

April 9, 2025

Crypto Task Force
Securities and Exchange Commission
100 F St NE, Washington, DC 20549
crypto@sec.gov

Re: Crypto Task Force Input: Secondary-Market Trading

Dear Crypto Task Force members,

Cumberland DRW LLC and its affiliates (collectively, “Cumberland” or “we”) write with a second installment of responses to certain of the questions for public comment published by Commissioner Peirce on February 21, 2025 (the “RFI”). We again thank Commissioner Peirce, the Securities and Exchange Commission (“Commission” or “SEC”), and the Crypto Task Force for the opportunity to provide feedback as the Commission works to develop a comprehensive and clear regulatory framework for crypto assets.

Our feedback in this letter focuses on secondary-market trading, addressing the RFI questions and other issues in this area most relevant to Cumberland’s business model. By way of background, Cumberland has been one of the largest principal trading firms in crypto asset markets since 2014, transacting over-the-counter (“OTC”) with institutional and high-net-worth counterparties and on-exchange via directional proprietary trading and liquidity provision.¹

As a threshold matter, as discussed in greater detail in its initial comment letter to the Crypto Task Force,² Cumberland believes that many secondary-market transactions in native crypto assets are not securities transactions, even if the crypto asset in question was initially offered and sold as part of an investment contract (and thus in a securities transaction). This letter addresses (i) tokenized representations of traditional securities (which Cumberland acknowledges likely are or should be treated as securities) and (ii) the stipulated hypothetical that certain crypto assets that are not tokenized versions of traditional securities are nevertheless securities or the subject of securities transactions, even in a secondary-market context (such assets, “Natively Digital Securities”).³

¹ Cumberland transacts solely on a principal basis and does not act as a broker, dealer, adviser, custodian, or any other type of service provider for any third party.

² Letter from Cumberland to SEC Crypto Task Force (Mar. 16, 2025), <https://www.sec.gov/files/ctf-input-cumberland-drw-2015-03-16.pdf>.

³ For example, Cumberland notes that a yield-bearing stablecoin, YLDS, was registered with the SEC in February 2025.

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16. What updates to the Commission 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?

Side-by-side pairs trading in security and non-security crypto assets is critical for any liquidity provider or trading platform, not least because of the importance of non-yield-bearing, dollar-pegged stablecoins for crypto asset trading. An inability to hold and transact in such stablecoins solely because they would not reasonably be classified as securities⁴ would impose unnecessary settlement delays and accompanying credit, market, and operational risks, as counterparties could settle the crypto asset leg of a dollar-denominated trade almost instantaneously but would then need to await settlement of the fiat leg through generally slower legacy payment rails.

Cumberland and its counterparties would benefit in a variety of ways if a counterparty could face a single Cumberland entity for both securities and non-securities crypto trading, even beyond the context of non-yield-bearing stablecoins. Examples of such benefits include, *inter alia*, a more streamlined onboarding process for counterparties; the possibility of providing counterparties with improved price quotes in the context of an expanded trading relationship; reduction of credit and operational risks due to net settlement of all outstanding transactions between Cumberland and the counterparty; enhanced collateral efficiency and mobility (e.g., for derivatives positions to hedge counterparty trading activity); and potentially lower net capital costs.

Assuming the securities-related transactions must take place in a broker-dealer (i.e., there is no safe harbor or other exemption available and the transactions constitute dealing), then, as discussed in the response to Question 25 below, reasonable net capital treatment for both security and non-security crypto assets is critical to avoid stifling this activity. Issues involving a number of other statutory requirements and SEC rules also impede trading in crypto assets that are or may be deemed securities, and in some cases also hinder side-by-side trading of such assets with non-security crypto assets.⁵ To contribute feedback as expeditiously as possible, Cumberland discusses examples of such regulatory impediments here and may supplement with further input and feedback as the Crypto Task Force's work continues.

⁴ See, e.g., Division of Corporation Finance, SEC, *Statement on Stablecoins* (Apr. 4, 2025) ("SEC Staff Stablecoin Statement") (stating that the offer and sale of certain dollar-pegged stablecoins backed by highly liquid assets generally does not constitute the offer and sale of securities).

⁵ A number of FINRA requirements also raise difficulties for securities transactions involving crypto assets. By way of example, please see a discussion of potential issues related to FINRA reporting in Appendix C hereto.

(i) Exchange Act Rule 15c2-11

Rule 15c2-11 under the Exchange Act requires a registered broker-dealer to comply with specified requirements if the firm seeks to publish or submit for publication a “quotation” of a covered security in a “quotation medium” (subject to exceptions). Among other things, the firm must obtain, have in its records, and review specified information regarding the subject security and its issuer (the “issuer information”)—and such information must be “current” and “publicly available.” Under the rule, relevant “issuer information” for a given issuer depends on the nature of the issuer’s disclosure obligations under the federal securities laws. For covered securities not registered or subject to certain other disclosure and reporting obligations under the Securities Act or the Exchange Act (“catch-all issuers”), the rule prescribes a list of 16 required items of information.

Compliance with the substantive requirements of Exchange Act Rule 15c2-11 generally is not feasible for a broker-dealer with respect to Natively Digital Securities. This is because the categories of “issuer information” that the rule prescribes contemplate only the characteristics of traditional operating company issuers and their securities. Many of the required elements in the rule are not applicable to a Natively Digital Security and its issuer (if any). For example, the rule requires a recent issuer balance sheet and profit and loss and retained earnings statement; similar financial information for the preceding two years; the name and address of the transfer agent; the class of the security and its par value; and a description and extent of the issuer’s facilities. This information either is not applicable or is not available for most native crypto assets (presumably including any that are deemed to be securities). Moreover, given the fundamental differences between crypto assets and securities of traditional operating companies, certain information that the rule requires generally would not be material to a decision as to whether to transact in most crypto assets. Conversely, information that may be material to a market participant considering transacting in a crypto asset is not addressed by Rule 15c2-11.

That said, Cumberland believes that it is possible to apply the rule to Natively Digital Securities so as to achieve the rule’s core investor and market protection goals. This could be achieved by staff no-action relief, a conditional Commission exemptive order under Rule 15c2-11(g), or other Commission or staff action allowing broker-dealers to substitute the required “issuer information” with alternative comparable categories of information that *are* applicable to such assets and their issuers, promoters, or similar related parties and would be more useful to investor decision-making with respect to such assets than would the information

that the rule text currently requires.⁶ Please find proposed such categories in Appendix A below, along with annotations for certain elements explaining why the alternative categories of information are better suited to the unique characteristics of crypto assets.

(ii) Securities Act registration / exemption framework

Under Section 5 of the Securities Act of 1933, all offers and sales of a security (including in the secondary trading context) must be registered unless an exemption is available. As the RFI notes, there are many impediments to an issuer seeking to register Natively Digital Securities. These difficulties have downstream effects, as they prevent broker-dealers from transacting in Natively Digital Securities absent an applicable exemption. And the market could benefit from greater clarity as to how exemptions relevant to secondary-market transactions apply in the context of Natively Digital Securities.

