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Hon. Hester Peirce, Commissioner

Crypto Task Force
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Submitted via email to: crypto@sec.gov

March 25, 2025

Dear Commissioner Peirce,

Re: AIMA written input to the SEC's Crypto Task Force

The Alternative Investment Management Association ("AIMA")[1] welcomes the opportunity to provide written input to the Securities and Exchange Commission ("SEC" or "Commission")'s newly launched Crypto Task Force.[2]

As the world's largest membership association for alternative investment managers, AIMA represents a growing segment of the industry engaging with crypto assets. Our members, spanning fund managers, institutional investors and service providers, are increasingly exploring or actively participating in digital asset markets. This reflects both the expanding investment opportunities and the transformative potential of distributed ledger technology (DLT).

To support our members in this rapidly evolving landscape, AIMA established the industry-leading Digital Assets Working Group ("DAWG").[3] This initiative brings together senior industry experts to address regulatory and operational challenges in the DLT and crypto asset space. Through thought leadership, regulatory engagement and the development of industry sound practices, DAWG plays a pivotal role in fostering the institutional adoption of crypto assets. Our work includes the publication of due diligence questionnaires (DDQs) specifically for crypto asset managers and funds,[4] as well as industry-leading guides on crypto asset

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1 AIMA is the world's largest membership association for alternative investments managers. Its membership has more firms, managing more assets than any other industry body and, through our 10 offices located around the world, we serve over 2,000 members in 60 different countries. AIMA's mission, which includes that of its private credit affiliate, the Alternative Credit Council (ACC) is to ensure that our industry of hedge funds, private market funds and digital asset funds is always best positioned for success. Success in our industry is defined by its contribution to capital formation, economic growth, and positive outcomes for investors, while being able to operate efficiently within appropriate and proportionate regulatory frameworks. AIMA's many peer groups, events, educational sessions, and publications, available exclusively to members, enable firms to actively refine their business practices, policies, and processes to secure their place in that success. For further information, please visit www.aima.org.

2 *See* https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125#_ftnref7.

3 *See* https://www.aima.org/dawg.

4 *See* https://www.aima.org/compass/ddqs/digital-assets-ddq.html.

trading[5] and custody,[6] providing critical resources for institutional investors effectively navigating this emerging asset class.

AIMA has also highlighted the severity of access to banking challenges faced by the crypto asset industry. AIMA research[7] found that in a survey of 160 crypto hedge fund managers, 75% reported issues with accessing or growing banking services for their funds. At the same time, none of the traditional alternative investment managers surveyed have lost or been denied banking services for their funds or management companies. The 'debanking' of these businesses negatively affects operational efficiency, investor confidence and talent acquisition. The existence of this problem across the U.S. crypto industry more broadly has wider implications for the reputation of the U.S. as a global leader in financial innovation and open markets. We were pleased to see the testimony of Austin Campbell, Acting CEO of WSPN, at a recent hearing on this topic in the House Committee on Financial Services,[8] where our research was referenced.

We welcome the rescission of SEC Staff Accounting Bulletin No. 121 ("SAB 121") that will help enable U.S. banks' to engage in the safeguarding of crypto assets.[9] However, we believe that additional action by the federal banking agencies is needed to further advance banks' ability to participate in the crypto assets ecosystem, which will help the U.S. solidify its global leadership position. It was pleasing, therefore, to see the Office of the Comptroller of the Currency (OCC) publish Interpretive Letter 1183 on March 7,[10] confirming that crypto-asset custody, certain stablecoin activities, and participation in independent node verification networks such as distributed ledger are permissible for national banks and federal savings associations.

We appreciate the announcement of a new SEC agency-wide Crypto Task Force and the recent remarks by SEC Acting Chairman Mark T. Uyeda advocating for a more transparent regulatory approach to crypto assets.[11] The U.S. regulatory landscape for crypto assets has been marked by uncertainty, inconsistency and an absence of a cohesive framework, creating significant barriers to institutional investment. This lack of clarity has likely stifled innovation, increased compliance costs, and left investors exposed to regulatory risk.

AIMA's research underscores the industry's concerns. Our annual global crypto hedge fund reports,[12] produced in partnership with PwC, highlight regulatory uncertainty as a primary obstacle to institutional crypto asset investment. Findings from our recent reports reveal:

- **2021** – 82% of traditional alternative managers not yet invested in crypto assets cited regulatory uncertainty as the main deterrent, with 50% of active investors identifying it as a challenge.
- **2022** – 83% of non-investing managers saw regulatory and tax uncertainty as the biggest obstacle, with 89% of those engaged in crypto assets expressing similar concerns.

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5 *See* https://www.aima.org/compass/insights/digital-assets/digital-asset-trading.html.
6 *See* https://www.aima.org/sound-practices/industry-guides/digital-asset-custody-guide.html.
7 *See* https://www.aima.org/compass/insights/digital-assets/the-debanking-dilemma.html.
8 *See* https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=409451.
9 *See* https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-121.
10 *See* https://www.occ.treas.gov/news-issuances/news-releases/2025/nr-occ-2025-16.html.
11 *See* https://www.sec.gov/newsroom/press-releases/2025-47.
12 *See* https://www.aima.org/compass/insights/digital-assets.html.

- **2023** – 23% of crypto-investing alternative managers reconsidered their strategy due to increasing U.S. regulatory uncertainty. One-third cited rising legal and compliance costs and difficulties accessing banking services.

- **2024** – Traditional alternative managers with crypto exposure grew from 29% to 47%, driven by regulatory clarity in some jurisdictions, including the approval of spot crypto ETPs. However, 76% of managers not yet invested indicated reluctance to enter the space due to ongoing regulatory uncertainty.

While excessive regulation could hinder growth, an undefined framework has let market vulnerabilities persist. We urge the SEC, under new leadership, to strike a balance – one that encourages innovation while ensuring investor protection and financial integrity. Without decisive action, the U.S. risks falling behind jurisdictions such as Singapore, Hong Kong, the UAE, Switzerland, and the EU, where clearer regulations are providing industry confidence and investor safeguards.

To address these challenges, AIMA suggest that the SEC adopt a clear, principles-based regulatory approach toward crypto assets, recognizing their diverse nature and use cases. Specifically, we recommend:

1. **Establishing regulatory clarity and legal certainty**: Recognizing that crypto assets encompass various asset types (e.g., fungible tokens like stablecoins, non-fungible tokens, ownership or governance rights of blockchain protocols) with distinct regulatory considerations.

2. **Avoiding a one-size-fits-all approach**: Tailoring regulations to accommodate emerging blockchain technologies and crypto assets while ensuring investor protections.

3. **Encouraging competitive market growth**: Supporting U.S. businesses, developers, and users in the U.S. by fostering a pro-innovation, principles-based regulatory framework.

