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Secretary Vanessa A. Countryman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets — Release Nos. 33-11412; 34-105020; File No. S7-2026-09

Dear Secretary Countryman:

I. Introduction

I submit this comment to address a narrow but important gap in the Release's discussion of custody structures for blockchain-based systems. The Release's five-category classification framework, its investment contract formation and separation analysis, and its treatment of protocol mining, staking, wrapping, and airdrops collectively represent a meaningful advance in regulatory clarity. This comment does not address those provisions.

This comment concerns a single issue: the Release's custody framework for Protocol Staking describes three arrangements — self (or solo) staking, self-custodial staking directly with a third party, and custodial staking — but does not address a fourth, distinct model in which **no party has unilateral authority to cause arbitrary disposition of funds**. The relevant legal question in such a system is not simply who is physically closest to the private keys. It is who possesses unilateral discretionary control. Where the answer is *no one* — because all permissible fund movement is governed by pre-encoded smart-contract rules requiring coordinated multi-party input — neither self-custody nor conventional custodial frameworks apply.

I am the inventor of the Pledge-to-Pay architecture ([U.S. Patent Application No. 17/396,203](#)) and founder of TandaPay, a blockchain-based group governance protocol. Pledge-to-Pay is not a proof-of-stake validation network and does not involve node operation, consensus participation, or staking rewards in the sense discussed in Section V.B of the Release. Its relevance here is structural: it employs a **constrained joint-custody architecture** in which private key material resides on a participant's physical device, no party can unilaterally access or direct the keys, and fund movement is restricted by software to a narrow set of pre-authorized destinations and purposes. That architecture does not fit any of the three custody models the Release describes, and the absence of guidance creates unnecessary legal uncertainty for legitimate blockchain-based benefit delivery and group governance systems.

The Commission should clarify that its custody discussion in Section V.B is illustrative rather than exhaustive, and that an arrangement is not properly characterized as a conventional custodial arrangement merely because an end user lacks unilateral control, where no administrator, employer, or intermediary exercises unilateral discretionary control either.

II. The Release’s Three Custody Models and the Gap They Leave

Section V.B of the Release describes the following three custody arrangements for Protocol Staking:

Self (or solo) staking: The Release states that “the Owner maintains ownership and control of its digital commodities and cryptographic private ‘keys’ at all times.” The Commission interprets this arrangement as not involving the offer or sale of a security because the reward payments represent compensation to the Owner for services rendered by the Owner’s own stake, not profits derived from the essential managerial efforts of others.

Self-custodial staking directly with a third party: The Owner “grants validation rights to a third-party Node Operator” while retaining “ownership and control of its digital commodities and its private keys.” The Commission reaches the same non-security conclusion.

Custodial staking: A Custodian “takes custody of an Owner’s digital commodities” and “at all times during the staking process, the deposited digital commodities remain in the control of the Custodian.” The Release states that the Custodian’s “only decision in the staking process” is selection of a Node Operator, and that deposited assets are not “used by the Custodian for operational or general business purposes” and may not be used “to engage in leverage, trading, speculation, or discretionary activities.” The Commission reaches the same non-security conclusion.

Each of these models assumes that custody resides somewhere determinately — with the Owner, with the Owner plus a delegated Node Operator, or with a Custodian. The Release does not address the case in which custody resides jointly in a shared fashion, meaning that no one human party holds absolute authority over the private keys, no human party can unilaterally direct fund movement, and all permissible transfers are determined by pre-encoded smart-contract rules that constrain the actions of all participants simultaneously.

III. Description of the Pledge-to-Pay Constrained Joint-Custody Architecture

Pledge-to-Pay is a blockchain-based benefit delivery system in which participating employees maintain funded positions on their physical devices as a condition of paid sick leave eligibility. The system operates two parallel payment paths: (1) a fiat benefit payment mechanism in which the employer pays the claiming employee’s benefit directly from an employer benefit fund, creating a debt on that fund; and (2) a cryptocurrency benefit reimbursement mechanism in which the crowdfunding mechanism aggregates contributions from member escrow wallets through a smart-contract hub and routes the aggregated amount to the employer reimbursement mechanism, crediting the employer benefit fund. See Exhibit A (architecture diagram); Exhibit B (patent drawing). The net economic result for the employer is neutral; the net economic result for the employee-member is receipt of a consumed benefit.

