Submitted via rule-comments@sec.gov

May 8, 2023

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

RE: Safeguarding Advisory Client Assets, Release No. IA-6240; File No. S7-04-23

Dear Ms. Countryman:

The Global Digital Asset & Cryptocurrency Association ("GDCA") submits this letter in response to the request of the U.S. Securities and Exchange ("Commission") for comment in connection with the Commission's proposed new rule under the Investment Advisers Act of 1940 ("Advisers Act") to address how registered investment advisers safeguard client assets (the "Proposing Release").

About the GDCA

The GDCA is a global, voluntary Self-Regulatory Association for the digital asset and cryptocurrency industry. It was established to guide the evolution of digital assets, cryptocurrencies, and the underlying blockchain technology within a regulatory framework designed to build public trust, foster market integrity and maximize economic opportunity for all participants. In defining the membership base, GDCA has sought to ensure representation from the many actors comprising and adjacent to the digital assets and cryptocurrency ecosystem. Our broad-based membership pulls from all facets of the ecosystem, and includes spot and derivative exchanges, proprietary trading firms, investors, asset managers, brokerage firms, custodians, decentralized technology organizations, banks, legal firms, audit firms, insurance professionals, academics, consultants, and others. GDCA is now made up of approximately 80 member firms from around the world, most of which are based in the U.S.

Overview

The GDCA welcomes the opportunity to comment on this proposal. The letter addresses the following:

- The Proposing Release Inappropriately Assumes Application of and Non-Compliance with the Current Custody Rule
- The Expansion of the Safekeeping Rule to Cover All Client Assets is Inadvisable.
- The Commission Should Adopt Flexible Standards for Demonstrating "Possession or Control" and Should Not Discourage Use of Crypto Trading Platforms
- The Minimum Custodial Standards Provisions Ignore the Important Role of State Regulation
- The Commission Should Not Use this Rule to Block Access to Crypto as an Asset Class

The Proposing Release Inappropriately Assumes Application of and Non-Compliance with the Current Custody Rule

The current custody rule applies when a registered investment adviser has custody of client funds or securities.[1] Current practice varies: some such advisers seek to comply with the custody rule relating to crypto assets to the extent their client's crypto assets are securities or funds under the current rule, while other advisers may seek to voluntarily comply with the custody rule as a best practice. Other advisers may take the position that crypto assets for which it provides custodial services are neither securities nor funds and the rule does not apply. In any event, the rule does not apply to exempt advisers.

With respect to advisers providing custodial services for their client's crypto assets, the Commission seeks to paint a culture of non-compliance on the industry by asserting that some advisers are "attempting to safeguard their client's crypto assets themselves," while other advisers may incorrectly conclude that the current custody rule does not apply.[2] The Commission admonishes these advisers and states that the current rule applies "because most crypto assets are likely to be funds or crypto asset securities covered by the current rule."[3] To support its assertion, the Commission contends that "to the extent there is a question" as to whether a crypto asset is a security, the analysis is governed by the test for an investment contract as articulated in *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946).[4] The Commission further explains "even if a particular crypto asset is not a security, the current rule also covers funds."[5]

Whether a crypto asset is offered or sold pursuant to an investment contract is a facts and circumstances analysis under *Howey* that requires an evaluation of each contract, scheme, or transaction. To supplement the analysis developed by more than seventy-five years of case law, the SEC Staff issued a framework for analyzing whether a crypto asset is offered or sold as an investment contract, which identifies more than sixty factors to be considered.[6] Given the variety of fact patterns and legal considerations at play in any given analysis, there is significant uncertainty as to whether any particular crypto asset is offered and sold as an investment contract. Moreover, even if a crypto asset is offered and sold pursuant to an investment contract in an initial transaction, the crypto asset itself is not the security.[7]

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[1] 17 CFR § 275.206(4)-2.
[2] Proposing Release at 18.
[3] *Id.*
[4] *Id.* at fn 29.
[5] *Id.*
[6] SEC Staff, Framework for "Investment Contract" Analysis of Digital Assets (Apr. 3, 2019), https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets.
[7] *See, e.g.,* William Hinman, then-Director of Division of Corporation Finance, Digital Asset Transactions: When Howey Met Gary (Plastic) (June 14, 2018) ("the token-or coin or whatever the digital information packet is called – all by itself is not a security, just as the orange groves in *Howey* were not."); SEC v. Telegram Group Inc., No. 1:19-cv-09439-PKC (S.D.N.Y. Mar. 24, 2020) ("While helpful as a shorthand reference, the security in this case is not simply the Gram, which is little more than alphanumeric cryptographic sequence.") *See also* Cohen, Lewis and Strong, Greg and Lewin, Freeman and Chen, Sarah,