We appreciate the recent statement by the Division of Corporate Finance's that certain proof-of-work mining activities do not involve the offer and sale of securities.[13] This statement provides important clarity that protocol mining to validate transactions on a crypto network can be rewarded for verifying blockchain transactions without being deemed to be a securities transaction. We would note the same logic can and, in our view, should be applied to "proof-of-stake" as well as other activities directly related to the safe and secure operation of a blockchain system.

Institutional-grade custody is a principal regulatory and operational challenge for crypto industry participants. While custodial solutions continue to evolve to address industry demands, the regulatory framework governing crypto asset custody does not align with existing crypto market dynamics and the manner in which blockchain networks inherently function. We therefore welcome SAB 121 being rescinded and we strongly urge the SEC to formally withdraw the proposed Safeguarding Rule,[14] which presents unworkable requirements for crypto assets. The Safeguarding Rule Proposal seeks to impose onerous obligations on custodians, foreign financial institutions and registered investment advisers (RIAs), including minimum custodial protections that would upend existing custodial arrangements. The Safeguarding Rule Proposal details neither a clear benefit nor attempts to accurately analyze the costs of these changes. For those and other reasons, we believe that the

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13 *See* https://www.sec.gov/newsroom/speeches-statements/statement-certain-proof-work-mining-activities-032025.
14 *See* https://www.sec.gov/files/rules/proposed/2023/ia-6240.pdf.

Commission should formally withdraw the Safeguarding Rule Proposal and instead provide clear custody guidelines for RIAs and other institutional investors.

AIMA remains committed to working collaboratively with regulators to establish a balanced, forward-thinking framework that supports both investor protection and market innovation. We would support the SEC coordinating closely with the U.S. Commodity Futures Trading Commission ("CFTC"), and other relevant agencies, on crypto market jurisdictional matters. We believe that the SEC should consider entering into a memorandum of understanding with the CFTC to define the contours of each agency's regulatory authority over crypto markets until such time as Congress legislates in this area. We appreciate your attention to these critical issues and welcome the opportunity to engage further on the path toward regulatory clarity in the DLT and crypto asset space.

We would be happy to elaborate further on any of the points raised in the below **Annex**. For further information, please contact James Delaney, Managing Director, Asset Management Regulation (jdelaney@aima.org), and Joe Engelhard, Head of Asset Management Policy, Americas (jengelhard@aima.org).

Yours faithfully,

Jiří Król
Deputy CEO
Global Head of Government Affairs

Annex

Only the questions to which AIMA chose to answer appear in this Annex. Questions on which we had no comments have been omitted, but the order and numbering of the remaining questions has been retained for clarity.

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?**

The SEC should adopt a clear, objective regulatory taxonomy for crypto assets that removes uncertainty, ensures predictability and avoids overreach. One example of a taxonomy can be found in the Financial Innovation and Technology for the 21st Century Act ("FIT 21 Act").[15]

The current reliance on case-by-case enforcement and vague legal standards has led to inconsistent treatment of digital assets, discouraging innovation and pushing activity offshore. In the first instance, we think that the SEC should consider rescinding the 2019 *Framework for "Investment Contract" Analysis of Digital Assets*,[16] which is overly broad, lacks prioritization from most to least important considerations and is impractical for proper application.

Because of the possibility that a crypto asset can be an investment contract and the fact-specific nature of the investment contract analysis, we believe that the SEC should provide clear guidance of the circumstances when the SEC would deem a crypto asset becomes or is part of an investment contract. Specifically, the degree of centralized control and the extent of "ongoing efforts" could be used as factors to distinguish between a commodity and a security. Control criteria could include factors such as:

- Distributed governance
- Network autonomy
- Permissionless use
- Open-source code, and
- Economic independence from a single entity

Ongoing efforts criteria could include:

- Extent of reliance on a single team for further development
- Degree of control by a single company over upgrades, token issuance, or validator participation
- The extent to which the protocol relies on the efforts of a single group to maintain value

The SEC should provide a clear statement that investment intent by purchases alone, absent other facts such as an express undertaking (or indication of an intent to undertake) managerial and entrepreneurial efforts from

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15 H.R. 4763, 118th Cong. (2023), https://www.congress.gov/bill/118th-congress/house-bill/4763.

16 *See* https://www.sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets.

which purchasers reasonably could expect profit, is not sufficient to create an investment contract, similar to the recent statement contained in the Staff *Statement on Meme Coins*.[17] Moreover, the SEC should provide guidance that specific crypto asset types, including native DLT tokens, stablecoins, and Non-Fungible Tokens (NFTs) used for digital collectibles, art, and music, do not constitute securities provided that these crypto assets are not securities under the family resemblance test of *Reves* and there is not express undertaking (or indication of an intent to undertake) from the issuers of such crypto assets to provide managerial and entrepreneurial efforts from which purchasers reasonably could expect profit.

AIMA recommends that the SEC clarifies that certain technology functions on blockchain networks do not constitute securities transactions even if a token could be a security. Many blockchain-based functions, such as the transfer of native tokens for network operation, should be deemed to be ministerial actions and explicitly recognized as outside the scope of securities laws. In addition, we suggest that the SEC develops a provisional, more precise definition or test for determining when a crypto asset implicates securities laws. The *Howey Test*, while foundational, is insufficiently precise for crypto assets, necessitating a more structured approach.

One recent example of a crypto asset taxonomy are the guidelines issued by the European Supervisory Authorities (ESAs) under the European Union's Markets in Crypto-Assets Regulation (MiCAR).[18] These guidelines include a standardized test aimed at providing a consistent regulatory classification of crypto assets within the EU. The ESA guidance serves as a reference at one approach to a crypto asset classification system that goes beyond traditional securities tests.

The SEC must establish a clear, transparent and replicable process for determining whether crypto assets are securities. For instance, we believe that the SEC should provide an analysis of why Bitcoin (BTC) was determined by the SEC to not be a security and how and when Ethereum (ETH) became sufficiently decentralized so that it was deemed not to be a security as laid out by the speech of Director Hinman in 2018.[19] Furthermore, we suggest that the SEC establishes a clear path for analyzing other tokens under a consistent and transparent framework, particularly how a token that initially was offered in a manner that created an investment contract could later be deemed to not be a security. Clear guidelines should also be published to establish a safe harbor when utility tokens, such as in-game tokens, and collectibles such as certain NFTs are not deemed to be securities. This would ensure regulatory clarity for developers and users, as well as set baseline criteria for crypto assets eligible for exclusion from investment contract treatment.

To foster innovation in blockchain and crypto assets, we believe it would be sensible for the SEC to consider safe harbors, particularly for token creation and gratuitous distributions of crypto assets such as forks and airdrops. In addition, the SEC could provide explicit exemptions for Decentralized Physical Infrastructure Networks (DePIN) and corresponding hardware, as well as for non-custodial decentralized finance (DeFi) protocols and wallet software providers. Even narrowly tailored exemptions would be of value, should the SEC be concerned that broad exemptions could lead to unintended consequences.

