to the rules could address these challenges?

(b) Should crypto assets generally be treated as if they are traditional securities for purposes of these recordkeeping rules?

[21] For example, recently, the European Banking Authority concluded that "The tokenisation of a deposit … does not per se alter the fundamental nature of the claim and thus its regulatory qualification as a deposit". *See*, European Banking Authority, "Report on Tokenised Deposits", December 2024, https://www.eba.europa.eu/sites/default/files/2024-12/4b294386-1235-463f-b9b5-08f255160435/Report%20on%20Tokenised%20deposits.pdf.

While broker-dealer recordkeeping requirements may not contemplate the utilization of distributed ledger technology ("DLT") to maintain records, compliance with existing rules can be accomplished by using DLT without further modification other than regulatory clarity. FINRA has previously acknowledged DLT as a potential basis for recordkeeping[22] and in certain instances, the SEC has informally permitted DLT record-keeping. However, there remains a need for the SEC to formally confirm that DLT-only records satisfy broker-dealer recordkeeping requirements and can serve as the official record without the need for creation and retention of a duplicate record in a traditional format.

From a technological standpoint, blockchain and other DLTs differ from a traditional book entry recordkeeping system in that they utilize cryptographic key pairings to ensure that transactions are immutable. This fundamental immutability is the reason blockchain can be relied on as the official record for purposes of satisfying the recordkeeping requirements. By design, blockchain provides a robust, readily traceable method of recordkeeping.

While the recordkeeping rules are technology neutral, there remains substantial ambiguity among market participants about whether or not the SEC would accept DLT-only records as meeting these requirements. SIFMA therefore recommends that the SEC explicitly confirm that blockchain and other recognized DLT systems satisfy the agency's broker-dealer recordkeeping requirements. While the question posed here is limited to broker-dealer recordkeeping, any future guidance should comprehensively address parallel recordkeeping requirements, e.g., for security-based swap dealers.

VI. Investment Adviser Custody and Other Requirements

27. *What challenges do registered investment advisers ("RIAs") face in complying with the Investment Advisers Act of 1940 ("Advisers Act") as it relates to investments in crypto assets that are securities? What common practices, if any, have developed to address these challenges?*

As noted above, SIFMA urges the SEC to not adopt its proposed Safeguarding Advisory Client Assets rule and, as also noted in our earlier comments, SIFMA believes that the custody principles currently in place for traditional assets should also define the framework for digital assets. In addition, the SEC should continue its dialogue with market participants regarding: (i) the fact that an RIA that does not have possession of "private key" information with respect to the blockchain address at which a digital asset is recorded does not have "control" of the digital asset; (ii) an extension of the authorized trading exemption to digital assets,[23] under which an RIA's ability to instruct a broker-dealer or custodian to carry out trades on behalf of clients does not equate to custody of digital assets; and (iii) an extension to digital assets of the current recognition of (and regulation relating to) structures in which clients choose to hold their assets with a sub-custodian while giving their RIA authority to trade on their behalf. In these situations, control would not rest with the RIA and regulatory clarity confirming this would be conducive to further growth of the digital asset industry.

a. *Could best execution or recordkeeping obligations, or compliance with Form ADV or Form PF disclosure requirements, be clearer in the crypto asset context?*

As consistently noted, we support a "same activity, same risk, same regulatory outcome" approach for building the ruleset for digital assets on existing frameworks. At the same time, we also recognize that targeted adjustments may be necessary where compliance with existing regulations would be infeasible given the technological realities of certain activities. The same principles that apply to an RIA's fiduciary duty are applicable regardless of whether the relevant funds and securities are in the form of traditional

[22] *See, e.g.,* FINRA, Distributed Ledger Technology: Implications of Blockchain for the Securities Industry (Jan. 2017) at 1, 13 ("[A] DLT application that seeks to alter clearing arrangements or serve as a source of recordkeeping by broker-dealers may implicate FINRA's rules related to carrying agreements and books and records requirements" and "[b]roker-dealers may want to carefully consider the capabilities and limitations of the DLT network before determining whether they are able to rely on the records developed within the network to fulfill their minimum recordkeeping requirements."). https://www.finra.org/sites/default/files/FINRA_Blockchain_Report.pdf.

