

SEC Staff Statement on Custody of Crypto Asset Securities by Broker-Dealers

Introduction & Background

On December 17, 2025, the staff of the Division of Trading and Markets (the "Division") issued a statement (the "Statement")¹ on the custody of crypto asset securities by broker-dealers under Rule 15c3-3 (the "Rule").² The Statement's views and recommendations do not constitute a rule, regulation or guidance of the U.S. Securities and Exchange Commission (the "Commission"), instead it reflects the views of Division staff and is therefore not legally binding. The Statement is significant, however, because it articulates concrete circumstances under which the staff would not object to a broker-dealer deeming itself to have "physical possession" of crypto asset securities pursuant to paragraph (b)(1) of the Rule.

Practically speaking, the Statement may be viewed as an inflection point for broker-dealers contemplating custody solutions within the existing framework of the Rule for "crypto asset securities" – a term which the Division does not specifically define but expressly states includes "tokenized versions of an equity or debt security."³ Furthermore, the Statement is emblematic of an approach to broker-dealer custody that is evolving from narrow and specific to more operationally scalable. In December 2020, the Commission issued a statement that provided a narrow pathway for Special Purpose Broker-Dealers to engage in limited digital asset activity, which – given its constraints – led to limited uptake.⁴ This new staff Statement broadens applicability by clarifying how any broker-dealer carrying crypto asset securities may establish "physical possession" in practice.⁵

¹ SEC Statement, Division of Trading and Markets, *Statement on the Custody of Crypto Asset Securities by Broker-Dealers* (Dec. 17, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/trading-markets-121725-statement-custody-crypto-asset-securities-broker-dealers>.

² 17 C.F.R. § 240.15c3-3 (2026).

³ See Statement at n.2.

⁴ See *Custody of Digital Asset Securities by Special Purpose Broker-Dealers*, Exchange Act Release No. 90788 (Dec. 23, 2020), 86 FR 11627 (Feb. 26, 2021).

⁵ See Statement ("In circumstances where a broker-dealer takes the measures discussed below,

the Division will not object to a broker-dealer deeming itself to have "physical possession" of the crypto asset security carried for the account of customers as set forth in paragraph (b)(1) of Rule 15c3-3.").

The Five Measures of “Possession” of Crypto Asset Securities

Paragraph (b)(1) of the Rule states that “A broker or dealer shall promptly obtain and shall thereafter maintain the physical possession or control of all fully-paid securities and excess margin securities carried by a broker or dealer for the account of customers” (emphasis added).

The Statement indicates that the staff’s non-objection pursuant to the Statement is expressly limited to the “possession” prong of Rule 15c3-3(b)(1).⁶ Prior Division pronouncements have addressed “control” of crypto asset securities.⁷ For crypto asset securities, the staff has identified five measures that, if taken by a broker-dealer, would result in the Division not objecting to a broker-dealer deeming itself to have “physical possession”:

- First, the broker-dealer must have direct access to the crypto asset securities and transfer capability. Possession, therefore, is framed as an operational and technological capability specifically with respect to blockchain-based crypto asset securities.
- Second, the broker-dealer must implement written policies and procedures to assess the characteristics of the crypto asset security’s underlying blockchain or distributed ledger technology (“DLT”), e.g., Ethereum, and any associated network infrastructure on which transactions are validated, ordered and finalized for such crypto asset security. Assessments should occur prior to custody and at reasonable intervals thereafter and should generally address DLT characteristics (such as performance, speed, throughput, scalability, resiliency, security, consensus, complexity, extensibility, visibility), and governance considerations including protocol upgrade procedures (and other features such as forks, airdrops and staking).
- Third, the broker-dealer must not undertake to maintain custody of, or deem itself to possess, a crypto asset security if it is aware of material security or operational problems with the DLT or associated network, or other material risks to the broker-dealer from custody of that asset. The risk profile therefore centers on material risk to the broker dealer’s operations arising from the possession as opposed to market or reputational risk associated with the asset.
- Fourth, the broker-dealer must establish, maintain and enforce written policies, procedures, and controls to protect against theft, loss, or unauthorized or accidental use of private keys. These measures should be reasonably designed to ensure that no other person, including customers or affiliates, may have the ability to transfer assets without the broker-dealer’s authorization.
- Fifth, the broker-dealer must implement measures for ensuring the continued safekeeping and accessibility of the crypto asset securities in the event of disruption. Specifically, the broker-dealer must:
 - Identify, in advance, the steps it will take in the wake of certain events that could affect the firm’s possession of crypto asset securities, including blockchain malfunctions, 51% attacks, hard forks, or airdrops.

⁶ Statement at n.7.

