

Memorandum

SEC Staff Issues No-Action Relief to Simpson Thacher Concerning the Use of State-Chartered Trust Companies as Custodians of Crypto Assets Under the Advisers Act and 1940 Act

October 3, 2025

Introduction

In an important development for the asset management industry, the Staff of the SEC's Division of Investment Management [issued a no-action letter to Simpson Thacher](#) in response to our request for confirmation that state-chartered trust companies—which are among the most significant providers of crypto asset custodial services—can serve as “qualified custodians” for purposes of Rule 206(4)-2 under the Advisers Act and permissible custodians for purposes of Sections 17(f) and 26(a) of the 1940 Act. Coming just a day before a government shut-down, the issuance of the letter demonstrates the importance to Chairman Paul Atkins' SEC to build out a workable regulatory framework for crypto assets.

The Simpson Thacher no-action letter is the first no-action letter issued by the Division of Investment Management that is directly targeted to the crypto asset space.¹ In the letter, the Division confirmed that it will not recommend that the SEC take enforcement action if a registered investment adviser or registered fund (including a business development company) treats a state-chartered trust company as a “bank” and therefore a qualified/permissible custodian of crypto assets (and cash and cash equivalents used to settle trades in crypto assets).

The no-action relief is conditioned on compliance with a series of conditions, discussed below.

Background on Crypto Custody

Since the advent of bitcoin in 2009, institutional investors have increasingly deployed investment strategies that provide exposure to crypto assets, but the number of institutions providing crypto asset custody services to regulated entities has not kept pace. This lack of access to custodial services is due in part to limitations imposed by the federal and state regulatory frameworks applicable to various financial services intermediaries.

For example, we understand that broker-dealers, which are eligible to serve as qualified/permissible custodians under the Rule 206(4)-2 and Section 17(f), have generally not offered crypto asset custody services partly as a

¹ Simpson Thacher & Bartlett, SEC No-Action Letter (Sept. 30, 2025), available [here](#).

result of the limitations included in the Commission’s December 2020 “Special Purpose Broker-Dealer” framework.² In particular, the relief provided by the framework is restricted to a broker-dealer that, among other things, limits its business activities to “digital asset securities” and does not engage in activities related to non-security crypto assets or traditional securities. This constraint appears to have dissuaded broker-dealers from offering crypto asset custody services or participating in crypto asset markets more generally.

At the same time, the willingness of national banks and full-service state-chartered banks to provide crypto asset custody services was previously limited by a perception that the federal banking regulators would criticize the perceived risk profile, or “reputational risk,” associated with those activities. The banking industry’s views were influenced by several letters issued by the federal banking regulators cautioning banks about the risks associated with crypto asset-related activities and requiring them to obtain “non-objection” from their primary federal bank regulator prior to commencing such activities.³ The federal banking regulators have more recently rescinded or withdrawn those letters.⁴

These regulatory dynamics affecting broker-dealers and national and full-service state-chartered banks have thus led state trust companies to become critical providers of crypto asset custody services.

However, the question of whether state-chartered trust companies can serve as qualified/permissible custodians under the Advisers Act and the 1940 Act has long been the subject of interpretation. Indeed, Commissioner Peirce acknowledged the uncertainty of the status of state-chartered trust companies in her statement accompanying the issuance of the Simpson Thacher no-action letter, explaining that “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 under the custody provisions of the [Advisers Act] and [1940 Act], respectively.”⁵

Legal Background

Rule 206(4)-2 of the Advisers Act requires a registered investment adviser that has custody of client funds or securities to maintain those funds and securities with a qualified custodian. Under the rule, the term “qualified custodian” is defined to include “a bank as defined in Section 202(a)(2) of the Advisers Act.” Sections 17(f) and 26(a) of the 1940 Act and the rules thereunder similarly provide that registered funds (and business development

² Custody of Digital Asset Securities by Special Purpose Broker-Dealers, Exchange Act. Rel. No. 90788 (Dec. 23, 2020).

³ Bd. of Governors, Fed. Rsrv. Sys., Letter No. SR 22-6, CA 22-6, Engagement in Crypto-Asset-Related Activities by Federal Reserve-Supervised Banking Organizations, Aug. 16, 2022 (withdrawn); Fed. Deposit Ins. Corp., Letter No. FDIC FIL-16-2022, Notification and Supervisory Feedback Procedures for FDIC-Supervised Institutions Engaging in Crypto-Related Activities, Apr. 7, 2022 (content has expired or been rescinded); and Office of the Comptroller of Currency, OCC Interpretive Letter 1179, (Nov. 18, 2021) (rescinded).

