

# Under Control: A Framework for Applying the Federal Securities Laws to Crypto Vaults

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Executive Summary

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## Executive Summary

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### Authors

**Crypto Council for Innovation (CCI)** is the premier global alliance advancing crypto innovation. Our mission is to unlock the transformative power of digital assets and blockchain technologies by advocating for thoughtful regulation, protecting consumers, and promoting responsible innovation. We operate across the U.S. on federal and state levels, the European Union, United Kingdom, and Asia Pacific region.

This paper was developed by CCI's Vault Coalition, composed of members from leading industry organizations and anchored by representatives from Bitwise, Galaxy, and Morpho, and legal advisers from Chapman and Cutler, LLP.

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# Under Control: A Framework for Applying the Federal Securities Laws to Crypto Vaults

## Summary

- Vaults are smart contracts that accept deposits, issue vault receipt tokens, and deploy pooled assets under coded rules; three predominant ways vaults are used are for overcollateralized on-chain lending markets, holding or portfolio exposure, and derivatives or structured-position construction.
- The CCI Vault Coalition has submitted a four-volume report to the United States Securities and Exchange Commission that applies 100 years of securities law and regulation to Vault architecture and design.
- The Introduction (Volume I) proposes a two-sided Control Framework that asks one question: *has code sufficiently reduced the need for reliance on human intervention?*
- The following volumes (Volumes II through IV) of the report apply the Control Framework to the Securities Act of 1933, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. CCI believes this rigorous analysis will support the SEC in its efforts to shape more fitting rulemaking.

## Overview

**The Crypto Council for Innovation (CCI) and its Vault Coalition seek to help regulators understand how vaults work and to define key concepts and terms.** Vaults are smart contracts that accept deposits, issue vault receipt tokens, and deploy pooled assets under coded rules. Three predominant ways vaults are used are for overcollateralized on-chain lending markets, holding or portfolio exposure, and derivatives or structured-position construction.

**The Vault Coalition has submitted a four-volume report (the “Report”) to the Securities and Exchange Commission (SEC), prepared in partnership with Chapman and Cutler LLP, that applies relevant federal securities law to Vault architecture and design.** An Introduction establishes a common Control Framework; while the Report’s three remaining volumes apply the Securities Act of 1933 (“Securities Act”), the Investment Company Act of 1940 (“1940 Act”), and the Investment Advisers Act of 1940 (“Advisers Act”) to vaults as they actually operate. The Report analyzes where discretion and control lie, what the smart contract code of a vault architecturally makes possible, and what depositors are aware of and can make actionable. The goal is to ground the SEC’s analysis and future rulemaking in the reality of how vaults function, rather than on labels or analogies to centralized platforms. The Report responds to then-SEC Commissioner Hester Peirce’s July 22, 2026 invitation for inquiries on vaults.<sup>1</sup> It also responds to SEC Chairman Paul Atkins’ May 8, 2026 remarks that the agency should consider ways to “provide clarity surrounding what are commonly referred to as ‘crypto vaults,’ particularly regarding Securities Act and Advisers Act touch-points.”<sup>2</sup>

All four volumes examine the conditions and risks that arise when assets are entrusted to another party. The Introduction frames this as the principal-agent problem: when an investor entrusts capital to a person with superior information and discretion over its deployment, the relationship creates opportunities for self-dealing, misallocation, and concealment. The Securities Act addresses it through disclosure, the 1940 Act through structural requirements for pooled capital managed by others, and the Advisers Act through fiduciary duties on those who exercise discretionary authority.

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<sup>1</sup> Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission, *Headstands and Summervaults: A Statement on Crypto Vaults and Lending Strategies* (July 22, 2026), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-crypto-vaults-lending-strategies-072226>.

<sup>2</sup> Paul S. Atkins, Chairman, U.S. Securities and Exchange Commission, Remarks at the Special Competitive Studies Project AI+ Expo (May 8, 2026), <https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-sdsp-ai-expo-050826>.

**The Report examines how vault design may change whether existing statutory frameworks should apply.** The code that defines vaults' smart-contract rules can make certain conduct architecturally impossible. Certain vault functions, including timelocks, allowlists, supply caps, renounced administrator keys, and the ability to withdraw without anyone's approval can reduce or remove the discretionary control and information gaps these statutes target, though the question in each case is whether a constraint actually eliminates managerial discretion or merely channels it. Conversely, where substantial human discretion remains, the case for application strengthens.

## Key Report Concepts

**Vault products represent one of the most significant innovations in financial infrastructure to emerge from blockchain technology.** Vaults are more than another decentralized finance product; they are an architecture for broadening access to financial services that have historically been available only through institutional intermediaries. At their most fundamental level, vaults are smart contract systems that enable holders of digital assets to deploy those assets productively through programmable, transparent, and in many cases fully auditable on-chain mechanisms. As former SEC Commissioner Peirce observed, these new approaches "hold great promise" because, "[d]epending on their design, they can enable people to use the assets they own to generate income efficiently and cheaply."

Similar activity routed through traditional finance has long been characterized by opacity, high fees, settlement delays, and restricted access: a bank depositor earns only part of the rate her capital generates, fund investors pay layers of management, custody, brokerage, and transfer agent fees, and small businesses face underwriting designed for institutional scale. Vaults write the terms of capital deployment into publicly verifiable smart contracts, replacing intermediary discretion with programmatic certainty where the code is designed to do so. That can make credit and collateral markets more efficient, with faster settlement, automated enforcement, and less manual reconciliation. It can also widen access: a retail saver in North Platte, Nebraska, and a treasury manager in New York can use the same lending markets under the same risk parameters and code-enforced rules, opportunities that once depended on institutional relationships and balance-sheet access. Whether that promise is realized depends in large part on the extent to which the federal securities laws apply to vault structures, which is the question this Report takes up.

**The Introduction proposes a two-sided Control Framework, used across all three statutes, that asks one question: has code sufficiently reduced the need for reliance on human intervention?**<sup>3</sup> The agent side of the framework examines what control the curator or other non-depositor role retains, across four dimensions: Mandate, Execution, Governance, and Disposition (“MEGD”). The depositor side examines six architectural conditions of the vault’s design: comprehensibility, verifiability, observability, predictability, notice, and actionability. A role is considered protective (administrative or ministerial) only if it acts on preset, objective triggers, such as pausing the vault after a documented security incident or oracle failure, and cannot direct capital or affect returns.

Ultimately, exposure to the federal securities laws is strongest where a person retains material discretion after deposit and can extract value or alter outcomes without depositor consent, and weakest where no person can do so and the code is immutable and transparent.

