

SEC No-Action Letter Guidance on Crypto Custodians under the Custody Rules

On September 30, 2025, the Securities and Exchange Commission (**SEC**) Division of Investment Management issued a no-action letter to law firm Simpson Thacher & Bartlett LLP (**Simpson Thacher**) with respect to the custody provisions of the Investment Advisers Act (Section 206(4) and Rule 206(4)-2) and the Investment Company Act (Section 17(f) and 26(a) and rules thereunder) (referred to collectively as "the **Custody Rules**"). The no-action letter requested assurance that the SEC would not seek enforcement action against investment advisers registered under the Advisers Act ("**Registered Advisers**" or "**RIAs**") or issuers registered as investment companies or that have elected to be regulated as business development companies under the Investment Company Act ("**Regulated Funds**") that treat a "**State Trust Company**"¹ as a "bank" with respect to the placement and maintenance of "**Crypto Assets**"² and cash and/or cash equivalents reasonably necessary to effect transactions in Crypto Assets ("**Related Cash and/or Cash Equivalents**"). This would effectively enable Registered Advisers and Regulated Funds to utilize State Trust Companies as qualified custodians permitted to hold or custody Crypto Assets under the Custody Rules.

The no-action request noted that State Trust Companies are critical providers of custody services for Crypto Assets and Related Cash and/or Cash Equivalents and that State Trust Companies that provide Crypto Asset custody services have implemented sophisticated controls to ensure safekeeping of such assets, which typically include, among others: (i) so-called "deep" cold storage of Crypto Assets; (ii) third-party annual audits of financial statements; (iii) third-party reports regarding financial, governance, and information technology processes and controls, including system and organization controls reports (e.g., SOC-1 and/or SOC-2 reports); (iv) cybersecurity, physical security, and business continuity policies and procedures; (v) complex encryption protocols and Crypto Assets movement verification controls; and (vi) policies and procedures concerning private key generation and storage.

The no-action request further highlighted the fact that such controls have been developed within state regulatory frameworks that generally include: (i) eligibility and licensing requirements; (ii) ongoing supervision and examination by state banking authorities; (iii) minimum capital requirements; (iv) restrictions on activities and balance sheet investments; (v) periodic reporting on business operations and financial condition; (vi) comprehensive recordkeeping requirements; and (vii) enforcement authority by state banking authorities. Accordingly, the SEC granted the requested no-action relief based upon the following conditions intended to ensure safekeeping of Crypto Assets:

- Prior to engaging the State Trust Company and on an annual basis, the Registered Adviser or Regulated Fund, as applicable, has a reasonable basis, after due inquiry, for believing that:
 - the State Trust Company is authorized by the relevant State Banking Authority to provide custody services for Crypto Assets and Related Cash and/or Cash Equivalents; and
 - the State Trust Company maintains and implements written internal policies and procedures reasonably designed to safeguard Crypto Assets and Related Cash and/or Cash Equivalents from the risk of theft, loss, misuse, and misappropriation, with such policies and procedures addressing, among other topics, private key management and

¹ "State Trust Company" refers to a legal entity organized under state law that is: (i) supervised and examined by a state authority having supervision over banks and (ii) permitted to exercise fiduciary powers under applicable state law.

² "Crypto Assets" refers to assets that are digital representations of value that are recorded on a cryptographically secured distributed ledger.

cybersecurity. In making such a determination, the Registered Adviser or Regulated Fund:

- receives and reviews the State Trust Company's most recent annual financial statements and confirms that such financial statements have been subject to an audit by an independent public accountant and have been prepared in accordance with Generally Accepted Accounting Principles (GAAP); and
 - receives and reviews the State Trust Company's most recent written internal control report prepared by an independent public accountant during the current or prior calendar year (e.g., SOC-1 report or SOC-2 report) and confirms that such internal control report contains an opinion of such independent public accountant that controls have been placed in operation as of a specific date and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of Crypto Assets and Related Cash and/or Cash Equivalents during the year;
- The Registered Adviser or Regulated Fund, as applicable, enters into, or causes an **"RIA Client"**³ to enter into, as applicable, a written custodial services agreement with the State Trust Company, which provides that:
 - the State Trust Company will not, directly or indirectly, lend, pledge, hypothecate, or rehypothecate any Crypto Assets (or Related Cash and/or Cash Equivalents) held in custody for the RIA Client or Regulated Fund, as applicable, without the prior written consent of the RIA Client or Regulated Fund, and then only for the account of such RIA Client or Regulated Fund; and
 - all Crypto Assets (and Related Cash and/or Cash Equivalents) held in custody for the RIA Client or Regulated Fund, as applicable, will be segregated from the State Trust Company's assets;
 - The Registered Adviser discloses to its RIA Clients (in the case of a Registered Adviser) or the Regulated Fund discloses to the members of its board of directors or trustees (in the case of a Regulated Fund, as applicable) any material risks associated with using State Trust Companies as custodians of Crypto Assets (and Related Cash and/or Cash Equivalents); and
 - The Registered Adviser (with respect to an RIA Client) or the Regulated Fund (and, as applicable, its board of directors or trustees), reasonably determines that the use of the State Trust Company's custody services is in the best interest of the RIA Client or Regulated Fund and its shareholders, as applicable.

For investment advisers seeking to rely on this no-action position, we suggest that firms update their custody policies and procedures to include the terms and conditions of the no-action letter and the steps firms will take to ensure that they comply with such provisions. We further recommend that such firms update service provider due diligence procedures and related documentation with respect to any State Trust Company custodians utilized in reliance on such no-action position.

See No-Action Letter - <https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-investment-management-staff-no-action-interpretive-letters/simpsonthacherbartlett093025>

³ "RIA Clients" may include Regulated Funds, natural persons, private funds or other pooled investment vehicles, corporations, foundations, trusts and other types of individual and institutional accounts.