Rather, a particular crypto asset in conjunction with a particular set of promises, expectations, or understandings may constitute an investment contract. The extent to which any promises, expectations, or understandings continue to exist for secondary transactions of any particular crypto asset is not clear under case law or Commission staff guidance. Given this uncertainty, we do not believe the Commission can fairly characterize most crypto assets as securities in this release (or otherwise).

The Commission further asserts that "even if any particular crypto asset is not a security," crypto assets are likely to be funds under the current rule. "Funds" is not defined in the current custody rule and the Proposing Release does not provide a definition or include an explanation as to under what circumstances the Commission believes crypto assets are funds. Notably, Item 9 of Form ADV addresses custodial practices of advisers and requests information concerning custody of clients "cash or bank accounts" and "securities," and appears to refer to "cash or bank accounts" interchangeably with "funds."[8] It is unclear how the Commission determines whether any particular crypto asset is a fund or the equivalent of "cash or bank accounts" under the current custody rule. Indeed, the Proposing Release envisions a subset of crypto assets that are neither funds nor securities.[9] ***We respectfully request the Commission to clarify the proper classification of crypto assets as securities, funds, or neither under the current rule.***

Notwithstanding the Commission's perception of non-compliance with the current custody rule, tremendous efforts have been put forward by the industry to build state-of-the-art custodial services for crypto assets. Notably, the GDCA is at the forefront of establishing industry-wide standards on this issue. Earlier this year, the GDCA released six Core Principles for the purposes of setting minimum standards and best practices for the conduct of centralized digital asset businesses that handle customer digital assets and funds.[10] We include the full text of our "Protection of Customer Accounts" core principle below to demonstrate the seriousness with which our members treat this issue.

Global DCA Core Principle #2: Protection of Customer Accounts

Customer Businesses are required to segregate Customer Funds/Assets in compliance with the following criteria and must prominently disclose the relevant policies and processes to their customers:

The Ineluctable Modality of Securities Law: Why Fungible Crypto Assets Are not Securities (November 10, 2022). *Available at SSRN: https://ssrn.com/abstract=4282385 or http://dx.doi.org/10.2139/ssrn.4282385*.

[8] Item 9 of Form ADV. For example, Item 9.A(1) asks whether the adviser has custody of any advisory clients' (a) cash or bank accounts or (b) securities. Item 9.A(2) instructs that "if you checked 'yes' to Item 9.A.(1)(a) or (b), what is the approximate amount of client funds and securities and total number of clients for which you have custody." Accordingly, there is a clear inference that "funds" in Item 9.A(2) is equated with Item 9.A(1)'s reference to (a) cash or bank accounts. *See* https://www.sec.gov/about/forms/formadv-part1a.pdf.

[9] *See* Proposing Release at 272 ("to the extent advisers have custody of client crypto assets that are not funds or securities . . . .").

[10] GDCA Core Principles (Mar. 2023), https://global-dca.org/core-principles/.

1. **Hold Customer Funds/Assets in segregated accounts** separately from proprietary funds and separately account for all Customer Funds/Assets as belonging to their customers;

2. **Deposit, or custody, Customer Funds/Assets under an account name** that clearly identifies them as Customer Funds/Assets;

3. **Customer Businesses operating as transactional platforms, marketplaces or exchanges must use a separate or independent custodian** to hold Customer Funds/Assets and must not commingle Customer Funds/Assets with its own funds/assets;

4. **Establish policies and procedures reasonably designed to monitor and manage the risks associated with holding Customer Funds/Assets,** including appropriate controls, disclosures, and policies and procedures that specify:

   4.1 - The evaluation of the entity that has custody or control, or otherwise acts in a fiduciary capacity with respect to, depositories and custodians of Customer Funds/Assets, including, at a minimum, documented criteria addressing the capitalization, creditworthiness, operational reliability, and access to liquidity of the respective depository or custodian. The criteria should further consider the extent to which Customer Funds/Assets are concentrated with any depository or custodian, the availability of deposit insurance, as applicable, and whether the depository or custodian is regulated and/or supervised by a regulatory authority.