[23] Rule 206(4)-2(d)(2)(ii). *See,* Custody of Funds or Securities of Clients by Investment Advisers, Release No. IA-2176 (Sept. 25, 2003).

securities and other assets, or digital asset securities or other digital assets, such as payment stablecoins. SEC rules should be agnostic to trading mechanisms, data availability, and pricing structure.

In addition, SIFMA encourages the SEC to permit an adviser to adhere to existing principles under which an RIA can choose an execution venue taking into consideration a range of factors. Just as the structures of the equity markets and fixed-income markets vary (along with certain market-specific regulations applicable to each), the digital assets market structure currently varies from equities both in terms of the lack of integration of trading venues as well as the near instantaneous settlement times for digital assets.

The SEC should tread cautiously in areas where there could be other downstream impacts, depending on how the SEC chooses to amend requirements. Internal coordination at the SEC and public notice and comment is crucial to identify downstream impacts and potential unintended consequences. For example, a definition of "cash" might impact margin, collateral, fund names rule, derivatives coverage, or other variables. Updated guidance on the definition of "securities" might impact personal trading rules that revolve around reporting of "securities" holdings and transactions.

Similarly, questions in Form ADV (both parts 1 and 2) may need to be updated depending on how the SEC changes notions of custody. Part 1, Section 5.K.(3) lists the top ten custodians for separately managed accounts. Part 1, Item 9 requires information about the nature of advisor custody, use of related persons, actions of qualified custodians and independent public accountants. Part 2, Item 15 is a narrative of custody requirements. Each of these sections may require updates to better align with the needs of the digital asset market. These changes should be made iteratively, through continuous conversations with market participants.

b. *Do any crypto asset characteristics or market structures place advisory client crypto assets at a greater or different risk of theft, loss, or misappropriation? If so, how can those risks be addressed?*

As noted previously, SIFMA encourages the SEC to focus on the economic substance of a given digital asset, rather than focusing on any specific feature or underlying technology. The SEC should also acknowledge the value of existing controls and risk management frameworks and not require additional regulation for digital assets merely on the basis of technological form.

28. *Can RIAs trade, stake, vote, or otherwise participate without moving crypto assets outside a qualified custodian? Should the Commission amend the existing RIA custody rule to provide an exception to allow RIAs to move client crypto assets temporarily out of qualified custodial arrangements to engage in staking, voting, or other novel participatory features of crypto assets? If so, should that exception be subject to time limits or other limitations or requirements?*

In our view, the answer to these questions depends on trading logistics and how the SEC chooses to treat the definition of a "qualified custodian." If a "trade" in a digital asset security merely involves a matching function for an on-chain transaction, then a qualified custodian can maintain control of the assets and process the changes in ownership on-chain.

Importantly, some exchanges maintain their own internal systems and process trades off-chain (akin to an omnibus account). At present, in those cases, often times there is no qualified custodian involved.

The SEC should not impose an obligation for an RIA to move a digital asset security to vote a proxy. Indeed, proof of ownership is required for the issuer to record a vote, not the ability to move the asset. However, corporate actions could require instructing a custodian to take action to work with the issuer to appropriately reflect a stock split, an early call for a bond, an exchange or an issuance of a warrant or a "pay in kind" security. An issuer of a tokenized security will need to be able to carry out those actions and an RIA will need the ability to participate. Currently, an adviser with discretion to trade is not deemed to have custody but is still able to make instructions on behalf of their clients for corporate actions. Digital asset custody should follow the same path, while recognizing the mechanics and language of corporate actions may differ for digital assets.

The SEC should retain existing rules as closely as possible for issues such as rehypothecation, and lending. Where changes are necessary, the SEC should work closely with market participants to ensure that those changes are made in a principles-based manner.

29. *What clarifications, if any, are needed in the Advisers Act regulations to address the cold or hot storage of crypto assets held in custody on behalf of a client?*

a. What requirements, if any, should the Commission consider for the custody of crypto assets held in each type of wallet on behalf of a client? Should the requirements be the same for both types of wallets?

