MEMORANDUM

To: Crypto Task Force Meeting Log
From: Crypto Task Force Staff
Re: Meeting with Representatives of the Securities Industry and Financial Markets Association and CahillNXT

On May 27, 2025, Crypto Task Force Staff met with representatives from the Securities Industry and Financial Markets Association and CahillNXT.

The topic discussed was approaches to addressing issues related to regulation of crypto assets. The Securities Industry and Financial Markets Association and CahillNXT representatives provided the attached documents, which were discussed during the meeting.

SIFMA would like to request a meeting to follow up on our recent response to the Crypto Task Force's Request for Information. We propose that the meeting cover our recommendations on the following topics raised in the RFI:

- Securities status and scoping issues;
- Broker-dealer, investment adviser and investment company custody; and
- Regulatory modernization to support tokenized asset markets.

A summary of our recommendations can be found below and are indicative of the specific issues we would like to cover during the meeting.

Attendees would include SIFMA leadership, including Ken Bentsen, SIFMA CEO and President; Joe Seidel, COO; Peter Ryan, Managing Director and Head of International Capital Markets and Strategic Initiatives; Charles DeSimone, Managing Director and Deputy Head of Operations and Technology; and Kevin Ehrlich, Managing Director, SIFMA Asset Management Group.

Securities Status

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

Custody

- ***Apply Traditional Custody Principles:*** Traditional regulatory principles around custody and the role of the custodian, including the separation of financial activities, segregation of client assets, and ensuring proper control of assets, should be applied to the custody of digital assets, whether in the broker-dealer, registered investment adviser ("RIA"), or investment company context.
- ***Rely on Existing Custody Frameworks and Do Not Adopt Safeguarding Proposal:*** The SEC should neither develop a new custody framework solely for digital assets nor proceed with its unworkable 2023 Safeguarding proposal. Instead, the SEC should ensure that existing regulatory perimeters with respect the regulation of custodial activity do not expand to include asset types beyond securities and funds, and that where clarification regarding how these regulations will apply to digital asset securities and funds may be appropriate, the SEC should engage in an iterative dialogue with industry participants to develop updated guidance on specific topics *e.g.,* on the subject of "private keys."
- ***Custody Requirements Should be Technology Neutral:*** Custody rules and guidance should adopt flexible frameworks that accommodate evolving technologies and avoid favoring specific technological characteristics, including the network type (*e.g.,* public versus private) and its configuration (*e.g.,* permissioned versus permissionless).

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

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

Tokenization

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

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

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

SEC Crypto Task Force: Feedback on Securities Status, Custody, and Tokenization Issues

PRESENTED BY

SIFMA

May 2025

Agenda

1. Core Principles for Regulating Digital Securities
2. Securities Status and Scoping
3. Custody: Overall Recommendations
4. Broker-Dealer Custody
5. Investment Adviser and Investment Company Custody
7. Regulatory Modernization to Support Tokenization

1 Core Principles for Regulating Digital Securities

SIFMA believes that any new law, regulation or guidance impacting digital asset activity in the securities sector should be designed with the following core principles in mind:

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

2 Securities Status and Scoping

- ***Adopt Clear and Consistent Taxonomies and Classifications***
  - The SEC should adopt clear, consistent and consensus-driven taxonomies and classification approaches as a crucial first step in the development of effective digital assets regulation. Specifically, SIFMA supports the CFTC GMAC DAM taxonomy approach, which has been widely vetted by a diverse group of market participants and can be universally applied across jurisdictions and regulatory frameworks.
  - The SEC should, to the extent possible, avoid adopting terminology that creates inconsistencies with approaches being considered by Congress and other regulators.
  - The SEC should establish a standard that allows market participants to classify digital assets into categories in a way that does not result in varying outcomes based on factors extrinsic to the asset. This would allow market participants to readily classify digital assets into financial assets that are securities; money-like digital assets; cryptocurrencies; alternative digital assets; functional digital assets; and settlement controllable electronic records.

- ***Securities Status Should be Based on Economic Characteristics and Legal Relationships***
  - The determination of whether a digital asset is a security should be based upon the intrinsic economic characteristics of an asset or transaction rather than through a technology-driven approach that depends on mutable factors extrinsic to the asset or transaction.
  - For example, guidance on staking should take into consideration the economic nature of staking as a reallocation of network value along with the legal relationship, or lack thereof, involved in the relevant activity.
  - Determination of securities status should also be based on whether a legal relationship exists with an entity properly characterized as an “issuer” under federal securities laws.