   4.2 - Bearing in mind that the movement of Customer Funds/Assets must be handled according to due standards of care, restricted to lawful and appropriate uses, be approved by the customer, and safeguard Customer Funds/Assets from misappropriation, the responsibilities for the handling of the following:

   4.2.1 - Customer deposits and withdrawals;

   4.2.2 - Deductions from Customer accounts for the payment of fees and costs, which fees and costs must be clearly disclosed to Customers in advance of accepting Customer Funds; and

   4.2.3 - Movement of Customer Funds/Assets, aside from fees and costs, that should address transfers to affiliated companies and parties and which must be properly approved, documented, and disclosed to customers and investors.

   4.3 - The appropriate separation of duties among individuals responsible for the handling of Customer Funds/Assets, including the separation of duties among personnel that are responsible for advising and servicing customers, approving or overseeing receipts and disbursements, and recording and reporting financial transactions.

   4.4 - The process for assessing the appropriateness of specific investments or other uses of Customer Funds/Assets, as applicable, taking into consideration the following:

4.4.1 - the market, credit, counterparty, operational, and liquidity risks associated with such investments and other uses;

4.4.2 - whether such investments and other uses are consistent with the objectives of preserving principal and maintaining liquidity; and

4.4.3 - whether account terms and conditions provide sufficient information as to the investment or use of Customer Funds/Assets.

4.5 - The process of establishing and monitoring a minimum amount of excess funds or reserves in segregation to meet obligations to customers.

4.6 - The process of immediate corrective measures to be taken when total assets held in segregated accounts are less than the total obligations to customers.

4.7 - The process for the timely recording of all transactions, including transactions impacting customers' accounts, in the firm's books of record.

4.8 - The disclosure to customers of the ultimate depository(ies) and/or custodian(s) holding Customer Funds/Assets.

4.9 - The independent audit of all books and records with respect to the segregation of Customer Funds/Assets.

The Expansion of the Safekeeping Rule to Cover All Client Assets is Inadvisable.

The Proposing Release seeks to extend the current custody rule's coverage beyond client's "funds and securities" to all client assets, including artwork, real estate, precious metals, and physical commodities. With respect to crypto assets, the Proposing Release is clear that the proposed rule would include "all crypto assets, even in the instances where such assets are neither funds nor securities."[11]

We respectfully request that the Commission reconsider covering *all* client assets within the scope of the new rule, and with respect to crypto assets, focus on clarifying the scope of the current rule to crypto assets that are securities or funds.

First, it is unclear whether the Commission has statutory authority to write a rule covering *all* client assets. Section 411 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amends the Investment Advisers Act of 1940 to state "[a]n investment adviser registered under this title shall take such steps to safeguard client assets over which such adviser has custody, including, without limitation,

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[11] Proposing Release at 28.

verification of such assets by an independent public accountant, as the Commission may, by rule, prescribe."[12] The Commission interprets this addition to mean that "Congress authorized the Commission to prescribe rules requiring advisers to take steps to safeguard *all* client assets, not just funds and securities, over which an adviser has custody."[13] (emphasis added) In support of its interpretation, the Commission cites to the testimony of one witness at a Congressional hearing on regulating hedge funds and other private investment pools, and notes that an earlier version of Section 411 of Dodd-Frank "show[s] that Congress considered retaining the current rule's funds and securities formulation."[14]

As a preliminary matter, the modifier *all* to *client assets* does not appear in the legislative text. Additionally, a review of the record of the 2009 Congressional hearing reveals that cited language from the relevant witness testimony appeared in a footnote of that testimony.[15] The specific issue of the scope of the custody rule is not mentioned anywhere else in the record: not in the opening statements of the Chair and Ranking Member, in any other witness testimony, or in the responses to written questions of senators. An argument raised in the footnote of one witness in one hearing can not reasonably be interpreted as representing the intent of Congress to expand the SEC's authority to regulate custody of all assets other than funds and securities. Further, the earlier version of the bill cited by the Commission would have directed the agency to adopt a rule making it unlawful for "an investment adviser registered under the Act to have custody of funds or securities of a client the value of which exceeds $10,000,000, subject to such exception the Commission determines in such rule are in the public interest and consistent with the protection of investors," unless certain conditions are met.[16] This earlier version is so different from Section 411 of Dodd-Frank that, absent additional context for the earlier version, it is difficult to draw conclusions from any differences.

