

Insights

SEC OPENS THE VAULT: NEW CRYPTO CUSTODY RELIEF FOR STATE TRUST COMPANIES

09/30/2025

On September 30, 2025, the Division of Investment Management of the Securities and Exchange Commission (“SEC”) issued a significant no-action letter (the “Letter”)[1] assuring that the Division would not recommend enforcement action against SEC-registered investment advisers (“Advisers”) and regulated investment funds (“Funds”) that use certain “State Trust Companies”[2] as custodians for Crypto Assets and Related Cash and/or Cash Equivalents.[3] By eliminating uncertainty over whether State Trust Companies are qualified custodians, this Letter illustrates both the SEC’s current receptiveness to industry concerns and its focus on eliminating barriers to Advisers’ and Funds’ acquiring crypto assets.

Background

As Crypto Assets became an increasingly attractive asset class, state trust companies emerged as primary custodians because many traditional financial institutions were reluctant to enter the market due to perceived risks.[4] Using these state trust companies became a practical necessity for Advisers and Funds holding Crypto Assets subject to the custody rules of the Investment Advisers Act of 1940, as amended (“Advisers Act”) and the Investment Company Act of 1940, as amended (“Investment Company Act”).

However, it has not always been obvious whether a given state trust company was a permissible custodian under such statutes. Both the Advisers Act (Rule 206(4)-2) and Investment Company Act (Sections 17(f) and 26(a)) require custodians to qualify as “banks,” which term includes any “trust company...doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority” having supervision over banks.

The permissibility of state trust companies therefore required a facts-and-circumstances analysis of whether a “substantial portion” of their business met this standard, leaving Advisers and Funds with uncertainty about these custodians.

Key Provisions of the Letter

The Letter confirms that the SEC staff will not recommend enforcement action if Advisers and Funds treat a State Trust Company as a “bank” for custody of Crypto Assets, provided certain conditions are met:

- **Due Diligence Requirements.** Before engaging a State Trust Company and annually thereafter, Advisers and Funds must have a reasonable basis 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 maintains written internal policies and procedures reasonably designed to safeguard such assets from theft, loss, misuse, and misappropriation, with such policies addressing private key management and cybersecurity. The due diligence process must include: (i) receiving and reviewing the State Trust Company’s most recent annual financial statements and confirming that such statements have been audited by an independent public accountant and prepared in accordance with Generally Accepted Accounting Principles (GAAP); and (ii) receiving and reviewing the State Trust Company’s most recent written internal control report prepared by an independent public accountant (e.g., SOC-1 or SOC-2 report) and confirming that such report contains an opinion that controls have been placed in operation and are suitably designed and operating effectively to meet control objectives relating to custodial services.
- **Contractual Protections.** The written custody agreement must provide 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) without the prior written consent of the client or fund, and then only for the account of such client or fund, and that all Crypto Assets (and Related Cash and/or Cash Equivalents) will be segregated from the state trust company’s own assets.
- **Disclosure and Best Interest Determinations.** Advisers must disclose to their clients (and Funds to their Boards) material risks associated with using State Trust Companies as custodians of Crypto Assets (and Related Cash and/or Cash Equivalents), and Advisers and Funds must reasonably determine that using the State Trust Company’s custody services is in the best interest of clients or shareholders.

Reactions of Commissioners Peirce and Crenshaw

Not surprisingly, the industry has hailed the relief provided by the Letter. It is also worth noting that the Letter also prompted contrasting statements from Commissioners Peirce and Crenshaw.^[5]

Commissioner Peirce welcomed the Letter as bringing clarity to a regulatory “gray zone” that has harmed investors, stating that “for too long, registered advisers and regulated funds have been caught up in a guessing game as to whether their entity of choice for crypto asset custody, which also may be the only available custodian for such service, is a permissible custodian.” In her view, the Letter “does not expand the definition of a permissible custodian” under the Advisers Act but

rather “provides a staff position regarding the use of entities for crypto asset custody that I would contend already are permissible custodians.” She noted that the relief applies to state trust companies “operating within a regulatory framework that ensures investor protection and is similar in material respects to the regulatory frameworks applicable to other types of permissible custodians”.

Conversely, Commissioner Crenshaw issued a sharply critical statement, characterizing the relief as “poking holes” in the SEC’s custody framework. In her view, “unlike traditional custodians, state trust companies are subject to an inconsistent hodgepodge of less rigorous rules and less oversight.”^[6] She also criticized the relief for “picking favorites,” noting that “there are apparently multiple applicants who are, in good faith, seeking national charters from the OCC to offer crypto custody services” while “state trust companies can bypass the entire OCC application process”. In addition, she questioned why the relief creates a special exception just for crypto assets, noting that the letter “doesn’t contemplate the idea of allowing state trust companies to custody anything other than crypto assets” and provides “no real explanation for why we are comfortable with crypto assets receiving less custodial protections than traditional assets.” She further argued that “executing a shift of this magnitude via no-action relief without public comment and without any economic analysis is ill-advised” and “likely violates the Administrative Procedure Act,” particularly given that the Commission’s Spring 2025 Regulatory Agenda indicates upcoming rulemaking on crypto asset custody.^[7]

Looking Forward

Advisers and Funds using or considering State Trust Companies as custodians for Crypto Assets must carefully review and ensure compliance with all conditions in the Letter. As the SEC has indicated it is considering rulemaking on this topic, firms should continue to monitor regulatory developments in this area.

^[1] SEC Division of Investment Management, [No-Action Letter to Simpson Thacher & Bartlett LLP](#) (Sept. 30, 2025).

^[2] As used in the letter, “State Trust Company” refers to a legal entity organized under state law that is supervised and examined by a state authority having supervision over banks and permitted to exercise fiduciary powers under applicable state law.

^[3] The Letter defines “Crypto Assets” as “assets that are digital representations of value that are recorded on a cryptographically secured distributed ledger.” The Letter defines Related Cash and/or Cash Equivalents as “cash and/or cash equivalents reasonably necessary to effect transactions in Crypto Assets.”

[4] See, e.g., Board of Governors of the Federal Reserve System, [Press Release](#) (Apr. 24, 2025).

[5] Commissioner Hester M. Peirce, [Out of the Gray Zone: Statement on The Division of Investment Management's No-Action Letter Relating to the Custody of Crypto Assets with State Trust Companies](#), U.S. Sec. & Exch. Comm'n (Sept. 30, 2025).

[6] Commissioner Caroline A. Crenshaw, [Poking Holes: Statement in Response to No-Action Relief for State Trust Companies Acting as Crypto Asset Custodians](#), U.S. Sec. & Exch. Comm'n (Sept. 30, 2025).

[7] U.S. Securities and Exchange Commission, [Spring 2025 Regulatory Agenda](#), REGINFO.GOV; see also *BCLP Client Alerts*, [SEC Announces Topics for Future Rule Proposals to Ease Disclosure Requirements and Simplify Capital Raising](#) (Sept. 9, 2025); [A Boon for Private Market Access](#) (Sept. 5, 2025).

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MEET THE TEAM



Robert M. Crea

Co-Author, San Francisco

robert.crea@bclplaw.com

+1 415 675 3413



Lauren A. Ford

Co-Author, Charlotte

lauren.ford@bclplaw.com

+1 704 749 8930



Carol R. Schepp

Co-Author, New York

carol.schepp@bclplaw.com

+1 212 541 2004

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