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17 *"[A]ny expectation of profits that meme coin purchasers have is not derived from the efforts of others. That is, the value of meme coins is derived from speculative trading and the collective sentiment of the market, like a collectible."* https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins.

18 *See* ESMA75453128700-1323_Guidelines_on_the_conditions_and_criteria_for_the_qualification_of_CAs_as_FIs.pdf.

19 *See* https://www.sec.gov/newsroom/speeches-statements/speech-hinman-061418.

By adopting clear, technology-neutral rules, the SEC can provide legal certainty for market participants without undermining established securities law principles. The goal should be permanent, predictable regulation, not subjective enforcement actions.

2. Should the SEC 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?[20]

AIMA supports the SEC taking a comprehensive approach in determining when crypto assets fall within any category of financial instruments, other than investment contracts that are specifically listed in the definition of "security" under federal securities laws. A clear and precise definition or test is necessary to ensure regulatory consistency and market confidence. We suggest that the SEC establishes clear guidelines distinguishing crypto assets that function primarily as mediums of exchange, stores of value, or commodities from those that exhibit the characteristics of securities. Therefore, we believe that the SEC must finalize a more specific and tailored definition that considers the unique characteristics of crypto assets and their underlying technology.

This definition or test should be developed in coordination with the CFTC, Congress, and the Administration. Collaboration among regulatory bodies is essential to prevent regulatory arbitrage, ensure consistent enforcement, and provide clarity to market participants. A harmonized approach would help avoid contradictory guidance that could hinder innovation and market development while ensuring robust investor protection.

Transparency in the SEC's decision-making process is critical, and we applaud the Crypto Task Force's current practice of providing near real-time updates to its meetings with outside groups and associated documents.[21] Prior to any definitive regulatory framework that may be statutorily established, the Commission should issue interim guidance to determine whether a crypto asset falls within a specific financial instrument category under current federal securities laws. Such transparency will not only provide regulatory relief but also foster compliance and responsible innovation within the crypto industry. This approach will support the long-term growth and legitimacy of the crypto asset market while maintaining investor confidence and financial stability.

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

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[20] Under the Securities Act of 1933, as amended (the "Securities Act"), the definition of "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. The definition of "security" under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is virtually identical.

[21] *See* https://www.sec.gov/about/crypto-task-force.

blockchain network? Should the SEC address the status of technology functions under the federal securities laws and, if so, what issues should be addressed?

Certain crypto assets serve non-investment functions within blockchain networks and thus should not be classified as securities, such as true utility tokens, collectibles, and tokens that are solely a store of value. Certain crypto assets serve essential functions inherent to the operation of blockchain networks. These functions include mining and staking as part of consensus mechanisms, securing the network, validating transactions, and paying transaction fees. Such activities are critical to maintaining blockchain integrity and functionality and may be conducted directly by participants or indirectly through third-party service providers. Given their foundational role, it is crucial for regulatory clarity to distinguish between technology functions that are intrinsic to network operation and those that could be classified as securities transactions or investment schemes.

The SEC should provide guidelines that distinguish between tokens used for network operations and those structured as investment instruments. Tokens used for staking, governance, or paying gas fees enable blockchain functionality rather than serving as investment vehicles. As part of this guidance, the SEC should recognize that direct participation in mining or staking is a technology function, not an investment contract. Validators are compensated for providing security and processing transactions, just as data centers are paid for cloud computing. If the SEC chooses to address technology functions, it should explicitly address how network operations are distinct from securities laws to provide clarity and prevent unnecessary legal uncertainty. The current state of uncertainty of how many aspects of blockchain infrastructure, such as the instances mentioned above, mesh with securities law creates regulatory confusion, stifles innovation, and severely disadvantages U.S. businesses competing in the global crypto economy.

AIMA suggests that the SEC provide a clear analysis around staking, particularly distinguishing which staking activities do not constitute securities transactions. For instance, protocol staking, in which participants lock up crypto assets to support network security and validation without any expectation of profits derived from the managerial efforts of others, should not be considered a security even if it involves an intermediary that bundles crypto assets of holders and stakes them on their behalf. Establishing that protocol staking is not a security would provide much-needed certainty for market participants and facilitate broader adoption of blockchain technologies. The FIT 21 Act would include staking as a type of "end user distribution' that would not be considered a security as long as the distribution meets the following criteria: broad and equitable distribution and a nominal amount of value. The end user distribution exemption would permit incentive rewards for staking, mining, validating, or other activities essential for the safe functioning of the system.[22]

Moreover, we believe that the SEC should permit protocol staking in exchange-traded funds (ETFs), subject to proper safeguards to protect the investors in such ETFs, to enable broader participation in staking while ensuring appropriate investor protections. This would allow regulated financial products to incorporate staking mechanisms, which would improve the return to investors in such ETPs, without unnecessary legal uncertainty. While staking involves risks (such as the potential of loss of stake due to slashing penalties) such risks often can be mitigated, and investors should be given the choice whether or not to accept such risks – which is the purpose of the prospectus disclosure regime of the Securities Act of 1933, as amended; that is, an issuer must disclose risks to investors in the issuer's securities so that investors can make an informed decision whether or not to accept such risk. Coordinated guidance with the CFTC is essential to provide legal clarity for Staking as a Service (SaaS) providers in the absence of specific federal legislation. Such guidance should clearly

[22] FIT 21 Act, H.R. 4763, 118th Cong. § 101, ¶ 30 (2023).

define how third-party staking services can operate without triggering securities regulations and it should be communicated to all market participants at the same time before staking is allowed within the ETF wrapper.

In addition, regulatory clarity should ensure that crypto asset companies can offer staking services in a way that fosters innovation, upholds consumer protection, and maintains market integrity. By enabling crypto asset companies to provide staking services responsibly, the SEC can encourage innovation while ensuring compliance with existing regulations. In the absence of federal legislation, regulatory guidance should focus on distinguishing between passive staking activities that support network operations and active, profit-seeking arrangements that may require additional oversight.

Ultimately, we recommend that the SEC, recognizing that technology functions such as mining, staking, transaction validation, and network security are fundamental to blockchain networks, provide a well-defined and coordinated regulatory approach, in partnership with the CFTC and other relevant agencies, with respect to such functions.

As mentioned above, we do appreciate the March 20, 2025, Division of Corporate Finance statement that proof-of-work mining activity does not represent the sale or offer of a security. We agree with the division's view that protocol mining to validate the authenticity of a blockchain transaction is integral to the safety of a blockchain and can be rewarded with nominal value without that being deemed a security. The same logic can be applied to PoS activity as it provides the same type of validation to ensure the integrity of a blockchain network and should not be deemed to represent the sale or offering of a security.

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 SEC address the status of liquid staking tokens under the federal securities laws, and, if so, what issues should it address?**

The rise of liquid staking tokens (LSTs), which represent a user's staked crypto asset while allowing participation in other activities, has prompted significant debate regarding their regulatory status, particularly in the context of federal securities laws. These tokens are integral to the operation of Proof-of-Stake (PoS) and Delegated Proof-of-Stake (dPoS) blockchain networks, such as Ethereum and Solana, where staking plays a vital role in maintaining network security and integrity.

