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July 21, 2025

BY ELECTRONIC SUBMISSION

Commissioner Hester M. Peirce
Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-0213

Re: **COMMENTS ON THE SEC CRYPTO TASK FORCE'S QUESTIONS CONCERNING BROKER-DEALER CAPITAL AND RECORDKEEPING REQUIREMENTS FOR CRYPTO ASSETS**

Dear Commissioner Peirce:

Andreessen Horowitz ("**a16z**") appreciates the opportunity to respond to several questions posed to the public by the Securities and Exchange Commission's Crypto Task Force (the "**Crypto Task Force**") in its Statement on February 21, 2025 (the "**Statement**").[1] This submission responds to a number of the Crypto Task Force's questions concerning broker-dealer net capital requirements and recordkeeping.

At a16z, we believe blockchain technology has incredible potential to promote innovation, entrepreneurship, and economic growth. Like the Crypto Task Force, we are deeply committed to the development of a legal and regulatory framework for crypto assets, which we believe is critical to fostering innovation while protecting market participants. Our numerous publications on developing regulatory approaches, as well as our ongoing engagement with regulators reflect this commitment and belief.[2] To that end, we hope that our observations, drawn from our deep experience, can be of assistance to the Securities and Exchange Commission (the "**Commission**"). We believe that time is of the essence in these endeavors, and have separated our responses to the Task Force's questions into different topic letters, which we intend to submit to the Commission as quickly as possible.

A16z is a venture capital firm that invests in seed, venture, and late-stage technology companies, focused on bio and healthcare, American Dynamism, consumer, crypto, enterprise,

[1] *See* Commissioner Hester M. Peirce, Statement, *There Must Be Some Way Out of Here* (Feb. 21, 2025), https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125.
[2] For a list of our publications relating to crypto policy, see: https://a16zcrypto.com/posts/focus-areas/policy.

fintech, and games. A16z currently has more than $74 billion in assets under management across multiple funds, with more than $7.6 billion in committed capital for crypto funds. In crypto, we primarily invest in companies using blockchain technology to develop protocols that people will be able to build upon to launch Internet businesses. Our funds typically have a 10-year time horizon, as we take a long-term view of our investments, and we do not speculate in short-term crypto-asset price fluctuations.

We are not ourselves registered broker-dealers, but we routinely interact with and use the services of broker-dealers. Over the last several years, we have closely observed broker-dealers struggling to comply with an inchoate and often incoherent crypto asset regulatory framework. Accordingly, and as the earliest and largest investor in many crypto companies and projects, and as one of the largest investment advisers in the advanced technology space, a16z is well-positioned to respond to the Crypto Task Force's important questions around broker-dealer net capital and recordkeeping requirements for crypto assets.

We see this letter, and our responses herein, as building upon the Commission staff's recently issued "Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology" (the "**FAQs**").[3] We welcome the FAQs and the additional clarity that they bring to the landscape for broker-dealer custody of crypto assets. We appreciate, in particular, the staff's clear statement that broker-dealers may take custody of crypto assets, both securities and non-securities. However, we recognize, as the Commission does, that the FAQs are the first of many steps required to establish a clear, cohesive custodial regime for crypto assets.[4] Towards the development of that comprehensive regime, we offer the following responses.

I. Responses to Questions 25 and 26 of the Statement.

Question 25.a:

The net capital rule (17 CFR 240.15c3-1) requires a broker-dealer to maintain sufficient liquid assets to meet all liabilities, including obligations to customers, counterparties, and other creditors and to have adequate additional resources to wind down its business in an orderly manner, without the need for a formal proceeding if the firm fails financially.

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[3] SEC, Div. Trading & Mkts., Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology (May 15, 2025), https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology.

[4] Commissioner Hester M. Peirce, Statement, *An Incremental Step Along the Journey*: *The Division of Trading Markets' Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technologies* (May 15, 2025), https://www.sec.gov/newsroom/speeches-statements/peirce-tm-faq-051525.

a. Under the net capital rule, assets held by a broker-dealer must be readily convertible into cash to count as allowable for meeting minimum net capital requirements (*e.g.*, intangible assets, furniture, fixtures, equipment, and most unsecured receivables are not readily convertible into cash under the rule and, therefore, do not qualify as allowable net capital). How should a given crypto asset be evaluated to assess whether it is readily convertible into cash?

RESPONSE:

As a general principle, we propose that a broker-dealer's crypto assets should be considered for the same deductions as traditional financial assets to the extent that the same liquidity concerns or operational risks exist; that is, the same risks should merit the same regulatory treatment. Consider additional general points:

First, while all crypto assets are certainly not securities,[5] the manner in which crypto assets are traded over-the-counter ("OTC") between trading partners or on centralized exchanges may have more similarities to the trading of securities, rather than traditional commodity derivatives. In commodity derivatives trading, a central counterparty (such as CME) generally exercises a significant degree of control over clearance and settlement, thus making fails and other operational risks much less common. This degree of centralized control is not present in the trading of most crypto assets, nor would there likely be a CME clearing equivalent for trading of crypto assets, outside of an Automated Trading System (ATS) or Decentralized Exchange (DEX) that would offer atomic settlement — which we will discuss at a later point in our response. Second, the trading of crypto assets may entail the delivery of the asset (i.e., the token) in much the same way as the transfer of a certificated security may involve the physical delivery of the security certificate. By contrast, the trading of cash-settled futures contracts, by definition, involves no physical delivery.[6] Third, the crypto asset market does not have set trading hours; it operates 24 hours / 7 days a week, and broker-dealers could have access to crypto asset liquidity which has a material impact on operations.

We would therefore note that:

- There is no central clearing facility or central counterparty for most crypto assets that can exercise the degree of control required to avoid "fails" or mitigate settlement or other operational risks — nor should one be required for crypto asset transactions. Rather, it is an attribute of crypto asset transactions that they accommodate decentralized and disintermediated transfer.

[5] Miles Jennings et al., *SEC RFI: A Control-Based Decentralization Framework for Securities Laws*, a16z crypto (Mar. 13, 2025), https://a16zcrypto.com/posts/papers-journals-whitepapers/control-based-decentralization-framework-securities-laws/.

[6] *See* CFTC, Statutory Interpretation Concerning Forward Transactions, 55 Fed. Reg. 39188 (Sept. 25, 1990).

- Note further the distinction between a central clearing market and a decentralized clearing protocol (i.e., DEX) in which the latter does not exhibit the risks inherent in the central clearing market due to instantaneous clearing and settlement.
- Buyers or borrowers of crypto assets generally expect to receive physical delivery of the asset, and usually do so in near-real time.