Even if the Commission does have the statutory authority to regulate the custody of all client assets, an equally important question is whether the Commission should do so. The Commission regulates securities markets. It does not regulate markets for artwork, real estate, precious metals, physical commodities, or non-security crypto assets. We respectfully submit that the Commission should not seek to regulate the custody of all assets because the Commission lacks the necessary expertise to meaningfully oversee or evaluate arrangements between advisers and custodians concerning assets that are not securities. Moreover, in the context of the proposed rule, the expansion of the Commission's authority to cover all crypto assets obfuscates the important and difficult work that must be done to provide clarity about which crypto assets are securities or funds under the current rule.

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[12] Section 411 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (adding section 223 to the Advisers Act).
[13] Proposing Release at 12.
[14] *Id.*
[15] Hearing Before the Subcommittee on Securities, Insurance and Investment of the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, S. HRG.. 111-273 (July 15, 2009), *available at* https://www.govinfo.gov/content/pkg/CHRG-111shrg54883/pdf/CHRG-111shrg54883.pdf.
[16] *See* Investor Protection Act of 2009, H.R. 3817, 111th Cong section 419 (2009), *available at* https://www.congress.gov/bill/111th-congress/house-bill/3817/text#toc-HCCD5D045753E4540A5499ABD9DA6D1AF. .

The Commission Should Adopt Flexible Standards for Demonstrating "Possession or Control" and Should Not Discourage Use of Crypto Trading Platforms

The proposed rule would require that an adviser maintain client assets with a qualified custodian that has "possession or control" of those assets. "Possession or control" is defined to mean holding assets such that the qualified custodian is required to participate in any change in beneficial ownership of those assets.[17] One way to demonstrate "possession or control" is to establish that the qualified custodian has exclusive control over the asset. In the crypto context, the Commission acknowledges the difficulty with demonstrating exclusive possession or control. Specifically, the Commission suggests that models where a client and qualified custodian simultaneously hold copies of the client's private key material would not be sufficient to demonstrate that the qualified custodian has possession or control.[18]

We urge the Commission to permit flexibility in the models for crypto asset custody. For example, there may be circumstances where the model cited by the Commission (where the client and qualified custodian simultaneously hold copies of the client's private key) is preferable to the client. It might also be safer for the client, recognizing that single keys can be lost. To the extent the policy concerns driving this rule are potential loss, theft, misuse, or misappropriation of the client's crypto assets, it is difficult to understand how prohibiting the client from having access to their crypto assets is necessary to further those policy goals, to the extent the client desires to retain a level of control over the assets.

The Proposing Release also states that an adviser would have to ensure that crypto assets are maintained with a qualified custodian that has possession or control of the assets "at all times in which the adviser has custody," including when transacting on a crypto asset trading platform, which typically involves the transfer of crypto assets to the platform prior to the execution of a trade.[19] The Commission explains that because crypto asset trading platforms are not qualified custodians, this practice would generally result in an adviser being in violation of the current custody rule, with respect to a crypto asset that is a fund or security, and with the proposed rule for any crypto asset.[20]

The implication of these statements is that the Commission seeks to discourage the use of crypto trading platforms by advisers that have custody over crypto asset securities today, and crypto assets more generally, in the future. We believe that, with respect to the current custody rule and proposed safeguarding rule, the Commission should permit flexibility with the use of crypto trading platforms. Forcing qualified custodians to seek liquidity through means other than crypto trading platforms may ultimately harm the client if the alternative liquidity source results in a worse price.

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[17] Proposing Release at 63.
[18] Proposing Release at 66.
[19] Proposing Release at 67.
[20] Proposing Release at 68.

We are cognizant of the larger context within which this rulemaking is proposed: the SEC is seeking to exert its jurisdiction over crypto asset trading platforms. It sued and settled with Kraken and is in the Wells process with Coinbase. Specifically, Chair Gensler recently remarked that "many crypto trading platforms already come under the current definition of an exchange"[21] and also has asserted that crypto trading platforms may need to "disaggregat[e] their functions into separate legal entities to mitigate conflicts of interest and enhance investor protection."[22] We previously raised a number of concerns with attempting to impose SEC exchange and ATS regulation on crypto trading platforms without first enabling the creation of critical infrastructure and the provision of helpful guidance in a previous letter to the Commission and believe they are equally valid today.[23]

Even if it had authority, it would be imprudent in our view for the Commission to adopt this complex, inter-related web of "exchange," "dealer" and "investment adviser" regulations without – at a minimum – issuing proposed guidance for public comment about how the to comply with the new rules, individually and in the aggregate, and holding public roundtables to explore compliance.

