

SEC and FINRA Staffs Highlight Broker-Dealer Regulatory Challenges Raised by Digital Assets—And Hint at Solutions

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Broker-dealer custody of on-blockchain assets has been a key hurdle in the development of a more regulated financial infrastructure for digital assets in the United States. In a joint statement, the staffs of the SEC and FINRA outlined their concerns about broker-dealers' ability to comply with their financial responsibility rules—in particular, the requirement to obtain and maintain physical possession or control of fully-paid and excess margin securities—for business activities involving digital assets that are securities. The statement hints at a possible path forward for broker-dealers who pursue a business model that does not result in a broker-dealer having custody of customer digital assets.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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