SIFMA is not taking a position at this time.

b. How would a requirement to maintain custody of some or all crypto assets in either cold or hot storage affect an adviser's ability to transact in those crypto assets or otherwise implement its investment strategy?

As a general premise, the SEC's guidance should allow for advisors to use third party custodial services consistent with current regulatory guidance and compliance requirements for such arrangements. Additionally, the SEC should not require a specific amount of assets to be maintained in hot or cold storage. This respects the premise that each advisor-advisee relationship involves different facts, needs, implications, and risks. The parties to a transaction are best positioned to identify the configurations necessary to mitigate applicable risks, in conformity with the needs of the client. If the SEC believes additional controls or measures are necessary on the part of the adviser, a principles-based approach for reasonable controls, policies and procedures would be a better approach than attempting to prescriptively build a set framework.

c. What means are available to mitigate the risks related to maintaining crypto assets in hot storage?

SIFMA encourages the SEC to avoid drawing regulatory perimeters based on any proposed distinction between "hot" and "cold" wallet storage, and the advisability of utilizing either storage mechanism should be evaluated based upon adherence to the three principles of custody previously discussed. As explained in response to previous questions, digital asset technology is rapidly developing and rules that mandate certain approaches to the handling of technology elements risk quickly becoming outdated (for example as "account abstraction" tools are developed that may mitigate risks related to holding private keys). Moreover, technological distinctions are inevitably less meaningful than principle-based regulation focused on the economic nature of the transaction and the risks applicable to the regulated activity.

VII. Investment Company Custody

30. *What challenges do registered investment companies ("funds") face in complying with section 17(f) of the Investment Company Act and the rules thereunder (governing custody) with respect to investments in crypto assets? Are any specific requirements of section 17(f) or the rules thereunder categorically inconsistent with custody of crypto assets? Do funds anticipate that custodians currently eligible to act as fund custodians under the Investment Company Act and the custody rules (e.g., banks, foreign banks, broker-dealers) will offer fund custodial services for crypto assets?*

A key challenge presented by Section 17(f) is that it implies the use of a single, centralized, book of record being maintained by a fund's custodian. In the world of distributed ledgers, a custodian can track activity and ownership on the chain with access to a definitive record, copies of which will exist across the network. SEC rules should acknowledge that the role of a custodian for digital securities may be one of tracking a private key and corresponding ownership of the activity shown on the chain.

Funds anticipate that currently eligible custodians will offer fund custodial services and additional participants may also enter the market. In such cases, SIFMA strongly advocates that all qualified custodians, regardless of whether they are engaged in digital asset securities activities, traditional securities

activities or both be subject to equivalent standards relating to capital, cybersecurity, and customer protection.

31. *Can a fund comply with the requirements of section 17(f) and the rules thereunder when trading, staking, voting, or otherwise engaging with crypto assets in which it invests? Should the SEC consider any changes to rule 17f-2 (the self-custody rule) or any other rules to facilitate transactions in crypto assets, and if so, what tailored conditions should the SEC propose to mitigate any related risks?*

SIFMA points the SEC to the RIA considerations noted in responses to previous questions.

32. *Should any provisions relating to investment company custody be revised to account for investment activities or other transactions that are unique to crypto assets (e.g., staking, mining, airdrops)? Do the existing custody rules present obstacles to such activities or transactions? How might these activities or transactions place a fund's assets at risk of theft or loss?*

SIFMA points the SEC to the RIA considerations noted in responses to previous questions.

VIII. Tokenization

40. *Tokenization enables dematerialized securities to be mobilized (i.e., not held in and confined to a single centralized ledger). Are there any provisions under the federal securities laws that prevent these securities from being used in new blockchain-based transactions and applications, and, if so, what steps should the Commission consider taking to facilitate this innovation while mitigating any related risks? Are there amendments or new rules that the Commission should consider to ensure a merit- and technology-neutral approach to tokenization? Does the type of blockchain used (i.e., permissioned versus permissionless) bear on this risk assessment?*

Overview

As SIFMA has noted previously, any new regulation or regulatory position impacting digital asset activity in the securities sector should be designed with the foundation of a principles-based, technology neutral framework. Subject to issuers addressing the state-law requirements under Article 8 of the UCC that securities be issued either in certificated (paper) form or uncertificated (no representation) form, as discussed under Question 44 below, we are not aware of any significant direct federal securities laws impediments to creating digital assets that are used to facilitate the transfer of either securities or securities entitlements on the books of an issuer or a securities intermediary, as the case may be.