For example, one exemption that may potentially be available to a broker-dealer transacting OTC in secondary markets is Section 4(a)(3) of the Securities Act, which exempts “dealer” transactions from the requirements of Section 5 of the Securities Act.⁷ However, the exemption is not available until “forty days after the first date upon which the security was bona fide offered to the public.” Given the noted inability of many issuers to register crypto assets that may be deemed Natively Digital Securities, such assets are often sold in private offerings. Thus, in many cases there will be no bona fide public offering to begin the forty-day countdown.

Similarly, a number of interpretive issues arise in attempts to apply the Regulation S safe harbor in the context of Natively Digital Securities. In the initial sale and distribution phase, parties often cannot agree on whether the offering falls within Category 1, 2, or 3, due to definitional incompatibilities such as the following:

1. *Uncertainty as to whether there is “substantial U.S. market interest” for a given Natively Digital Security.* For example, on a public, permissionless blockchain, it is unlikely to be clear to the issuer or to other parties

⁶ Cumberland recognizes that relief from FINRA Rule 6432 regarding compliance with Exchange Act Rule 15c2-11 would also be needed.

⁷ The definition of “dealer” under Section 2(a)(12) of the Securities Act differs from its Exchange Act counterpart; it broadly includes “any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.” 15 USC 77b(a)(12).

attempting to rely on Regulation S how many of the wallet addresses holding the crypto asset are “held of record” by U.S. persons.⁸

2. *Uncertainty as to whether the asset would be appropriately categorized as “equity” or “debt” under the rule.* While most Natively Digital Securities would seem likely to meet the “debt” definition, this does not end the difficulties in applying the Regulation S safe harbor. For example, for Category 3 debt offerings, it is not clear how the “temporary global security” requirement would be met in the context of crypto assets. If the offering does constitute equity under Category 3, it is not clear that all Natively Digital Securities could be made to contain the required legend.

To the extent a secondary-market transaction in a crypto asset is also deemed a securities transaction, it would be clouded with the same confusion, as the length of the “distribution compliance period” during which a “dealer” (as defined in Securities Act Section 2(a)(12)) must apply additional conditions for resales depends on whether the security falls within Category 2 or Category 3 (or falls within Category 1, in which case these conditions do not apply) and whether the security is equity or debt.

The safe harbor that Commissioner Peirce put forward in her Token Safe Harbor Proposal (i.e., Commissioner Peirce’s proposed Securities Act Rule 195) would alleviate many of these concerns for primary issuance and secondary-market trading alike. Cumberland therefore supports adoption of Commissioner Peirce’s proposed safe harbor or similar relief. For any Natively Digital Securities that may fall outside any such safe harbor, it would be helpful for the Commission or its staff to address the above issues in due course.

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

Because Cumberland does not custody third-party assets, the SPBD Statement is not directly applicable to it. However, as noted, Cumberland believes that it and

⁸ It is also not entirely certain whether the Commission would interpret wallet addresses on a public, open-source distributed ledger designed by the issuer to constitute “records of security holders maintained by or on behalf of the issuer” and thus view such wallet addresses’ holdings as “of record” under Exchange Act Rule 240.12g5-1.

other similarly situated market participants would benefit from having the flexibility to trade security and non-security crypto assets—and related traditional securities, e.g., BTC and ETH ETP shares—within the same legal entity. To the extent such activities require a carrying broker-dealer, Cumberland could indirectly benefit from an expanded version of the SPBD statement that allows broker-dealers to custody non-security crypto assets as well as crypto asset securities and related traditional securities.

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

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

Based on over a decade of experience providing liquidity in crypto asset markets, Cumberland believes that the following non-exclusive factors should be considered in assessing whether a given crypto asset is readily convertible into cash (and thus should be an allowable asset for meeting broker-dealer net capital requirements):

1. The number and reliability of sources of liquidity in the asset that are accessible to the broker-dealer,⁹ including centralized trading platforms, over-the-counter liquidity providers, and decentralized trading platforms;
2. With respect to centralized trading platforms:
 - a. The frequency of order placement and executed transactions in the asset, i.e., whether liquidity is generally continuous or is more episodic in nature;
 - b. Typical market depth and quality, including number and size of orders at various levels around the mid-market price; whether bid and ask orders are reasonably balanced; and average size of bid-ask spread;

⁹ A broker-dealer may not be willing or able to access all sources of liquidity for the asset—for example, due to technological limitations, regulatory restrictions on the broker-dealer or the platform itself, or operational risk tolerances, among other reasons. It may also be appropriate to consider derivatives platforms that the broker-dealer could use to hedge a part of the position while liquidating it.

3. If the broker-dealer is considering OTC liquidity providers in the asset, whether such providers have a track record of availability in times of market stress and of liquidating sizeable positions with minimal market impact; and
4. If the broker-dealer is considering trading via decentralized trading platforms, the average size of liquidity pools for the crypto asset relative to the size of the broker-dealer's position in the asset and expected slippage.

Against the backdrop of these market dynamics, Cumberland has observed that, as with other assets, the liquidity of a crypto asset is largely a function of the size of the position that one needs to liquidate and the time in which one needs to complete the transaction. In this context, assuming the transaction needs are relatively immediate (as they may be, given the speed at which crypto markets move), reference to 24-hour trading volume may be most instructive.

As a general rule of thumb, crypto asset positions under 25% of average daily volume are easy enough for an experienced market participant to execute in orderly fashion; this is not to say that there will not be any market impact, but merely that one can expect reasonable execution for this size. Depending on the crypto asset, its liquidity, and the markets for the asset generally available to registered broker-dealers, it may be prudent to classify crypto asset holdings appreciably in excess of 25% of average daily volume as not readily convertible to cash and thus to exclude such excess from counting toward a broker-dealer's net capital.

Given the highly technical and rapidly evolving nature of crypto markets generally and the idiosyncrasies of markets for particular crypto assets, Cumberland believes that a broker-dealer should be afforded reasonable discretion in determining whether it can readily convert a given crypto asset into cash based on the above considerations. Such discretion may be made subject to obligations on the broker-dealer to apply an approved methodology, operate in accordance with established policies and procedures, document its analysis with supporting evidence, and perform reassessments periodically and as market circumstances warrant.