The custody structure operates as follows:

1. **Key storage and physical possession.** Private keys are generated locally and stored on each employee’s physical device. Keys are never transmitted to any central server or administrator terminal.
2. **Key inaccessibility to all parties.** Despite physical possession of the device, the employee cannot access, view, or directly use the private keys. The keys are held by the

on-device software in a manner that is inaccessible through the user interface. The employer and administrator terminal are likewise blind to the private keys at all times.

3. **Software-enforced transfer restrictions.** Funds can move only within a closed set of pre-authorized destinations:
 - (a) The withholding address may transmit funds only to (i) the hub smart contract, or (ii) the exit address.
 - (b) The claim address may transmit funds only to (i) the exit address, or (ii) the employee address, and only after reimbursement has been verified in the employee's paycheck.
4. **Multi-party coordination requirement.** Funds can only move when a digitally-signed instruction from the administrator aligns with an auto-signature emitted by the employee's device in response to that instruction. Neither party alone can initiate or complete a transfer.
5. **Employer rights are contractual, not custodial.** The employer has defined rights under the arrangement but those rights do not amount to general wallet control. The employer cannot arbitrarily sweep, repurpose, rehypothecate, or redirect funds for operations, leverage, trading, or speculation.

This architecture is the operative meaning of **constrained joint custody**: physical possession, contractual rights, and dispositive authority are split and bounded by code so that no actor has unilateral discretionary control. The system is not controlled by any one party; it is governed by rules to which all parties are subject.

IV. Why This Architecture Fits None of the Release's Three Models

It is not self-custody (Model 1). The employee does not "maintain... control of its... private keys at all times." Physical possession of the device does not confer ordinary spending power. The employee cannot unilaterally direct funds to any destination of the employee's choosing.

It is not self-custodial staking with a third party (Model 2). The employee has not "granted validation rights" to a Node Operator while retaining key control. No validation, consensus participation, or node operation occurs. The obligation to crowdfund valid claims — the functional analog to a stake — is protocol-enforced, not delegated.

It is not a custodial arrangement (Model 3). No third party "takes custody" of the employee's assets. The keys never leave the employee's device. The administrator terminal is designed never to know the private keys. There is no Custodian who "holds the deposited digital commodities in a cryptographic wallet that the Custodian controls." The Release's custodial staking framework rests on a Custodian who makes at least one discretionary decision — selection of a Node Operator. Here, no such discretionary authority over fund movement exists in any party.

A system should not be treated as a conventional custodial arrangement merely because the end user lacks unilateral control, when the supposed custodian lacks unilateral discretionary control as well. The Release's own logic supports this conclusion: it treats custodial staking as a non-security in part because the Custodian's authority is tightly circumscribed and the assets "are not used by the Custodian for operational or general business purposes" and may not "engage in leverage, trading, speculation, or discretionary activities." That circumscription rationale applies

with greater force to constrained joint custody, where no party's authority extends even to Node Operator selection.

V. Why Participation in This Architecture Does Not Involve the Offer or Sale of a Security

The Release correctly states that “[t]he Federal securities laws generally do not apply to items that are purchased for use or consumption, whether they are physical or digital.” That principle directly governs this architecture.

Employees in Pledge-to-Pay do not contribute funds in order to earn trading gains, passive yield, or enterprise profits. They contribute payroll-withheld premiums to maintain eligibility for a workplace benefit. The economic function is consumptive and protective, not speculative. Any payment received through the system is a benefit disbursement tied to the terms of the arrangement — not a return on capital.

No issuer undertakes essential managerial efforts from which participants reasonably expect to derive profits. Disbursements are triggered by a valid approved claim and executed automatically by the smart contract's pre-committed ruleset. The administrator's only discretionary act is approving or denying a claim — structurally analogous to the Custodian's Node Operator selection that the Release already determined does not constitute essential managerial efforts. No party makes representations or promises about investment return, appreciation, or profit. Said differently, the administrator does not manage assets to generate profit. The administrator's role is limited to claim adjudication within the benefit system, while fund movement itself remains bounded by pre-committed rules.

This matters practically because of the downstream regulatory stakes. The Pledge-to-Pay architecture is designed to operate as a Voluntary Employees' Beneficiary Association (VEBA) trust under IRC § 501(c)(9), invoking ERISA's preemption of fragmented state-level wage payment mandates. Whether the architecture constitutes a securities offering is a threshold question that affects the entire ERISA and insurance-avoidance regulatory framework. The Release's clarification on this point — that benefit-delivery systems operating through constrained joint custody are not offering or selling securities — would provide the foundational clarity that downstream regulatory analysis requires.