Nevertheless, historically, the SEC has taken technology-specific positions that have discouraged regulated entities from entering the tokenized securities sector. This position inhibits investor choice and hinders new forms of capital formation. Whatever the means by which securities are issued and transferred, the critical element is that the process used for issuance and transfer functions accurately, efficiently and transparently. We have not seen evidence that a ledger or record of security ownership maintained by multiple independent parties through the use of permissioned or open and public blockchain technology is inherently risky. To the contrary, many pilot programs conducted around the world have demonstrated the robustness and reliability of technologies that support "distributed ledgers".

Rather than directly or indirectly discouraging market participants from issuing, trading and holding tokenized securities, we would recommend that the SEC continue their fact-finding efforts in this area, potentially supplemented by time-limited exemptive relief that would allow market participants to evaluate different distributed ledger and related technologies (such as different types of wallet software for managing credentials) and create learning and best practices that will allow investors in the United States to safely benefit from these important developments. As part of these fact finding efforts, the SEC should expand its scope to review security-based swap regulations for appropriate guidance and relief, so as to enable the development of derivatives markets in parallel to the underlying securities markets.

Specific Areas that Would Benefit from Explicit Confirmation or Further Clarity

As noted above, there are no direct federal impediments to an issuer creating tokenized securities and, indeed, a small number of tokenized securities have been registered with the SEC. Nevertheless, there are areas in which explicit confirmation or further clarity stemming from engagement with industry participants would be very helpful.

For example, with respect to recordkeeping, as we explained more fully in our response to Question 26, DLT-only records are consistent with the Commission's broker-dealer recordkeeping requirements and can serve as the official record without the need for creation and retention of a duplicate record in a traditional format. For the avoidance of doubt, the SEC should explicitly confirm that blockchain and other DLT systems satisfy the agency's recordkeeping requirements, including confirmation that data stored on both permissioned and open public blockchain networks can serve as a definitive record, meeting the requirements of Section 17(a)(1) of the Exchange Act, related Exchange Act Rules 17a-3 and 17a-4 and related FINRA rules, as well as applicable security-based swap recordkeeping requirements.

Explicit confirmation from the SEC regarding how market participants can meet possession or control requirements (*i.e.*, SEC Rule 15c3-3, "Customer Protection - Reserves and Custody of Securities") when dealing with tokenized securities would be helpful and, for the avoidance of doubt, should go beyond the current SPBD framework, which, as noted previously, SIFMA urges the SEC to formally withdraw. SIFMA discussed this topic in detail in our 2020 whitepaper entitled "Security Tokens: Current Regulatory and Operational Considerations for Broker-Dealers and a Look Towards the Future."[24]

In addition, clarification from the SEC is needed with respect to the application of clearing agency rules under the Securities Exchange Act of 1934 to digital asset activity. Given that the operational structure of digital asset transactions bears no resemblance to the centralized structure upon which current clearing agency rules are based, SIFMA believes that the SEC should offer exemptive or no action relief from the clearing agency rules for digital asset activity. Such relief, at the discretion of the SEC, could be granted subject to certain factual constraints such as (i) relating to limited volumes of transactions or (ii) being part of a pilot program or "sandbox." Doing so would enable market participants to develop business practices and controls with respect to these activities, from which further dialogue with regulators could ensue and best practices could be developed. Additionally, SIFMA advocates for the SEC making clear that entities that play limited administrative roles, such as operating a blockchain network node on a permissioned or open public blockchain network, should benefit from broader relief to avoid being inadvertently considered a "clearing agency".

SIFMA also requests the SEC explicitly confirm (i) the use of digital assets created using permissioned and open public blockchain networks to record changes in ownership of securities positions does not change the fundamental nature of those securities positions or result in the issuance of a new or separate security (assuming that the digital asset does not create new rights or obligations and is used only as a means of effecting transfer of the underlying securities); and (ii) digital assets or "tokens" used to record and effect transfers of ownership of bank deposits or securities (but which do not introduce new rights, benefits or legal relationships) will not be considered separate legal instruments from the underlying bank deposit or security for purposes of federal securities laws.

