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THE CONUNDRUM OF CRYPTO CUSTODY: REGULATORY CONSIDERATIONS FOR INVESTMENT ADVISERS

As clients demand exposure to crypto assets, SEC-registered investment advisers weigh how to integrate crypto assets into investment offerings while navigating major regulatory hurdles, including uncertainty around safeguarding and custody. This article surveys the federal custody framework, state virtual currency and money-transmitter laws, and key pending legislative proposals.

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I. INTRODUCTION AND SCOPE

Investment advisers are increasingly considering how to incorporate crypto asset¹ investments into their clients' investment strategies as clients seek exposure to the asset class.² This article explores the regulatory challenges, specifically safeguarding and custody, that Securities and Exchange Commission ("SEC")-registered investment advisers face as they incorporate this new asset class into investment advice provided to separate account and pooled investment vehicle/fund clients. Although we focus in this article on custody considerations for SEC-registered advisers advising on

crypto assets, we also analyze the intersection with state laws that govern crypto custody and other activity with respect to crypto assets. One of the most significant threshold questions when analyzing a crypto asset is whether the asset is a security or not. Although our focus is primarily on crypto assets that are not securities (e.g., Ether, Bitcoin, Covered Stablecoins), we also discuss crypto assets that are securities.³

This article will explore (1) the regulatory framework for analyzing custody issues for SEC-registered advisers providing advice about crypto assets, (2) state laws (given the lack of federal preemption) that govern crypto asset activities, such as state virtual currency laws and state money transmitter laws, (3) legislative proposals

¹ For purposes of this article, the term "crypto assets" is used broadly to include digital assets and virtual currency.

² Inv. Adviser Ass'n & COMPLY, Investment Adviser Industry Snapshot 2025, 66 (2025), <https://www.investmentadviser.org/wp-content/uploads/2025/05/Snapshot2025.pdf>.

³ SEC, *Statement on Covered Stablecoins* (Apr. 4, 2025), <https://www.sec.gov/newsroom/speeches-statements/statement-stablecoins-040425> (defining "Covered Stablecoins").

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