

To the Point

SEC – proposed rules

SEC proposes custody rule amendments to address crypto assets and modernize other provisions

The proposal would create new custody pathways for crypto assets and update custody rules to address current industry practices.

What you need to know

- ▶ The SEC proposed amendments that would allow registered investment advisers to hold crypto assets on behalf of clients, including regulated funds, and would allow state trust companies to custody crypto assets, subject to certain conditions.
- ▶ The proposal would also modernize existing custody rules, including changes affecting registered investment advisers, broker-dealer custodians, audit requirements and reporting obligations.
- ▶ The proposal discusses planned updates to the SEC's 2009 Guidance for Accountants,¹ including the addition of informational technology and crypto asset custody control objectives for internal control reports.
- ▶ Comments are due by 7 December 2026.

Overview

The Securities and Exchange Commission (SEC or Commission) **proposed** new rules and amendments that would create new custody pathways for crypto assets while modernizing existing custody requirements for registered investment advisers (RIAs) and regulated funds (i.e., registered investment companies and business development companies).

The SEC said the amendments to the Investment Advisers Act of 1940 (Advisers Act) and Investment Company Act of 1940 (Investment Company Act) would remove certain regulatory barriers to crypto-related investment activity and allow regulated funds to offer investors access to a wider range of crypto asset-related investment strategies.



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Under the proposal, RIAs could self-custody certain crypto assets when no permitted custodian is available, subject to certain conditions, and advisers and regulated funds could maintain crypto assets with state trust companies that satisfy certain requirements. The proposal also would update existing custody requirements, reporting obligations and recordkeeping requirements to better reflect current industry practices and stakeholder feedback.

The proposal also discusses planned updates to the SEC's 2009 Guidance for Accountants, including guidance related to surprise examinations and internal control reports.

Key considerations

Crypto self-custody

The proposal would allow an RIA to hold crypto assets on behalf of its clients, including regulated funds, if it complies with certain self-custody conditions. An RIA would be required to, among other things:

- Determine initially and quarterly that no permitted custodian is available
- Maintain and document safeguarding expertise, systems and cybersecurity controls (e.g., private key management, joint authorization of transactions or multi-signature wallets), including completion of an annual review of those systems and controls
- Obtain an internal control report from an independent public accountant covering the safeguarding of crypto assets within the first six months and annually thereafter
- Agree, in writing, with each client that the crypto assets will be legally treated as financial assets
- Provide quarterly account statements
- Maintain proper segregation of each client's crypto assets

The proposal would also require a regulated fund's board of directors to determine that any crypto asset held in custody by its RIA would be safeguarded with reasonable care. The board would also be required to review the RIA's determination that no other permitted custodian is available.

State trust company custody

The proposal would allow custody of crypto assets by state trust companies, subject to certain conditions, if the RIA or regulated fund:

- Has a reasonable basis for believing that the state trust company is authorized by the relevant banking authority to provide custody, as well as maintains and implements written policies and procedures to safeguard assets
- Receives and reviews the state trust company's most recent annual audited financial statements and internal control report both initially and annually thereafter
- Maintains arrangements requiring the state trust company to properly segregate assets
- Complies with updated recordkeeping requirements

The proposal
would expand
crypto-related
reporting on
Forms ADV
and N-CEN.

Other custody rule modernization

Regulated funds: The amendments to the Investment Company Act would, among other things:

- ▶ Clarify that business development companies may use permitted custodians other than banks
- ▶ Expand the pool of eligible broker-dealer custodians to include all registered broker-dealers permitted to carry assets, rather than only members of a national securities exchange
- ▶ Rescind outdated rule 17f-3, which addresses free cash accounts

The SEC also requested comments on additional changes involving certain uncertificated securities and affiliated custodians, including whether changes should be made to surprise examinations under rule 17f-2.

RIAs: The amendments to the Advisers Act custody rule would, among other things:

- ▶ Exempt RIAs from certain custody rule requirements when custody arises from discretionary trading authority or inadvertent custody, subject to certain conditions
- ▶ Exempt RIAs from the independent verification requirement for client funds and securities when custody exists solely due to a standing letter of authorization
- ▶ Eliminate the requirement that independent public accountants performing work required by the custody rule be registered with and subject to inspection by the Public Company Accounting Oversight Board
- ▶ Codify certain practices related to timing of audited financial statements, acceptable accounting frameworks and distribution deadlines
- ▶ Modify the audited financial statement delivery requirement for pooled investment vehicles (PIVs) formed in the last 90 days of their first fiscal year

PIVs formed within the last 90 days of their first fiscal year would not be required to provide audited financial statements for that year if investors receive unaudited financial statements within 90 days of the first fiscal year end and audited financial statements covering the first and second fiscal years after the end of the second fiscal year.

2009 Guidance for Accountants

The proposal also summarizes planned updates to the SEC's 2009 Guidance for Accountants, which address procedures performed by accountants in connection with surprise examinations and internal control reports to satisfy the Advisers Act custody rule. The updates would, among other things:

- ▶ Revise the definition of a material discrepancy
- ▶ Add information technology and crypto asset custody control objectives
- ▶ Modify verification procedures for internal control reports

Form amendments

The proposal would amend Form ADV to reflect the proposed adviser self-custody provisions and require disclosures about tokenized private funds, among other updates. It would also amend Form N-CEN to require regulated funds to report whether they rely on crypto self-custody or a state trust company to maintain custody of crypto assets. Registered investment companies also would be required to report whether they are tokenized funds.

How we see it

The proposal would provide RIAs and funds with additional options for maintaining custody of crypto assets, but they would also include enhanced governance, oversight and control requirements. RIAs, regulated funds and fund boards should assess whether custodians are available and evaluate their governance, cybersecurity, internal controls and related assurance reports.

Entities should continue to monitor developments but avoid changing custody practices before a final rule is issued.

Endnotes:

¹ The SEC’s 2009 Guidance for Accountants refers to Commission Guidance Regarding Independent Public Accountant Engagements Performed Pursuant to Rule 206(4)-2 Under the Investment Advisers Act of 1940, Advisers Act Release No. 2969 (30 December 2009) [75 FR 1492 (11 January 2020)].