With respect to whether the type of blockchain used (*i.e.*, permissioned or permissionless) should have a bearing on the foregoing, we reiterate our view that a technology-neutral approach should be followed, which would allow for exploration of both types of blockchains and a weighing of the relative benefits and drawbacks, without a preconceived preference for, or bias towards, the use of one type over the other.

41. *How do the programmability and composability properties of blockchain technology and blockchain-based technologies, such as smart contracts, affect the role of a transfer agent? Are there*

[24] *See*, http://sifma.org/resources/general/security-tokens/.

provisions in the transfer agent rules that prevent transfer agents from using blockchain technology for this purpose to the fullest extent possible? Is an offchain record still needed as an official or a complementary record in a tokenization arrangement? Are there any legal or regulatory impediments to using onchain identity solutions?

Overview

SIFMA recognizes that, in many cases, even where use of a registered transfer agent for a tokenized security is not mandated by statute, transfer agents can perform a valuable role that would otherwise need to be undertaken by the securities issuers themselves. Issuers of tokenized securities frequently wish to utilize the services of a transfer agent that is able to facilitate the issuance, transfer and redemption of their securities through the use of either permissioned or open public blockchain networks, without the need to maintain separate and redundant off-chain records.

Accordingly, and further to our response to Question 26, SIFMA urges the SEC to consider modernizing its transfer agent and related regulations to recognize that, where a transfer agent is required with respect to an issuance of tokenized securities, the use of either a permissioned or an open and public blockchain, coupled with appropriate use of smart contract technology, can allow the transfer agent to more effectively perform many, if not all, of its core functions, including recordkeeping, settlement facilitation, and compliance enforcement. As such, the utilization of this technology by transfer agents should be a compliant alternative to traditional methods of recordkeeping, provided that appropriate safeguards are in place. Providing guidance that the use of this technology is consistent with existing requirements imposed on registered transfer agents would encourage innovation and remain consistent with the principle of "same activity, same risk, same regulation" and would be consist with past SEC practice such as the SEC's providing guidance on compliant frameworks for activities in uncertificated securities.

Clarifications of Rules for Transfer Agents

The characteristics of blockchain technology and smart contracts, such as programmability and composability, can make transfer agent functions more efficient by enabling the transparent automation of processes, including recording of security ownership and transfer (including enforcing transfer restrictions), managing dividend or interest payments, and coordinating shareholder or bondholder voting.

Although nothing in the SEC's transfer agent rules prevent the use of blockchain technology, existing rules contemplate a much more manual regime. By way of example, Rule 17Ad-7 provides that transfer agent records that are stored "electronically or micrographically" as prescribed may serve as a substitute for the hard copy records required to be maintained pursuant to Rule 17Ad-6. No mention is made of records maintained through the use of blockchain technology.

Therefore, guidance from the SEC explicitly permitting the use of records maintained on a blockchain network would give market participants assurance that utilization thereof is consistent with existing regulatory requirements, subject to issuers and their registered transfer agents ensuring appropriate risk controls are in place. As with the use of other technology solutions (such as cloud computing services), this could be accomplished through robust testing of the contemplated technology prior to implementation and periods in which reliance on the technology is phased in over time.

Use of Offchain Records by Transfer Agents

Notwithstanding several transfer agents having already been approved to utilize a blockchain ledger as their official record, there remains ambiguity as to whether transfer agents providing services in respect to digital asset securities for which a registered transfer agent is appointed are expected to maintain an offchain record alongside a blockchain ledger, and as between the two, the offline record is viewed as the definitive record of ownership. This ambiguity results from informal statements and positions and a lack of clear regulatory guidance to the contrary, as well as certain instances where the SEC has specifically communicated to registered transfer agents that such offchain records are specifically required, while simultaneously approving other transfer agents to utilize the blockchain as their official record. We do not believe that conflicting positions of this type are consistent with a principle of technology neutrality and

should be replaced with positions that make clear to registered transfer agents when and how blockchain records can become an acceptable alternative to maintaining separate paper-based records.