**CCI’s legal analysis turns on how a particular vault is designed, and the implications of its architecture on potential activities.** This fact-based approach is applicable to a broad range of vault types; CCI’s taxonomy sorts vaults by economic function into three archetypes: (i) lending, (ii) holding or portfolio exposure, and (iii) derivatives or structured positions (see *Table 1 below*). To demonstrate why this fact-specific approach is necessary, the analysis across the four volumes of the Report works through the use case of the overcollateralized lending vault, “the most commercially significant vault use case today.” In a lending vault, depositors supply assets that a smart contract lends to borrowers who post more collateral than they borrow (see *Diagram 2*). Whether a lending vault’s loans are securities shapes the analysis across all three statutes. The same framework applies to the other two vault archetypes and to features that cut across all three, including curation, leverage, tokenized securities, and activity beyond the “transparency boundary” in offchain markets such as private credit.

**Table 1: Common Vault Archetypes**

| Archetype | Economic Function                                                                                                            | Return Source                                                                                                                                         |
|-----------|------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| Lending   | Accepts deposits and makes those deposits available to borrowers through one or more lending markets or credit arrangements. | Borrower-paid interest, whether utilization-based, blended across funded markets, fixed in advance, or produced through carry and looping structures. |

<sup>3</sup> See *Diagram 1*, below.

| Archetype                                | Economic Function                                                                                                                                    | Return Source                                                                                                        |
|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>Holding / Portfolio</b>               | Acquires, holds, or maintains exposure to digital assets, tokenized instruments, liquidity positions, staking claims, or other asset baskets.        | Asset appreciation, trading fees, staking rewards, or other cash flows associated with the held assets or positions. |
| <b>Derivatives; Structured Positions</b> | Uses deposited assets as collateral or inputs for options-writing, basis trades, delta-neutral strategies, tranching, or other structured exposures. | Premium income, funding-rate carry, trading profit and loss, or tranche-specific cash flows.                         |

CCI does not suggest that all vaults fall outside the securities laws. Instead, every outcome should depend on the facts of a vault's design. For vault structures that do fall outside the securities laws, that does not mean that they operate outside the law altogether: fraud remains fraud under federal wire-fraud and state consumer-protection law, and where a person retains control over a vault, CCI supports identifying a designated compliance entity responsible for regulatory engagement and accountability.

## Report Findings by Relevant Statute

### Securities Act

The Securities Act asks whether an instrument is a security. Often called the “truth in securities” law, the Securities Act of 1933 regulates the primary market and the initial offering of securities to the public while seeking to address a specific economic insight: when an investor entrusts capital to a person with superior information and discretion over its deployment, the resulting agency relationship creates opportunities for self-dealing, misallocation, and concealment.<sup>4</sup> It has two basic objectives: to “require that investors receive financial and other significant information concerning securities being offered for public sale,” and to “prohibit deceit, misrepresentations, and other fraud in the sale of securities.”<sup>5</sup> It does so primarily through registration, though exemptions exist for offerings such as private

<sup>4</sup> Securities Act of 1933, chapter 38, 48 Stat. 74 (codified as amended at 15 U.S.C. §§ 77a–77aa), <https://www.govinfo.gov/content/pkg/COMPS-1884/pdf/COMPS-1884.pdf>.

<sup>5</sup> U.S. Securities and Exchange Commission, Statutes and Regulations, <https://www.sec.gov/rules-regulations/statutes-regulations> (last updated October 1, 2013).

offerings and offerings of limited size. Because the Act regulates offers and sales of instruments rather than an activity, each of the relevant tests identifies a relationship rather than a regulated function: under *Howey*, reliance on another person's managerial control over the return-generating activity; under *Reves*, whether a note is an investment or a commercial instrument.

Whether the Act applies turns on the question of whether an instrument is a “security,” a term that includes investment contracts and notes. The Report applies the Securities Act’s two doctrinal tests to lending vaults (see *Diagram 2*):

- *Howey*: The depositor’s vault receipt token is analyzed under *Howey*, which asks whether there is (1) an investment of money (2) in a common enterprise, (3) with a reasonable expectation of profits derived from the essential managerial efforts of others.

For the baseline vault, an isolated, overcollateralized lending market with immutable parameters, the Report concedes the first question (depositors invest money and the vault may meet the common-enterprise element), and focuses on the second and third questions: if no one exercises discretion after deposit, the return does not come from anyone's managerial efforts. In contrast, a curator who can change rates, collateral, or loan-to-value limits without a timelock or depositor exit moves the vault toward a security.

- *Reves*: *Reves* asks whether a debt-like instrument is an investment or a commercial instrument. *Reves* starts from a presumption that every note is a security, rebutted if the note closely resembles a recognized category of non-security debt, such as a commercial loan. It matters for vaults because if a vault’s loans are not securities, the 1940 Act’s 40 percent test and the Advisers Act’s “advice about securities” requirement may not be met.

The Report argues that overcollateralization, automated liquidation, on-chain transparency, and permissionless exit place these loans in the commercial-loan family.

The Report’s analysis of the receipt token’s efforts-of-others prong runs through a “Control Framework” (see *Diagram 1*). Its MEGD (Mandate, Execution, Governance, Disposition) framework dimensions supply “the factual vocabulary” for the Turner “undeniably significant” standard, and the six depositor conditions test whether the depositor depends on a role-holder’s efforts “in the way the securities laws target.”

The Report also weighs SEC enforcement actions and, for vault positions that are securities, closes by inventorying where registration and reporting requirements do not fit and may call for new approaches.

### Key Findings:

- **For the programmatic permissionless vault, the decisive *Howey* question is whether anyone’s managerial efforts generate the return, or whether anyone exercises discretion after deposit. In this case, a vault may fail the *Howey* test at multiple independent points.** The baseline vault is an isolated, overcollateralized lending vault whose parameters are immutable after deployment. The Report focuses on the “efforts-of-others” element. It acknowledges that such a vault “may satisfy horizontal commonality as courts have formally stated it,” but argues that pooling there produces “market interdependence” rather than an enterprise. Similarly, it argues that a market-clearing rate set by code may not be “profits” derived from undeniably significant efforts of others.<sup>6</sup>
- **Curated vaults occupy a novel, case-dependent middle ground.** Because curators hold bounded and observable retained authority, the outcome depends on each vault’s facts. The question is whether the curator’s choices generate the depositor’s return or merely calibrate a system whose autonomous mechanics do. CCI argues that roles that act only on preset, objective triggers do not supply managerial efforts. Discretionary changes, including risk-reducing ones, should be disclosed, and whether they are essential managerial efforts turns on whether they are bounded in code, timelocked, and subject to depositor exit. Curation of real-world assets and private credit, where the curator relies on information depositors may not be able to access directly, is a harder case, though not dispositive.<sup>7</sup>

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<sup>6</sup> Crypto Council for Innovation, Vault Coalition, *Under Control: A Framework for Applying Federal Securities Law to Crypto Vaults*, Securities Act Analysis, Executive Summary (October 2026) [hereinafter Report; its parts are cited below as Introduction, Securities Act Analysis, 1940 Act Analysis, and Advisers Act Analysis] (identifying efforts of others as the decisive *Howey* element for the baseline vault); Securities Act Analysis, Section B.2.c (discussing horizontal commonality and the distinction between market and enterprise interdependence); Securities Act Analysis, Section B.3.a (arguing, in the alternative, that a market-clearing rate set by code may not be “profits”); see *Securities and Exchange Commission v. W.J. Howey Company*, 328 U.S. 293 (1946).

