

SEC Responds to Wyoming's Opinion on Custody of Digital Assets and Qualified Custodian Status

Blockchain and the Law on November 25, 2020

The U.S. Securities and Exchange Commission ("SEC") issued a [statement](#) in response to the Wyoming Division of Banking's [No-Action Letter](#) on Custody of Digital Assets and Qualified Custodian Status.

In October, the Wyoming Division of Banking granted [Two Ocean Trust](#), a Wyoming-chartered public trust company, "no action" relief setting forth the first opinion by a state or federal banking regulator to permit a financial institution to act as a "qualified custodian" under the Advisers Act of 1940 ("Advisers Act") for digital assets. The no-action letter is Wyoming's latest [move](#) to further establish the state's position as the digital asset epicenter of the U.S.

The SEC "Custody Rule" ([Rule 206\(4\)-2 under the Advisers Act](#)) requires that registered "advisers that have custody of client funds or securities [maintain] those assets with broker-dealers, banks, or other qualified custodians." In turn, only financial institutions that are deemed "qualified custodians" under federal law may provide custodial services to the public.

The Wyoming Division of Banking determined that Two Ocean Trust meets the definition of "bank" under the Advisers Act and may serve as a "qualified custodian" for both digital and traditional assets. The Wyoming Division of Banking also stated that it "will not recommend an investigation or enforcement action to the SEC on these issues." Following the no-action letter, Two Ocean Trust [announced](#) its offering of the "first comprehensive digital asset wealth management platform".

In response to the Wyoming Division of Banking’s opinion, the SEC’s Staff of the Division of Investment Management (the “Staff”), along with the SEC’s Strategic Hub for Innovation and Financial Technology (FinHub), issued a statement to reinforce, as stated by the Wyoming Division of Banking, that the no-action letter “should not be construed to represent the views of the SEC or any other regulatory agency.”

The Staff noted that “[d]etermining who qualifies as a qualified custodian is a complicated, and facts and circumstances based, analysis” and that the SEC “has limited the types of financial institutions that may act as qualified custodians to those institutions that possess key characteristics, including being subject to extensive regulation and oversight, that help to ensure that client assets are adequately safeguarded.”

The Staff solicited comments to inform and support “staff recommendations to amend the Custody Rule”—an opportunity that will play a critical role in the development of the cryptocurrency industry and how it will operate under state and federal law.

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- **Jordan M. Horowitz**
Associate