Onchain Identity Solutions

SIFMA does not take a view on whether there any legal or regulatory impediments to using onchain identity solutions at this time.

42. *Does the tokenization of redeemable registered investment company securities, such as those of a mutual fund or money market fund, raise any unique issues under the Investment Company Act or the rules thereunder? Would secondary transactions in these securities (e.g., peer-to-peer transactions or transactions occurring on or through an ATS) require relief from any provisions of the Investment Company Act? If so, should the Commission propose any changes to facilitate tokenization of registered investment company securities, and what should any such conditions be?*

We note that redeemable mutual fund shares are generally issued in uncertificated form, making them even more amenable to tracking ownership through the use of blockchain technology. Use of blockchain technology could further support the automation of various current and future features by registered investment companies, including monitoring real-time tracking of share trading (at least for those tokenized shares not immobilized by intermediaries).

The SEC should confirm that existing regulations do not inadvertently hinder ongoing development of tokenized money market and other mutual funds. Tokenization does not change the structure or legal nature of these securities, but instead improves their efficiency, settlement speed, and transparency through the utilization of blockchain infrastructure. By way of example (i) Rule 22c-1 of the Investment Company Act prohibits a fund, the principal underwriter or any dealer from selling or repurchasing any shares of the fund at a price other than the next struck NAV and (ii) under Rule 6c-11 there is an exception to Rule 22c-1 for dealers trading in ETF shares at market-determined prices. To facilitate tokenization, the SEC could clarify that market-determined prices for a tokenized ETF would include peer-to-peer transactions or transactions occurring through an SEC-registered alternative trading system.

43. *How should the Commission approach tokenized securities that seek to maintain a stable value and may be designed to be used as a means of payment or settlement? What are the challenges and impediments to the usability and transferability of these tokenized securities, particularly securities issued by offchain entities (e.g., registered investment companies)? Should transactions involving the use of these tokenized securities as a means of payment be treated differently from other security-based transactions?*

As a general matter, any stable-value instrument that is properly considered a "security" under the Securities Act (as opposed to a "payment stablecoin" as referred to in current proposed federal legislation or "covered stablecoins" as referred to in the "Statement on Stablecoins" issued by the Division of Corporation Finance on April 4, 2025[25]) should be treated similarly for federal securities law purposes, regardless of whether the security is issued in tokenized form or not.

This said, we recognize that tokenization facilitates multiple uses for the same asset and that, in some cases, tokenized securities that seek to maintain a stable value that have been designed to be used as a means of payment or settlement may be issued. While issuers of these instruments will still need to comply with the various federal securities laws requirements applicable to them, we note that guidance provided by the U.S. Treasury's Financial Crimes Enforcement Network ("FinCEN") in 2019 suggests that issuers of such instruments "could be covered by BSA money transmission regulations under certain facts and circumstances".[26] Accordingly, we encourage the SEC to look closely at instruments of this type to ensure that they are being issued, managed and traded on a "same activity, same risk, same regulatory outcome" approach.

[25] Available at https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425.
[26] *See*, FinCEN, "Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies", May 19, 2019, at p. 5, available at https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf.

44. *Do other federal laws, or state corporate or commercial laws present challenges to firms seeking to issue tokenized securities or engage in activities involving tokenized securities?*

State Law Issues

When a security is "tokenized", one of the most critical tasks is to determine what the intended legal status of the relevant token is. Although federal securities laws focused on investor protection are broadly inclusive, state law which deals with property rights of necessity must be more precise.

Currently Article 8 of the UCC recognizes only two types of securities under state law: those that are in "certificated" form and those that are "uncertificated". In the case of the former, the UCC makes clear through multiple references that "certificated" means in physical or paper-based form. Alternatively, securities that are in uncertificated form have no form at all and the ownership of these securities is determined by the security issuer's books and records. These records may well be maintained using a permissioned or public blockchain, but this does not mean that state law would treat tokens created by the issuer as the equivalent to a certificated security.

