

RE: File Number S7-04-23

Comments on Proposed Rule: Safeguarding Advisory Client Assets

I am writing to provide my comments on the proposed rule on safeguarding advisory client assets, which was published in the Federal Register on August 30, 2023. I appreciate the Commission's efforts to enhance the protection of client assets managed by registered investment advisers, and I support the overall objectives and principles of the proposed rule. However, I also have some concerns and suggestions regarding certain aspects of the proposed rule, which I would like to share with you.

First, I believe that the proposed rule should provide more clarity and guidance on how advisers and custodians should handle crypto assets, which may pose unique challenges and risks for custody arrangements. Crypto assets are becoming increasingly popular and prevalent among investors and advisers, as evidenced by the recent approval of the first Bitcoin exchange-traded fund (ETF) in the US. However, crypto assets also have distinctive features and characteristics that may not fit well with the existing custody framework, such as decentralized ledger technology, private keys, forks, airdrops, and hacking. Therefore, I think that the proposed rule should specify the standards and best practices for securing, storing, and transferring crypto assets, such as using cold storage, multi-signature wallets, or third-party custodial services. The proposed rule should also address the issues of forked or airdropped crypto assets, which may create uncertainty or confusion about the ownership and valuation of such assets.

Second, I think that the proposed rule should enhance the disclosure and reporting requirements for advisers and custodians regarding the custody of client assets. Disclosure and reporting are essential tools for ensuring transparency and accountability of the custody arrangements, as well as for increasing awareness and understanding of clients about their assets and their rights. Therefore, I suggest that the proposed rule should require advisers and custodians to provide more detailed and frequent information to clients about the location, status, and value of their assets, as well as any fees, risks, or conflicts of interest associated with the custody arrangements. The proposed rule should also require advisers and custodians to file more comprehensive and standardized reports with the Commission about the custody of client assets, such as Form ADV-E and Form PF.

In addition to these two suggested improvements, I also have some questions and comments regarding certain key terms and concepts in the proposed rule, such as "possession or control", "other positions", "delivery-versus-payment", and "qualified custodian". These terms may have different interpretations and applications depending on the type, nature, and characteristics of the client assets involved. The proposed rule may also create confusion or inconsistency with other existing rules and regulations that apply to advisers and custodians, such as the Securities Investor Protection Act (SIPA), the Commodity Exchange Act (CEA), and the Bank Secrecy Act (BSA). Therefore, I request that the Commission provide more clarity and guidance on these terms and concepts in the final rule.

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