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

(i) Positions in crypto assets that are commodities

The preamble to the SEC’s since-vacated rule further defining the term “dealer” (the “Vacated Dealer Rule”) declared, without explanation, that all non-security crypto assets are subject to a 100% haircut for broker-dealer net capital purposes.¹⁰ Under this approach, non-security crypto asset inventory that is borrowed or funded with debt would increase a broker-dealer’s liabilities, thereby reducing net worth (and increasing aggregate indebtedness, assuming this net capital test is elected). However, such inventory would not count toward the asset side of the ledger at all, requiring the broker-dealer to hold other liquid assets to cover the liability.¹¹

This 100% haircut would appear to be inconsistent with Exchange Act Rule 15c3-1b and the guidance thereunder, which, as the RFI notes, imposes a 20% haircut on inventory in readily marketable spot commodities.¹² Given the extremely broad definition of “commodity” under Section 1a(9) of the Commodity Exchange Act, any crypto asset that is not a security is almost certainly a commodity.¹³ Indeed, multiple federal courts have held, and multiple Commodity Futures Trading Commission (“CFTC”) enforcement actions and CFTC Chairmen’s statements have confirmed, that Bitcoin, Ether, and non-yield-bearing, fiat-pegged stablecoins backed by highly liquid assets are non-security commodities.¹⁴ CFTC-designated contract markets have listed Bitcoin and Ether futures since 2017 and 2021, respectively, which would not be permissible unless the underlying assets were non-security commodities.¹⁵ And the SEC has approved amendments to multiple

¹⁰ See Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer in Connection With Certain Liquidity Providers, 89 Fed. Reg. 14938, 14988 (Feb. 29, 2024) (“Crypto assets that are not securities would be subject to a 100% deduction when computing net capital”), *vacated*, *Nat’l Ass’n of Priv. Fund Managers v. SEC*, No. 4:24-cv-00250 (N.D. Tex. Nov. 21, 2024); *Crypto Freedom All. of Tex. v. SEC*, No. 4:24-cv-00361 (N.D. Tex. Nov. 21, 2024).

¹¹ *Id.* n.573.

¹² 17 CFR 240.15c3-1b(a)(3)(ix)(C). Inventory other than readily marketable spot commodities generally cannot be counted toward net worth under 17 CFR 240.15c3-1b(a)(3)(iv).

¹³ 7 USC 1a(9). Securities may also fall within the text of the “commodity” definition, if read literally, but are subject to SEC rather than CFTC jurisdiction. See, e.g., 7 USC 2(a)(1)(A).

¹⁴ See, e.g., *CFTC v. Ikkurty*, No. 1:22-cv-02465, at *11-12 (July 1, 2024) (Ether); *CFTC v. My Big Coin Pay, Inc.*, 334 F. Supp. 3d 492, 498 (D. Mass. 2018) (Bitcoin); *In re Tether Holdings Limited*, *CFTC Docket No. 22-04* (Oct. 15, 2021) (stablecoin); *Oversight of the Commodity Futures Trading Commission (CFTC): Hearing before the S. Comm. On Agriculture, Nutrition, and Forestry*, 119th Cong. (Mar. 8, 2023) (statement of Hon. Rostin Behnam, Chairman, CFTC) (stablecoins); see also SEC Staff Stablecoin Statement, *supra* note 4.

¹⁵ Multiple listing designated contract markets are not registered as national securities exchanges, which is required for listing of futures on a single security. See Section 2(a)(1)(D) of the Commodity Exchange Act (CEA) and Sections 5 and 6(h)(1) of the Exchange Act (prohibiting trading of single-security futures on a futures exchange absent an exemption unless, *inter alia*, (i) the futures exchange is also registered as a national securities exchange and (ii) the security underlying the contract is an equity security meeting certain registration, clearing, and other requirements).

securities exchanges' rules for "commodity-based trust shares" to allow listing of Bitcoin and Ether ETPs, implying that the Commission itself accepts that Bitcoin and Ether should be treated as commodities.¹⁶

The preamble to the Vacated Dealer Rule did not explain this disparate treatment of crypto asset commodities. If the drafters of this language in the preamble intended to take the position that all crypto asset commodities are not readily marketable (or are not readily convertible into cash and thus fully deducted under Rule 15c3-1(c)(2)(iv)), they did not say so, much less provide their rationale for such a sweeping conclusion. While little guidance is available concerning when a commodity should be considered "readily marketable" for net capital purposes, the Commission has stated that it intends for Exchange Act Rule 15c3-1b to be interpreted uniformly with CFTC Rule 1.17,¹⁷ which imposes financial responsibility requirements for futures commission merchants ("FCM").¹⁸ On the distinct but conceptually related question of whether collateral securing an FCM loan is "readily marketable," the CFTC has stated that Rule 1.17 requires a "case-by-case" determination.¹⁹ Summarily declaring the entire universe of crypto asset commodities to be "not readily marketable" would seem to be the antithesis of a case-by-case determination.

When one conducts the sort of "case-by-case" determination intended for commodities inventory with respect to crypto asset commodities, one finds that well-established, widely circulating crypto asset commodities such as BTC and ETH are readily marketable. These assets are traded 24/7/365 on many centralized and decentralized platforms and by multiple OTC liquidity providers—including Cumberland, which has provided liquidity in these assets for a decade. Cumberland does not believe that the market, liquidity, and other risks presented by BTC and ETH are sufficiently greater than those of other commodities deemed readily marketable to warrant a 100% haircut as compared with the 20% haircut applicable to such other commodities.

¹⁶ See SEC, Order Granting Accelerated Approval of Proposed Rule Changes to List and Trade Shares of Ether-Based Exchange-Traded Products, Release No. 34-100224 (May 23, 2024); SEC, Order Granting Accelerated Approval of Proposed Rule Changes to List and Trade Bitcoin-Based Commodity-Based Trust Shares, Release No. 34-99306 (Jan. 10, 2024). If an ETP's purchases and sales of Bitcoin or Ether constituted securities transactions, the ETP would instead be required to be an exchange-traded fund registered under the Investment Company Act of 1940, with its shares registered on Form N-1A (and would not have been categorized by the listing exchange as a "commodity-based trust"). None of the ETPs approved in these orders was so registered.

¹⁷ See, e.g., 44 Fed. Reg. 34884 (June 15, 1979).

¹⁸ 17 CFR 1.17.

¹⁹ 43 Fed. Reg. 39956, 39963 n.19 (Sept. 8, 1978).

As to liquidity risk, spot markets for BTC and ETH have been healthy and liquid enough to support futures trading on CFTC-designated contract markets for many years, as well as trading of many Commission-approved ETPs. Over the past year, average daily trading volumes for BTC and ETH on major centralized exchanges alone were \$4.17 billion and \$1.89 billion, respectively. For these exchanges, average daily resting liquidity at $\pm 2\%$ from the mid-market price was \$157.15 million for BTC and \$63.32 million for ETH.²⁰ This data does not include liquidity from OTC liquidity providers such as Cumberland or decentralized trading platforms, which collectively contribute significantly to BTC and ETH's respective liquidity profiles. Even without these additional liquidity sources, such on-exchange trading alone makes BTC and ETH average daily traded volume larger than that of the vast majority of stocks in the S&P 500, as illustrated in Appendix B hereto. Though such stocks fall within the general marketable securities haircut category²¹ rather than the commodities haircut category, we believe this comparison of liquidity features further supports assignment of a haircut for BTC and ETH of approximately 20%, as this would be comparable to the 15% haircut imposed for these stocks—which in some respects appear to be less liquid than BTC and ETH—with an additional 5% buffer for further comfort.