<sup>7</sup> Securities Act Analysis, Executive Summary (discretionary changes “should be disclosed”); Securities Act Analysis, Section B.3.b (discussing the MEGD dimensions, the curator’s “causal relationship” to profits, and curation of offchain credit as “a harder case”); Securities Act Analysis, Section B.4.f (describing curated vaults with “bounded and observable retained authority” as the commercially significant middle ground).

- **A vault's smart contract code defines the character of the arrangement.** Code-enforced constraints (timelocks, supply caps, allowlists, permissionless exit) can lessen the applicability of *Howey* reliance itself (and not merely disclosure obligations), because they make certain conduct architecturally impossible rather than contractually prohibited. But though transparency and exit reduce reliance, they do not by themselves defeat the efforts-of-others element. When a vault's marketing diverges from its smart contract architecture, the code is the better evidence of the economic reality. Where what the vault is represented as offering does not match that reality, whether the marketing was misleading becomes a question for anti-fraud law. Under *Reves*, however, the Report acknowledges that marketing can shift the reasonable-expectations factor even where the code itself is bounded.<sup>8</sup>
- **Enforcement actions rest on facts that some vault architectures lack.** The Report examines relevant SEC actions involving Prosper, BlockFi, Genesis/Gemini Earn, DeFi Money Market, and BarnBridge, which each involved some combination of centralized discretion, custody, undisclosed deployment of funds, marketing emphasizing passive returns, and information asymmetry. The Report notes that BarnBridge, perhaps the most cited adverse authority, involved features absent from autonomous lending vaults. It agrees that where problems are present, the securities laws work as designed, and asks whether the same response is warranted where vault architecture has addressed them.<sup>9</sup>
- **Lending vaults need to be evaluated twice, first for the loan positions that the vault originates from, and second for the vault receipt tokens themselves.** CCI argues that vault loan positions bear a strong "family-resemblance" to non-security commercial credit under *Reves*. *Reves* begins with a rebuttable presumption that every note is a security, rebuttable where the note bears a strong resemblance to a recognized category of non-security debt. The Report treats the motivations factor as mixed, and acknowledges that the plan-of-distribution factor

<sup>8</sup> Securities Act Analysis, Executive Summary (transparency and exit "reduce reliance but do not by themselves defeat the efforts-of-others element"); Securities Act Analysis, Section B.3.d (explaining why code-enforced constraints bear on *Howey* reliance itself); Securities Act Analysis, Section B.3.e (discussing the reasonable-expectations standard; "the code is the better evidence of the economic reality"); Securities Act Analysis, Section C.2.c (marketing can shift reasonable expectations "even where the code itself is bounded").

<sup>9</sup> Securities Act Analysis, Sections B.4.a-e (discussing the Prosper, BlockFi, Genesis/Gemini Earn, DeFi Money Market, and BarnBridge DAO enforcement actions); Securities Act Analysis, Section B.4.f (where the agency problem is present, "the securities laws work as designed").

is also mixed, depending on the type of vault. CCI concludes by asking the Commission to confirm through interpretive guidance that these positions fall within the existing commercial-loan family. It uses “autonomous secured lending” as a description of them.<sup>10</sup>

- **Where vault instruments are securities, the securities laws should apply, but their procedural mechanisms may not fit.** Registration statements, periodic reports, and similar requirements assume an identifiable issuer and intermediaries, structures that autonomous code-driven systems may lack. For a significant subset of vaults, identifying the issuer may be genuinely intractable under current law. However, the Report finds that code-driven vault infrastructure can deliver many of the substantive protections the securities laws seek to achieve even where it cannot satisfy their procedural requirements. The Report inventories nine such gaps, with possible paths forward under the Commission’s existing exemptive authority, proposed federal legislation, and analogous regulatory adaptations. CCI asks the Commission to calibrate its response to the authority actually retained and to credit code-enforced protections where they deliver the securities laws’ substantive objectives.<sup>11</sup>

<sup>10</sup> Securities Act Analysis, Section C.2.a (motivations factor “mixed,” discussing *Kirschner v. JP Morgan Chase Bank, N.A.*, 79 F.4th 290 (Second Circuit 2023)); Securities Act Analysis, Section C.2.b (plan of distribution “likely weighs toward security status” for open retail vaults; gating); Securities Act Analysis, Section C.2.d (risk-reducing features as “the strongest in the analysis”); Securities Act Analysis, Section C.4 (requesting confirmation that vault lending positions fall within the existing commercial-loan family and using “autonomous secured lending” only as a description); see *Reves v. Ernst & Young*, 494 U.S. 56, 64–67 (1990); see also 1940 Act Analysis, Part III.B (discussing the effect on the 40 percent test).

<sup>11</sup> Securities Act Analysis, Section D (procedural requirements assume structures that “autonomous code-driven systems may lack”); Securities Act Analysis, Section D.1 (the issuer question “may be genuinely intractable under current law”); Securities Act Analysis, Section D.2 (discussing how code-driven infrastructure can deliver substantive protections; “the securities laws should apply”); Securities Act Analysis, Sections D.3.a–i (inventorying compliance gaps in nine areas); Securities Act Analysis, Executive Summary (asking the Commission to calibrate its response to the authority actually retained).

## Diagram 1: Two-Sided Control Framework

Under the Securities Act, vaults should be assessed on the level of control Vault curators and other role-holders can hold, and how dependent depositors are on the curator's judgment. Under the *Howey* test, whether profits arise from the "undeniably significant" "efforts of others" is a main inquiry. For vaults, four dimensions (Mandate, Execution, Governance, and Disposition, or "MEGD") describe the types of efforts a curator or other non-depositor can do. On the depositor side, six conditions test whether the depositor has sufficient control such that it is the depositor's "efforts" that lead to profits.