We emphasize these points because, while we stand by our view that many crypto assets are not securities and are not suitable for securities regulation,[7] the operations related to transactions in such crypto assets, when on centralized exchanges or traded OTC, may resemble traditional securities markets. In contrast, decentralized exchanges, that would all but eliminate any operating issues, are unlikely to be used by broker-dealers unless they could have comfort — based on the specific risk tolerance of the firm — that the other side of the broker-dealer's trade has met the anti-money laundering and sanctions requirements.

In addition, these three points have a direct bearing on the application of Rule 15c3-1 (the "**Net Capital Rule**") under the Securities Exchange Act of 1934 (the "**Exchange Act**") to crypto assets. However, before we discuss these aspects, it may be helpful to briefly consider from a first principles perspective why the Net Capital Rule considers whether an asset is readily convertible to cash. The Net Capital Rule relies on certain clearly identifiable principles to determine whether an asset on the balance sheet or a security should be treated as readily convertible to cash. Those foundational principles are:

(1) Established and unencumbered title to the securities;
(2) The existence of a ready market for the securities; and
(3) Reconciliation of assets within a specified period.

Below, we consider their application to crypto assets.

1. Established and Unencumbered Title to the Securities

Crypto assets pose distinct possession and/or control challenges that traditional securities and traditional assets do not. For example, unlike most traditional securities, a holder's control over a crypto asset is not proof of the absence of any other person's control over that same crypto asset. More than one entity may have access to the private keys related to a set of crypto assets, and consequently, more than one person may be able to effectuate a transfer or disposition of those crypto assets regardless of the contractual rights authorizing such conduct.[8]

[7] *See* Jennings, *supra* note 5.
[8] Scott Walker & Neel Maitra, Crypto Asset Custody by Investment Advisers After the SEC'S Proposed Safeguarding Rule (Volume 56, Review of Securities & Commodities Regulation Number 6—March 22, 2023) pp.75-89 (15).

While the Net Capital Rule was adopted decades before crypto assets were developed, the Rule is familiar with the issue of proving ownership and title to securities before they can count towards capital — an issue crypto assets help resolve through transparent, verifiable, and regulator-auditable control mechanisms. The Rule recognizes that imperfections in title to securities or uncertainty as to title can impair marketability and cast doubt on an asset's transferability. For example, under the Net Capital Rule, a broker-dealer's securities deposited with a foreign parent company are deemed "not readily convertible to cash" and subject to a 100% deduction from net worth unless certain conditions are met that establish, among other things, that:[9]

- The proprietary securities of the broker-dealer subsidiary are registered in the subsidiary's name and are free of liens or encumbrances in favor of the foreign parent;
- The proprietary securities of the broker-dealer subsidiary are physically segregated from the foreign parent's proprietary assets;
- The proprietary securities of the broker-dealer subsidiary are entitled to the same bankruptcy protections as other customers of the foreign parent; and
- The proprietary securities of the broker-dealer subsidiary are subject to certain inspection, audit, and insurance requirements.

[9] *See* SEC Letter to NYSE (July 30, 1986) (NYSE Interpretation Memo 86-9, August 1986; NYSE Interpretation Memo 93-6, November 1993). More specifically, the conditions are as follows:

- The proprietary securities are registered in the subsidiary broker's name;
- The proprietary securities are physically segregated in the foreign parent's vault abroad;
- The foreign parent submits a letter to the subsidiary which is provided to its Designated Examining Authority assuring that such proprietary securities will not be subject to any encumbrances or liens by the foreign parent;
- The broker-dealer can provide a letter to its Designated Examining Authority from its fidelity bond company which verifies that coverage extends to the proprietary securities in the custody of the foreign parent, or the foreign parent's insurance/bonding company submits a letter which provides equivalent coverage;
- The amount of the subsidiary's proprietary securities in the custody of the foreign parent does not exceed the subsidiary's tentative net capital for more than three (3) consecutive business days;
- The subsidiary must be treated by the parent the same as any other customer of the foreign parent for such purposes as bankruptcy of the parent under the laws of the foreign parent's country;
- The subsidiary's deposited proprietary securities must be inspected quarterly by parent company employees and the results of those inspections must be reported within 15 days of completion of the inspections to the independent public accountant for the parent for review;
- The foreign parent must comply with foreign regulatory net capital provisions; and
- The independent public accountant for the subsidiary must consider certain of the above items in connection with the supplemental schedule on net capital requirement.

The Rule's traditional treatment of assets outside the possession of the broker-dealer suggests that in order to allow such assets to count towards its net capital, a broker-dealer must:

- Show that the assets are segregated and registered in the broker's name;
- Provide assurances as to the absence of liens and encumbrances on the assets;
- Provide assurances as to the application of the bankruptcy laws to the asset; and
- Arrange for periodic audits and inspections of the assets.

These principles are well-suited for, and easily adaptable to crypto assets. In order to count a crypto asset towards its net capital, therefore, a broker-dealer should be required to:

- Establish, maintain, and enforce reasonably designed written policies, procedures, and controls that are consistent with industry best practices to demonstrate the broker-dealer has title to and exclusive control over the crypto assets it holds in custody;
- Provide periodic written assurances and affirmations to its examining authorities that the crypto assets are not subject to encumbrances and liens;
- Obtain a satisfactory legal opinion as to the likely treatment of the crypto assets in the event of the broker-dealer's bankruptcy; and
- Establish, maintain, and enforce reasonably designed periodic verification and audit procedures for the crypto assets that it seeks to treat as allowable for net capital purposes.

2. The Existence of a Ready Market

In our prior submission in response to questions 1 through 6 of the Commission's Statement[10] (our "**Taxonomy Submission**"), we outlined a proposed set of categories into which crypto assets and related transactions should be organized. Some of these categories may fall within the scope of the federal securities laws, while others do not. However, irrespective of how the crypto asset transaction is categorized (i.e., as a security or not), it is likely that many broker-dealers would trade various categories of crypto assets from the same regulated broker-dealer entity. The Commission staff's recent FAQs also recognize this, for example, by noting that broker-dealers may take custody of non-security crypto assets in connection with creation and redemption processes for spot crypto exchange-traded products.[11]

The FAQs go further, noting that the staff will not object if a broker-dealer treats a proprietary position in bitcoin or ether as being "readily marketable" for purposes of determining whether the 20% haircut applicable to commodities under Appendix B of Rule 15c3-1 applies.[12] However, the FAQs do not specify haircuts for crypto assets other than bitcoin and ether and do

[10] *See* Jennings, *supra* note 5.
[11] FAQs, *supra* note 3, at A4.
[12] *Id.*

not consider the treatment of such assets under the Net Capital Rule. Accordingly, we outline for the Commission's consideration some principles that should apply to the treatment of crypto assets held by the broker-dealer, in order to determine whether a ready market exists for such assets.