As to market risk, based on its own experience with OTC, on-exchange, and block trading in BTC and ETH derivatives (including margin for such derivatives) as well as spot trading, Cumberland believes the standard commodities haircut of 20% over a 1- or 2-day liquidation time horizon is sufficient to cover typical market moves in these assets. Indeed, Cumberland understands that the National Securities Clearing Corporation generally assigns a haircut of approximately 20% to collateral in the form of crypto asset ETPs,²² which are designed to track the price of the underlying spot crypto asset.²³ CFTC-designated contract markets and non-U.S. derivatives trading platforms also provide a variety of hedging tools to reduce crypto asset market risk. Combined average daily volume of BTC and ETH futures and options traded on the CME alone was 198,000 contracts, or \$11.3 billion

²⁰ Please see additional data compiled by Cumberland research analysts set forth in Appendix B below. Volume figures are broken out by exchange to address the possibility that some broker-dealers may not be able to access all major crypto asset exchanges.

²¹ 17 CFR 240.15c3-1(c)(2)(vi)(J).

²² The Depository Trust Company ("DTC") revised its policies in April 2024 to assign a 100% haircut to collateral in the form of ETFs and ETPs holding crypto assets. This was done as part of the annual renewal of DTC's line-of-credit facility from a consortium of banks; Cumberland does not know whether the 100% haircut was prompted wholly or partially by the statements in the Vacated Dealer Rule issued in February 2024. See DTC Notice B20002-24 (Apr. 26, 2024), <https://www.dtcc.com/-/media/Files/pdf/2024/4/26/B20002-24.pdf>.

²³ See, e.g., Form S-1/A Registration Statement of Fidelity Wise Origin Bitcoin Trust (filed Jan. 9, 2024) ("The Trust's investment objective is to seek to track the performance of bitcoin . . ."); Form S-1/A Registration Statement of (filed Jan. 9, 2024) (The Trust's investment objective is for the value of the Shares (based on Bitcoin per Share) to reflect the value of Bitcoins held by the Trust . . .").

notional, in Q1 2025, and volumes on non-U.S. derivatives exchanges are considerably greater.²⁴

The irrationality of the approach articulated in the preamble to the Vacated Dealer Rule is brought into greater focus when one considers its application to a broker-dealer holding both Bitcoin ETP shares and spot BTC. A broker-dealer long spot BTC inventory and short ETP shares would receive no offset even though the ETP is designed to track the price of the underlying spot BTC.²⁵ And the broker-dealer would take a haircut of only 15% on the ETP²⁶ but a 100% haircut on the spot BTC (though, again, the ETP tracks spot BTC prices, with holdings consisting almost entirely of spot BTC). This contrasts markedly with the situation in the case of holdings of other spot commodities such as oil, metals, or foreign currency and ETPs referencing such commodities. In the latter such cases, the broker-dealer could potentially benefit from offsetting positions in the ETP and the underlying in calculating net worth, and for any non-offset position, haircuts for the spot commodity would range from 6% (for five major foreign currencies) to 20% (for all other currencies, metals, and other commodities).²⁷

If the Commission is not comfortable with applying the standard 20% haircut to crypto asset commodities, Cumberland believes it could be appropriate to conduct a lookback at market movements, liquidity, and other risk factors in recent months or over the past several years, reviewing data such as that discussed in this letter, in order to categorize such crypto assets into risk “tiers.” Greater haircuts could apply for riskier tiers, similar to the differing foreign currency haircuts for major and non-

²⁴ CME Group, *Press Release: CME Group Sets New, All-Time Quarterly ADV Record of 29.8 Million Contracts, Driven by Growth Across All Asset Classes* (Apr. 2, 2025). Bitcoin perpetual contracts (a form of derivative contract without an expiry date), which are currently only available on non-U.S. exchanges, had average daily volumes of \$57.7 billion on weekdays in Q1 2024. David Han, Institutional Research Analyst, Coinbase, *A Primer on Perpetual Futures 2* (June 10, 2024). While BTC and ETH admittedly can be volatile over longer time horizons, the same is true of other commodities—for example, please see charts in Appendix B comparing volatilities of BTC, ETH, and oil over a rolling 30-day time period. And given the liquidity available in BTC and ETH noted above, Cumberland believes that a time horizon longer than 1 to 2 days typically would not be needed to liquidate a broker-dealer’s holdings of these assets, depending on the size of the holdings.

²⁵ See, e.g., Form S-1/A Registration Statement of Fidelity Wise Origin Bitcoin Trust (filed Jan. 9, 2024) (“The Trust’s investment objective is to seek to track the performance of bitcoin”); Form S-1/A Registration Statement of (filed Jan. 9, 2024) (The Trust’s investment objective is for the value of the Shares (based on Bitcoin per Share) to reflect the value of Bitcoins held by the Trust”).

²⁶ This example assumes that the general 15% haircut for exchange-traded securities applies, though a broker-dealer acting as a market maker in the ETP shares may instead only pay a margin charge to its carrying broker, with its carrying broker taking the capital charge.

²⁷ See, e.g., FINRA, SEA Rule Interpretations, 15c3-1(c)(2)(vi)/08, https://www.finra.org/sites/default/files/SEA.Rule_.15c3-1.Interpretations.pdf. Under FINRA interpretations, a 100% deduction would be required for gold and silver bullion purchased for the broker-dealer’s proprietary account if such gold or silver were not within the broker or dealer’s control in good deliverable form and covered by appropriate insurance. FINRA, SEA Rule 15c3-1b Appendix B and Related Interpretations, 15c3-1b(a)(3)(iv)/01 Gold and Silver (last updated Feb. 23, 2023), <https://tinyurl.com/FINRA-guidance>.

major currencies. Such a review could determine, for example, that BTC and ETH warrant a larger haircut than certain stablecoins, and other non-security crypto assets warrant a larger haircut than BTC and ETH, perhaps up to 100% depending on the asset. But Cumberland believes the approach of an automatic 100% haircut for all non-security crypto assets is insupportable, as it fails to consider market data or otherwise account for the distinct liquidity profiles of varying types of non-security crypto assets.

This approach is particularly inappropriate for dollar-pegged stablecoins backed by regularly verified reserves of highly liquid financial instruments (e.g., Treasuries) and cash. Cumberland believes historical volatility in such stablecoins (i.e., “de-peg” instances) would not even warrant a 20% haircut, far less a 100% haircut.²⁸ It is crucial to avoid such unjustified punitive capital treatment for these stablecoins, which are critical to mitigating the kind of counterparty credit, market, operational, and other risks inherent in the timing mismatches between crypto and traditional payments rails, as noted above.

(ii) Positions in securities that are crypto assets

The appropriate haircut for securities that are crypto assets may vary depending on whether the asset is a tokenized traditional security (e.g., tokenized Treasuries, equity, or corporate debt) or is a Natively Digital Security.