Where both sides align (role authority is bounded and depositor agency is meaningful), the predicate for securities-law coverage weakens.

### ROLE-HOLDER SIDE : MEGD FRAMEWORK

What are the actions a Vault curator or other role-holder can take that a depositor may rely on for "profits"?

#### LEAST MANAGERIAL

#### MOST MANAGERIAL

##### Mandate

What assets and strategies are permitted?

Fixed at deployment

Broad discretion over assets

##### Execution

Who sets the timing and size of allocations?

Deterministic rule

Full discretionary allocation

##### Governance

Who can change the rules or the actors?

Immutable or renounced

Unilateral upgradeability

##### Disposition

Can anyone move assets outside the mandate?

Approved paths only

Unconstrained transfers

### DEPOSITOR SIDE: CAUSAL CHAIN

What agency does a depositor retain, such that his or her own efforts are responsible for "profits"?

#### INFORMATIONAL CAPACITY

What can the depositor know?

**Comprehensibility:** Can the depositor understand the vault's strategy, risks, and mechanics with reasonable sophistication?

**Observability:** Can the depositor see the vault's current state, or are they dependent on periodic reports from the operator?

**Verifiability:** Can the depositor independently confirm that the vault behaves as described, or must they trust the promoter's representations?

#### UNCERTAINTY REDUCTION

What can the depositor anticipate?

**Predictability:** Can the depositor know what the vault will do within a bounded time horizon, or is future behavior subject to unannounced discretionary changes?

#### PROTECTIVE CAPACITY

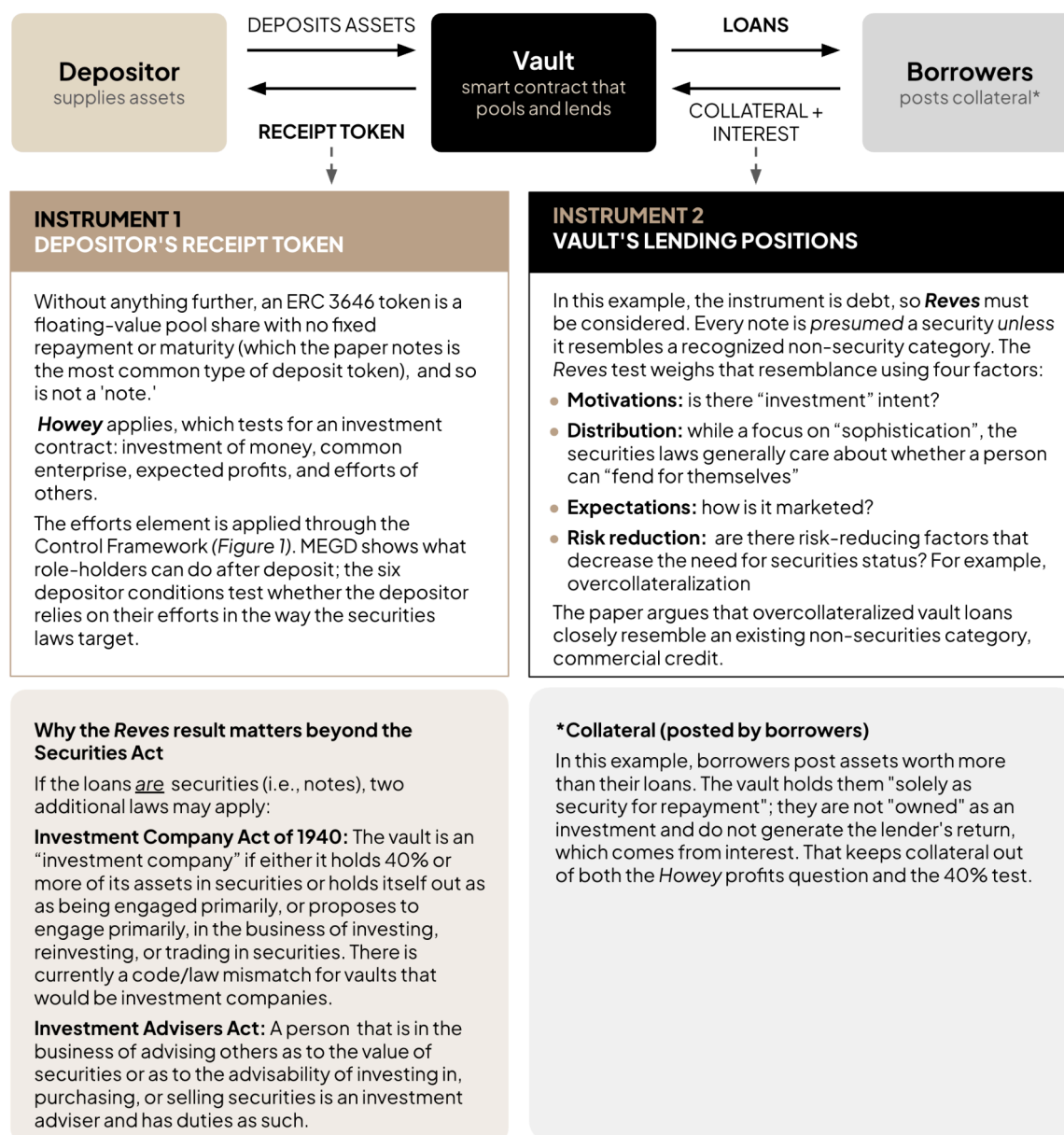
To what extent can the depositor act on what they know?

**Notice:** Does the depositor learn about material changes before they affect their position, transforming information from retrospective to prospective?

**Actionability:** Can the depositor act on what they learn? Specifically, can they withdraw before a pending change becomes effective?

## Diagram 2: Two Instruments, Two Tests

A lending vault creates two separate instruments. The diagram shows an overcollateralized on-chain lending vault, the structure the Report's *Reves* analysis addresses most closely. The securities analysis examines both the lending positions taken by the vault and the vault receipt tokens. Either can be a security, with follow-on implications flowing from that determination.