VI. Membership Credentials and Participation Records

Section III.C of the Release establishes that a “digital tool” — a crypto asset that “performs a practical function, such as a membership, ticket, credential, title instrument, or identity badge” — is not a security because it does not have “the economic characteristics of a security.” The Release further states that “[p]ersons acquire digital tools for their functional utility and do not have any rights or interest in or with respect to a business enterprise or other entity, promisor, or obligor,” citing a museum membership as the paradigm case.

Constrained joint-custody benefit systems may issue membership credentials, benefit-eligibility tokens, or participation records to participants. Where such instruments carry no right to profits, future income, or assets of any business enterprise, and instead serve solely as evidence of benefit-pool participation within the system, they fall squarely within the Release's digital tool category. The Commission should confirm that characterization.

VII. Requested Clarification

I respectfully urge the Commission to clarify the following:

6. **The custody discussion in Section V.B is illustrative, not exhaustive.** The three models described — self-staking, self-custodial staking with a third party, and custodial staking — do not constitute a closed taxonomy of all blockchain custody arrangements.
7. **An arrangement is not a conventional custodial arrangement solely because the participant lacks unilateral dispositive control.** Where no employer, administrator, service provider, or intermediary exercises unilateral discretionary control over fund disposition either, the arrangement does not constitute custodial staking within the meaning of Section V.B. The determinative question is not who is physically closest to the keys but who has unilateral authority to cause arbitrary disposition of funds.
8. **Constrained joint-custody architectures constitute a recognized, distinct custody model.** A blockchain-based system in which (a) private key material is associated with a participant's physical device but is inaccessible to the participant through the user interface, (b) no administrator or intermediary has access to or unilateral discretionary control of those keys, and (c) fund movement is restricted by pre-encoded smart-contract rules to specified destinations and purposes requiring coordinated multi-party input, is a constrained joint-custody arrangement that falls outside both conventional self-custody and conventional third-party custody.
9. **Blockchain-based benefit systems should be analyzed by actual economic function, not custody label.** Where participants contribute funds for benefit eligibility and consumption rather than for profit expectation, and where no party undertakes essential managerial efforts from which participants reasonably expect profits, those arrangements do not involve the offer or sale of a security. The Commission's own statement that "the Federal securities laws generally do not apply to items that are purchased for use or consumption" controls.
10. **Membership credentials, benefit-eligibility tokens, and participation records issued within constrained joint-custody benefit systems are digital tools, not securities.** Where such instruments convey no right to profits, enterprise income, or business assets and function solely as evidence of participation and benefit eligibility within the system, they satisfy the digital tool definition in Section III.C of the Release.

VIII. Conclusion

The Release is a meaningful step toward principled, functional analysis of blockchain-based systems. Its recognition that economic substance governs over label, that functional utility defeats investment contract characterization, and that custody structure informs securities analysis provides a workable foundation for legitimate innovation.

Constrained joint-custody benefit systems represent a category the Release's framework should address but does not. They are not investment schemes. They are benefit delivery mechanisms in which pre-encoded smart-contract rules serve as the governing fiduciary authority, and in which no party — whether employee, employer, or intermediary — possesses the unilateral discretionary control that defines both ordinary self-custody and ordinary third-party custody.

A clarification recognizing this architecture, confirming that it does not constitute a custodial arrangement within the meaning of the Release, and confirming that benefit disbursements

within it are not the offer or sale of a security, would reduce material uncertainty for a legitimate and growing class of blockchain-based benefit, governance, and mutual aid systems.