The Net Capital Rule provides that securities have a ready market if:

- independent bona fide offers to buy and sell exist at a price reasonably related to the last sales price; or
- bona fide competitive bid and offer quotations can be determined almost instantaneously;
- and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom.[13]

A ready market also exists where securities have been accepted as collateral for a loan by a bank and where the broker or dealer demonstrates to its examining authority that the securities adequately secure such loans.[14] Certain types of foreign markets have also been considered to be "ready markets" under the Net Capital Rule. For example, in 1975, the Commission's then-Division of Market Regulation issued an interpretive letter, which specified that foreign equity securities have ready markets if they are publicly issued in a principal securities market and listed on one of the principal exchanges in the major money markets outside the United States.[15] Subsequently, in 1993, the Commission stated that broker-dealers may treat foreign equities included in certain specified indices as having a ready market for purposes of the Net Capital Rule.[16] The indices in question were from exchanges in 24 countries and were jointly compiled by a consortium of leading institutions including a newspaper, an investment bank, and an actuarial institute.

In treating foreign equities listed on the indices as having a ready market, the Commission noted that:

- The indices included the largest, most liquid exchanges so long as they meet certain standards for data dissemination and international interest.

[13] 17 C.F.R. § 240.15c3-1(c)(11)(i).
[14] 17 C.F.R. § 240.15c3-1(c)(11)(ii).
[15] The 12 exchanges recognized as "principal exchanges" were Amsterdam, Brussels, Frankfurt, Johannesburg, London, Luxembourg, Montreal, Paris, Sydney, Tokyo, Toronto, and Zurich. *See* Letter from Nelson S. Kibler, Assistant Director, Division of Market Regulation, to Mr. Anthony M. O'Connor, Co-Chairman, International Committee, Securities Industry Association (Dec. 29, 1975).
[16] Letter from Dominic Carone, Chairman, Capital Committee, Securities Industry Association, to Michael A. Macchiaroli, Assistant Director, Division of Market Regulation (Oct. 8, 1992). In a letter dated August 13, 1993 the Division took a no-action position in which it stated that broker-dealers may treat foreign equity securities listed on the FT-A World Indexes as having a ready market for purposes of the Net Capital Rule. That letter withdrew all prior Staff opinions relating to the ready marketability of foreign equity securities, including the 1975 letter.

- The indices screened out small capitalization, illiquid, or restricted ownership stocks.
- The consortium compiling the index also considered the economic sectoral make-up of a market before determining which individual stocks to include.

The Commission staff's prior actions around foreign securities, as well as the definitions of a ready market under Rule 15c3-1(c)(11) are easily adaptable to crypto assets and crypto asset markets. Consistent with its actions around foreign securities, we suggest that the Commission consider establishing standards for "ready markets" in the crypto context. These standards should specify, among other things, that a ready market exists for any crypto asset that:

- Has maintained market capitalization above a specified level over at least the previous six months, based on data from one or more Covered Exchanges (as defined in the bullet below);
- Meets average daily and six-monthly trading volumes on a specified number of eligible crypto exchanges that are U.S. domiciled and/or registered pursuant to state law, or pursuant to the law of one or more specified non-U.S. jurisdictions, and that meet specified data dissemination standards (each a "**Covered Exchange**"); and
- Has been traded for a period of at least six months on one or more Covered Exchanges.

3. Reconciliation of Assets Within a Specified Period

The Net Capital Rule requires that net overall unfavorable reconciliation differences from bank accounts, correspondent accounts, clearing corporations, and securities depositories are deducted in computing net capital if not resolved within a specified number of business days from the date of receipt of the statement of account from the carrying entity.[17] Broker-dealers with any such differences are required to maintain a record of the date of receipt of the pertinent statement of account or, in the absence of such record, to compute the elapsed days from the date of the statement.[18]

While crypto assets are typically settled almost instantaneously, if there is a cash component of the transaction, they are likely not instantly settled, so reconciliation processes are likely to operate differently for such assets or transactions. However, broker-dealers transacting in such assets must ensure that their financial statements accurately reflect any blockchain transfers, and do so significantly more swiftly than the reconciliation periods specified in Rule 15c3-1(c)(2)(iv). In the context of crypto assets, any transfer of title and possession of the asset to the buyer or a buyer's intermediary[19] must be matched by a corresponding entry on the

[17] 17 C.F.R. § 240.15c3-1(c)(2)(iv).
[18] NYSE Interpretation Memo 79-4 (March 1979).
[19] *See* CFTC Issues Final Interpretive Guidance on Actual Delivery for Digital Assets (Mar. 24, 2020), https://www.cftc.gov/sites/default/files/2020/06/2020-11827a.pdf.

broker's books, and that entry and the transfer should be reconciled within a specified period of days — or an even shorter time, if the Commission deems it suitable based on the data available to it.

In addition to this general reconciliation requirement, we would also suggest that the Commission consider certain further specific modifications to net capital computations based on the specific practices around crypto assets or crypto asset transactions. The first two modifications relate to protocol-based staking of crypto assets, while the third relates to the treatment of "fails" and operational risks.

A. Receivables Related to Yield Bearing Crypto Assets or Staking Rewards

We propose that the Commission consider an interpretation of Rule 15c3-1(c)(2)(iv)(C) regarding receivables related to yield-bearing crypto assets or staking rewards for proof of stake assets. As the Commission's staff has recently recognized in its "Statement on Certain Protocol Staking Activities," crypto asset owners can either (1) earn rewards by staking their own crypto assets; or (2) engage in the validation process without running their own nodes by using self-custodial or custodial staking directly with a third party.[20] Some crypto asset protocols automatically deposit the earned rewards amounts at specified periods (or "epochs") into a wallet designated by the owner, or they require a process to claim assets each epoch. In the case where the rewards need to be claimed at each epoch, operational delays may cause the rewards receivable to become "aged," and therefore more difficult to claim.

In our view, aging criteria for these receivables should be similar to the criteria for other receivables that may not be readily available, and therefore the deduction would be based on the number of days outstanding before they are considered "aged." Put differently, where a staked crypto asset or a staking reward needs to be claimed within a specified time, and a broker-dealer has not claimed such asset or reward within that time, the broker-dealer should not be permitted to count the asset towards its net capital.