## Investment Company Act of 1940

The Investment Company Act of 1940 (the “1940 Act”) asks whether an entity is an investment company and, if so, how it must be organized and operated. The Report grounds the statute’s scope in what it calls the entrustment principle: the 1940 Act addresses the principal-agent problem that arises when public savings are entrusted to management for investment.<sup>12</sup> The 1940 Act’s core protections (independent directors, qualified custody, prohibitions on affiliated transactions, and valuation, fee, and shareholder-approval requirements) are designed to protect investors from “the abuse or mismanagement of their funds by the individuals and entities to whom they have entrusted their savings.”<sup>13</sup>

The statute applies only to an “issuer,” which is interpreted broadly. That issuer is an “investment company” if it is, or holds itself out as being, primarily engaged in the business of investing in securities; issues face-amount certificates of the installment type; or is engaged in that business and holds investment securities worth more than 40 percent of its total assets.<sup>14</sup> An investment company must register with the SEC unless it qualifies for an exclusion, such as those for private funds, commercial or real estate finance companies, and structured financings; where none applies, the SEC *may* grant exemptive relief.<sup>15</sup>

The Report applies these provisions to vault structures, focusing on lending vaults, one of three archetypes in CCI’s taxonomy (*see Table 1 above for archetypes*).<sup>16</sup> It first asks whether a vault is an “issuer” at all, then applies the three classification tests. For vaults that would be

<sup>12</sup> 1940 Act Analysis, Introduction (discussing the entrustment principle and the scope of the Act, and quoting Statement of Commissioner Robert E. Healy Before the Subcommittee of the Senate Committee on Banking and Currency on S. 3580 (April 2, 1940)).

<sup>13</sup> 1940 Act Analysis, Introduction (describing the Act’s substantive protections, including Sections 10, 17(a), 17(d), and 17(f)); 1940 Act Analysis, Part I (discussing protection against “the abuse or mismanagement of their funds by the individuals and entities to whom they have entrusted their savings”).

<sup>14</sup> 1940 Act Analysis, Parts II–IV. The three tests are Section 3(a)(1)(A) (primarily engaged, or holding itself out as primarily engaged, in the business of investing, reinvesting, or trading in securities); Section 3(a)(1)(B) (issuing face-amount certificates of the installment type, which promise a stated sum at a future date in exchange for periodic installment payments); and Section 3(a)(1)(C) (engaged in the business of investing in securities and holding investment securities worth more than 40 percent of total assets, excluding government securities and cash items). 15 U.S.C. § 80a-3(a)(1).

<sup>15</sup> 1940 Act Analysis, Parts V–X. Under Section 4, an investment company is organized as a face-amount certificate company, a unit investment trust, or a management company. 15 U.S.C. § 80a-4. Exclusions include Sections 3(c)(1) and 3(c)(7) (private funds), Section 3(c)(2) (underwriters, brokers, and market intermediaries), Section 3(c)(5) (commercial finance companies), and Rule 3a-7 (structured financings); exemptive relief is available under Section 6(c). 15 U.S.C. §§ 80a-3(c), 80a-6(c); 17 C.F.R. § 270.3a-7.

<sup>16</sup> 1940 Act Analysis, Part III.A (noting that the lending/holding/derivatives taxonomy is CCI’s own and cuts across the discretion spectrum Commissioner Peirce described); Introduction, Section III.A (setting out the three primary vault archetypes).

investment companies, it evaluates registration as a management company or unit investment trust (UIT); the exclusions for private funds, commercial finance companies, underwriters, brokers, and market intermediaries, and structured financings; and exemptive relief.<sup>17</sup> Throughout, it distinguishes fully immutable or “fully programmed” vaults, whose strategy and eligible destinations are fixed at deployment, from curated vaults, in which compensated curators select strategies and adjust exposures.<sup>18</sup>

The Report argues that “the regulatory analysis should calibrate to the degree of residual human control in the arrangement, not to the technological form of the instrument or the platform on which it operates.”<sup>19</sup> To the extent vault architecture replaces or constrains discretionary authority through transparent, immutable, code-enforced mechanisms, it “reduces or eliminates the agency problem the statute was designed to police.”<sup>20</sup> The Report notes that “[t]he point is not that regulation is unnecessary or that investor protection can be ignored,” but that the 1940 Act’s tools address a specific problem and “cannot operate where that problem does not exist.”<sup>21</sup>

- **Without a person in control of the pool, there may be no “issuer” for the 1940 Act to regulate.** The Report accepts that the definition of “issuer” is broad, but argues that a person’s “meaningful ongoing power” over the pool is necessary to find an issuer.<sup>22</sup> In every instance where the SEC or a court has found an issuer in an arrangement lacking conventional legal form, identifiable people controlled the pool.<sup>23</sup> The application for vaults is a spectrum: for fully immutable vaults, the problem the 1940 Act targets “does not exist”; where only ministerial or purely protective roles remain (such as a guardian that can only pause the vault or veto changes upon preset, objective triggers), it is attenuated; and for actively curated

<sup>17</sup> 1940 Act Analysis, Introduction (describing the structure of Parts I–X).

<sup>18</sup> 1940 Act Analysis, Part I (distinguishing fully immutable vaults, vaults with only ministerial or protective roles, and actively curated vaults); 1940 Act Analysis, Part V.D (discussing the “specified securities” requirement for fully programmed vaults).

<sup>19</sup> 1940 Act Analysis, Conclusion.

<sup>20</sup> 1940 Act Analysis, Conclusion.

<sup>21</sup> 1940 Act Analysis, Introduction.

<sup>22</sup> 1940 Act Analysis, Part I (discussing the statutory definitions of “issuer,” “person,” and “company” and arguing that “meaningful ongoing power” over the pool is necessary to find an issuer); see 15 U.S.C. § 80a-2(a)(8), (22), (28).

<sup>23</sup> 1940 Act Analysis, Part I (discussing *Prudential Insurance Company of America v. Securities and Exchange Commission*, 326 F.2d 383 (Third Circuit 1964); Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Exchange Act Release No. 81207 (July 25, 2017); *Commodity Futures Trading Commission v. Ooki DAO*, No. 3:22-cv-05416-WHO (Northern District of California); *Sarcuni v. bZx DAO*, 664 F. Supp. 3d 1100 (Southern District of California 2023); *Samuels v. Lido DAO*, No. 3:23-cv-06492-VC (Northern District of California November 18, 2024); and *In re BarnBridge DAO* (December 22, 2023)).

vaults, the no-issuer argument “is likely not available.”<sup>24</sup> Any power exercisable on changing market conditions, including a power to lower caps or narrow allowlists, is “curatorial rather than protective.” And where a sponsor seeds the vault, distributes receipts, or retains upgrade or fee authority, that person supplies the control an issuer finding requires. “The no-issuer position applies only where no such person remains.”