In appropriate cases, Cumberland would encourage the Commission or its staff to allow tokenized traditional securities to receive a haircut similar to that applicable to the underlying asset that has been tokenized, whether this is accomplished through Commission or staff guidance, a no-action position, or some other vehicle for relief. Cumberland believes that tokenization of securities and other financial assets promises immense gains in efficiency and speed of collateral management, movement, and settlement, with knock-on benefits such as reduced or eliminated counterparty credit risk and support for extended trading hours. Many of the world’s largest exchanges, depositories, and clearinghouses are now actively working to capture these benefits.²⁹ Cumberland recognizes that liquidity for sales

²⁸ For example, the largest historical market “de-peg” for USDC, the second-largest stablecoin by circulating supply, was just over 13% (down to \$0.877647 per coin). This occurred in March 2023, when Silicon Valley Bank faced a deposit run and failed. Approximately \$3.3 billion, or nearly 8% of USDC’s reserves, was held at the bank. USDC’s issuer, Circle, honored the 1:1 dollar peg despite this exposure, and all of the funds were ultimately made available and transferred to other banks. Circle now holds approximately 85% of USDC reserves in the Circle Reserve Fund, a government money market fund as defined under Rule 2a-7 under the Investment Company Act of 1940.

²⁹ See, e.g., CME Group, *Press Release: CME Group Will Introduce Tokenization Technology to Enhance Capital Market Efficiency Using Google Cloud's New Universal Ledger* (Mar. 25, 2025); ICE and Circle, *Press Release: ICE and Circle Sign MOU to Explore Product Innovation Based on Circle's USDC and USYC Digital Assets* (Mar. 27, 2025); Canton Network, *Unlocking Collateral Mobility through Tokenization: US Treasuries Use Case* (Sept. 2024).

of tokenized versions of a security may currently comprise a fraction of the market liquidity for the underlying security, and would be receptive to an additional add-on haircut to reflect the unique market, technological, and operational considerations associated with liquidating tokenized securities. However, some measure of parity in net capital treatment for tokenized and non-tokenized securities is particularly critical to support innovation in this area while it remains in a nascent stage largely due to a lack of regulatory clarity for, and at times outright hostility to, such efforts under the prior Administration.

If the Commission finds it necessary, it could impose a cap on the amount of a tokenized security to which a broker-dealer may apply a haircut that is the same as or similar to the underlying, requiring a greater haircut for amounts above that threshold. Such a cap could appropriately balance the key objectives of encouraging responsible innovation and adoption in tokenization initiatives and carefully limiting risk to a broker-dealer's financial integrity.³⁰

As to Natively Digital Securities, the Commission or its staff should consider providing interpretive or no-action relief from certain aspects of the tests for determining whether securities have a ready market, have a limited market, or are non-marketable, so that the tests can be applied in a manner compatible with the current characteristics of markets for such assets.

For example, though no national securities exchange (“NSE”) currently lists Natively Digital Securities, and it appears unlikely that an NSE will be able to do so in the near future, it appears possible that an alternative trading system (“ATS”) could support active trading in such assets in the future.³¹ The Commission or its staff should make clear that the term “recognized established securities market” within the “ready market” definition³² could include such an ATS.

In addition, for purposes of determining whether Natively Digital Securities have only a limited market necessitating a 40% haircut or have a more active market, Cumberland would recommend that the Commission or its staff grant relief from the requirement that regular quotations be made “in an inter-dealer quotations system,” at least on a temporary basis. Quotes for crypto assets historically have not

³⁰ Cumberland acknowledges that a tokenized security should not be allowable for net capital purposes unless the broker-dealer has adequate contractual—and, where applicable, technological—assurances of the rights it holds by virtue of holding the cryptographic keys controlling transfers of the tokenized security. To the extent the broker-dealer's tokenized security or other crypto asset holdings collateralize a loan, the indebtedness may not be viewed as “adequately collateralized” unless the lender's security interest in the tokenized security has been perfected, via filing of a financing statement or via control under the law of states that have adopted Article 12 of the Uniform Commercial Code.

³¹ See, e.g., Coinbase, Response to RFI, at 15 (Mar. 19, 2025), https://assets.ctfassets.net/sygt3q11s4a9/12w8JQU4Yd4mZcmMDbqleX/2dab2b67e9f3e1e3eaaae758e2b7d3f7/Coibase_SEC_RFI_Response.pdf.


³² 17 CFR 240.15c3-1(c)(11)(i).

been disseminated through such systems. Rather, quotes are generally provided on a bilateral basis. Among the reasons for this structural difference from typical securities markets are (i) pervasive ambiguity as to whether a given crypto asset *is* a Natively Digital Security (e.g., under the *Howey* test); (ii) the prior Administration's hostility toward mixing of crypto asset and traditional securities infrastructure; and (iii) risks of exacerbating existing information leakage concerns associated with the use of public blockchains.

* * *

Again, we appreciate the opportunity to share our views, and we would welcome the opportunity to discuss these topics further with the Task Force, the Commission, and the Commission staff. Please do not hesitate to contact us should you have any questions or if we can be of assistance.

Sincerely yours,

DocuSigned by:

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Chelsea Pizzola
Associate General Counsel
Cumberland

Appendix A
Proposed Alternative “Catch-All” Issuer Information
Under Exchange Act Rule 15c2-11(b)(5)

Required “Catch All” Issuer Information: Rule 15c2-11(b)(5)	Proposed “Comparable Elements” for Natively Digital Securities
(A) The name of the issuer and any predecessors during the past five years	<p>The name and description of any identifiable person or entity (e.g., a “Labs” or “Foundation” entity) that instantiated the Natively Digital Security</p> <p><i>Explanation: for some crypto assets, there is no “issuer,” as the crypto asset is created by network validation / consensus activity as an incentive for such activity. For other crypto assets, the issuer is unknown. While Cumberland views it as unlikely that such crypto assets would be reasonably classified as securities, it includes a broader term than “issuer” here for completeness given the variety of ways in which crypto assets are created.</i></p>
(B) The address(es) of the issuer’s principal executive office and of its principal place of business	<p>The address(es) of the principal executive office and principal place of business associated with any identifiable person or entity that instantiated the Natively Digital Security</p> <p><i>Explanation: see above note on “issuer” status</i></p>
(C) The state of incorporation or registration of the issuer and of each of its predecessors (if any) during the past five years	<p>The state of incorporation or registration of any identifiable entity that instantiated the Natively Digital Security, and of each of its predecessors (if any) during the past five years</p> <p><i>Explanation: see above note on “issuer” status</i></p>
(D) The title, class, and ticker symbol (if assigned) of the security	<p>The name of the Natively Digital Security, its symbol, and the relevant distributed ledger on which the Natively Digital Security was initially instantiated</p> <p><i>Explanation: This proposed element would set forth the key information needed to identify the specific Natively Digital Security, as would the title, class, and ticker symbol of a traditional security. This is the cryptoasset analog to the information specified in the rule. Note that there generally are not multiple “classes” of a crypto asset.</i></p>
(E) The par or stated value of the security	No par or stated value unless the person or entity that instantiated the Natively