B. Third-Party Staking

Where staking is undertaken through third parties, such staking may be performed in either a "self-custodied" manner (where the crypto asset owner continues to exercise custody over the staked crypto asset) or through custodial staking (where the third party exercises custody over the staked crypto asset).[21] The Commission staff notes, among other things, that a third-party service provider may provide the following "ancillary services":[22]

[20] SEC, Div. Corp. Fin., Statement on Certain Protocol Staking Activities (May 29, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925.
[21] *Id.*
[22] *Id.*

- Slashing Coverage where the service provider reimburses or indemnifies a staking customer against loss resulting from slashing.

- Early Unbonding where a service provider allows staked crypto assets to be returned to an owner before the end of the protocol's unbonding period.

- Alternate Rewards Payment Schedules and Amounts where the service provider delivers earned rewards at a cadence and in an amount different from the protocol's schedule and/or the rewards are paid earlier or less frequently than the protocol awards them.

In each of these cases, and consistent with the Commission staff's statement on protocol staking, we recommend that a broker-dealer that stakes its crypto assets with a third party should be permitted to count staked assets and staking rewards consistent with the third party's services. For example, where a third-party service provider provides slashing coverage, assets that are staked and that receive the benefit of slashing coverage should be permitted to count towards a broker-dealer's net capital. Where a service provider allows staked crypto assets to be returned to an owner before the end of the protocol's unbonding period, a broker-dealer should be permitted to count those assets towards its net capital when they are returned, irrespective of whether the unbonding period has ended. Where a third-party service provider delivers earned rewards at a cadence and in an amount different from the protocol's schedule, the broker-dealer should be permitted to count these assets when delivered by the service provider, irrespective of whether they have been earned on the protocol.

These clarifications would ensure consistency with the Commission staff's statement on staking and would recognize the commercial realities associated with staking. They would also enable broker-dealers to make full and productive use of their crypto assets — a policy outcome that ultimately benefits both broker-dealers and their customers.

C. Treatment of "Fails" and Operational Risks

Today's crypto markets include many assets, due to smart contract design and architecture, that may have features in common with various traditional finance products. As a result, even in a transaction where the underlying crypto asset may not be a security, broker-dealers may face similar operational and liquidity risks as traditional assets. For example, borrows and loans of crypto assets may, depending on their structure and transaction terms, pose similar operational and liquidity risks associated with securities borrowing. Similarly, purchases and sales of crypto assets may pose risks of "fails" similar to certain securities transactions (i.e., there is a fail to receive on the broker-dealer's asset side of the balance sheet).

We propose that these operational risks be addressed in net capital terms by allowing for a period of 5 days before a deduction is required to be taken. The time allowed before a

deduction is required should also depend on whether the counterparty is a centralized exchange, and could potentially net fails to receive against long positions of the same asset of the issuer. (To be clear, we think it is rarely the case that a centralized exchange nets fails for crypto assets in this way.) For fails, deficit charges on the difference between the current market value of the crypto asset and value of the transaction should be considered a deduction for net capital purposes.

In the case of margin trading for crypto assets, the broker-dealer will likely locate the borrow, particularly in the case of hard-to-borrow crypto assets. As a result, there will be the potential for deficits when a difference arises between the market value of the margined assets and the collateral with the broker-dealer. These too should have an appropriate deduction for net capital purposes.

* * *

Question 25.b:

b. Under the net capital rule, securities and commodities are treated as readily convertible into cash. However, they are subject to deductions (known as haircuts) to account for the market, credit, liquidity, basis, and other risks inherent in the instrument. The haircuts range from 0 to 100 percent. For example, exchange-traded equity securities have a 15 percent haircut, while securities without a ready market (*e.g.*, securities that are not exchange traded) are subject to haircuts as high as 100 percent. Commodities are subject to a 20 percent haircut. How should crypto assets be evaluated to determine the appropriate haircut to apply?

In suggesting a possible approach to net capital requirements for crypto assets, we ask that the Commission consider a balance between three distinct elements:

- Liquidity;
- Simplicity; and
- Consistency or parity across comparable asset categories.[23]

We explore each of these principles in turn below.

- **Liquidity** is the central principle underlying the net capital rule.[24] The Rule addresses liquidity concerns relating to asset positions by seeking to test a brokerage firm's ability

[23] Michael P. Jamroz, *The New Capital Rule*, 47 Bus. Law. 863, 868 (1992).
[24] *Id.* at 867.

to sell assets in a manner unhampered by market or legal obstacles.[25] For example, the concentration risk that a quantity of any one token held in excess of the four-week average daily trading volume at the principal market for such tokens should be considered for a larger haircut. Additionally, a position in a token that is large in relation to the broker-dealer's own net capital should also be subject to an additional haircut.[26]

- **Volume Data Concerns:** In the broker-dealer's judgment, if there are concerns around data or volume reporting from the principal market for the token, the token should be subject to a higher haircut. The broker-dealer should have a diligence defense for its assessment regarding data quality.
- **Market making / block trading:** To the extent the broker-dealer acts as a market maker or engages in block trading in a given token, it may be eligible for a lower haircut for such token.[27]

- **Simplicity** is the balance between the efficient application of the crypto industry's existing resources, against the benefits of simple, easily applicable capital computation methods. The Commission and its staff must consider the need to protect public investors and instill investor confidence to ensure their continued participation in the crypto markets.[28]

  Precise recognitions of risk may cause capital computations to become more sophisticated, and therefore more complex. However, in balancing precision and simplicity, the Commission has typically favored simplicity.[29] The Commission has noted that if the capital computation is not excessively complicated, a broker-dealer firm can determine more easily whether it has sufficient capital to enter into sizable transactions.

  As far back as 1974, the Commission noted that capital requirements eventually must become simple enough in concept and design to facilitate their review by regulators and make the capital structures of broker-dealers, as well as their investment and operating policies, more understandable to the public, lenders, and other suppliers of capital.[30]

- **Consistency or Parity** has historically not applied different net capital requirements within asset categories.[31] For example, and as the Commission notes in Question 25, the Commission subjects exchange-traded equity securities to a standard haircut. By applying

[25] 17 C.F.R. § 240.15c3-1(c)(2).
[26] SEC Letter to NYSE (October 5, 1987) (NYSE Interpretation Memo 87-11, December 1987). *See, e.g.*, *Lowell H. Listrom*, Exchange Act Release No. 30497 (Mar. 19, 1992).
[27] Adoption of Amendments to Rule 15c3-1, Exchange Act Release No. 11497 (June 26, 1975).
[28] Jamroz, *supra* note 23, at 867.
[29] *Id.* at 868.
[30] Notice of Revisions to Proposed Rule 15c3-1, Exchange Act Release No. 11094 (Nov. 11, 1974).
[31] *See, e.g.*, 17 C.F.R. § 240.15c3-1(c)(11).

a uniform haircut to all equity securities positions, the Rule does not influence the allocation of capital between different industries or classes of issuers.

