



January 15, 2025

By electronic submission

Members of the SEC Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-0213

RE: Wallet Providers and Broker Dealer Regulation

Members of the Crypto Task Force:

The Securities Industry and Financial Markets Association¹ and its Asset Management Group² (collectively, "SIFMA") appreciate the opportunity to provide input to the Securities and Exchange Commission (the "SEC") Crypto Task Force as they evaluate the appropriate regulatory treatment of wallet providers. This letter addresses the critical question of whether such providers should be required to register as a broker under the Exchange Act of 1934 (the "Exchange Act") and comply with the requirements generally applicable to broker-dealers.

Executive Summary

It is critical to identify when wallet providers supporting tokenized securities are carrying out services which would require registration as a broker, dealer or other entity. Where wallet providers engage in broker-dealer activities, they raise the same investor protection and market integrity concerns as traditional intermediaries, and regulatory clarity should be achieved through durable, notice-and-comment rulemaking rather than exemptions or no-action relief.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation, and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association.

² SIFMA AMG brings the asset management community together to provide views on policy matters and to create industry best practices. SIFMA AMG's members represent U.S. and multinational asset management firms whose combined global assets under management exceed \$45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

Broker-Dealer Regulation Is Necessary to Protect Investors and Market Integrity

- Applying wallet-based models to tokenized securities without appropriate regulation would expose investors and markets to well-established risks.
- Best execution, suitability, duty of fair dealing, Rule 15c3-5, and other business conduct requirements are necessary to mitigate the risk that wallet providers holding or controlling customer assets route trades based on conflicts of interest or make inappropriate solicitations to customers.
- There is no sound policy basis to exempt wallet providers performing broker-dealer functions from these protections.

Distinguish Non-Custodial Wallet Services from Custody and Safekeeping Models

- True non-custodial wallet services that enable investor self-custody should be distinguished from models in which wallet providers hold or control customer private keys or assets.
- Wallet providers that assume safekeeping responsibilities functionally resemble brokers or custodians and may trigger additional regulatory obligations.
- Clear distinctions are necessary to prevent unregulated custody of tokenized securities and to protect customer assets.

Regulatory Clarity Should Be Achieved Through Rulemaking, Not Exemptive Relief

- SIFMA cautions against exemptions or no-action relief that would allow wallet providers performing broker services to operate outside the broker-dealer regulatory framework.
- Durable, technology-neutral clarity should be achieved through notice-and-comment rulemaking grounded in economic function and the totality of activities performed.
- Clear rules, including those establishing when wallet providers are not serving as brokers, would better support compliant innovation and partnerships between wallet providers and registered broker-dealers.

It is critical to identify when wallet providers supporting tokenized securities are carrying out services which would require registration as a broker, dealer or other entity. Some wallet providers represent their offerings regulatory submissions as simply providing software that enables users to hold their private and public keys.³ However, there is the potential for wallet providers to offer additional services in which, if they were to be offered for tokenized securities, would function in a manner very similar to, and in some cases would directly overlap with, core brokerage activities, including, order routing, soliciting trades, providing investment advice, arranging financing, and safekeeping. This combination of services beyond basic functions such as key management is seen among some wallet providers supporting the non-security crypto asset markets.

When tokenized securities are involved, these services require registration as a broker, dealer or other entity authorized to perform a relevant function (e.g. regulated national banks which may provide custody services without being broker dealers). Indeed, wallet providers often receive transaction-based compensation from their users. Where securities are involved, this is the tell-tale

³ See e.g., Consensus Software, Letter to the SEC on Amendments Regarding the Definition of “Exchange” (Release No. 34-93709, File No. S7-02-22), RIN 3235-AM45 (Feb. 21, 2025), <https://www.sec.gov/files/ctf-input-hughes-2025-02-21.pdf>.

sign the Commission has historically relied upon to discern whether a party is functioning as a broker by directly or indirectly effecting securities transactions for others.

This should be addressed by providing a framework to recognize what services wallet providers can offer without requiring registration as brokers, enabling wallet partners to partner with registered broker-dealers while avoiding opportunities for regulatory arbitrage. This is best done through robust, durable rulemaking providing clear guidelines for identifying when wallet providers are or are not offering services which would require registration as a broker, as opposed to via exemptive relief.

Of greatest importance, extending this model of wallet providers' activities to tokenized securities would present the same risks to investor protection and market integrity as those of traditional broker-dealers, including poor or biased trade execution, undisclosed or opaque fees and other costs, conflicts of interest, the facilitation of excessive leverage, and the potential for loss or misuse of customer property. There is therefore no sound public interest or policy basis to exclude this class of service providers from Congress's prescribed registration requirements for brokers or deny their customers and the broader market the protections Congress and the Commission have prescribed.