⁴ Press Release, Fed. Rsrv. Bd., Federal Reserve Board announces the withdrawal of guidance for banks related to their crypto-asset and dollar token activities and related changes to its expectations for these activities, (Apr. 24, 2025); Press Release, Fed. Deposit Ins. Corp. FDIC FIL-7-2025, FDIC Clarifies Process for Banks to Engage in Crypto-Related Activities (Mar. 28, 2025); and Office of the Comptroller of Currency, OCC Interpretive Letter 1183, (Mar. 7, 2025).

⁵ Hester M. Peirce, Commissioner, SEC, Statement, 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 (Sept. 30, 2025), available [here](#).

companies) must place and maintain securities and similar investments with specified categories of custodians, including “banks” as defined in Section 2(a)(5) of the 1940 Act.

Under both statutes, the term “bank” is defined to include, among other things, a “banking institution” or “trust company” “whether incorporated or not, 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, and which is “not operated for the purpose of evading the provisions” of the 1940 Act or Advisers Act, as applicable.

As applied to a state-chartered trust company, the definition of “bank” has historically proven challenging to interpret because it requires a facts-and-circumstances analysis to determine whether a “substantial portion” of a given state-chartered trust company’s business consists of receiving deposits or exercising “fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency.” Each element of this definition requires an intricate analysis of state and federal law and associated guidance.

Scope of Relief; Conditions

The relief in the letter is limited to custody services in respect of crypto assets that are subject to the custody provisions under the Advisers Act and 1940 Act, but covers custody services provided by a wide range of state trust companies—defined to include any 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.

To rely on the relief, a registered investment adviser or fund must take the following measures:

1. Prior to engaging the state trust company and on an annual basis thereafter, the adviser or fund must have a reasonable basis for believing that:
 - a. the state trust company is authorized to provide custody services for crypto assets; and
 - b. the state trust company maintains and implements written internal policies and procedures reasonably designed to safeguard crypto assets from theft, loss, misuse, and misappropriation (with such policies and procedures addressing, among other topics, private key management and cybersecurity). In making such a determination, the adviser or fund must:
 - i. receive and review the state trust company’s most recent annual financial statements and confirm that they have been subject to an audit by an independent public accountant and have been prepared in accordance with GAAP;⁶ and

⁶ Alternatively, in the event that the state trust company’s financial statements are presented on a consolidated basis with its parent and other affiliates that have substantive activities, the adviser or fund may obtain a written certification or representation from the state trust company that the most recent annual financial statements of its parent have been subject to an audit by an independent public accountant and have

- ii. receive and review 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 confirm that the internal control report contains an opinion that controls have been placed in operation as of a specific date and are suitably designed and are operating effectively;
2. The adviser or fund must enter into, or in the case of an adviser, cause a client to enter into, as applicable, a written custodial services agreement with the state trust company, which provides that:
 - a. the state trust company will not, directly or indirectly, lend, pledge, hypothecate, or rehypothecate any crypto assets without the prior written consent of the client or fund; and
 - b. all crypto assets held in custody for the client or fund, as applicable, will be segregated from the state trust company's assets;
3. The adviser must disclose to clients or the fund must disclose to the members of its board of directors or trustees any material risks associated with using state trust companies as custodians of crypto assets; and
4. The adviser or fund (and, as applicable, its board of directors or trustees) must reasonably determine that the use of the state trust company's custody services is in the best interest of the client or fund and its shareholders, as applicable.

Conclusion

The Simpson Thacher no-action letter is a significant step for all types of asset managers who employ or are considering employing crypto asset-related strategies, and we are optimistic that it will be particularly noteworthy for registered funds, which historically have not invested directly in crypto assets, in part, because of the ambiguity that the letter resolves.⁷

The letter also represents the latest effort of the SEC's Project Crypto, which Chairman Atkins has described as a "Commission-wide initiative to modernize the securities rules and regulations to enable America's financial markets to move on-chain."⁸

We will continue to monitor crypto asset regulatory developments and provide further updates as developments arise.

been prepared in accordance with GAAP. In those circumstances, the written certification or representation should include information regarding results of the audit.

⁷ Pooled investment vehicle issuers that invest all or a substantial portion of their assets in crypto assets that are not securities typically are not eligible to register under the 1940 Act. Since January 2024, many such issuers have operated, or have sought to operate, as exchange-traded products (ETPs) with interests registered under the Securities Act of 1933 and the Securities Exchange Act of 1934. Because such issuers are not registered under the 1940 Act and are not managed by investment advisers that are registered under the Advisers Act, they are not subject to the custody provisions under the 1940 Act or the Advisers Act. *See, e.g.*, Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units (Jan. 10, 2024).

⁸ Paul S. Atkins, Chairman, SEC, Speech, American Leadership in the Digital Finance Revolution (Jul. 31, 2025), available [here](#).

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