With these three principles as background, we illustrate how net capital would apply across the token taxonomy that we previously provided to the Commission.[32] We do not propose precise haircuts for each category of token — that determination is best made by the Commission's quantitative staff on the basis of comprehensive data. Instead, we point to certain factors that should increase or decrease the haircut level in each case.

- **Network tokens:** A network token is a crypto asset that is intrinsically linked to, and primarily derives or is expected to primarily derive its value from, the programmatic functioning of a blockchain network. Network tokens often have embedded utility; they may be used for network operations, to form consensus, to coordinate protocol upgrades, or to incentivize network actions. Critically, the value of network tokens are driven by the adoption and functioning of their underlying networks—often containing programmatic economic mechanisms that render network tokens productive and economically independent from any person.[33]

  In order for a broker-dealer to avail themselves of the standard haircut for such tokens, the broker-dealer would be required to maintain current records showing that a ready market exists for such tokens. That is the position taken by the Commission staff with respect to two network tokens, bitcoin and ether, in its recent FAQs.[34]

  In the FAQs, the Commission staff note that they "will not object if a broker-dealer treats a proprietary position in bitcoin or ether as being readily marketable for purposes of determining whether the 20% haircut applicable to commodities under Appendix B of Rule 15c3-1 applies."[35]

  We agree with the general principle that a proprietary position in a network token should be eligible to count towards a broker-dealer's net capital, if the network token is found to be "readily marketable." Furthermore, for these purposes, that "ready market" may be a centralized or a decentralized one, or some combination of the two.

- **Security tokens:** A security token is a crypto asset that represents the digital form of a security on a blockchain. The security might be in a traditional form, like a share in a company or a corporate bond, or might take on specialized characteristics, such as

[32] *See* Jennings, *supra* note 5, at 11-15.
[33] *Id.* at 11.
[34] FAQs, *supra* note 3.
[35] *Id.*

providing a profits interest in an LLC, a share in an athlete's future earnings, or even securitized rights to future payments of litigation settlements.[36]

The net capital calculation for security tokens should be identical to the net capital calculation for the underlying security. So, for example, a security token that represents an equity should be treated in the same way as an equity security for net capital purposes. An additional haircut may be applicable for any material blockchain-related vulnerabilities of which the broker-dealer is aware or should reasonably be aware.

- **Company-backed tokens:** Unlike a network token, a company-backed token is a crypto asset that is intrinsically linked to, and primarily derives or is expected to primarily derive its value from, an offchain application, product, or service operated by a company (or other centralized organization). Company-backed tokens may not provide legal rights to holders, but they otherwise have trust dependencies and risk profiles that are nearly identical to ordinary securities and security tokens.

  Company-backed tokens may make use of blockchains and smart contracts (e.g., to facilitate payments). But because they primarily relate to offchain operations, rather than ownership of a blockchain network, a company may unilaterally control their issuance, utility and value.[37]

  Accordingly, the net capital treatment of a company token should be similar to a corporate bond, but without the decreasing haircut that accompanies the decrease in risk as the maturity of the bond approaches.[38] Rather, the haircut should represent:

  - the risk that the company becomes insolvent or is unable to provide the product or service for any reason;[39] and

  - any material blockchain-related vulnerabilities of which the broker-dealer is aware or should reasonably be aware.

- **Collectible tokens:** A collectible token is a crypto asset whose value, utility, or significance is primarily derived from being a record of ownership of a tangible or intangible good.[40] Such collectible tokens should be subject to a high haircut — and significantly higher than the haircut for network or security tokens unless the

[36] *See* Jennings, *supra* note 5, at 12.
[37] *Id.*
[38] 17 C.F.R. § 240.15c3-1(c)(2)(vi)(F)(1).
[39] As we note in our prior submission, "...unlike in the case of network tokens, the control-related risks [of company tokens] are not capable of being mitigated through decentralization because the value is associated with an offchain application, product, or service not capable of operation without human intervention and control." *See* Jennings, *supra* note 5, at 13..
[40] *Id.*.

broker-dealer can reasonably show that:

- There is a ready market for that collectible token, rather than for collectible tokens more generally; and

- The amount or quantity of the collectible tokens held is equal to or lower than the four-week average daily trading volume at the principal market for such collectible tokens.

The haircut for collectible tokens may, however, be increased to the extent the broker-dealer is aware of, or should be aware of any material vulnerabilities surrounding the blockchain on which the token is based.

- **Arcade tokens:** An arcade token is a crypto asset that provides utility within a system and is not intended for investment purposes. Arcade tokens often function as currencies within an issuer-controlled digital economy: digital gold in a game, loyalty points within a membership program, or redeemable credits for digital products and services. Importantly, they are distinguishable from security tokens, network tokens, and company-backed tokens because they are specifically designed to dissuade speculation. For instance, they may have uncapped supplies (meaning an unlimited number can be minted) or limited transferability; they may expire or lose value if unused; or they may only have monetary value and utility within the system in which they are issued.

  Arcade tokens do not offer or promise financial returns outside of the system or specific digital economy.[41] Accordingly, the haircut for arcade tokens must be high, and significantly higher than security tokens or network tokens, because there is likely no market for them other than for their intended use.

  Any amount of an arcade token that is held in excess of the four-week average daily estimated use amounts for such token should be subject to a 100% haircut. Arcade tokens for which there is an unlimited supply should be subject to a higher haircut. Where the "arcade" or venue that supports the token has disappeared, the token should be subject to a 100% haircut, unless the broker-dealer can reasonably show that the token should be treated as a collectible token.The haircut may also be increased to the extent the broker-dealer is aware, or should be aware of any material vulnerabilities surrounding the blockchain on which the token is based.