However, we recognize that developing a robust and resilient wallet provider ecosystem will be important to the development of tokenized securities markets. Just as wallet providers who are carrying out broker-dealer functions should be regulated as such, there should also be a clear process for identifying what services wallet providers can provide while not serving as brokers. These frameworks for clearly understanding and defining the roles of wallet providers should be done through a notice-and-comment rulemaking process which produces durable, consistent guidance, not through exemptions or no action relief. This comprehensive approach to reform is important not only to intermediaries, but also provides a framework for issuers and software developers designing both traditional and tokenized securities.

I. Broker-Dealer Requirements Mitigate Key Investor and Market Integrity Risks

The substantive provisions of broker-dealer regulation are critical to mitigate potential risks to investor protection and market integrity raised by those wallet providers that are not otherwise sufficiently regulated (e.g., national banks) holding tokenized securities on behalf of customers. In particular, it is critical to ensure that wallet providers maintaining possession or control of customers' tokenized securities do not misuse customer public and private keys and that such keys are otherwise maintained in a secure manner to ensure their prompt return to customers in a wallet provider failure. Moreover, best execution, suitability, duty of fair dealing, Rule 15c3-5, and other business conduct requirements are necessary to mitigate the risk that wallet providers holding or controlling customer assets route trades based on conflicts of interest or make inappropriate solicitations to customers. Finally, Regulation T and FINRA Rule 4210 are critical to ensure that wallet providers do not extend financing that either creates undue leverage in U.S. securities markets or threatens the failure of the broker itself.

We recognize that there are a variety of participants that purport to offer non-custodial wallets. Certainly, if all a given wallet provider did was provide software allowing users to store their private keys like a manufacturer provides safes to hold paper certificates, the legal analysis would be far

clearer. But the reason why parties are seeking exemptions from the Commission is because they recognize that they may in fact be engaging in broker activity and may be creating similar risks to those that the Commission's broker registration and regulatory regime is designed to address.

II. Develop a Robust, Durable Regulatory Framework Addressing the Role of Wallet Providers in the Tokenized Securities Markets

We caution against any sort of exemption or no-action relief which would exempt wallet providers who offer broker services from being regulated as such. However, as discussed above, we recognize the evolving role of wallet providers in tokenized securities operating models – models which will likely include non-broker wallet providers working in partnership with broker-dealers. As such, the best way to develop a robust, durable, and technology neutral approach is through rulemaking as opposed to no-action relief. Regulatory clarity obtained through a durable, notice-and-comment process will be more effective in supporting the development of these products and services than ad hoc carve outs.

This process should also focus on defining the regulatory requirements for wallet providers based on the services they offer and their relationship with other market infrastructure venues, and the legal and economic roles that underlie them. Ultimately, individual services and user experience features should not be viewed in isolation, but in a holistic way which recognizes that broker status (or absence thereof) of a wallet provider turns on the totality of its activities.

III. Wallet Providers May Perform Activities Indicative of Being a Broker

Many wallet providers perform several other activities which, if carried out for tokenized securities, have time and again been identified by the Commission as indicative of being a broker. One activity of particular note is when wallet providers also offer routing services that allow the provider to have a role in determining where and the manner in which a customer's trades are executed on DeFi exchanges or with market makers.⁴ With these services, the wallet operator's app or browser extension has "buy" and "sell" or similar buttons that a customer can click to execute purchases and sales of their holdings.⁵ These buttons look very similar to those one would see on a broker-dealers' app or website. When the user clicks the button, the wallet provider will route the customer's request to a trading venue or market maker, including one that may be selected or recommended by the provider in order to execute a transaction.

The wallet provider will also often exercise discretion in identifying the various venues and market makers it displays to the customer.⁶ It may be the case that the wallet provider displays prices from

⁴ See e.g., Complaint at ¶ 107, *SEC v. Consensys Software Inc.*, No. 1:24-cv-04578 (E.D.N.Y. June 28, 2024) ("If the investor selects the "best price"—or any other price—displayed on the screen and clicks "Swap," that signals Consensys's software to proceed with submitting a blockchain transaction to a Consensys owned and operated node, routing the investor's trade request (i.e., the investor's order) and transferring the investor's crypto asset to the third-party liquidity provider.")

⁵ See e.g., *Wallet*, Bitpay, <https://www.bitpay.com/wallet>.

