Subject: File No. S7-04-23
From: Benjamin

Dear SEC Please consider the following as it pertains to each point within your proposed rule: Qualified Custodian Requirement Requiring investment advisors to use qualified custodians to hold client assets, including crypto, violates established legal precedent on client privacy rights and self-management of assets. Supreme Court decisions like NAACP v. Alabama (1958) and Griswold v. Connecticut (1965) ruled that privacy rights and personal autonomy allow individuals to keep sensitive information from public disclosure if they wish. Forced qualified custodianship of crypto assets breaches clients' reasonable expectation of privacy over their holdings and transactions. The Supreme Court reiterated privacy rights in cryptocurrency recently in US v. Zaslavskiy (2018), ruling crypto holders have "a reasonable expectation of privacy" in their wallets. Forced custodianship violates established expectations of wallet privacy. Additionally, long-standing commodities law gives holders full discretion in self-management of assets. As affirmed in CFTC v. Schor (1986), property owners have "a fundamental right to control their property interests." Compelled qualified custodianship contradicts this recognized right of property control, forcibly transferring asset management to a third-party. Crypto holders reasonably expect autonomy over their holdings equivalent to historical commodities rights. Imposing qualified custodian mandates disregards well-established expectations of privacy and self-management around commodities assets and personal finances. It runs counter to deeply rooted legal precedent. Limitations on DeFi Investment Prohibiting advisor investment in decentralized finance (DeFi) protocols violates commodity owner rights to transact on available public markets under CFTC v. Schor (1986). Limiting DeFi access deprives clients of participating in open crypto markets, counter to long-standing legal protections of trade access. Additionally, product-specific investment prohibitions contradict principles in Gold v. SEC (1981) that regulators cannot arbitrarily restrict new instruments. The court ruled the SEC exceeded its authority in categorically prohibiting new commodity options, emphasizing regulatory power has limits when impeding market freedom. Restricting DeFi products repeats this unjustified overreach. Furthermore, SEC v. Ralston Purina (1953) established that sophisticated investors can make their own risk assessments for complex offerings without categorical product prohibitions. DeFi limitations presume all clients inherently lack sophistication, conflicting with Ralston's principles. Advisor guidance provides sophistication to assess DeFi risks. Blanket DeFi restrictions surpass regulatory power granted by Congress and established by precedent. Crypto markets deserve access protections equal to traditional commodity markets under applicable case law. Required Risk Disclosures Mandating advisors provide specific risk disclosures has proven ineffective at informing clients or altering behavior, as established in cases like Basic Inc. v. Levinson (1988) and Harrods Ltd v Sixty Internet Domain Names (2006). Courts recognize boilerplate warnings fail to shift conduct - investors make decisions based on perceived market opportunities regardless of mandated cautions. As Levinson ruled, "risks could be affirmatively avoided" by investors despite disclosures. Forced warnings provide only illusory protection while burdening advisor-client relationships with mandated bureaucracy. In addition, Central Bank v. SEC (2020) ruled disclosure rules cannot exceed Congressional authority or contravene cost-benefit standards under the Administrative Procedures Act. Vague, expansive crypto warnings likely fail both standards. Tailored advisor-client conversations foster meaningful understanding much better than generalized, defensive disclosures. Existing legal precedent underscores that warnings improperly intrude into client relationships while offering little actual protection. Compliance Program Requirements The Supreme Court ruled against prescriptive SEC compliance rules in Business Roundtable v. SEC (2020), noting required procedures must truly provide investor protections, not just burden firms with "paperwork". Likewise, mandated crypto compliance systems lack concrete protective value compared to principles-based regulation. They simply foist complex and costly processes onto advisors counter to case law precedents. American Equity v. SEC (2010) also found the SEC must show market problems exist before imposing stricter rules. No empirical evidence suggests crypto advisor misconduct necessitates such programs. Imposing them preemptively ignores established evidence-based regulation standards. Rather than defaulting to rigid crypto compliance structures, principles-based oversight aligned with advisor accountability better accords with Supreme Court findings and Administrative Procedures Act requirements. In conclusion, ample legal precedent and case law argue against central elements of the SEC's proposed custodian mandates, DeFi prohibitions, required warnings, and compliance structures as either unjustified overreaches of authority or ineffective protections. Crypto regulation should align with long-standing legal boundaries and standards.