The Minimum Custodial Standards Provisions Ignore the Important Role of State Regulation

The proposed rule requires advisers to enter into a written agreement with and obtain certain reasonable assurances from qualified custodians to ensure that clients receive minimum standard custodial protections. Specifically, the written agreement must provide protections for the client and the adviser:

- A qualified custodian should exercise due care and implement appropriate measures to safeguard the advisory client's assets;
- A qualified custodian should indemnify an advisory client when its negligence, recklessness, or willful misconduct results in that client's loss;
- A qualified custodian should not be relieved of its responsibilities to an advisory client as a result of sub-custodial arrangements;
- A qualified custodian should clearly identify an advisory client's assets and segregate an advisory client's assets from its proprietary assets;
- The client's assets should remain free of liens in favor of a qualified custodian unless authorized in writing by the client;
- A qualified custodian should keep certain records relating to those assets;
- A qualified custodian should cooperate with an independent public accountant's efforts to assess its safeguarding efforts;

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[21] SEC Chair Gary Gensler, Statement on Alternative Trading Systems and the Definition of an Exchange (Apr. 14, 2023), https://www.sec.gov/news/statement/gensler-statement-ats-041423.

[22] SEC Chair Gary Gensler, Kennedy and Crypto (Sept. 8, 2022), https://www.sec.gov/news/speech/gensler-sec-speaks-090822.

[23] GDCA, Letter to SEC, File No. S7-02-22 (Apr. 18, 2022), https://www.sec.gov/comments/s7-02-22/s70222-20123954-280109.pdf.

- Advisory clients should receive periodic custodial account statements directly from the qualified custodian;
- A qualified custodian's internal controls relating to its custodial practices should be evaluated periodically for effectiveness; and
- A custodial agreement should reflect an investment adviser's agreed-upon level of authority to effect transactions in the advisory client's account.[24]

Additionally, the adviser would be required to obtain reasonable assurances in writing that the custodian will comply with the following client protections, and the adviser must maintain an ongoing reasonable belief that the custodian is complying:

- The qualified custodian will exercise due care in accordance with reasonable commercial standards in discharging its duty as custodian and will implement appropriate measures to safeguard client assets from theft, misuse, misappropriation, or other similar types of loss.
- The qualified custodian will indemnify the client against the risk of loss in the event of the qualified custodian's own negligence, recklessness, or willful misconduct.
- The existence of any sub-custodial, securities depository, or other similar arrangement with regards to the clients assets will not excuse any of the qualified custodian's obligations to the client.
- The qualified custodian will clearly identify the client's assets as such, hold them in a custodial account, and segregate them from the qualified custodian's proprietary assets and liabilities.
- The qualified custodian will not subject client assets to any right, charge, security interest, lien, or claim in favor of the qualified custodian or its related persons or creditors, except to the extent agreed to or authorized in writing by the client.[25]

The scope of these requirements is stunning, as is the acknowledgement in the release that these requirements "would be a substantial departure from current industry practice" and "that certain of the protections that the rule text would promote are not *universally* provided to all custodial customers today."[26] The Commission explains that one of its motivations for these amendments is the evolving custodial market practices for crypto assets.[27] Specifically, the Commission notes that although some banks provide custodial services for crypto assets, federal banking regulators have safety and soundness concerns with business models focused on crypto assets.[28] Moreover, new state-chartered trust companies focused on providing crypto custody require the Commission to "be mindful of the extent to which many of these new entrants to the custodial marketplace offer, and are regulated to provide, the types of protections we believe a qualified custodian should provide under the rule."[29]

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[24] Proposing Release at 79-80.
[25] Proposing Release at 410-11.
[26] Proposing Release at 77.
[27] Proposing Release at 75.
[28] *Id.*
[29] Proposing Release at 76.