⁶ See e.g., Complaint at ¶ 95, *SEC v. Consensys Software Inc.*, No. 1:24-cv-04578 (E.D.N.Y. June 28, 2024) (noting that Consensys does "all the work" by "employing its own market knowledge and exercising its own discretion when displaying pricing information and providing investment advice to the investor").

a limited number of venues and market makers that have paid the operator for the privilege of being displayed or are affiliated with the provider. Although the wallet provider may include legal language suggesting that the customer is trading directly with the exchange or counterparty, the wallet provider is as a factual matter intermediating these trades.

However, there remains uncertainty around what degree of activity by wallet providers in informing clients about trading opportunities on other venues rises to the level of meaningful participation in the order routing process. The rules must be written to distinguish when those buttons, apps, services reach the level of broker-dealer services.

A number of wallet providers also arrange or otherwise facilitate financing for users' assets, solicit customers to purchase and sell assets, and provide recommendations or other investment advice.⁷ Wallet providers that connect customers to lending protocols are connecting customers to financing providers that can allow customers to invest on a leveraged basis. This is core arranged financing—an activity for which registered broker-dealers are subject to regulation and oversight. With respect to investment advice, many wallet providers not only show quotes from market makers and exchanges, but will also indicate which are the “best”.⁸ Wallet providers will also engage in advertising or other solicitations for purchasing and selling, telling customers that the wallet software functions as a “one-stop shop” for trading with access to deep liquidity and good prices.⁹

It is also important to recognize that a wallet provider that does not itself provide broker-dealer services for tokenized securities could have, within its interface, interactions with a registered broker-dealer that does provide broker-dealer services for tokenized securities (through the registered entity).

IV. Wallet Provider Models May Include Transaction-Based Compensation

The fact that a party earns transaction-based compensation for securities trades does not in and of itself establish conclusively that the party is a broker. However, the reason it has been a consistent touchstone of the Commission's framework for identifying brokers is that, if a party is earning transaction-based compensation, this is indicative that the service they are providing involves effecting transactions. For example, providers of hardware that allows parties to hold private and public keys charge a fee when they sell the hardware, not a fee based on the number of transactions executed with the keys stored in the hardware. Similarly, safe deposit box providers generally charge a rental fee for the box, not a fee for every time someone sells assets in the box.

V. Providers of “Non-Custodial” Services Must be Distinguished from Providers of Safekeeping and Custodial Services

It is critical to ensure that wallet providers offering “non-custodial” services are clearly distinguished from models in which they take custodial or safekeeping responsibilities. This could include models

⁷ See e.g., Borrow, Nexo, <https://nexo.com/borrow> (offering financing arrangements for crypto wallet customers).

⁸ See *supra* note 4.

⁹ See e.g., TrustWallet, <https://trustwallet.com/> (“Your one-stop, Web3 wallet. Buy, sell, and swap crypto, earn rewards, manage NFTs, and discover DApps, all in one place.”)

where a user will entrust its private key and public key to the wallet operator, much the same way as a customer would deliver security certificates to a broker or another entity subject to a non-SEC oversight regime such as a bank acting as custodian. Like a broker, the wallet operator will then hold the keys for the customer and provide the customer with a page that shows all of the customer's holdings so that the customer can trade them. Providers offering these services would effectively have moved beyond "non-custodial" services into safekeeping services, and arguably could have a range of other regulatory obligations, such as the need to register as a money transmitter under the Bank Secrecy Act. As SIFMA has outlined in our prior letters, wallet services which support true self-custody by investors must be distinguished from those where a third party effectively takes safekeeping or custodial responsibility without being subject to an applicable regulatory regime.

VI. Provide a Framework to Recognize Wallet Providers Who Are Not Serving as Brokers

While wallet providers offering the features and services outlined above would in many cases be functioning as brokers and should be regulated as such, it is equally important to provide a framework to identify when wallet providers are not operating in a broker capacity. Providing a clear pathway to offer wallet services for tokenized securities through notice and comment rulemaking would enable the development of these services without the opportunities for regulatory arbitrage that a safe harbor or exemption could offer. This clarity could also enable wallet providers to develop without being regulated as brokers, and then to offer corresponding services to support regulated broker-dealers' tokenized securities activities.

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SIFMA appreciates the Crypto Task Force's consideration of these comments as it works through these complex issues through notice-and-comment rulemaking, while ensuring that core investor and market integrity protections remain in place.

We thank the Commission for considering our comments. Please contact Charles De Simone (cdesimone@sifma.org) and Peter Ryan (pryan@sifma.org) if you wish to discuss the points raised in this letter further or have any questions.

Sincerely,



Kenneth E. Bentsen Jr.
President & CEO