

Division of Trading and Markets and FINRA Staffs Issue Joint Statement on Broker-Dealer Custody of Digital Asset Securities

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On July 8, in response to questions raised by market participants regarding the application of federal securities laws and the Financial Industry Regulatory Authority (FINRA) rules to the custody of digital asset securities and transactions, the staffs of the Division of Trading and Markets (the Division) and FINRA issued a joint statement. The joint statement seeks to articulate and clarify various considerations pertinent to many of the questions raised, particularly with respect to the Securities and Exchange Commission's Customer Protection Rule applicable to SEC-registered broker-dealers.

The joint statement highlights the importance of the Customer Protection Rule and details its potential application to digital asset securities. It also discusses the application of the books and records and financial reporting requirements, as well as the Securities Investor Protection Act of 1970, to digital asset securities.

The staffs note several examples of business activities that would *not* involve the broker-dealer engaging in custody functions, including where a broker-dealer

facilitates over-the-counter secondary market transactions in digital asset securities without taking custody of, or exercising control over, the digital asset securities. In this example, the buyer and seller complete the transaction directly.

The staffs also note some complications and concerns with custodying traditional securities and digital asset securities. The manner in which digital asset securities are issued, held and transferred may create greater risk for a broker-dealer in custody of them to 1) be victimized by fraud or theft; 2) lose a “private key” required to transfer a client’s digital asset securities; or 3) inadvertently transfer a client’s digital asset securities to an unknown or unintended address. Further, the joint statement explains that the nature of distributed ledger technology—and the characteristics of digital asset securities—may make it difficult for a broker-dealer to evidence the existence of digital asset securities for the purposes of the broker-dealer’s regulatory books and records and financial statements.

Notwithstanding the challenges associated with custody of digital asset securities, both the Division and FINRA staffs reiterated their support for innovation and open dialogue with market participants to work toward developing methodologies for establishing possession or control over customers’ digital asset securities.

The complete joint statement is available [here](#).

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