The Commission appears to be concerned with the quality of oversight of crypto asset custodians by state regulators. The Commission therefore seeks to impose significant minimum custodial protections in an attempt to front-run the state-level regulation of crypto asset custodians. This attempted usurpation of state-level regulation is unprecedented and unnecessary. While the Commission justifies its position by suggesting that state-level regulation merely focuses on MSB laws,[30] state chartered trust companies typically cover much more than MSB laws. For example, there are extensive requirements for receiving a limited purpose trust company charter in New York,[31] as well as for receiving a special purpose depository institution charter in Wyoming.[32]

While we do not believe that the full scope of the proposed minimum custodial protections is necessary to achieve the investor protection concerns articulated by the Commission, we are hopeful that, if adopted, the Commission will interpret these requirements in a manner that acknowledges the proper role of state regulation in the U.S.'s parallel state and federal banking systems. We strongly urge the Commission to find a path to permit entities licensed under state chartered trust laws to provide custodial services for crypto assets as qualified custodians.

The Commission Should Not Use this Rule to Block Access to Crypto as an Asset Class

As discussed above, the Proposing Release goes to great lengths to establish that the current custody rule and the proposed safeguarding rule apply to crypto assets. The Proposing Release also raises a number of hurdles to compliance with both the current and proposed rule. Unfortunately, the Proposing Release is short on solutions on how investment advisers and qualified custodians can demonstrate compliance with the current and proposed rules.

Indeed, the Proposing Release is at times cavalier about the potential impact of the application of the proposed rules on the market for crypto asset custody. For example, the Proposing Release notes that it "could cause investors to remove their assets from an entity that has developed innovative safeguarding procedures for those assets, possibly putting those assets at a greater risk of loss."[33] Additionally, the Proposing Release identifies seven advisers that currently, or plan to, advise pooled investment vehicles holding crypto assets. In the event costs are too high to comply with the rule, the Commission explains "we believe that advisers may choose to cease providing advisory services to pooled investment vehicles holding such assets, implying these pooled investment vehicles may no longer be offered to investors."[34] The Commission should reject such outcomes and adopt a final rule that provides a path forward for crypto asset custody services.

A "rule" that cannot be complied with is hardly a "rule" it all. It's a ban.

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[30] *See* Proposing Release at 76, fn. 139.
[31] *See* https://www.dfs.ny.gov/apps_and_licensing/banks_and_trusts/commercial_banks_trusts.
[32] *See* https://wyomingbankingdivision.wyo.gov/banks-and-trust-companies/special-purpose-depository-institutions.
[33] Proposing Release at 273.
[34] Proposing Release at 271, fn. 478.

One of the feared consequences of Staff Accounting Bulletin 121 is that it discourages banks and other financial institutions from engaging in digital asset custody because it effectively requires them to place crypto assets on their balance sheets.[35] We hope that this safeguarding rule proposal will not have a similar impact of discouraging investment advisers from engaging with crypto assets on behalf of their clients. Remarkably, SEC Commissioner Mark T. Uyeda characterized the Proposing Release as "mask[ing] a policy decision to block access to crypto as an asset class" and asks "[h]ow could an adviser seeking to comply with this rule possibly invest client fund in crypto assets after reading this release?"[36]

We are aware, as well, and surely the Commission knows this – that federal banking regulators are actively discouraging banks from engaging in custody and other crypto asset activities. As a result, only one bank with a federal charter is empowered at present to custody crypto assets. For the SEC to try to force crypto assets into qualified custodians when it knows that the banking agencies are refusing to let banks custody those assets, is for the SEC – without Congressional imprimatur --to seek to destroy the trillion-dollar asset class that is crypto. For the SEC to do this in coordination with the banking agencies, or otherwise, would raise serious issues of statutory authority, administrative due process and deprivation of constitutional rights.

We thank the Commission for considering our comments and respectfully request that Commission take this opportunity to meaningfully engage on the appropriate application of securities laws and regulations on crypto assets, and not use the rulemaking to create an impossible compliance burden rendering crypto assets untouchable by registered investment advisers and qualified custodians.

Sincerely,

Renata K. Szkoda

Renata K. Szkoda
Chair
Global Digital Asset & Cryptocurrency Association

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[35] *See* Letter from Sen. Lummis and Rep. Patrick McHenry to Vice Chair Barr, Chairman Gruenberg, Chairman Harper, and Mr. Hsu, Prudential Impact of Staff Accounting Bulletin 121 (Mar. 2, 2023), https://www.lummis.senate.gov/wp-content/uploads/Prudential-Impact-of-SAB-121-Letter.pdf.

[36] Commissioner Mark T. Uyeda, Statement on Proposed Rule Regarding the Safeguarding of Advisory Client Assets (Feb. 15, 2023), https://www.sec.gov/news/statement/uyeda-statement-custody-021523.