In the case of liquid staking, users receive tokens that are redeemable for their staked assets, but these tokens can also be used in other activities (e.g., trading, lending, or other decentralized finance applications). This dual-purpose functionality adds complexity to the regulatory landscape, as these tokens represent a hybrid between a staked asset and a tradable token. However, their hybrid nature alone does not make LSTs securities – they solely represent the staker's ownership of stake assets – and LSTs should not be deemed to be securities absent other factors.

Given the crucial role staking plays in the security of blockchain networks, we believe incorporating staking into ETP products would provide significant benefits to both investors and the broader crypto industry. Allowing the staking of native crypto assets would strengthen the security and stability of the networks in which these assets operate, while also aligning investors with the inherent value of these assets. Conversely, restricting staking in crypto ETPs would negatively impact investors by limiting the productivity of the underlying assets. We believe that such restrictions would also undermine network security by preventing a substantial portion of an asset's circulating supply from being staked, ultimately diminishing the network's robustness.

Scoping Out

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

We do not think that the SEC should preemptively label entire categories of crypto assets as securities, recognizing that other prudential regulators may be better equipped to oversee assets that fall under their purview. The SEC should not regulate money – stablecoins, at most, should fall under banking or payments oversight, not securities laws. Other assets do not need to be subject to the protections of U.S. securities laws; for instance, wrapped tokens are technical representations of existing assets, not investment contracts. They do not create additional risks beyond the underlying asset and should not be treated differently. Forcing securities registration on wrapped assets would create unnecessary red tape without improving investor protection. The SEC should not assume every digital asset is a security but recognize that payment systems, commodities, and collectibles are not subject to its regulatory oversight.

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

The SEC should not define an overly broad taxonomy for crypto assets, as doing so risks creating rigid, top-down classifications that fail to keep pace with innovation. Instead, it should take a principles-based approach, applying existing legal standards without trying to fit all crypto assets into a pre-determined regulatory box. The SEC should classify assets based on their economic function, not their technology or token format. See our response to question one for more details on the principles that can be used to distinguish between a security and a commodity.

Public Offerings

8. Should the SEC develop tailored disclosure requirements for offerings or classes of specific categories of crypto assets? What types of disclosures would be important for investor protection? Should disclosure occur both at the time of sale and on an ongoing basis? If so, what information should the ongoing disclosure contain and how should that disclosure occur?

The SEC should develop specific disclosure standards that are tailored to the specific risks and functions of crypto assets that are subject to its jurisdiction.

For example, the Commission should ensure investors can access comprehensive disclosures covering key aspects of the crypto asset. This includes a clear explanation of token supply and issuance mechanics (including the number of tokens 'in treasury' (i.e., future dilution) and any plans or conditions for future release of these treasury tokens to the market, including the functioning of token 'sinks', the underlying technology and any smart contract risks, and the rights or utility associated with the asset. Investors should also receive information about the project's management and development team, along with the potential risks related to security, market volatility and regulatory uncertainty. A transparent disclosure of the asset's legal and compliance status is critical, ensuring investors understand whether it qualifies as a security and what regulatory obligations apply.

These disclosures should be made in a standardized format that is easily accessible to investors. Filings with the SEC could be streamlined for crypto assets, while project websites or blockchain-native platforms could serve as reliable sources of real-time updates.

Safe Harbor from Registration

10. Should the SEC consider a version of Rule 195, my proposed token safe harbor? Is the iteration on my proposed safe harbor known as "Safe Harbor X," or some other iteration, a better approach?

AIMA suggests that the SEC consider adopting a version of Rule 195,[23] as you have proposed, to provide much-needed clarity on when a token sale ceases to be an investment contract and when a network achieves sufficient decentralization. The crypto industry requires clear rules that delineate when a token is merely the pre-sale of a commodity, without forming an investment contract, versus when an investment contract is created with underlying crypto assets.

Your proposed safe harbor is a step in the right direction, offering interim relief to crypto asset issuers and trading venues while regulatory frameworks are being developed. Such a framework would allow legitimate projects to grow and achieve the necessary decentralization without the immediate burden of securities regulations that may not be applicable in the long term. However, there is a risk that interim solutions could become de facto permanent regulatory structures, especially if they remain in place for an extended period. While a safe harbor is a step in the right direction, the SEC should ultimately work toward permanent, technology-neutral rules that ensure businesses can operate without needing to rely on temporary exemptions.

The iteration of the proposed safe harbor, known as "Safe Harbor X" or other similar frameworks, should ensure that market participants do not develop unwarranted expectations that an asset classified under interim rules will remain a non-security indefinitely. Also, if a token qualifies for the safe harbor, it should not later be reclassified arbitrarily. We believe that the SEC should establish transparent disclosure requirements for tokens operating under the safe harbor and clarify the transition process for projects that evolve beyond the safe harbor framework.

Trading

15. Should the SEC create a new entity registration status with tailored registration requirements for any platform that trades crypto assets that are securities? Should the SEC use or adapt the existing requirements for national securities exchange registration or the alternative trading system exemption from such registration, and if so, how?

Yes, the SEC should ensure that trading platforms are subject to appropriate regulatory requirements.

Under the current approach (e.g., the SEC's limited broker-dealer "safe harbor" for crypto asset securities custody), very few firms have been able to register. This may indicate that barriers to entry are too high. Institutional traders often require their counterparties to be properly licensed or registered, yet the barriers to entry in the U.S. regulatory environment have led many of them to partner with or even relocate to offshore entities. A more streamlined and precise registration path would likely incentivize both crypto-native and traditional financial institutions to operate in the U.S. under a clear set of requirements that enhance market integrity and ensure robust oversight while still acknowledging the unique features of crypto assets.

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[23] *See* https://www.sec.gov/newsroom/speeches-statements/peirce-statement-token-safe-harbor-proposal-20.

16. What updates to the SEC rulebook are needed for side-by-side pairs trading of securities and non-security crypto assets to allow for enhanced interoperability and composability in finance?

The SEC, in coordination with the CFTC, should clarify how a single platform can facilitate both tokenized securities and non-security crypto assets. Under current rules, platforms that trade assets considered "securities" must follow one set of requirements, while assets deemed "commodities" or "non-securities" fall under another. The result is regulatory uncertainty for platforms attempting to offer both. Clear guidance or an adapted ATS/broker-dealer regime would allow a single entity or its affiliates to handle both asset classes under a coherent framework – provided robust controls exist for separate compliance, custody, and market surveillance where necessary.

One approach is to maintain operational separation of order books or ledgers for securities versus non-securities while still offering users a unified interface. This means institutions can trade tokenized securities and crypto commodities side by side for improved efficiency and risk management, yet each asset class remains subject to the relevant regulatory obligations. Any cross-asset functionality (such as using a crypto commodity as collateral for a security trade) should be explicitly recognized and addressed by rules.