- **Lending vaults do not hold themselves out as investment companies.** Each factor the SEC uses to decide whether a company is primarily engaged in investing in securities points away from a lending vault, whose business is credit and whose income comes from borrowers’ interest and fees.<sup>25</sup> The question is whether a reasonable person would conclude from public statements that the business is investing in securities. Promising attractive returns is not enough, because “lending is not investing in securities.”<sup>26</sup> Where a vault’s code is public and verifiable, it is the most authoritative statement of what the vault does, though a vault that describes itself as offering exposure to a securities portfolio could still be captured.<sup>27</sup>
- **Lending vaults’ loan positions should not count toward the 40 percent test.** Read literally, the 1940 Act’s definition of “security” could sweep in ordinary commercial loans; however, the SEC has consistently read it in light of the test’s purpose (identifying companies whose primary business is securities investment), declining to count instruments where doing so “would produce results inconsistent with the purposes of the Act.”<sup>28</sup> The Report argues that a lending vault’s overcollateralized loans resemble a commercial bank’s loan book, and that collateral held to secure a loan is not owned as an investment.<sup>29</sup> If the loans are not investment securities, the vault does not meet the 40 percent threshold. If the lending positions are not

<sup>24</sup> 1940 Act Analysis, Part I (applying a graduated analysis to fully immutable, protective-role-only, and actively curated vaults).

<sup>25</sup> 1940 Act Analysis, Part II.A (applying the five-factor test of *In re Tonopah Mining Company of Nevada*, 26 S.E.C. 426 (1947)).

<sup>26</sup> 1940 Act Analysis, Part II.B (discussing *Securities and Exchange Commission v. Fifth Avenue Coach Lines, Inc.*, 289 F. Supp. 3 (Southern District of New York 1968), affirmed, 435 F.2d 510 (Second Circuit 1970)).

<sup>27</sup> 1940 Act Analysis, Part II.B and note 57. The 1940 Act Analysis distinguishes the holding-out inquiry from the *Howey* analysis in the Securities Act Analysis: “holding out” tracks the issuer’s own description of its business rather than investor expectations.

<sup>28</sup> 1940 Act Analysis, Part III.B (discussing *Certain Prima Facie Investment Companies*, Investment Company Act Release No. 10937, 44 Fed. Reg. 67,148, 67,150 (November 13, 1979), and *Bank of America Canada*, Securities and Exchange Commission No-Action Letter (July 25, 1983)).

<sup>29</sup> 1940 Act Analysis, Part III.B (comparing a lending vault’s loan positions to a commercial bank’s loan book and discussing collateral held under a security interest, Uniform Commercial Code Sections 1-201(b)(35), 9-610).

securities, the live federal questions move to the Commodity Exchange Act, including commodity pool operator and commodity trading advisor status and the CFTC's October 2026 advance notice of proposed rulemaking on Regulation CTX. The Report asks the SEC to coordinate any vault guidance with the CFTC.<sup>30</sup>

- **Existing SEC enforcement does not establish that lending vaults are investment companies.** The first SEC action applying the 1940 Act to a DeFi protocol involved pools that bought securities issued by other protocols and founders who controlled governance votes and a multisignature address. In contrast, an autonomous lending vault originates collateralized loans, with no one selecting investments. Another action involved a firm that combined lending with investing in equities, futures, and other crypto assets, and left open whether a company that only lends would meet the 40 percent test. Both were settled orders that, the Report notes, are not binding precedent.<sup>31</sup>
- **The face-amount certificate test only applies to vaults that issue fixed-return installment instruments.** This classification applies automatically when a vault issues a debt receipt that promises a set sum more than 24 months out in exchange for periodic installments.<sup>32</sup> It does not apply to vaults that take single deposits, pay variable returns, or issue notes maturing within 24 months, but for vaults that take periodic deposits and guarantee fixed returns over longer terms, “the risk is real and should inform design-stage decisions.”<sup>33</sup>
- **For vaults that must register, the management company framework is a structural mismatch. The unit investment trust (UIT) offers a proportionate path for fully programmed vaults.** Management company rules assume a board, a custodian, and

<sup>30</sup> 1940 Act Analysis, Part III.B and note 71 (the zero-numerator argument assumes the vault is an issuer and does not extend to vaults that invest in other vaults or acquire diversified third-party debt); 1940 Act Analysis, Part III.A (discussing Commodity Exchange Act questions and coordination with the CFTC, citing Regulation Crypto Asset Transactions and Regulation Crypto Asset Markets, 91 Fed. Reg. 64,811 (proposed October 13, 2026)). Whether the loan positions are securities depends on the Reves analysis in the Securities Act Analysis, Section C.

<sup>31</sup> 1940 Act Analysis, Part III.C (distinguishing *In re BarnBridge DAO* (December 22, 2023), and *In re BlockFi Lending LLC*, Securities Act Release No. 11029 (February 14, 2022), and noting that both resolved by consent and are not binding precedent).

<sup>32</sup> 1940 Act Analysis, Part IV (discussing Section 3(a)(1)(B), 15 U.S.C. § 80a-3(a)(1)(B), which classifies any issuer of face-amount certificates of the installment type as an investment company, and Section 2(a)(15), 15 U.S.C. § 80a-2(a)(15), which defines those certificates). Unlike Sections 3(a)(1)(A) and (C), Section 3(a)(1)(B) has no “primarily engaged” qualifier or 40 percent threshold.

<sup>33</sup> 1940 Act Analysis, Part IV (noting that classification would make the Section 3(c)(5) exclusion unavailable and trigger Section 28's reserve, custody, and investment requirements).

people to sign filings, the kind of intermediated organization vault architecture is designed to eliminate.<sup>34</sup> A unit investment trust has no board or adviser and holds a fixed portfolio, “the same bargain a fully programmed vault strikes with code.” It requires genuine immutability: any retained human ability to redirect assets or change strategy defeats it, and, absent exemptive relief, the code would need to be paired with a traditional trust agreement.<sup>35</sup> A vault whose code permits only the removal of a market upon objective, pre-specified triggers, much as a UIT sponsor may eliminate a security after a default or delisting, “should not by itself defeat the ‘specified securities’ requirement.”

Architecturally, the most challenging UIT requirement is that a bank hold the trust’s assets, because a vault’s assets sit in its smart contract and cannot be moved to a bank without dismantling the design. Based on this architectural reality, the vault would need SEC exemptive relief, which requires showing that its design delivers the protections the bank requirement exists to provide: assets beyond any participant’s reach, complete records, redemption at net asset value, and limits on fees. Absent exemptive relief, a UIT also needs a legal entity to act as sponsor, sign filings, and register as a broker-dealer.<sup>36</sup>

- **Private fund exclusions are available to permissioned, institutional vaults, but not to permissionless ones.** These exclusions depend on limiting the number or sophistication of investors and avoiding a public offering.<sup>37</sup> Permissionless vaults cannot identify their beneficial owners, accept deposits from any address (“functionally a standing invitation to the public”), and cannot keep tokens from reaching ineligible holders, but vaults with KYC-gated deposits, on-chain allowlists, and transfer restrictions can qualify.<sup>38</sup> The Report asks the SEC to address five open questions: (1) whether each wallet address is a separate beneficial owner; (2) whether the rule for counting bearer certificates applies to blockchain tokens; (3) whether a permissionless deposit function is a “public offering”; (4) whether

<sup>34</sup> 1940 Act Analysis, Part V.A.