- **Asset-backed tokens:** An asset-backed token is a crypto asset that primarily derives its value from a claim on, or economic exposure to, one or more underlying assets. These

[41] *Id.* at 13.

underlying assets may include physical-world assets (e.g., commodities or fiat currency) or crypto assets (e.g., cryptocurrencies or liquidity pool interests).[42]

In general, if the asset-backed token represents or is backed by an asset which is subject to an existing net capital category, that net capital category should also apply to the asset-backed token. So, for example, a broker holding an asset-backed token where the token is backed by a commodity (e.g., gold) should be subjected to the same net capital requirement as a broker holding the commodity. Where the asset backing the token is one for which a net capital category is not clearly applicable, the broker should be eligible for a lower haircut if it can show that:

- There is a ready market for that asset-backed token (rather than for the asset itself); and

- The amount or quantity of the asset-backed tokens held is equal to or lower than the four-week average daily trading volume at the principal market for such asset-backed tokens.

The haircut may, however, be increased to the extent the broker-dealer is aware of, or should be aware of any material vulnerabilities surrounding the technology on which the asset-backed token is based.

- **Meme coins:** A meme coin is a crypto asset without intrinsic utility or value, often tied to an internet meme or community-driven movement, and not fundamentally tied to a network, company, or application.[43] As a recent statement by the Commission staff notes, meme coins' prices are driven purely by speculation and associated market forces (which unfortunately makes them highly susceptible to manipulation).[44]

  Meme coins should be subject to a high haircut, unless the broker can show that:

  - There is a ready market for the meme coin; and

  - The amount or quantity of the meme coins held is equal to or lower than the four-week average daily trading volume at the principal market for such meme coins.

[42] *Id.* at 14.
[43] *Id.* at 15.
[44] SEC, Div. Corp. Fin., Staff Statement on Meme Coins (Feb. 27, 2025), https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins.

The haircut may, however, be increased to the extent the broker-dealer is aware of, or should be aware of any material vulnerabilities surrounding the blockchain on which the meme coin is based.

* * *

As with the token taxonomy we previously shared with the Commission, our aim in the foregoing discussion is to provide an operational framework for extending the net capital rule to broker-dealers. While we provided examples of deductions from net capital; this is a non-exhaustive list. The rule is prescriptive and there are many types of crypto asset transaction-related issues that could arise beyond our examples. The growth and development of the Net Capital Rule has been developed over decades, collaboratively advanced by the Commission and the securities industry. Implementing the appropriate principles for capital regulation for broker-dealers should set the stage for a similarly productive collaboration between regulators and market participants relating to crypto assets. Moreover, we urge the Commission to issue interpretations and/or no-action letters for situations as they arise.

Question 26.a:

The recordkeeping rules for broker-dealers (17 CFR 240.17a-3 and 17 CFR 240.17a-4) require the creation and maintenance of accounting and operational records designed to assist a firm in tracking and understanding its assets, liabilities, positions, and obligations to customers (*e.g.*, cash owed to customers and securities held for customers).

a. What challenges, if any, do the requirements of these recordkeeping rules present with respect to crypto assets that are not an issue for traditional securities? What modifications to the rules could address these challenges?

The Commission's books and records rules, Rule 17a-3[45] and Rule 17a-4[46] under the Exchange Act, specify minimum requirements with respect to the records that broker-dealers must make and how long those records and other documents relating to a broker-dealer's business must be kept.[47] The Commission has required that broker-dealers create and maintain certain records so that, among other things, the Commission, self-regulatory organizations such as FINRA and securities exchanges, and state securities regulators may conduct effective examinations of broker-dealers.[48]

[45] 17 C.F.R. § 240.17a-3.
[46] 17 C.F.R. § 240.17a-4.
[47] *See, e.g.*, 17 C.F.R. § 240.17a-4(a) and (b).
[48] *See, e.g.*, *Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934,* Exchange Act Release No. 44992, 66 Fed. Reg. 55818 (Nov. 2, 2001).

In 1997, the Commission amended Rule 17a-4 to allow broker-dealers to store records electronically. The amended rule did not specify what type of media the records needed to be stored on, only that it "preserve the records exclusively in a non-rewriteable, non-erasable format" (also known as a "write once, read many" ("**WORM**") format).[49] Notably, in 1997, when WORM was first adopted, the hardware used for recording — typically CD-ROMs and other optical disks — provided a significant degree of protection for data, and compliance with WORM was both easily achievable and relatively uncontroversial.

The Commission adopted amendments in 2022 that effectively retained the WORM standard as an option for firms but also added an audit-trail alternative to the WORM requirement. The audit-trail alternative requires that a broker-dealer use an electronic recordkeeping system that maintains and preserves electronic records in a manner that permits the re-creation of an original record if it is modified or deleted.[50] Under the amendments to Rule 17a-4, therefore, a broker-dealer that elects to use an electronic recordkeeping system will need to ensure that such electronic recordkeeping system meets either the audit-trail requirement or the WORM requirement.[51]

Notably, the Commission's 2022 adopting release for the amendments never refers to blockchains as a possible record or recordkeeping system — an inexplicable omission under the circumstances. We see no reason why a blockchain cannot be used as either the primary record, or as a backup record for the purposes of Rule 17a-3 and Rule 17a-4 given the blockchain is inherently an auditable record of transactions. We do not suggest that the blockchain should be the sole recordkeeping medium — rather, we would submit that the blockchain is uniquely suited to maintain certain kinds of transactional records, such as, for example, transaction IDs, wallet addresses, quantum of assets transferred, asset balances etc.

We note that the Commission's recent FAQs are entirely consistent with this approach. The FAQs note, for example, that:

> [S]ome transfer agents' master securityholder files comprise multiple files or systems. In the context of distributed ledger technology, this may mean that transaction information, such as wallet address, asset balance, ownership percentage, number of shares or units, date of purchase, and transaction ID, is maintained on a blockchain while personal information, like the investor's name, investor ID, address and other contact information, Tax ID or social security

[49] *See Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934*, Exchange Act Release No. 38245, 62 Fed. Reg. 6469 (Feb. 12, 1997); *Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934*, Exchange Act Release No. 32609, 58 Fed. Reg. 38092 (July 15, 1993) (proposing Rule 17a-4(f)).
[50] *See Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants*, Exchange Act Release No. 96034, 87 Fed. Reg. 66412 (Nov. 3, 2022).
[51] *Id.* at 66419.

> number, and other identifying or non-public information, is kept off-chain within the transfer agent's proprietary systems. In the Staff's view, provided the transfer agent ensures that its records are at all times secure, accurate, up-to-date, produceable to the Commission and its staff in an easily-readable format, and maintained for the required time periods under the rules, the specific technology, systems or files that comprise the records would generally be within the transfer agent's discretion.[52]

Records required to be maintained under Rules 17a-3 and 17a-4 are today often maintained through a combination of media. The addition of blockchain to those recordkeeping media should pose no doctrinal problems under Rules 17a-3 and 17a-4, as long as, "those records are at all times secure, accurate, up-to-date, produceable to the Commission and its staff in an easily-readable format, and maintained for the required time periods under the rules."[53] In addition to the general principles of security, accuracy, currentness, and accessibility that the Commission identifies, there are specific questions or concerns that broker-dealers using the blockchain must address in order to maintain records for the purposes of Rule 17a-3 and Rule 17a-4.

