

CLIENT ALERT

Inside the Emerging U.S. Crypto Regulatory Framework: Recent Key Developments and Takeaways

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Momentum is building. In recent weeks, the SEC and CFTC have taken a distinctly pro-crypto innovation approach, issuing joint statements, advancing rules that streamline crypto product listings, and offering practical compliance pathways through targeted staff guidance and no-action relief, together signaling a more navigable U.S. regulatory framework for digital assets. These actions follow the promulgation of the Guiding and Establishing National Innovation for U.S. Stablecoins Act (the “GENIUS Act” or the “Act”)¹ and the CFTC’s recently announced initiative seeking public comment on the use of tokenized collateral, including stablecoins, in derivatives markets.²

¹ See J. Christopher Giancarlo et al., *The GENIUS Act: A New Pathway for Stablecoin Issuance*, WILLKIE FARR & GALLAGHER LLP (July 24, 2025), available [here](#); J. Christopher Giancarlo et al., *GENIUS: Treasury Seeks Public Input on Stablecoin Framework Implementation*, WILLKIE FARR & GALLAGHER LLP (Oct. 2, 2025), available [here](#).

² For more information on the request for public comment on the use of tokenized collateral, see Gabriel Acri et al., *CFTC Seeks Public Input on Tokenized Collateral and Stablecoins Initiative*, WILLKIE FARR & GALLAGHER LLP (Sept. 29, 2025), available [here](#).

This alert provides an overview of recent developments, beginning with the SEC's Spring Agenda and approved listing standards that facilitate certain spot crypto products, then surveying the SEC's evolving posture through guidance on staking models, and no-action letters addressing token treatment and custody for registered funds and advisers. We also cover the growing coordination between the SEC and CFTC. These actions together form a strong signal for the potential rulemaking and regulatory clarity to come.

SEC Spring 2025 Reg Flex Agenda

On September 4, 2025, the SEC announced its Spring 2025 Unified Agenda of Regulatory and Deregulatory Actions (the "Spring Agenda").³ The Spring Agenda appeared to focus on creating a more stable regulatory framework for crypto assets, by including proposals to:

- (i) Address the offer and sale of crypto assets, potentially including exemptions and safe harbors to clarify the regulatory framework for crypto assets;
- (ii) Modernize custody requirements for advisory client and fund assets, including crypto assets;
- (iii) Update the transfer agent regime, including rules related to crypto assets and the use of distributed ledger technology by transfer agents; and
- (iv) Clarify how broker-dealer rules apply to cryptocurrency operations.

Recent Developments by the SEC's Crypto Task Force

- Liquid Staking. On August 5, 2025, the Division of Corporation Finance released a statement clarifying its views that "liquid staking activities in connection with protocol staking do not involve the offer and sale of securities" under federal securities laws. The statement provides some clarity for the liquid staking sector, which was not addressed in a prior staff statement on crypto asset staking, and also reinforces the Commission's welcoming posture towards crypto innovation as the technologies in the space evolve.
- Spot Crypto Asset Products. On September 2, 2025, the SEC and CFTC issued a joint statement on certain crypto asset products, clarifying their views that registered exchanges are not prohibited from facilitating the trading of certain leveraged commodity products. This was the first statement on crypto assets issued jointly by the agencies, and displayed their intent to foster regulatory harmony between the agencies.
- DoubleZero. On September 29, 2025, the Division of Corporation Finance issued a no-action letter to the Double Zero Foundation, agreeing that it would not recommend enforcement if the programmatic issuance of 2Z tokens to compensate participants for contributions to the DoubleZero decentralized physical

³ U.S. Sec. & Exch. Comm'n, Regulatory Flexibility Agenda (Sept. 4, 2025), available [here](#).

infrastructure network are not registered under Section 5 of the Securities Act or Section 12(g) of the Exchange Act.⁴

Generic Listing Standards for Crypto ETPs That Hold Crypto Assets

On September 17, 2025, the SEC approved rule changes proposed by Cboe BZX Exchange, Inc., NYSE Arca, Inc. and the Nasdaq Stock Market LLC that establish generic listing standards for Commodity-Based Trust Shares⁵ that hold spot commodities, including digital assets.⁶ These “Generic Standards” allow exchanges to list qualifying crypto Commodity-Based Trust Shares without needing to file a separate Form 19b-4 for each product. The rule sets out the eligibility requirements for Commodity-Based Trust Shares to be listed.

The rule will permit faster listings and lower costs where the underlying token benefits from more mature markets (e.g., Bitcoin and Ether). However, many crypto products do not qualify for the Generic Standards’ automatic listing pathway, including actively managed strategies, leveraged or inverse products, and products with features like staking, lending, or rehypothecation. Exchanges will still need to submit Form 19b-4 for these products.

SEC and CFTC Harmonization Roundtable

On September 29, 2025, the SEC and CFTC held their first joint roundtable on crypto regulatory harmonization, indicating the agencies’ priority to create clear U.S. crypto regulatory harmony. The agencies’ joint statement announcing the roundtable⁷ emphasized that both agencies recognized the significance of interagency collaboration in order to foster digital asset innovation and strengthen the U.S. crypto market. The heads of many of the largest exchanges and market participants participated in the roundtable. The panels were moderated by Jamie Selway, current director of the SEC Division of Trading and Markets, Troy Paredes, former SEC Commissioner, Jill Sommers, former CFTC Commissioner, and J. Christopher Giancarlo, Willkie senior counsel and former CFTC Chairman. The discussion addressed the need for interagency regulatory harmonization in a variety of areas, including swaps reporting, margin requirements, and clearing, amongst others.