Required “Catch All” Issuer Information: Rule 15c2-11(b)(5)	Proposed “Comparable Elements” for Natively Digital Securities
	<p>Digital Security provides otherwise, as with par value for traditional securities</p> <p><i>Explanation: We believe that there is no appropriate comparable element to Rule 15c2-11(b)(5)(E) because there is no “par” or “stated” value of Natively Digital Securities.</i></p>
<p>(F) The number of shares or total amount of the securities outstanding as of the end of the issuer’s most recent fiscal year</p>	<p>The circulating supply (i.e., actual amount in circulation) of the Natively Digital Security as of the end of the previous calendar year</p> <p><i>Explanation: The circulating supply of the Natively Digital Security as of the end of the previous calendar year is the cryptoasset analog to the “number of shares or total amount of the securities outstanding.” This proposed element provides market participants with information about the total universe of tradable units, parallel to Rule 15c2-11(b)(5)(F). Note that the person or entity that instantiated the Natively Digital Security may not have a specified fiscal year (and Natively Digital Securities generally are not characterized as “shares”).</i></p>
<p>(G) The name and address of the transfer agent</p>	<p>In respect of the initial issuance, the smart contract address or distributed ledger technology associated with the Natively Digital Security</p> <p><i>Explanation: Under current market structure and industry practices, transfer agents are ordinarily not used in respect of Natively Digital Securities. The distributed ledger technology or smart contract address associated with the Natively Digital Security serves a recordkeeping function that is generally analogous to that provided by transfer agents, and indeed, this is part of what blockchain technologists view as the promise of the technology: its ability to create and maintain immutable shared records of asset transfers far more quickly and inexpensively than could a traditional transfer agent.</i></p>
<p>(H) A description of the issuer’s business</p>	<p>A description of the Natively Digital Security (from a whitepaper, a prospectus or other description made available by the person or entity that instantiated the Natively Digital Security)</p> <p><i>Explanation: Although these descriptions will vary on an asset-by-asset basis, for crypto assets</i></p>

Required “Catch All” Issuer Information: Rule 15c2-11(b)(5)	Proposed “Comparable Elements” for Natively Digital Securities
	<p><i>today, such descriptions commonly include basic background information on the Natively Digital Security and its purposes, goals, and technology as well as that of any associated network or ecosystem. This information is thus the cryptoasset analog to a “description of the issuer’s business,” as stated in the rule.</i></p>
<p>(I) A description of products or services offered by the issuer</p>	<p>A description of the Natively Digital Security (from a whitepaper, a prospectus or other description made available by the person or entity that instantiated the Natively Digital Security)</p> <p><i>Explanation: Although this information will vary on an asset-by-asset basis as noted, it commonly includes basic background information on the Natively Digital Security and its purposes, goals and technology, including any function it fulfills or service it provides with respect to a blockchain on which it was instantiated or any related applications. This information is thus the cryptoasset analog to a “description of products or services offered by the issuer,” as stated in the rule.</i></p>
<p>(J) A description and extent of the issuer’s facilities</p>	<p>The address(es) of the principal executive office and principal place of business associated with any identifiable person or entity that instantiated the Natively Digital Security</p> <p><i>Explanation: Most Natively Digital Securities (and their issuers or similar persons) do not have physical “facilities” as do traditional operating company issuers. However, we believe that the proposed comparable element—the address(es) of the principal executive office and principal place of business associated with any identifiable person or entity that instantiated the Natively Digital Security—is the cryptoasset analog to a “description and extent of the issuer’s facilities,” as stated in the rule.</i></p>
<p>(K) The name and title of all company insiders</p>	<p>The name and affiliation of any identifiable key persons or entities related to, or affiliated with, the Natively Digital Security (including any identifiable officer or director of, or person that performs a similar function with respect to, any identifiable entity that instantiated the Natively Digital Security)</p>