Technology exemptions (or a lite registration process) for the SaaS providers who can assist in providing the underlying infrastructure needed for a resilient and safe unification of order books and ledgers are important to consider while contemplating modifications and approaches.

By permitting side-by-side trading, regulators would foster an ecosystem where traditional finance (e.g., tokenized equities) and decentralized finance (e.g., crypto commodities) can interact more seamlessly. Institutions increasingly look to consolidate their trading activity onto a single platform or aggregator for better liquidity management, holistic risk controls, and streamlined operations. Without regulatory clarity for these institutions and their service providers, these market participants are forced to accept a significant amount of operational risk and fragment their activity across multiple platforms and interfaces.

The SEC rulebook should be updated to remove artificial barriers that prevent securities and non-security crypto assets from trading side-by-side. The current framework wrongly assumes that all markets should function like traditional securities exchanges, limiting interoperability, composability, and financial innovation in crypto markets.

17. Does execution in off-chain order books or on blockchain networks pose complexities for broker-dealers in satisfying any applicable best execution obligations? Does onchain execution pose complexities for broker-dealers in satisfying their best execution obligations, given onchain complexities such as transaction ordering and block construction? Should any rules, guidelines, or disclosures be modified to address broker-dealer execution reasonably available under the circumstances in offchain and onchain trading environments?

Executing directly "on-chain" on a blockchain (e.g. via a decentralized exchange or DEX) introduces new issues. Transactions are public in the mempool before finalization, which can lead to front-running or MEV (Maximal Extractable Value) situations where the order's outcome might be manipulated by third parties. Additionally, block timing and network fees mean execution is not instantaneous or free as a trade might wait seconds to minutes to be mined and incur variable gas fees. These factors complicate how a broker evaluates "best execution." The best price on a DEX might not truly be best after considering slippage, gas, and potential

MEV-driven price impact. We suggest the SEC consider framing best execution practices in the crypto space. It is an important issue that will require further thought.

18. **The crypto markets are inherently transparent because they use open-source data, from public blockchains to open application programming interfaces ("APIs"). Are there programmatic/ technological ways that crypto market participants, intermediaries, potential self-regulatory organizations, or regulators can monitor crypto markets using open-source data? How would this take into consideration nested accounts on centralized exchanges, given that this activity may not appear in public ledgers? Is open-source data sufficient for the market to monitor trading and therefore what non-public information might warrant mandatory disclosure? What sort of open-source tools can be used for enhanced transparency, such as proof of reserves, or proof of holdings? What are the limitations of such tools and such data?**

While public blockchain data and APIs afford some degree of transaction information, the SEC should consider measures that ensure sufficient transparency. For instance, unlike equities or fixed-income markets, currently, the blockchain does not have robust consolidated pre- and post-trade price data feeds. Pre- and post-trade transparency is crucial in financial markets for ensuring efficiency, fairness, and stability. Pre-trade transparency improves price discovery and enhances market liquidity. Post-trade details on price, volume, and time enhance market risk management and increase market confidence. Currently, blockchain data shows transactions but not price information. The SEC should consider rules to ensure publicly available and consistent pre- and post-trade information. Centralized exchanges generally provide public APIs, which include certain information regarding trades and order books. Regulators could similarly leverage these feeds or require standardized reporting APIs to track trading activity across venues without waiting for end-of-day reports.

While on-chain data is open, trades on centralized exchanges are not recorded on-chain individually. A centralized exchange might show only aggregate movements (deposits/withdrawals) on-chain. This means nested accounts (customer subaccounts within an exchange) are invisible in public data. For complete market oversight, regulators will need cooperation from exchanges to obtain internal trading data. Non-public information such as detailed order flow, beneficial ownership of wallets, and off-chain matching engine logs warrants mandatory disclosure in certain contexts – especially for surveillance and audits. For instance, regulators might mandate regular proof-of-trade reports from major exchanges, which when combined with on-chain data give a full picture.

By leveraging open-source data and tools, regulators can greatly enhance transparency in crypto markets. Much of this data is already accessible and the SEC should standardize its use and further enhance it through cooperative disclosure frameworks. This two-pronged approach will improve market integrity and trust.

19. **With the understanding that both APIs and public ledgers can provide order books, what would be a good strategy for regulators to efficiently ingest and analyze order book data? How can the regulators leverage publicly available data to become more efficient and alleviate regulatory burdens?**

We suggest that the SEC leverage publicly available API feeds from exchanges and on-chain data instead of relying solely on firm-by-firm reports. Many crypto venues openly provide real-time snapshots of their order book and trade tape. A regulator could subscribe to these APIs or use data aggregators that compile order books across venues. This approach reduces burden on firms (since data is pulled automatically, not

manually submitted) and gives the SEC a direct, timely window into market activity.

We recommend the SEC develop or commission a central data platform to collect and normalize order book data. This would be similar to a consolidated tape, but for crypto it might be broader.

In AIMA's view, the SEC has an opportunity to lead the way as a technologically advanced market observer, harnessing open APIs and blockchain data to oversee the market in real time. Such a strategy will make regulation more proactive and less burdensome, aligning oversight methods with the tech-driven nature of crypto assets.

Custody

21. **Should the SEC 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 SEC propose any specific changes to its rules to accommodate the self-custody of crypto assets by entities registered with the SEC? 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?**

AIMA believes that rather than imposing the burdensome requirements within the proposed Safeguarding Rule, which should be formally withdrawn, the SEC should provide guidance or amend existing Custody Rule provisions to accommodate the unique characteristics of crypto assets while ensuring investor protection.

Amendments to the Custody Rule

Instead of pursuing the 2023 Safeguarding Rule Proposal,[24] the SEC should confirm the longstanding limitations to the Custody Rule (Rule 206(4)-2) by affirming that it only applies to assets that are cash or securities. With respect to crypto assets that are securities, we believe that the Custody Rule should provide reasonable exceptions or exemptions from the qualified custodian requirement for certain crypto asset activities, including staking, claiming airdrops, governance participation and exchange trading. For example, the SEC could permit RIAs that custody client crypto assets with a qualified custodian to execute exchange transactions through an affiliate of that custodian without deeming such crypto assets to not be in the custody of the qualified custodian, provided adequate safeguards are in place to prevent loss of such assets. Furthermore, an exemption should allow investment advisers to engage in self-custody subject to certain conditions – such as maintaining written risk controls – if the investment adviser can document that no qualified custodian with appropriate capabilities exists for a particular asset.

Practical challenges with the Safeguarding Rule Proposal

The 2023 Safeguarding Rule Proposal's requirement that all assets remain within a qualified custodial environment throughout a trade's lifecycle is impractical given crypto assets' technological characteristics. Real-time settlement of crypto assets often requires pre-funding on trading venues or with prime brokers, many of which are not qualified custodians.