SEC No-Action Letter: Custody of Crypto Assets

On September 30, 2025, the staff of the SEC’s Office of Chief Counsel in the Division of Investment Management issued a no-action letter stating that it would not recommend enforcement pursuant to Rule 206(4)-2 under the Investment Advisers Act of 1940 (the “Advisers Act”), or the custody-related provisions (sections 17(f) and 26(a)) of

⁴ Double Zero Foundation, SEC No-Action Letter (Sept. 29, 2025), available [here](#).

⁵ For the definition of “Commodity-Based Trust Shares,” see Securities Exchange Act Release No. 34-103995; File Nos. SR-NASDAQ-2025-056; SR-CboeBZX-2025-104; SR-NYSEARCA-2025-54; Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To Adopt Generic Listing Standards for Commodity-Based Trust Shares; 90 Fed. Reg. 45414 (Sept. 22, 2025), available [here](#).

⁶ *Id.*

⁷ Joint Statement from the Chairman of the SEC and Acting Chairman of the CFTC, U.S. Sec. & Exch. Comm’n & U.S. Commodity Futures Trading Comm’n (Sept. 5, 2025), available [here](#).

the Investment Company Act of 1940 (the “Investment Company Act”) and the rules thereunder, if registered investment advisers and regulated funds treat certain state trust companies as “bank” qualified custodians for crypto assets and cash and/or cash equivalents reasonably necessary to effect transactions in crypto assets (the “State Trust NAL”).⁸ The term “state trust company” referred to a legal entity organized under state law that is: (i) supervised and examined by a state authority having supervision over banks and (ii) permitted to exercise fiduciary powers under applicable state law.⁹

Historically there has been uncertainty regarding whether the definition of “bank” set out in Section 202(a)(2) of the Advisers Act includes a state trust company, though state trust companies are major providers of custody services for crypto assets. Rule 206(4)-2 under the Advisers Act requires a registered investment adviser that has custody of client securities and funds to maintain those assets with a “qualified custodian,” which includes a bank within the meaning of Section 202(a)(2) of the Advisers Act.

The staff provided guidance to allow a registered investment adviser to use a state-chartered trust company to custody crypto, cash and cash equivalents in accordance with requirements. First, before engagement and annually, advisers and funds must have a reasonable basis, after due inquiry, for believing that a state trust company has state authorization to provide crypto custody and that the state trust company has written safeguard controls addressing private key management and cybersecurity, among other topics. The adviser or fund should review internal written control reports and the audited GAAP financial statements of the state trust company or a written representation regarding the financial statements of its parent if presented on a consolidated basis,¹⁰ and should enter into, or cause an advisory client to enter into, written custodial agreements that prohibit rehypothecation of any crypto assets without client consent and confirm segregation of client assets. In addition, advisers must disclose and funds must inform their boards about any material risks, and the adviser, fund, and fund board must determine that using a state trust company is in the clients’ or shareholders’ best interests, as applicable.

The State Trust NAL leaves a number of important questions unanswered. For example, it does not address the application of the custody rule’s other provisions to crypto assets, which continue to apply.¹¹ The letter also does not address whether, and under what conditions, a state trust company may be a “bank” within the meaning of Section 202(a)(2) of the Advisers Act more broadly. The State Trust NAL allows a registered investment adviser to *treat* a state trust company as a bank solely with respect to acting as a qualified custodian for crypto assets and related cash/cash equivalents. Importantly, the State Trust NAL does not take the position that a state trust company *is* a bank or that it can act as a qualified custodian for other types of client assets.

The State Trust NAL also does not address whether a SEC-registered broker-dealer can use a state trust company as a so-called “control location” to hold the crypto assets and cash/cash equivalents of the broker-dealer’s

⁸ U.S. Sec. & Exch. Comm’n, Div. of Inv. Mgmt., *No-Action Letter: Simpson Thacher & Bartlett LLP* (Sept. 30, 2025), available [here](#).

⁹ *Id.* at n. 1.

¹⁰ *Id.* at n. 6.

¹¹ *Id.* at n. 8.

customers. Rule 15c3-3 under the Exchange Act¹² requires a broker-dealer to maintain physical possession or control, i.e., custody, its customers' fully paid and excess margin securities, meaning, effectively, securities for which the customer has paid in full. Paragraph (c)(5) of Rule 15c3-3 allows a broker-dealer to use a "bank," as that term is defined in Section 3(a)(6) of the Exchange Act, as a control location for its customers' securities. The definition of "bank" set out in Section 3(a)(6) of the Exchange Act is substantially identical to the definition of "bank" set out in Section 202(a)(2) of the Advisers Act. The SEC's Division of Trading and Markets, moreover, has issued guidance that permits a broker-dealer to maintain crypto assets, whether securities or non-securities, at a bank.¹³ Nevertheless, there is no guidance that allows a broker-dealer to treat a state trust company as a bank for purposes of maintaining control of its customers' securities under paragraph (c)(5) of Rule 15c3-3 even though an investment adviser may custody its clients' crypto assets at a state trust company under the State Trust NAL.

This State Trust NAL provides limited near-term regulatory flexibility to registered investment advisers to meet rising demand for crypto strategies subject to diligence, contractual protections, and governance expectations around the custody of crypto assets. The staff also noted that the Commission is considering rulemaking regarding the custodial requirements applicable to registered advisers and funds as to crypto assets, suggesting further action may be taken in the coming months.¹⁴

Key Takeaways

Recent actions by the SEC and CFTC signal ramped-up efforts by both agencies to create a clearer, more coherent U.S. crypto regulatory scheme. We expect to see both agencies continue to engage with market participants and encourage feedback throughout the forthcoming rulemaking process.

¹² 17 CFR 240.15c3-3.

¹³ Division of Trading and Markets: Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology (May 15, 2025), FAQ2.

¹⁴ *Id.* at n. 8.

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