2 Securities Status and Scoping

- ***Supplement Existing Case Law through Guidance and FAQs***
  - The SEC should build on the existing corpus of case law in determining securities status, supplementing as appropriate through the issuance of flexible, principles-based guidance that considers industry input, and FAQs specific to digital assets.
  - Guidance is particularly helpful in areas where technology and related applications introduce new processes and involve functionalities that go beyond existing regulated market activity *e.g.,* in areas such as staking digital assets to secure a blockchain network and running a computer node on a network to validate transactions
- ***Scoping Out***
  - SIFMA supports the SEC's efforts to-date to provide guidance scoping-out non-securities digital assets and digital asset activities *e.g.,* the staff statements on "covered stablecoins" and certain proof-of-work mining activities.
  - However, guidance should be based on a technology-neutral approach and avoid adopting classifications that may create conflicts with terminology in potential future legislation on payment stablecoins and digital asset market structure.

3 Custody: Overall Recommendations

- ***Apply Traditional Custody Principles***
  - Traditional regulatory principles around custody and the role of the custodian, including the separation of financial activities, segregation of client assets, and ensuring proper control of assets, should be applied to the custody of digital assets, whether in the broker-dealer, registered investment adviser ("RIA"), or investment company context.
  - Building on these core principles, the Commission should clarify, where necessary, existing regulations to address the specific attributes of digital assets. This includes guidance relevant to the control of "private keys" used to give transfer instructions for digital assets and the conduct of various activities, such as staking, voting, or other participatory features that may implicate the asset's economic value.
- ***All Qualified Custodians Should be Subject to the Same Standards***
  - To the extent that the SEC is considering widening the definition of qualified custodians to permit new types of entities to custody digital asset securities, those entities must meet the same level of regulatory obligations and investor protections as existing qualified custodians.
- ***Self-Custody Should Be Clearly Defined***
  - For most institutional investors, self-custody is unlikely to practicable given security risks and operational complexities of digital wallets; potential conflicts of interest and investor protection requirements; and the practical convenience provided by an indirect holding system managed by third party entities.
  - As such, the SEC should adopt a consistent definition of "self-custody" as referring solely to those situations where a client has custody over its own digital assets, on its own behalf and for which no responsibility would be placed upon a custodian.

3 Custody: Overall Recommendations

- ***Article 12 of the Uniform Commercial Code (UCC) and State Law Issues***
  - Article 12 of the UCC can provide a useful starting point as the SEC considers the critical question of control of digital assets in the context of custodial relationships for purposes of federal securities law. In addition to its definition of the concept of control over controllable electronic records, Article 12 provides both a clear "take-free" rule for good faith purchasers and rules that allow for perfection by control of security interests in digital assets.
  - Article 12 is in the process of being adopted by the states. SIFMA would support SEC efforts to encourage its further adoption in those states in which the adoption process has not been finalized to avoid potential state law issues affecting the grants of security interests over digital assets.
- ***Possession and Control Issues: Need for Dialogue with Market Participants***
  - We encourage the SEC to work with market participants to better understand what proper control means for purposes of the federal securities laws in the context of digital assets, including how requirements around "physical" or "exclusive" possession or control over digital assets should be applied to these types of assets.
- ***Rely on Existing Custody Frameworks and Do Not Adopt Safeguarding Proposal***
  - The SEC should neither develop a new custody framework solely for digital assets nor proceed with its unworkable 2023 safeguarding proposal.
  - A better approach would be for the SEC to engage in an iterative dialogue with industry participants to develop updated guidance explaining how existing rules apply in specific areas *e.g.,* on the subject of private keys.

3 Custody: Overall Recommendations

- ***Coordinate with Other Regulators***
  - It is also important for the SEC to coordinate its approach with that of other primary regulators of market participants, including the CFTC and prudential regulators, so that they can permissibly function as custodians under current SEC regulations. Lack of coordination would lead to unnecessary complication, potential regulatory arbitrage, and delays in adoption.
  - For digital assets that are not securities, the SEC should carefully assess its authority to promulgate applicable rules and should not seek to implement mandates, such as those in its proposed safeguarding rule, that would require the custodian or RIA to assume responsibility for assets for which it has no practical means for control, or that would extend to asset types beyond securities and funds.
- ***Adopt a Technology Neutral Approach***
  - SIFMA believes that the SEC should remain technology-neutral and not take an approach to regulating different network configurations that would favor specific technological characteristics such as (i) features of the network type itself (*e.g.,* private vs. public), (ii) the configuration of the network (*e.g.,* permissioned vs. permissionless) or (iii) additional controls added at the application level.
- ***Custody of Non-Security Digital Assets***
  - For digital assets that are not securities, the SEC should carefully assess its existing authorities in consultation with other regulators and avoid prescriptive mandates that may be difficult or impossible for custodians to implement. Any rules or guidance should also be technology neutral and treat the non-security digital asset in the same manner as a traditional asset with the same economic function.