<sup>35</sup> 1940 Act Analysis, Parts V.B–D (discussing the unit investment trust under Section 4(2), 15 U.S.C. § 80a-4(2), the “similar instrument” question, and the “specified securities” requirement, and noting Commissioner Peirce’s observation that some vaults “may function similarly to unit investment trusts”).

<sup>36</sup> 1940 Act Analysis, Part V.E (discussing Section 26(a)’s bank-trustee requirement, 15 U.S.C. § 80a-26(a), and exemptive relief under Section 6(c)); 1940 Act Analysis, Part V.F (discussing sponsorship and distribution).

<sup>37</sup> 1940 Act Analysis, Part VI.A (discussing Sections 3(c)(1) and 3(c)(7), 15 U.S.C. § 80a-3(c)(1), (7)).

<sup>38</sup> 1940 Act Analysis, Parts VI.B–C (discussing the structural problems for permissionless vaults and the permissioned pathway, citing Arca U.S. Treasury Fund, Registration Statement (Form N-2) (2020)).

restricted-token standards are enough to meet the 1940 Act's transfer-restriction requirements; and (5) what happens when tokens are inadvertently transferred to holders who are not qualified purchasers.<sup>39</sup>

- **The commercial finance exclusion is the most durable option for vaults willing to accept significant design constraints.** Section 3(c)(5) excludes commercial finance businesses: companies that buy receivables, make loans to finance purchases of specific goods or services, or acquire mortgages. Lending vaults that do the same, such as trade-finance or equipment-financing vaults, may qualify. The exclusion is unavailable to issuers of redeemable securities, so a vault using a standard receipt token redeemable on demand cannot rely on it, though one issuing fixed-term notes or tokens with no redemption function could.<sup>40</sup> The vault must also hold roughly 80 percent of its assets in eligible receivables, loans that finance purchases of specified goods or services, or real estate interests, which rules out diversified multi-strategy vaults.<sup>41</sup> Because only Congress can change the exclusion, the Report calls it “the most durable foundation available under the 1940 Act.”<sup>42</sup>
- **The structured finance exclusion can accommodate static-pool credit vaults but not curated vaults, and its credit-rating condition is the main obstacle.** The exclusion requires, among other conditions, non-redeemable fixed-income securities, no active portfolio management, and an independent trustee.<sup>43</sup> Static-pool credit vaults backed by real-world assets can meet most conditions with deliberate structuring, single-market immutable lending vaults would need restructuring that “would fundamentally change the product,” and curated multi-strategy vaults cannot qualify at all.<sup>44</sup> Because credit ratings are “practically unavailable for novel on-chain asset classes,” unrated securities can be sold only to institutional investors; CCI urges the SEC to replace the rating condition with other creditworthiness standards.<sup>45</sup>

<sup>39</sup> 1940 Act Analysis, Part VI.D.

<sup>40</sup> 1940 Act Analysis, Part VII (discussing Section 3(c)(5), 15 U.S.C. § 80a-3(c)(5), and noting that the standard ERC-4626 receipt token is a redeemable security under Section 2(a)(32)).

<sup>41</sup> 1940 Act Analysis, Part VII (noting that recent staff no-action letters appear to require approximately 80 percent of assets in eligible receivables and loans, and that the real estate paragraph applies a 55/80 percent test).

<sup>42</sup> 1940 Act Analysis, Part VII.

<sup>43</sup> 1940 Act Analysis, Part VIII (discussing Rule 3a-7, 17 C.F.R. § 270.3a-7).

<sup>44</sup> 1940 Act Analysis, Part VIII.

<sup>45</sup> 1940 Act Analysis, Part VIII; 1940 Act Analysis, Conclusion (request 5); see Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203, Section 939A, 124 Stat. 1376, 1887 (2010).

- **Vaults that let depositors withdraw at any time cannot use the commercial finance or structured finance exclusions.** Both exclusions are only applicable to vehicles whose investors cannot withdraw on demand. However, the Report's analysis treats the ability to withdraw at any time as the main protection vaults can provide depositors; accordingly, the Report calls these exclusions "a design choice for a different product rather than a compliance path" for the vaults it describes. The Report points those vaults to three other paths, in order: show that there is no "issuer" for the 1940 Act to regulate; register as a unit investment trust; or ask the SEC for a tailored exemption under Section 6(c).<sup>46</sup>
- **The broker and market-intermediary exclusion does not reduce exposure for vaults.** The 1940 Act's Section 3(c)(2) covers firms whose business is brokering or making markets, because they are already regulated as broker-dealers, but does not cover the vaults themselves. A vault issues its own receipts, does not trade on behalf of customers, and offers the same terms to everyone through its code rather than negotiating individual deals, which the market-maker part of the exclusion requires. As the Report concludes, the exclusion "excludes intermediaries, not the pools that intermediaries distribute or the code that replaces them." The exclusion may still apply to a broker-dealer or market maker that holds vault receipts as part of its trading business. CCI asks SEC staff to confirm that a market maker quoting prices on-chain on request can meet the statute's "financial contract" test.
- **Exemptive relief offers a path modeled on the SEC's approach to exchange-traded funds.** The SEC may exempt any person, security, or transaction from the 1940 Act where doing so is in the public interest and consistent with investor protection and the Act's purposes.<sup>47</sup> Exchange-traded funds operated under hundreds of individual exemptive orders for more than 25 years before the SEC adopted a general rule in 2019, an arc the Report calls "the most instructive precedent for vault-specific

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<sup>46</sup> Section 3(c)(5) (commercial finance) is unavailable to issuers of redeemable securities, and Rule 3a-7 (structured finance) is available only to issuers that do not issue them; a standard ERC-4626 vault receipt token is a redeemable security. 1940 Act Analysis, Parts VII–VIII. The first analysis, on the Securities Act, and the third, on the Advisers Act, treat permissionless exit as the central protection vault architecture offers depositors. The three paths are confirmation that no issuer exists (1940 Act Analysis, Part I), the unit investment trust framework with relief from Section 26(a)'s bank-trustee requirement (Part V), and exemptive relief under Section 6(c) (Part X). The 1940 Act Analysis adds that redeemability "is therefore a structural choice that determines which pathway a vault may use, not a protection that the 1940 Act demands of every pooled vehicle." 1940 Act Analysis, Part VIII.