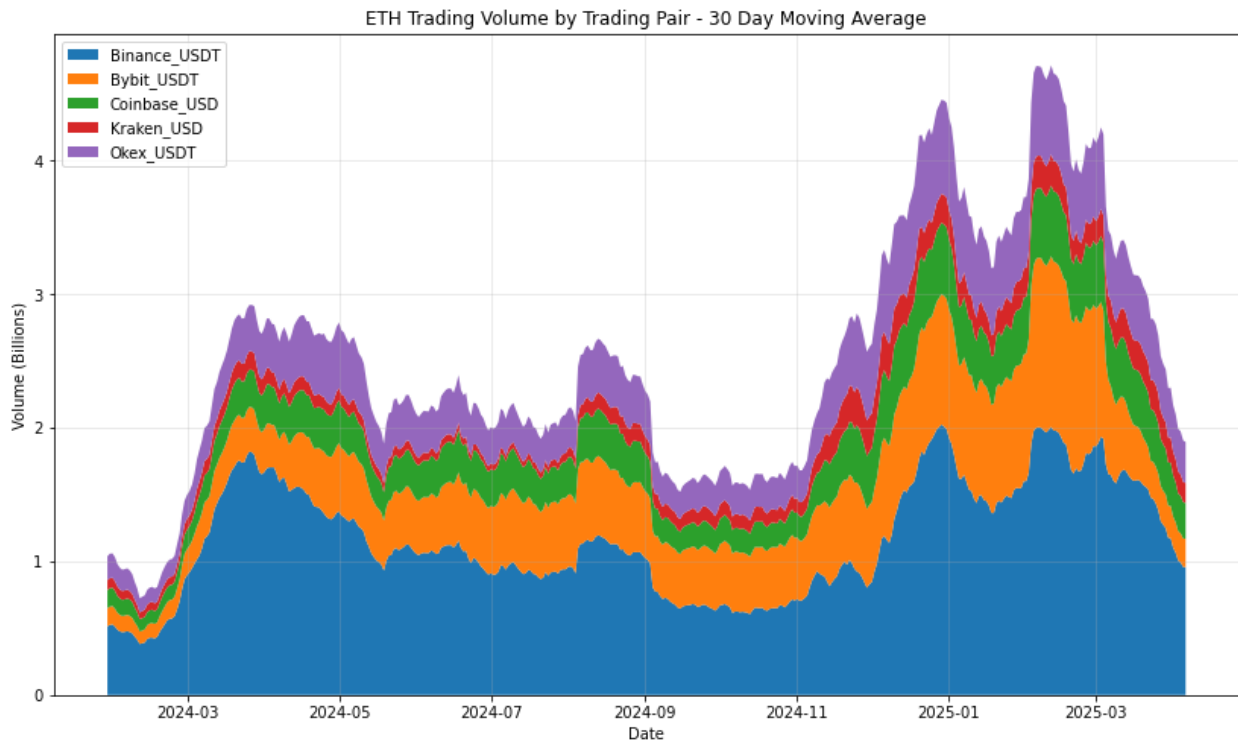
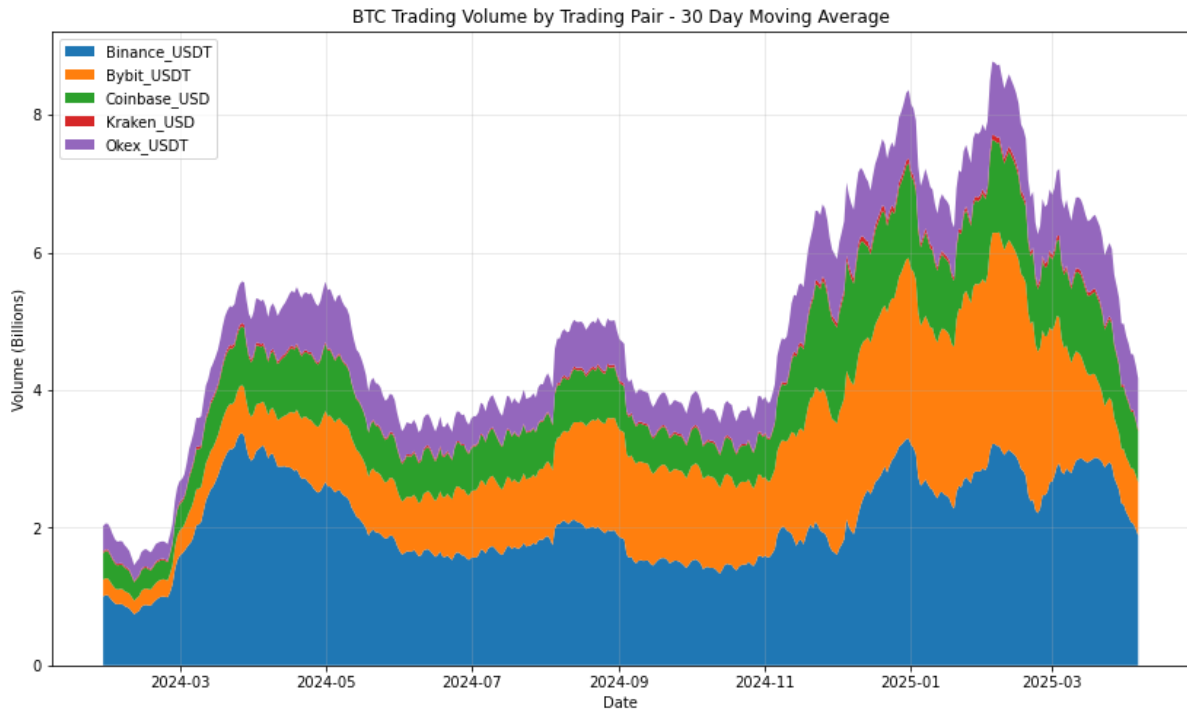
Required “Catch All” Issuer Information: Rule 15c2-11(b)(5)	Proposed “Comparable Elements” for Natively Digital Securities
	<p><i>Explanation: The concept of “company insiders” does not apply to Natively Digital Securities in the same way as the concept applies with respect to traditional operating company issuers. That said, we believe that the proposed comparable element—the name and affiliation of any identifiable key persons or entities related to, or affiliated with, the Natively Digital Security—is the cryptoasset analog—and provides comparable information to market participants. The inclusion of “any identifiable officer or director of, or person that performs a similar function with respect to, any identifiable entity that instantiated the Natively Digital Security” draws on the text of the definition of “company insider” under Rule 15c2-11(e)(1).</i></p>
<p>(L) The issuer’s most recent balance sheet (as of a date less than 16 months before the publication or submission of the quotation) and profit and loss and retained earnings statements (for the 12 months preceding the date of the most recent balance sheet)</p> <p>(M) Similar financial information for such part of the two preceding fiscal years as the issuer or its predecessors has been in existence</p>	<p>A copy of (i) all authorized audit reports concerning smart contracts, protocols, or other code associated with the Natively Digital Security or (ii) the most recent audit report, as well as copies of the audit reports covering the prior two years, each concerning the financial condition of any identifiable person or entity that instantiated the Natively Digital Security, in each case as of a date less than 16 months before the publication or submission of the quotation</p> <p><i>Explanation: We believe that this is an appropriate comparable element to Rule 15c2-11(b)(5)(L) and (M). The audit reports discussed in this proposed comparable element are the cryptoasset analog to the financial information described in elements (L) and (M) of the rule, which is not available for most crypto assets. These proposed comparable elements provide information about, or an assessment of the integrity of, the smart contracts, protocols or other code associated with the Natively Digital Security or information concerning the financial condition of any identifiable person or entity that instantiated the Natively Digital Security. This is information that is broadly parallel to the information contemplated in Rule 15c2-11(b)(5)(L) and (M) in the sense that it requires the broker-dealer to “give . . . attention to financial and other information about the issuer” and the Natively Digital Security,</i></p>

Required “Catch All” Issuer Information: Rule 15c2-11(b)(5)	Proposed “Comparable Elements” for Natively Digital Securities
	<i>including information about the integrity of the related protocol and associated code. The integrity of this code is key to its success and thus key to an investor’s decision with respect to transacting in the crypto asset.</i>
(N) Whether the broker or dealer or any associated person of the broker or dealer is affiliated, directly or indirectly, with the issuer	Whether the broker or dealer or any associated person of the broker or dealer is affiliated,³³ directly or indirectly, with any identifiable person or entity that instantiated the Natively Digital Security³⁴ <i>Note: see note on “issuer” status above.</i>
(O) Whether the quotation is being published or submitted on behalf of any other broker or dealer and, if so, the name of such broker or dealer	Whether the quotation is being published or submitted on behalf of any other broker or dealer and, if so, the name of such broker or dealer <i>Note: this element is unchanged from the language of the rule.</i>

