Crypto
Council for
Innovation

San Francisco | Washington D.C. | New York
Denver | London | Brussels | Hong Kong

May 10, 2023

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Hochul,

The Crypto Council for Innovation (CCI) writes to note our concern with recent actions taken by the Securities and Exchange Commission (SEC), which could impact both the Department of Financial Services' (DFS) role as a leading digital asset regulator and our nation's parallel regime of state and federal bank regulation.

CCI is a global alliance of industry leaders in the digital asset and Web3 sectors that serves to educate consumers and policymakers and advocate for policy that spurs responsible innovation. Our members include prominent companies headquartered in New York. We believe that trusted partnership between government and business stakeholders is key to crafting inclusive policy that benefits consumers and industry alike.

On February 15, 2023, the SEC proposed a new rule that includes provisions for overseeing state banks and trust companies that engage as digital asset custodians.[1] This proposed rule implies that the SEC is considering adopting a final rule that would require banks and trust companies to have a federal charter or a federal supervisor in order to remain "qualified custodians."[2] When discussing the proposed rule, SEC Chair Gary Gensler also cast doubt on the long term viability of state-chartered digital asset custodians when he indicated that existing digital asset custodians may not meet the qualifications to remain "qualified custodians."[3]

In 2015, DFS enacted the nation's first comprehensive regulatory regime for digital assets. While stakeholders differ about aspects of the program, having an established and well-supervised financial sector, along with a clear regulatory framework for digital assets, attracts talent, capital, and companies to New York. If the finalized rule does not provide a clear pathway for state-chartered trusts and banks to remain "qualified custodians," not only would these entities suffer significant operational challenges, DFS and other state regulators would also have a diminished role in overseeing digital asset custodians.

New York state-chartered trust companies have paved the way to provide safe and secure custody services for digital assets and are among the leading providers of digital asset custody in the country. As representatives of state-chartered trusts, we believe it is critical to preserve the important role that state governments play in overseeing these institutions, especially as they engage in digital asset custody.

---

[1] Safeguarding Advisory Client Assets, Investment Advisers Act Rel. No. 6240 (Feb. 15, 2023) ("Proposing Release"), available at https://www.sec.gov/rules/proposed/2023/ia-6240.pdf.
[2] *Id.*
[3] "Make no mistake: Based upon how crypto platforms generally operate, investment advisers cannot rely on them as qualified custodians." Chair Gary Gensler, Statement on Proposed Rules Regarding Investment Adviser Custody (Feb. 15, 2023), available at https://www.sec.gov/news/statement/gensler-statement-custody-021523.

We ask that you assess the proposed rule’s potential impact on New York’s regulatory autonomy and consider weighing in with the SEC. Please let us know if we can serve as a resource in this regard.

Sincerely,

Sheila Warren
Chief Executive Officer
Crypto Council for Innovation