In addition, there are currently very few qualified custodians for crypto assets. The lack of available custodians could make many investment strategies impossible or impractical. Furthermore, the small number of existing custodians could result in over concentration, which contradicts the SEC's investor protection goals.

We would welcome the SEC's clarification on the use of third-party alternative custodial solutions that may not meet the technical definition of qualified custodian under the custody rule (e.g., service providers that offer segregated storage of digital assets on chain with addresses uniquely reserved for the client's account), exchange omnibus accounts (e.g., centralized exchange omnibus accounts), and self-custody solutions (e.g., the use of a combination of software-based key sharing solutions, on-chain multi-signature wallets and hardware wallets) for custody of client's digital assets.

Pre-funding and best execution issues

Spot crypto asset trading relies on pre-funding, which minimizes leverage use. However, if pre-funding is effectively banned as proposed under the Safeguarding Rule Proposal, leverage usage would increase, making crypto trading riskier – likely an unintended consequence of the SEC's approach.

Moreover, RIAs have a fiduciary duty to seek the best execution for their clients, whether for securities or non-security crypto assets. Requiring client assets to remain in a qualified custodian at all times would limit access to many crypto trading venues, including those offering the best execution. Thus, the 2023 Safeguarding Proposal would have inadvertently forced RIAs to violate their fiduciary duties by preventing them from obtaining optimal execution for their clients.

Self-custody considerations

For crypto assets, where the old saying is "not your keys, not your crypto," investors may prefer that an RIA self-custody crypto assets that are neither securities nor funds in an on-chain wallet with a public key. This would provide investors with real-time monitoring and verification capabilities, enhancing transparency. Conversely, assets held at third-party custodians often cannot be independently verified on-chain, as they may be stored in omnibus wallets controlled by the custodian. Even when custodians maintain segregated wallets, they may not disclose the public keys to investors.

Since the crypto asset industry is still evolving, investors may prefer RIAs with technical expertise to self-custody their assets rather than entrusting them to third-party custodians with less industry experience. An RIA holding private keys is not inherently inconsistent with fiduciary duty; denying investors this choice could be counterproductive. Furthermore, allowing RIAs to self-custody crypto assets facilitates more efficient trading when needed.

Few third-party qualified custodians agree to retrieve forked or airdropped assets. Many custodians disclaim liability for these assets due to the unpredictable nature of blockchain protocol changes and the associated costs. As a result, requiring RIAs to hold all assets with third-party custodians could lead to the abandonment of forked or airdropped assets, depriving investors of potential value. Allowing RIAs to self-custody such assets, even if only for a limited time to accept the forked or airdropped assets, would provide greater flexibility to preserve and recover their value for fund investors.

Concerns with enforcement and the current regulatory landscape

SEC examiners, under prior leadership, cited RIAs for Custody Rule violations when crypto assets were not held with a qualified custodian regardless of whether an RIA had determined that such assets were not securities and therefore not subject to the Custody Rule. Whether an RIA violated the Custody Rule hinges on whether the crypto assets in question are securities. An RIA examination is not the appropriate forum to make that determination; as we noted above, the SEC should provide meaningful guidelines that RIAs can use and

rely on. At the very least, we believe that SEC examiners should identify the specific assets they believe are securities and provide a detailed rationale before citing a violation.

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 SEC propose additional or specific requirements to address the unique nature of crypto assets?

We acknowledge that the audit and accounting standards for crypto asset investments and transactions are still evolving, but there are emerging best practices that professionals increasingly follow. AIMA has recently updated its Guide to Sound Practices for Valuation of Investments[24] to incorporate considerations for crypto assets.

The crypto asset investment ecosystem differs significantly from traditional asset classes. Key differences include the existence of numerous global crypto exchanges for the same asset, the continuous 24/7 operation of crypto markets, the pseudonymity of counterparties, heightened market volatility, and the dynamic shifts in volume and activity across different exchanges. In addition, transactions can occur in fractional quantities and may involve direct asset swaps without the involvement of fiat currency. These factors contribute to distinct data and operational characteristics that are often incompatible with traditional financial software and valuation methodologies.

Determining the fair value of crypto assets remains a complex issue, requiring specialized auditor expertise and tools. Many managers adopt a hybrid valuation approach, depending on the nature of the investment. For instance, actively traded crypto assets on exchanges may have an identifiable principal market and exit price, while newer assets undergoing development may initially require a cost-based valuation before transitioning to a market-based approach upon listing on an exchange. The permissibility of any valuation method should be aligned with jurisdictional guidelines. Furthermore, all valuation methodologies must be transparently disclosed in financial statements and reports to investors.

The valuation of crypto assets also presents practical considerations regarding identifying a principal market and determining an exit price. Different funds may reach different conclusions based on their assessment of exchange quality, volume, entity-specific trading preferences and market access. Since crypto markets operate continuously, defining a cut-off time for fair value estimation remains a challenge. These factors should be thoroughly discussed with stakeholders and documented in a fund's Valuation Policy Document to ensure consistency and transparency.

Classification is another significant issue in crypto asset valuation. Depending on relevant accounting guidance, crypto assets may be classified as intangible assets, financial assets, instruments, or inventories. The classification chosen impacts valuation approaches, accounting treatment, and disclosure requirements. The determination of the principal or most advantageous market is another critical factor, necessitating due diligence on the reliability of data sources, including exchanges. In some cases, assessing blockchain data directly can provide additional verification for valuation purposes.

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[24] *See* https://www.aima.org/compass/practical-guides/valuation/guide-for-valuation-of-investments.html.

Beyond valuation, verifying the existence and value of crypto assets also presents unique challenges. Auditors and attestation providers, including non-accountant providers, must ensure the reliability of blockchain data and market pricing mechanisms. Since professional certifications for crypto asset valuation remain limited, alternative indicators of an independent valuation expert's qualifications must be considered. Ensuring that service providers use reliable data sources and have appropriate expertise is crucial for maintaining high audit and accounting standards.

The SEC should not impose additional regulatory requirements on crypto accounting and auditing. The market is already developing best practices for valuation and verification, and forcing inappropriate rules onto crypto will only stifle innovation and limit investor choice.

Broker-Dealer Custody and Other Financial Responsibility Requirements

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

AIMA believes that the SEC should withdraw or modify its Special Purpose Broker-Dealer Statement[25]. The current SPBD framework is too restrictive, as it only permits the custody and trading of crypto asset securities while prohibiting broker-dealers from handling non-security crypto assets and traditional securities. This limitation prevents broker-dealers from fully integrating crypto asset securities into broader financial markets. To address these challenges, the SEC should expand the SPBD Statement to allow broker-dealers to custody both crypto asset securities and crypto assets that are not securities. This modification would create a more comprehensive and practical regulatory structure, aligning with the needs of market participants.