Many of the unique legal issues applicable to digital assets as property were addressed in amendments to the UCC published by the Uniform Law Commission in a new Article 12 of the UCC ("Article 12"), which is currently in the process of being adopted by the states.[27] However, these amendments generally did not address issues with respect to when digital assets (known as a "controllable electronic records" under Article 12) would be treated as a security under applicable state law. This creates a number of challenges for the practical implementation of tokenizing securities.

In some cases, a "tokenized security" may, for state law purposes, function as the means of providing an instruction to an issuer (or its transfer agent) to register the transfer of uncertificated securities on the issuer's official records from the owner of one whitelisted blockchain address to the owner of another such address. In other cases, the token may function as the means of providing an instruction to a securities intermediary (such as a bank acting as a custodian or a broker-dealer) to register the transfer of a "securities entitlement" on the intermediary's official records from the owner of one whitelisted blockchain address to the owner of another such address.

We urge the SEC to work closely with issuers of tokenized securities to ensure that the state law treatment of the securities does not create unintentional burdens on the ability of issuers to utilize this technology at the federal level, including the application of Rules 17a-3 and 17a-4 and related FINRA rules on recordkeeping.

Use of Tokenized Deposits and Banking Regulation Issues

To the extent that the settlement of transfers of tokenized securities models build on the use of tokenized deposits, certain legal status questions around the treatment of tokenized deposits would need to be confirmed under the Federal Deposit Insurance Act (the "FDIA") and with the Federal Deposit Insurance Corporation (the "FDIC").

We believe that the use of tokenized deposits to represent commercial bank deposits should not affect the insured status of such deposits under the FDIA or related regulations because none of the provisions of the FDIA defining deposits or insured deposits depend upon or limit the technology used to maintain the ledger on which the deposits are recorded; and confirmation that records kept by banks involved in tokenization of deposits to effectuate settlements and record deposit account relationships should be sufficient to satisfy the rules of the FDIC.

[27] *See*, https://www.uniformlaws.org/acts/ucc#:~:text=Article%2012%20and%20the%202022,intelligence%2C%20and%20other%20technological%20developments.

Finally, SIFMA recently joined a letter submitted to the President's Working Group (the "PWG Letter") on Digital Asset Markets by a number of major financial industry trade associations setting out certain core principles, including:

The Federal Banking Agencies Should Codify a Technology-Neutral Approach, Including With Respect to the Treatment of Deposits

The PWG Letter recommends that "the underlying technology wrapper applied to an asset does not change the asset" which is "especially true as to tokenizing real-world assets and liabilities." It also notes that "FDIC Acting Chairman Hill recently acknowledged that the FDIC 'should provide certainty that deposits are deposits, regardless of the technology or recordkeeping deployed.'" In addition, the PWG Letter recommends that banking agencies should "(i) issue joint guidance confirming a technology-neutral approach to the legal permissibility of banks' use of distributed ledger technology to represent or otherwise interact with digital asset, and (ii) issue guidance on specific permissibility uncertainties that are currently hindering bank innovation."

Interactions with Public Chains

The PWG Letter explains that, in furtherance of this technology-neutral approach, "federal banking agencies should confirm that it is legally permissible for banks to interact with public chains".

Other Banking Matters

The PWG Letter recommends that federal banking agencies address specific permissibility questions that are currently hindering banks' ability to innovate and recommends that federal banking agencies clarify the risk management expectations for banks' digital asset activities.

Finally, the PWG Letter recommends that regulators should continue to evaluate new technologies and activities, such as staking, as the industry continues to innovate and experiment with different use cases of distributed ledger technology and digital assets.

45. *The Commission recently adopted rule amendments to shorten the standard settlement cycle for most broker-dealer transactions from "T+2" to "T+1," subject to certain exceptions. Tokenization is often characterized as an innovation that facilitates instant or simultaneous settlement ("atomic settlement") if all parts of a transaction are executed and settled on the same blockchain. What are the benefits of atomic settlement, and what are the risks? Should the Commission consider taking any actions that would encourage adoption of atomic settlement?*

Background on Accelerating the Settlement Cycle in the U.S.