5 Broker-Dealer Custody

- ***Replace the Special Purpose Broker-Dealer (SPBD) Framework***
  - SIFMA has long highlighted the unworkability of the SPBD framework. We welcome FAQs recently released by the staff clarifying that compliance with the SPBD is no longer mandatory, as well as Chairman Atkins' remarks indicating an openness to rescinding and replacing the framework.
  - We encourage the SEC to formally withdraw the SPBD statement as soon as possible and replace it with a framework that would enable all broker-dealers to custody digital asset securities in compliance with applicable regulations alongside traditional assets within their established entities.
- ***Applicability of Net Capital Rule***
  - Where applicable, we would advocate for treating digital assets under the net capital rule in the same way as their traditional asset equivalents. With respect to native digital assets, the SEC should engage with market participants to develop a thoughtful way to treat these assets that does not involve unnecessary risk penalties.
  - Similarly, when considering applicable haircuts under the net capital rule, the SEC should treat digital asset securities (whether natively issued or tokenized), tokenized cash, and payment stablecoins the same as their traditional equivalents. There should be no additional haircut for securities or cash held in digital form.
- ***Clarify Use of Blockchain for Recordkeeping***
  - Compliance with existing rules can be accomplished by using blockchain without further rule modification. However, the SEC should confirm that blockchain-only records satisfy broker-dealer recordkeeping requirements and can serve as the official record without the need for creation and retention of a duplicate record in a traditional format. Any future guidance should comprehensively address not only broker-dealer but other parallel recordkeeping requirements, *e.g.,* for security-based swap dealers.

6 Investment Adviser and Investment Company Custody

- SIFMA urges the SEC to not adopt its proposed safeguarding advisory client assets rule.
  - In particular, SIFMA urges the SEC to preserve the principle that discretionary trading is not deemed to be custody for Advisers Act purposes.
- The SEC should continue its dialogue with market participants regarding situations in which control does not rest with the RIA and provide regulatory clarity as needed.
- The same principles that apply to a RIA's fiduciary duty should be applicable regardless of whether the relevant funds and securities are in the form of traditional securities and other assets, or digital asset securities or other digital assets, such as payment stablecoins.
- SEC rules should be agnostic to trading mechanisms, data availability, and pricing structure. However updated guidance may be needed in some areas when definitions change *e.g.,* regarding Form ADV.
- Custody rules related to corporate actions, rehypothecation and lending should generally apply to digital assets, while recognizing the mechanics and language may differ in some areas.
- As a general premise, the SEC's guidance should allow for advisors to use third party custodial services consistent with current regulatory guidance and compliance requirements for such arrangements.
- Consistent with the principle of technology neutrality, SIFMA encourages the SEC to avoid drawing regulatory perimeters based on any proposed distinction between "hot" and "cold" wallet storage.

7 Regulatory Modernization to Support Tokenization

- ***Targeted Clarifications Are Needed to Help Tokenized Asset Markets Develop***
  - The SEC should make targeted policy changes to promote the development and expansion of tokenized securities markets. This includes clarifying how existing requirements apply to tokenized securities in areas such as recordkeeping, possession and control, and clearing and settlement, and clearing agency requirements for post-trade activities carried out on a ledger.
- ***Modernize Transfer Agent Regulations for Tokenized Assets***
  - We welcome the clarifications provided in the recent staff FAQs on transfer agent registration and recordkeeping. The SEC should also work to modernize its transfer agent regulations as they apply to tokenized asset transactions, recognizing that key features of blockchains and smart contracts can allow the transfer agent to fulfil many, if not all, of its core functions, including recordkeeping, settlement facilitation, and compliance enforcement.
- ***Do Not Move to T+0 or "Atomic" Settlement on a Market-wide Basis***
  - Regulatory modernization to promote tokenized asset markets should not include any attempt to move the industry on a broad scale to a T+0 settlement cycle, given the significant risks, costs, and additional complexity it would create after the recent successful transition in the United States to T+1 settlement and the fact that other major jurisdictions have not yet completed their process of transitioning from a T+2 to a T+1 settlement cycle. Instead, firms should continue to explore the feasibility of T+0 settlement in certain products, markets, and transactions on a voluntary basis.