Broker-dealers should also be permitted to accept payment for crypto security transactions in crypto assets rather than being restricted to fiat currency. This is particularly crucial for broker-dealers facilitating trading in crypto asset securities, as the payment leg of these transactions should be executed on a blockchain rather than through traditional fiat rails. The current limitations prevent efficient settlement and introduce unnecessary complexity. Additionally, the SEC should provide explicit guidance on control locations for crypto securities under Rule 15c3-3 of the Exchange Act. Specifically, the SEC should confirm that trust companies or other broker-dealers can act as good control locations for crypto securities. This approach is already permitted under the rule for traditional securities but remains unaddressed for crypto securities in the SPBD framework.

We believe that the SEC should also conduct a thorough review of the regulatory basis and real-world implications of the Special Purpose Broker-Dealer Safe Harbor, set to expire in December 2025. Over the past four years, only two broker-dealers have been approved under this safe harbor, despite it being in place for nearly five years. The constraints and obligations imposed by the safe harbor have proven to be significant barriers to entry, discouraging broker-dealers from participating in crypto asset securities markets. These

[25] *See* https://www.federalregister.gov/documents/2021/02/26/2020-28847/custody-of-digital-asset-securities-by-special-purpose-broker-dealers.

obligations are technology-specific and do not apply to broker-dealers handling certificated or book-entry securities, creating an uneven regulatory playing field.

Instead of maintaining a rigid SPBD framework, the SEC should establish a more flexible regulatory approach that enables broker-dealers – both existing and new – to support traditional securities and crypto assets. Addressing custody risks and Securities Investor Protection Corporation (SIPC) concerns through enhanced disclosures rather than an SPBD designation would be a more effective solution.

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?

RIAs face significant challenges in complying with the Investment Advisers Act of 1940 when dealing with crypto assets that are classified as securities. One of the primary concerns is the lack of clear regulatory guidance on the trading and custody of such assets. The SEC's approach, under the previous leadership, has created uncertainty for SEC-registered entities engaging in crypto asset transactions, making it difficult for RIAs to develop compliant operational frameworks. For example, the SEC's recent Safeguarding Rule Proposal raised concerns within the industry. The proposal, as currently structured, would impose overly restrictive requirements that fail to account for the unique characteristics of crypto assets.

AIMA would like to see the SEC provide explicit guidance on how RIAs can custody crypto assets while ensuring compliance with existing regulations. One approach involves the use of multi-signature wallets and secure off-chain storage solutions, which enhance security and mitigate risks associated with crypto asset custody. There may also be a need for regulatory flexibility to accommodate innovative custody solutions that align with the decentralized nature of crypto assets. Another issue is the ability of investment advisers to stake idle assets or participate in governance decisions related to crypto assets under their management. Clear guidelines on these practices would provide RIAs with the necessary framework to engage with crypto assets while maintaining compliance with the Advisers Act.

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

AIMA agrees that the SEC should clarify regulatory obligations in the context of crypto. As discussed earlier, framing what "best execution" means for crypto is important. The SEC should consider providing clarity over how investment advisers can demonstrate best execution for crypto trades. This might include:

- Acknowledging that unlike equities, liquidity is fragmented globally. The SEC could clarify whether U.S. fiduciaries are expected to consider non-U.S. venues or only those accessible while complying with other laws.

- Enumerating the factors beyond price that count in crypto best execution: e.g. counterparty risk of venues, custody/firewall considerations, fees, market impact. Sometimes the best nominal price is on an unregulated offshore exchange, but a U.S. adviser might choose a slightly less favorable price on a reputable venue for risk reasons – and that should be an acceptable fulfillment of best execution given the circumstances. Regulatory guidance can affirm this principle.

- The SEC could provide examples (or a safe harbor) for best execution policies in crypto, such as stating that checking a reasonable number of leading venues and using a smart order router constitutes a diligent process.

Current recordkeeping rules do not explicitly contemplate blockchain records or crypto transaction logs. Firms understand the need to record positions and movements in crypto wallets. The SEC should articulate expectations on recording wallet addresses, proofs of control, and perhaps even require firms to keep audit trails of transfers to/from custody or trading venues. To maintain evidence of a trade executed on a DEX, one possible solution would be for the SEC to clarify that storing transaction IDs and using blockchain explorers can satisfy certain recordkeeping requirements, treating the blockchain as an acceptable source of truth (with proper backups).

Form ADV/Form PF disclosures would need to be updated to explicitly address digital assets through adding checkboxes or sections for crypto exposure, so that advisers report their use of crypto exchanges, DeFi protocols, or custody solutions clearly. This not only aids transparency to regulators and investors but also forces advisers to think through and document their crypto processes (which improves compliance culture).

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?

Crypto custody presents different risks. Self-custody eliminates counterparty risk but requires better user security practices. Centralized custodians can fail or mismanage funds (e.g., FTX), but Proof-of-Reserves and open-ledger audits can mitigate risk. The SEC should not overregulate custody but instead recognize cryptographic security models, multi-signature wallets, and smart contract vaults as valid protections.

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 SEC 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?

The SEC should not impose one-size-fits-all requirements for crypto custody under the Advisers Act. Cold and hot storage serve different purposes, and advisers should have the flexibility to determine the best custody solution based on security, liquidity needs, and investment strategy. Cold storage, which keeps private keys offline, is optimal for long-term security but less efficient for frequent trading. Hot storage, which enables faster access to assets, is necessary for active portfolio management. Regulations should recognize this trade-off rather than impose arbitrary restrictions that hinder investment flexibility. Any regulatory requirements should be risk-based, not prescriptive, and focus on best practices rather than rigid mandates.

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?

Requiring all or most crypto assets to be held in cold storage would significantly limit trading efficiency, liquidity management, and the ability to react to market conditions. Active strategies such as market-making, staking, or governance participation often require some level of hot storage access. If the SEC mandates strict cold

storage requirements, it could disadvantage U.S.-based advisers compared to global competitors operating under more flexible rules.

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

Advisers already have industry-standard methods to secure hot wallets, and regulators should focus on encouraging best practices rather than imposing blanket restrictions. Risk mitigation strategies include multi-signature wallets, hardware security modules (HSMs), withdrawal allowlists, time-delayed withdrawals, and insurance coverage. Instead of forcing advisers into a rigid custodial model, the SEC should allow firms to balance security and operational efficiency while ensuring that appropriate risk management protocols are in place.

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?

Registered investment companies (funds) face significant structural challenges in complying with Section 17(f) of the Investment Company Act, as its custodial framework assumes centralized intermediaries and traditional asset safekeeping. Crypto assets, however, rely on public-key cryptography, decentralized validation, and non-custodial ownership models, making the current regulatory framework inappropriate.

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?