While many non-security digital assets are currently exchanged on the basis of "atomic settlement" through the use of an automated market maker protocol, we do not believe that such a standard is appropriate for tokenized securities generally. SIFMA worked closely with our members and the industry broadly to execute the successful move to T+1 settlement in U.S. corporate bonds, municipal bonds, and equities in May 2024. During the planning for T+1, SIFMA strongly cautioned that a move to T+0 settlement on a market-wide basis was not achievable or desirable[28]. Despite the success of the move to T+1, SIFMA remains committed to its recommendation that T+1 is appropriate standard settlement cycle for securities transactions in the United States. Following the completion of the move to T+1, SIFMA, along with the Investment Company Institute ("ICI") and the Depository Trust & Clearing Corporation ("DTCC"), carried out a review of the transition and outlook for settlement developments, and released an After Action Report ("AAR") which concluded that a move to T+0 is not a natural next step for the industry.[29] Moving to T+0 on a broad industry basis could introduce significant risks and additional complexity.

Any large scale move to T+0 settlement for securities generally (including tokenized securities) would require a substantial rebuild of member firms' technology architecture and operating models at great

[28] *See,* https://www.sifma.org/wp-content/uploads/2022/04/SIFMA-T1-Comment-Letter-Final-04.13.2022-1.pdf.
[29] *See,* https://www.sifma.org/wp-content/uploads/2024/09/T1-After-Action-Report-FINAL-SIFMA-ICI-DTCC.pdf.

cost for what would be questionable benefits. A broad range of products and key operational process cannot be supported on a T+0 basis in their current form, including the current batch process operating model, issue resolution, allocations, securities lending, prime brokerage, interactions with clients in substantially different time zones, and dependencies on F/X markets for certain transactions. For additional detail on the challenges which each of these would face in T+0, we encourage Commission staff to review SIFMA's 2022 letter on the shortening the securities settlement cycle.[30]

Wider Implications of Moving to a T+0 Cycle

SIFMA recognizes that distributed ledger technology infrastructure and digital assets offer the potential for faster settlement in some products, markets, and transactions on a voluntary basis. Indeed, SIFMA supported exploration of faster settlement through the Regulated Settlement Network ("RSN") project, which explored a potential industry infrastructure to support same-day settlement of U.S. Treasury, corporate debt, and repo transactions. Other market participants have launched similar projects, some of which entered production and demonstrated their technological and business feasibility.

However, the viability of these projects must not be imputed to suggest that a broader market-wide transition to T+0 settlement should be a policy goal for the financial industry. While digital assets and blockchain infrastructure may in the future offer across-the-board solutions to these product and process challenges discussed above, they are not developed or implemented at scale today, nor do they address the range of interconnected challenges that T+0 presents to traditional markets. Similarly, potential ledger-based same-day settlement models would need to address their dependencies on adjacent processes and legacy infrastructure which are designed with different operating models in mind, such as wholesale payments and F/X processes.

In addition, any review of potential changes to settlement models must also take into account the process underway in the UK and Europe to move their settlement cycles from T+2 to T+1, which is scheduled to take place in October 2027, while also noting that several major markets (e.g. Japan) still remain at T+2. Given the interconnected nature of global markets, the focus of the industry must remain on successful completion of the move to T+1 in the UK and Europe, coupled with the development of harmonized best practices for T+1 settlement internationally, such as adoption of standardized automation practices.

We appreciate the SEC's interest in facilitating new models of securities settlement, and SIFMA and its members support continued innovation that will allow those who are interested to explore options that provide greater speed and customization of the settlement cycle. Resolution of the challenges outlined in our responses to Questions 40 & 44 will enable market participants to explore these new operating models, while preserving T+1 settlement as the standard for the US markets.

* * *

SIFMA appreciates the Task Force's consideration of these comments and looks forward to further engagement on these and other issues. Please contact Charles De Simone (cdesimone@sifma.org) and Peter Ryan (pryan@sifma.org) if you wish to discuss the points raised in this letter further or have any questions.

Sincerely,

Kenneth E. Bentsen, Jr.
CEO and President
Securities Industry and Financial Markets Association

[30] *See,* https://www.sifma.org/wp-content/uploads/2022/04/SIFMA-T1-Comment-Letter-Final-04.13.2022-1.pdf.