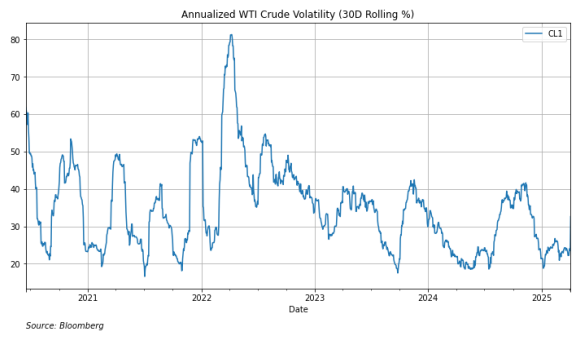
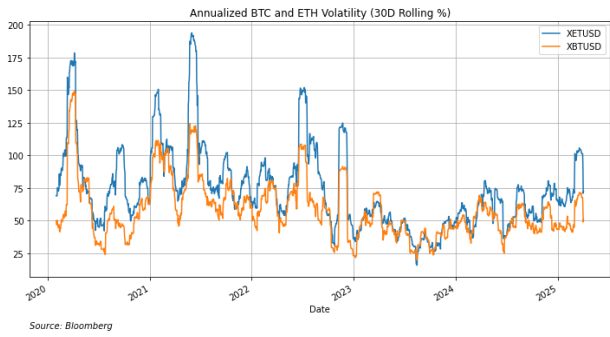
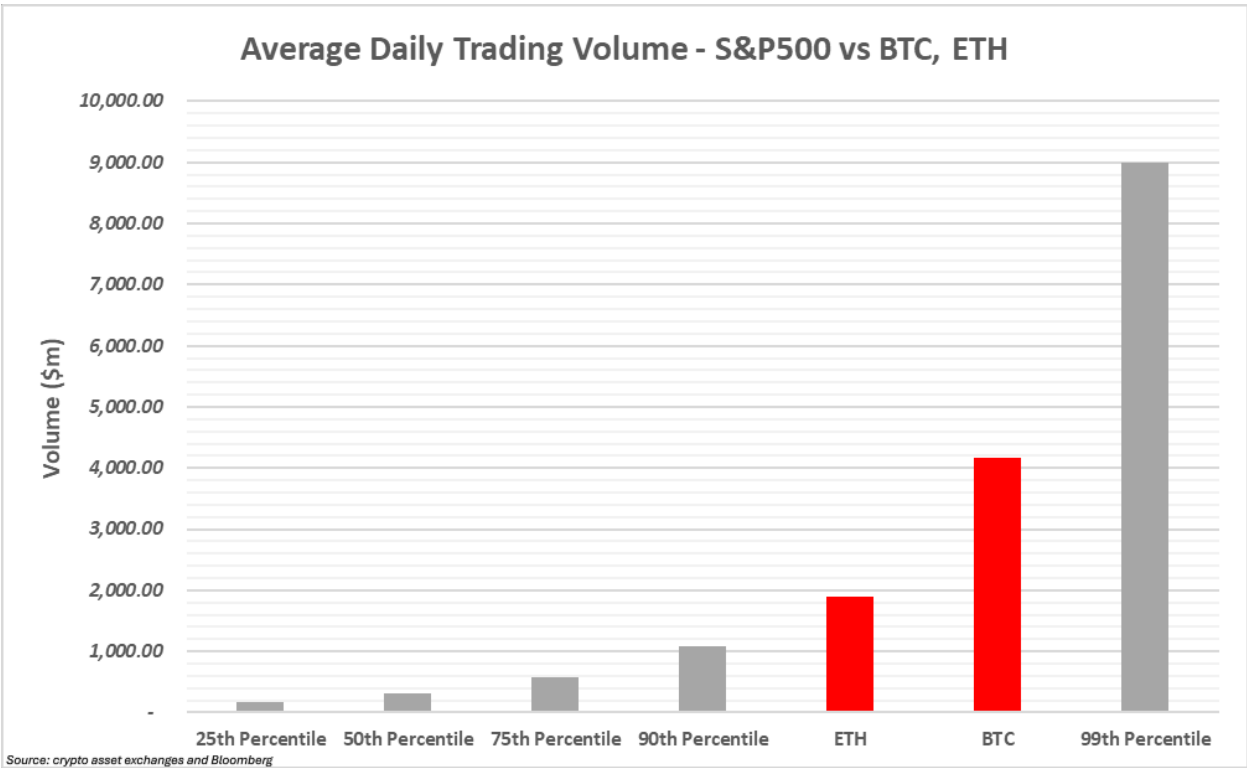
³³ Here, the “affiliated” concept would be the same as contemplated in Item (N) of Rule 15c2-11(b)(5) (in the left column)—i.e., the existence of a relationship where the broker-dealer (or any associated person of the broker-dealer) directly or indirectly controls, is under common control with, or is controlled by, the relevant person/entity. The definition of “control” is set out in SEC Form BD. *See generally* Rule 15c2-11(b)(5), Rule 15c2-11(f)(2)(ii)(B), Rule 144(a)(1), and SEC Form BD.

³⁴ Rule 15c2-11(a)(1)(i)(B) excludes the information identified in Rule 15c2-11(b)(5)(i)(N)-(P) from the requirement that such information must be current and publicly available.

Appendix B Data for RFI Question 25



Source: exchanges



Appendix C Potential Issues Related to FINRA Reporting Requirements

The following is a brief discussion of potential issues and points for clarification one may encounter in attempting to apply FINRA reporting requirements to Natively Digital Securities and tokenized securities transactions. We would be happy to discuss this further with SEC or FINRA staff if useful.

* * *

No crypto assets (whether Natively Digital Securities, tokenized securities, or otherwise) currently trade on a national securities exchange. It would be helpful if FINRA could clarify whether it views (i) tokenized equity securities as OTC Equity Securities for purposes of the FINRA Rule 6600 series (or as ADF-eligible securities under the Rule 6200 series, for tokenized versions of NMS stocks) and (ii) tokenized debt securities as TRACE-Eligible Securities under the FINRA Rule 6700 series (if the underlying non-tokenized version of the debt security would be thus eligible). Cumberland does not believe that a tokenized U.S. Treasury should be considered a “U.S. Treasury Security” under FINRA Rule 6710(p), as tokenized representations of Treasuries are not themselves “issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities,” though the underlying Treasury security being represented is. It would also be helpful if FINRA could confirm that crypto assets that are not tokenized representations of traditional securities and are or may be Natively Digital Securities solely under the *Howey*³⁵ or *Reves*³⁶ test are not OTC Equity Securities, ADF-eligible securities, or TRACE-Eligible Securities, and transactions in such assets thus need not be reported to FINRA.

Cumberland is not aware that electronic submission of trade reports to a FINRA Trade Reporting Facility or OTC Trade Reporting Facility (for NMS stocks and OTC Equity Securities, respectively) or to TRACE (for TRACE-Eligible Securities) is possible for crypto assets at this time. Accordingly, manual reporting by form (via Form T or under FINRA Rule 6730(a)(7)) may be required. This could prove impracticable if required for most or all OTC crypto asset trading involving securities. Cumberland understands that such form reporting is designed for one-off, unusual circumstances affecting a particular security or market participant, not for market-wide reporting of entire categories of securities.

Thus, if FINRA considers that reporting trades in tokenized securities or other crypto assets is required under the Rule 6200, 6600, or 6700 series, it would be

³⁵ *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

³⁶ *Reves v. Ernst & Young*, 494 U.S. 56 (1990).

helpful if FINRA were open to the position that, absent purposeful delay, there is generally “reasonable justification” or “exceptional circumstances” for failure to make such reports by the applicable deadline, under Supplementary Material .03 to FINRA Rule 6622, FINRA Rule 6282(a)(7), and FINRA Rule 6730(f), as applicable, and that FINRA will not pursue action against member firms for such failure.³⁷ Such a position could be limited to the period of time required for electronic reporting to be implemented and conditioned on a member firm providing FINRA with relevant wallet addresses so that FINRA can view the firm’s OTC crypto asset transfers in real time via block explorers or blockchain monitoring software.

³⁷ In any case where reporting is required, members will need to know the FINRA-assigned symbol to be used; in cases where there is also a non-tokenized form of the security, Cumberland believes that the symbols for the tokenized and non-tokenized versions should differ.