We submit that the Commission should require that in order for a broker-dealer to be able to use or rely on a blockchain or distributed ledger as a recordkeeping mechanism, the broker-dealer should adhere to the following requirements:

1. **Consider whether WORM/audit trail requirements are met:** Depending on whether the blockchain used is a public, permissionless blockchain or a private, permissioned one, broker-dealers may need to consider whether they meet either the WORM standard or the audit trail requirement. Although the distinction is not always clear, a number of public blockchains are likely to meet the WORM requirement, while a private, permissioned blockchain may likely meet the audit trail requirement.[54] In either case, the broker-dealer should be required to specify in writing:

- whether it seeks to rely on the WORM standard or on the audit trail requirement;
- the specific types of records enumerated under Rule 17a-3 and Rule 17a-4 for which the broker-dealer relies on the blockchain; and
- the default retention period for each such record, and whether such period is in compliance with the requirements of Rule 17a-4.

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[52] FAQs, *supra* note 3, at A10.
[53] *Id.*
[54] Cy Watsky et al., *Tokenized Assets on Public Blockchains: How Transparent is the Blockchain?* (Apr. 3, 2024), https://www.federalreserve.gov/econres/notes/feds-notes/tokenized-assets-on-public-blockchains-how-transparent-is-the-blockchain-20240403.html.

The Commission should consider clarifying that for the purposes of Rule 17a-4(f)(1)(ii), the phrase "electronic recordkeeping system"[55] encompasses blockchains or distributed ledgers. As part of this clarification, the Commission should consider clarifying that:

- public blockchains are presumptively considered to be "electronic recordkeeping systems" under Rule 17a-4, unless found to be otherwise by the Commission; and
- the circumstances under which a private, permissioned blockchain will be considered to be an "electronic recordkeeping system" for the purposes of Rule 17a-4.

2. Determine the location of the records maintained on the blockchain: A distributed ledger, particularly a public blockchain, may involve the participation of thousands, potentially even millions of nodes spread across the world.[56] To the extent such a blockchain is being used as a record, the broker-dealer may find it challenging or impossible to identify a single location where the blockchain is maintained or is stored.[57]

A possible alternative may be to have the broker-dealer maintain a full node of the relevant blockchain — thus maintaining the complete transaction history of that network — or, alternatively, a redundant copy of the blockchain at all times in its control and in secure storage, and have procedures in place to verify that this redundant copy is an accurate and complete record, easily accessible by the broker-dealer, FINRA, and the Commission at all times. This issue is less prominent with regard to a private, permissioned blockchain that is controlled by the broker-dealer, for which the broker-dealer can identify both a definite location as well as its own control.

In this regard, we would suggest that the Commission reconsider, or re-interpret the requirements of Rule 17a-4(l), which provides that required records for the most recent two year period which relate to an office shall be maintained at the office to which they relate.[58] That provision also permits broker-dealers to instead choose to produce the records promptly at the request of a representative of a securities regulatory authority at the office to which they relate or at another location agreed to by the representative.[59] The Commission should expressly recognize that where a broker-dealer relies upon a public blockchain for such required records, the broker-dealer may simply give the regulator access to the record at any location, regardless of whether such location is the broker-dealer's office.

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[55] 17 C.F.R. § 240.17a-4(f)(1)(ii).
[56] FINRA, Distributed Ledger Technology: Implications of Blockchain for the Securities Industry (Jan. 2017), https://www.finra.org/sites/default/files/FINRA_Blockchain_Report.pdf ("**FINRA Blockchain Report**").
[57] *Id*.
[58] 17 C.F.R. § 240.17a-4(l).
[59] *Id.*

3. Control or access to the blockchain-based record: The broker-dealer should be required to reduce to writing not only the nature of the records for which it relies on the blockchain, but also:[60]

- the degree of access the broker-dealer has to the blockchain;
- the degree of control the broker-dealer or third party has over the blockchain, particularly with regard to the ability to write, overwrite, or erase any blockchain entry;
- the risks of relying on the blockchain as a record;
- the existence of redundant copies or back-ups for the blockchain record, the security of storage for such copies or back-ups, and methods of reconciling or verifying the accuracy of the copies or backups;
- the format in which the broker-dealer is able to view the blockchain-based data;
- the broker-dealer's policies and procedures for securing all blockchain-based data; and
- whether, how, and in what format the blockchain-based record will be made available to the Commission and FINRA.[61]

For broker-dealers who rely on the blockchain to meet their recordkeeping requirements, the Commission should consider setting forth its expectations on what constitutes "easy access" or "produceability to the Commission and its staff" for the purposes of Rules 17a-4(a) and 17a-4(b). In particular, the Commission should consider the differential access terms that should apply with respect to access to a public blockchain, as opposed to a private, permissioned blockchain over which the broker-dealer exercises a significantly greater degree of control. We would submit that with respect to a public blockchain, ease of access should be determined by whether the regulator and the broker-dealer enjoy the same degree of access, and whether the method of access is no more onerous than for any other user of the blockchain.

4. Consider and assess the interaction between public blockchains and private records: To the extent that a broker-dealer employs or makes use of a public, permissionless blockchain as part of its own recordkeeping**,** it must examine and record how this public blockchain interacts with its own systems, irrespective of whether those systems are sub-ledgers, other blockchain-based records, or more traditional records.[62] In addition, broker-dealers must assess the risks posed by their use of a public blockchain for recordkeeping, or as an element of their recordkeeping activities.

5. Establish procedures for exception reporting: Broker-dealers who seek to rely on a blockchain, particularly a public blockchain for recordkeeping purposes should be required to

[60] *See* FINRA Blockchain Report, at 13-14, for a discussion of some of these factors.
[61] The Commission should consider specifying requirements, in general terms, for downloading and exporting the records and their audit trails in reasonably usable formats.
[62] *See* FINRA Blockchain Report, at 13.

describe in writing the processes by which they plan to identify and report irregularities arising from the blockchain. Due to the state transformation of blockchains and their asynchronous recordation, it is possible to have recent transactional ordering that varies prior to consensus.