⁷ “Control” under the Rule is typically satisfied when a broker-dealer properly maintains the security at an approved third-party “control location” under paragraph 3(c), and the Division’s previous FAQs on crypto asset activities and distributed ledger technology explain that “control” of crypto asset securities, even if uncertificated, is achievable if such crypto asset securities are held at a qualifying control location in accordance with the Rule. See SEC FAQ, *Division of Trading and Markets: Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology* (Dec. 17, 2025), available at <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology> (“The Staff notes that although certain control locations in paragraph (c) of Rule 15c3-3 reference a security being in certificated form to establish control under that provision, the Staff will not object if such crypto asset securities are not in certificated form when held at an otherwise qualifying control location under paragraph (c) of Rule 15c3-3.”).

- Ensure that it can comply with a lawful order as to seizing, freezing, burning or prevention of transfer of the crypto asset securities.
- Ensure that it can effectuate the transfer of the crypto asset securities held by the broker-dealer to a broker-dealer, trustee, receiver, liquidator, or person performing a similar function, or to another appropriate person, in the event the broker-dealer can no longer continue as a going concern and self-liquidates or is subject to a formal bankruptcy, receivership, liquidation, or similar proceeding.

Practical Recommendation

While the introduction of crypto asset securities into a broker-dealer's business requires evaluating familiar obligations under the lens of new technological considerations, the underlying regulatory objectives remain unchanged. To align operationally with the five measures set out in the Statement, broker-dealers may consider implementing some or all of the following non-exhaustive list of enhancements set out below.

In addition, firms should consider whether any such expansion constitutes a material change to the business requiring FINRA approval, as well as the broader implications to Anti-Money Laundering (AML) and Know Your Customer (KYC) policies, operational flows and settlements, recordkeeping and confirmations, and governance frameworks.

Enhancement Considerations	
Measure 1 – Access & Transfer	<ul style="list-style-type: none"> ▪ Revise Rule 15c3-3 possession procedures to address exclusive key control, customer/firm asset segregation, and daily reconciliations of on-chain data to the firm's books and records. ▪ Create crypto-specific custody accounts and wallet structures aligned to customer entitlements. ▪ Utilize self-hosted or dedicated nodes to verify balances before authorizing withdrawals. ▪ Employ architected key management so the firm retains unilateral transfer authority and no third party can initiate or veto transfers.
Measure 2 – DLT Assessment	<ul style="list-style-type: none"> ▪ Adopt a board-approved crypto custody policy (i) defining risk appetite, asset eligibility, and accountability and (ii) requiring written DLT assessments pre-custody and periodically thereafter. Assessments may consider performance, resiliency, consensus, governance, validator decentralization and events such as upgrades, forks and airdrops. ▪ Designate senior officers responsible for crypto asset security custody policies and procedures. ▪ Expand the firm's risk committee mandate to oversee DLT assessments, network health, forks/airdrops, and key incidents.
Measure 3 – No Custody Amid Threats	<ul style="list-style-type: none"> ▪ Update policies to set out protocols to be followed when material weaknesses exist, or network risks threaten possession/transferability.
Measure 4 – Key Management	<ul style="list-style-type: none"> ▪ Develop written policies ensuring no customer, affiliate, or third party has unilateral key access. ▪ Perform regular penetration testing and third-party audits of key management architecture. ▪ Consider developing incident response plans for key theft, compromise, accidental loss, or unauthorized signing.
Measure 5 – Contingency Planning	<ul style="list-style-type: none"> ▪ Consider resolution and transfer procedures for lawful orders (seizure/freeze/burn/prevent transfer) and for self-liquidation or insolvency. ▪ Consider enhancing recordkeeping to associate customer positions with identifiable wallet addresses and transaction IDs, while maintaining key-custody attestations and possession evidence suitable for regulatory examinations.
Additional Compliance Measures	<ul style="list-style-type: none"> ▪ Align disclosures with FINRA communications standards. ▪ Adjust capital and reporting for digital asset classifications and net capital impacts.

Conclusion

The Division's Statement offers a practical pathway for broker-dealers to achieve possession of crypto asset securities for custody purposes within the existing framework of the Rule. The core message is continuity over change, as the recommendations provide technology-based guidance for complying with already familiar regulatory obligations. Targeted updates to policies and controls will allow for operationalization of the expectations set by the five measures. As broker-dealers calibrate their programs, they should seek to design possession procedures that, notwithstanding the novelty of the technology, will integrate seamlessly into their existing compliance architecture.

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If you have any questions about the issues addressed in this alert, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email Frank J. Weigand (partner) at 212.701.3890 or FWeigand@cahill.com and Edward A. Leaf (associate) at 202.862.8990 or ELeaf@cahill.com.