Funds cannot fully comply with Section 17(f) when trading, staking, or voting crypto assets because the rule assumes traditional custodianship models that do not align with how blockchain networks function. Staking and governance require temporary movement of assets, but the SEC's rigid custodial framework prevents funds from fully utilizing crypto's capabilities without unnecessary regulatory risk. The SEC should modernize Rule 17f-2 (the self-custody rule) to allow funds to securely engage with crypto assets. Changes should include recognizing multi-signature wallets, institutional smart contract custody, and proof-of-stake mechanisms as valid forms of custody. Instead of imposing restrictive conditions, the SEC should require clear client disclosures about the risks of staking or governance participation, allowing funds to act responsibly while taking advantage of crypto's benefits. Without these updates, U.S. funds will remain at a disadvantage compared to global competitors operating under more flexible regulatory frameworks.

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?

The SEC's existing custody rules do not account for crypto-native activities like staking, mining, and airdrops, making compliance difficult or impossible for funds engaging in these areas. The rules assume static asset custody by a qualified custodian, which does not align with how digital assets function in decentralized networks. Staking and mining require funds to interact with blockchain protocols, often by temporarily delegating or locking up assets. Airdrops occur automatically and may involve unexpected asset receipt, creating compliance uncertainties. The current custody framework blocks funds from participating in these activities unless they take on unnecessary legal risk or rely on intermediaries that diminish the benefits of direct participation. Any risks of theft or loss should be mitigated through clear internal security policies, proof-of-reserves verification, and disclosure requirements – not rigid custodial restrictions that prevent funds from participating in crypto innovation.

Crypto Lending

33. How should the SEC approach various crypto lending concepts in a way that doesn't stifle the potential opportunities they provide?

We believe that the SEC should differentiate between custodial and non-custodial lending. Custodial lenders, like centralized exchanges, should meet clear disclosure and reserve requirements to ensure they are not engaging in hidden leverage or fractional reserve practices. However, decentralized lending platforms operate transparently on-chain, where all loans, liquidations, and collateral levels are publicly verifiable. The SEC should not regulate self-executing smart contracts as if they were traditional financial institutions. To foster responsible growth, the SEC should focus on clear, market-driven disclosure standards, requiring lenders to make risks, interest rates, and collateral requirements explicit to users.

Crypto Exchange-Traded Products ("ETPs")

Exchange Act Section 6(b)(5) requires that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices. In reviewing listing applications for crypto asset-based ETPs, the SEC previously has considered whether the exchange has a comprehensive surveillance-sharing agreement ("SSA") with a regulated market of significant size related to the underlying or reference assets. How should the SEC address listing applications for crypto asset-based ETPs going forward?

AIMA believes that the SEC should, where appropriate, align the approval standards for crypto asset-based ETPs with those applied to other asset-based ETPs, ensuring consistency in regulatory oversight. This includes enabling physical settlement for crypto ETPs, which would provide a more robust and transparent framework for these products. By treating crypto ETPs similarly to other commodity-based ETPs, the SEC can foster a fair and efficient marketplace that benefits both investors and market participants.

The SEC should also approve amended rule filings to allow in-kind contributions for spot BTC and ETH ETFs. The SEC, under previous leadership, required issuers to remove in-kind contributions as a condition for approval. Market makers and other participants typically purchase baskets of securities underlying an ETF to create ETF shares. Consistent with the need for broker-dealers to transact in crypto assets, they should be allowed to acquire BTC and ETH in the spot markets for ETF share creation purposes. Allowing in-kind contributions with additional terms and conditions set by the SEC would align the U.S. regulatory framework with international standards.

We believe that the SEC should approve additional spot ETF applications for other crypto assets, including SOL and XRP. Reinstituting the practice of approving applications in the order they are received would restore predictability and fairness to the process.

Tokenized Securities

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 SEC consider taking to facilitate this innovation while mitigating any related risks? Are there amendments or new rules that the SEC 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?

The SEC should not create artificial barriers that prevent tokenized securities from being used in blockchain-based transactions. Current federal securities laws were written for a paper-based and centralized financial system, and applying them rigidly to tokenized assets stifles innovation without improving investor protection. Existing rules that require securities to be held in specific centralized depositories may unintentionally block blockchain-based settlement and mobility. The SEC should modernize these regulations to recognize on-chain recordkeeping, smart contract-based compliance, and decentralized clearing mechanisms. A merit- and technology-neutral approach would ensure permissionless and permissioned blockchains are treated fairly rather than favoring one model over another. Permissionless networks offer greater transparency and decentralization, while permissioned chains may provide greater regulatory oversight. Regulation should allow issuers and investors to choose the best model for their needs rather than impose one through restrictive rules.

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 provisions in the transfer agent rules that prevent transfer agents from using blockchain technology for this purpose to the fullest extent possible? Is an off-chain 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?

The SEC should modernize transfer agent regulations to recognize that blockchain technology already provides many of the core functions of a transfer agent, including automated recordkeeping, settlement, and compliance enforcement via smart contracts. Existing rules assume that transfer agents must be centralized intermediaries, but blockchain programmability and composability eliminate the need for many traditional transfer agent roles. Current SEC rules may unintentionally limit the ability of transfer agents to use blockchain technology by requiring off-chain records or mandating legacy reporting structures. The SEC should remove barriers that prevent transfer agents from fully leveraging blockchain features.

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 SEC propose any changes to facilitate tokenization of registered investment company securities, and what should any such conditions be?

The SEC should ensure that existing regulations do not block the tokenization of mutual funds and money market funds while maintaining investor protections. Tokenization does not fundamentally alter the structure of these funds but improves efficiency, settlement speed, and transparency through blockchain-based infrastructure.

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?

The existing patchwork of federal and state laws creates unnecessary regulatory friction for firms issuing tokenized securities. The lack of uniform legal treatment across jurisdictions makes compliance costly, complex, and inefficient, discouraging U.S.-based innovation. State corporate laws, such as Delaware's corporate code, often assume centralized recordkeeping and transfer restrictions, making it unclear whether on-chain records and smart contract-based governance are legally sufficient. Meanwhile, state-by-state money transmitter laws create compliance barriers for firms facilitating tokenized security transactions, even when those assets remain fully compliant under federal securities laws.

At the federal level, inconsistencies between SEC, CFTC, and banking regulations create additional uncertainty. Firms issuing tokenized securities face unclear rules on custody, transfer restrictions, and secondary market trading, preventing widespread adoption.

Sandbox

47. Would the Sandbox[26] help foster tokenization and blockchain innovation? What types of products and services across the fintech landscape would firms like to test in the Sandbox? What regulatory, technical, and operational barriers pose the biggest challenges to innovation in this space? Could the Sandbox mitigate those challenges?

There may be benefits to innovating in a sandbox in the short-term, but in the long-term it will be important to have final, long-term solutions. A regulatory sandbox is not an effective long-term solution for fostering tokenization and blockchain innovation because firms cannot rely on temporary rules that may change or disappear. If businesses do not have regulatory certainty, they might hesitate to invest fully, build infrastructure, or contribute their best efforts. The SEC should continue working closely with Congress to establish a focus on establishing clear and permanent, long-term regulatory frameworks that apply consistently across all market participants.

[26] *See* https://www.sec.gov/newsroom/speeches-statements/peirce-boe-fca-comment-05302024.