6. Public blockchains and third-party undertakings: Some broker-dealers maintain their electronic recordkeeping systems and associated electronic records on servers or other storage devices that are owned or operated by a third party (e.g., a cloud service provider) while the broker-dealer retains control of the electronic recordkeeping system and access to the electronic records preserved on the system.[63] Where a broker-dealer seeks to rely on a public, permissionless blockchain for certain records required to be maintained under Rule 17a-3 and Rule 17a-4, the Commission should clarify that such public blockchain is not under the control of a third party, provided the broker-dealer can affirm in writing that the broker-dealer:

- has independent access to the records (i.e., that the broker-dealer can access the records without the need of any intervention of any third party);
- does not require or rely on the third party to take any intervening step to make the records available to the broker-dealer (i.e., the broker-dealer should not need to, for example, ask any third party to transfer copies of the records to the broker-dealer or ask any third party to first decrypt the records before they can be accessed).[64]

In the alternative, where a broker-dealer relies on a private, permissioned blockchain for recordkeeping and such blockchain is subject to the control of some entity other than the broker-dealer, the Commission should require such third party to attest in writing that the records are the property of the broker-dealer and that the broker-dealer has represented to the third party that the broker-dealer:

- is subject to rules of the Commission governing the maintenance and preservation of certain records;
- has independent access to the records maintained by the third party; and
- consents to the third party fulfilling the obligations set forth in the undertaking.[65]

If the third party cannot attest to such requirements, for example if they are not regulated by the Commission, we recommend that the Commission make clear that it is the obligation of the broker-dealer to maintain a copy of their records from their interactions with the blockchain to the extent required by the rule. Further, the third party must undertake to reasonably facilitate the examination, access, download, or transfer of the records by the Commission or its staff.

[63] 87 Fed. Reg. at 66413.
[64] These principles are substantially similar to those discussed by the Commission in its 2022 amendments to Rule 17a-4. *See* 87 Fed. Reg. at 66413-14.
[65] *Id.* at 66414.

Question 26.b:

b. Should crypto assets generally be treated as if they are traditional securities for purposes of these recordkeeping rules?

We would begin by noting the Commission's observation in the FAQs that "a broker-dealer that conducts a non-security crypto asset business could make and keep the same records for its non-security crypto activities as it does for its securities activities."[66] We agree with this approach as a general principle, and we offer some further observations below in support of this.

In general, some, though not all, of the elements enumerated in Rule 17a-3 and Rule 17a-4 may be applicable to crypto assets regardless of the security status of such assets. Even where a crypto asset is a non-security, Rule 17a-4 nevertheless provides some recordkeeping requirements. It specifies, for example, that broker-dealers must make and keep current "ledger accounts (or other records) itemizing separately as to each cash, margin, or security-based swap account of every customer and of such member, broker or dealer and partners thereof, all purchases, sales, receipts and deliveries of securities (including security-based swaps) and commodities for such account, and all other debits and credits to such account."[67]

These items would therefore have to be recorded irrespective of whether the crypto asset is a security or commodity. Beyond this, however, Rule 17a-4 provides a helpful way forward for crypto assets that are not securities. With respect to security-based swaps, Rule 17a-4(b)[68] requires that a "broker or dealer may comply with the recordkeeping requirements of the Commodity Exchange Act"[69] applicable to swap dealers and major swap participants in lieu of complying with certain aspects of Rule 17a-4.

In our other responses to the Commission, we have noted a number of the difficulties faced by market participants in determining the security status of individual crypto assets. Those difficulties are as present in compiling records as they are in many other aspects of compliance with existing legal regimes. We think, however, that the path forward on records is best illustrated by the recordkeeping regime for swaps and security-based swaps, which permits registrants to comply with the recordkeeping regime under the Commodity Exchange Act in lieu of compliance with Rule 17a-4. A similar approach could be adopted with respect to crypto assets that are not securities — if a broker-dealer reasonably takes the view that a crypto asset is a non-security, the broker-dealer should record in writing:

- the reasons for concluding that a crypto asset is not a security;

[66] FAQs, *supra* note 3, at A8.
[67] 17 C.F.R. § 240.17a-3(a)(3).
[68] 17 C.F.R. § 240.17a-4(b).
[69] 7 U.S.C. § 1 *et seq*.

- that the broker-dealer is instead following recordkeeping requirements under the Commodity Exchange Act, including under 17 C.F.R. §§ 1.31 — 1.39;
- that the broker-dealer is, to the extent possible, applying records requirements for commodity futures transactions as if they applied to spot transactions; and
- to the extent a record requirement is plainly inapplicable to spot market transactions, its reasons for not maintaining such records, and its decision to maintain any alternative, more clearly applicable records instead.

Over time, as regulatory scrutiny over the crypto spot market develops, alternative recordkeeping requirements can, and should be developed. Until then, we believe that the existing recordkeeping requirements can, with relatively minor adjustments along the lines discussed above, provide a more than adequate regulatory solution.

"The life of the law has not been logic; it has been experience."[70] The broker-dealer financial responsibility rules represent the accretion of decades of commercial experiences, broker-dealer failures, and defaults,[71] legislative and regulatory interventions, and formal and informal guidance delivered through a range of means. It would be unrealistic to expect the broker-dealer financial responsibility rules to arise, fully-formed on day one. We therefore welcome the Commission's invitation for requests for other assistance, including requests for interpretive or no-action letters,[72] and hope that many market participants will respond positively to this call. The sustained engagement the Commission invites will, we believe, produce what should be an enduring framework for well-functioning crypto asset markets that are attractive to market participants.

On that note, we greatly appreciate the opportunity to provide comments on these matters, and we look forward to continued engagement with the Commission. Consistent with its stated intention in the FAQs, we hope the Commission will continue to seek industry and public input as it fashions guidance and relief in the areas discussed above, including solicitations for comment on any proposed guidance the Commission may be considering prior to adopting it in final form.

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[70] Oliver Wendell Holmes, *The Common Law* (1881).

[71] Consider, for example, the Net Capital Rule. "Between 1968 and 1970, several broker-dealers failed, causing losses to investors. During this period, for many firms, capital adequacy requirements were administered by the broker-dealer's self-regulatory organization. Because most securities processing systems were manually intensive and inadequately funded, many firms experienced difficulty in processing the increase in transactions that occurred during this period. While most capital adequacy requirements provided for deductions for unprocessed transactions, basic differences developed in the application and interpretation of the Net Capital Rules of the Commission and the New York Stock Exchange." Jamroz, *supra* note 23, at 864, n.6 (1992).

[72] FAQs, *supra* note 3..

Respectfully submitted,
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