Respectfully submitted,

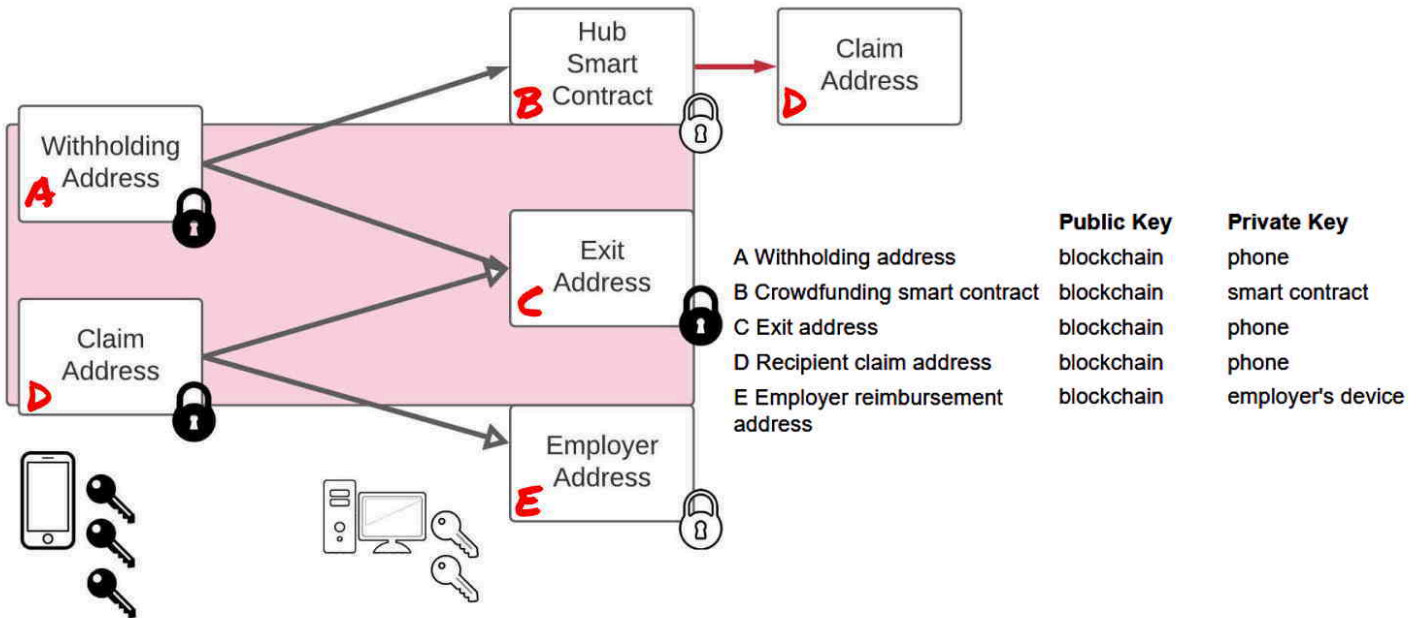
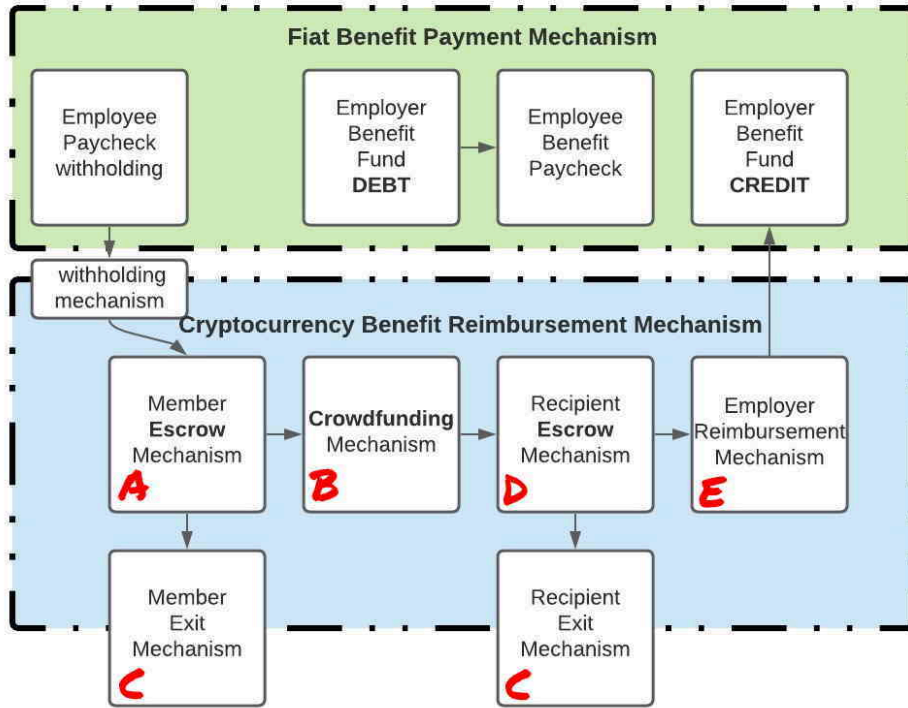
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Pledge-To-Pay Overview



Exhibits: Exhibit A — Pledge-to-Pay Custody and Rights Architecture Diagram; Exhibit B — Patent Drawing (U.S. Application No. 17/396,203)