<sup>47</sup> 1940 Act Analysis, Part X (discussing Section 6(c), 15 U.S.C. § 80a-6(c)).

relief.”<sup>48</sup> CCI proposes conditions designed to show that vaults can deliver the 1940 Act’s investor protections by other means, including real-time on-chain transparency, enforced overcollateralization, a code-guaranteed right to withdraw, independent code audits, and a legal entity accountable for compliance. The Report argues that the withdrawal and collateral protections are, in some respects, stronger than those mutual fund shareholders receive.

CCI asks the SEC for a roadmap: staff guidance on what a vault application must show, as the SEC once provided to early ETF sponsors, and an indication that it would consider applications from vaults that meet these conditions.<sup>49</sup> CCI also asks the Commission to consider safe harbors where the Act imposes requirements that vaults cannot satisfy and that serve no policy purpose for them, and views principles-based rulemaking as “the most durable result short of legislation.”

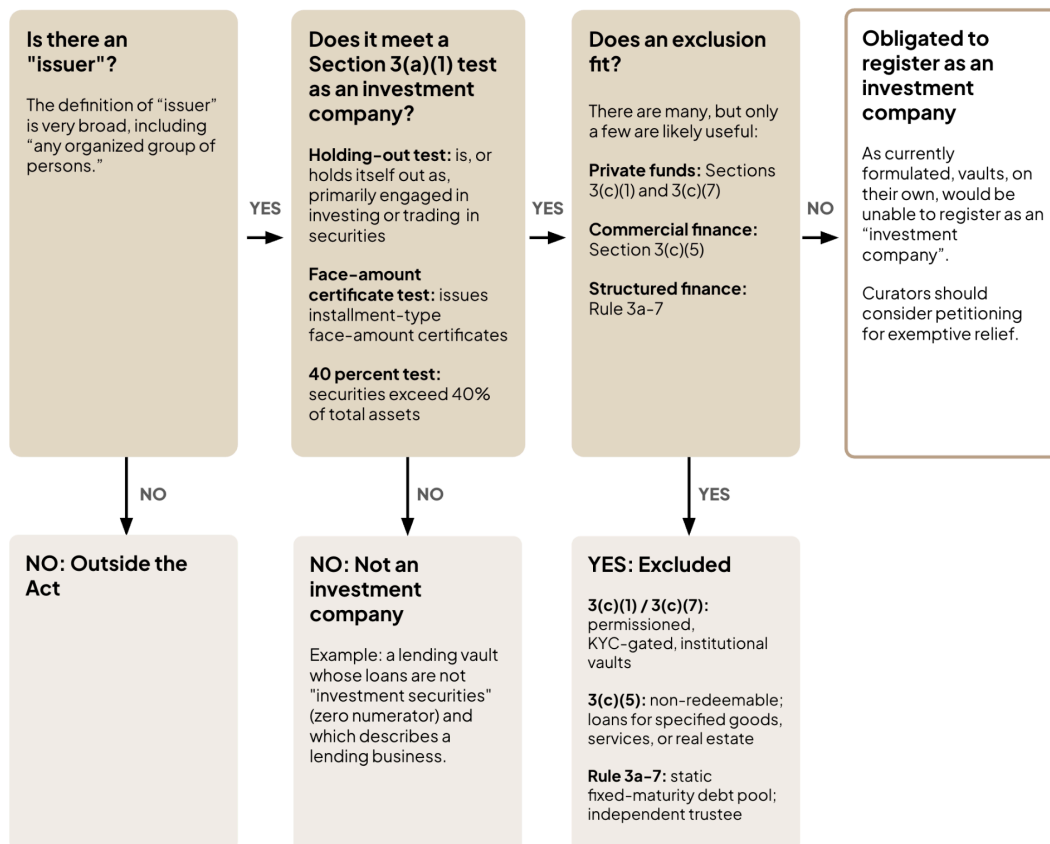
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<sup>48</sup> 1940 Act Analysis, Part X (discussing SPDR Trust, Series 1, Investment Company Act Release No. 19055 (October 26, 1992), and Exchange-Traded Funds, Investment Company Act Release No. 33646, 84 Fed. Reg. 57,162 (October 24, 2019)).

<sup>49</sup> 1940 Act Analysis, Part X (listing CCI’s proposed conditions and its two requests to the SEC, and identifying tokenized portfolio vaults and immutable lending vaults as the strongest initial candidates); 1940 Act Analysis, Conclusion (request 6). The 1940 Act Analysis notes that the CLARITY Act’s Section 10108 modernization language “could compress this timeline,” while observing that the bill did not advance past cloture.

### Diagram 3: To Which Vaults Does the 1940 Act Apply?

The Investment Company Act of 1940 regulates enterprises that pool money and invest it in securities. “Investment companies” must register with the SEC and adopt protections such as independent directors, qualified custody, and limits on insider transactions. The diagram follows the Report’s analysis, step by step, of whether a vault must register and in what form.



## Advisers Act

Whereas the Securities Act asks whether an instrument is a security, the Investment Advisers Act of 1940 (“Advisers Act”) asks whether a person is an investment adviser.<sup>50</sup> The Supreme Court has described the Advisers Act as Congress’s response to abuses by paid advisers,

<sup>50</sup> Advisers Act Analysis, Executive Summary; Advisers Act Analysis, Section I.A (scope); Advisers Act Analysis, Section V (the Act “regulates a relationship, not software in the abstract”).

undisclosed conflicts of interest, and self-dealing.<sup>51</sup> Congress was primarily concerned with “personalized investment advice,” not general-interest publications.<sup>52</sup> The Act’s core protection is a fiduciary duty of loyalty and care that advisers owe their clients by law; its registration, recordkeeping, and disclosure rules support that duty.<sup>53</sup> The regulated function is “the exercise, for compensation, of judgment over another person’s securities or securities investment decisions.”

An investment adviser is someone who:

1. Gives advice about securities;
2. For pay;
3. As a regular business.

All three must be true, and anyone who meets the test automatically assumes fiduciary duties (see *Diagram 4*).<sup>54</sup> The law also excludes certain groups, such as publishers of general-circulation financial publications and registered credit rating agencies.

Because the Act regulates people and their conduct, not software code, the Report applies this test by role to those who design, operate, govern, safeguard, and provide access to vaults.<sup>55</sup> It places those roles on a spectrum that former SEC Commissioner Hester M. Peirce described in July 2026, running from allocations set entirely by immutable smart contracts to allocations left to a person’s sole discretion.<sup>56</sup> The Report reads that spectrum as one of retained human control. The Report addresses lending vaults specifically on three questions: whether a vault’s loans are securities at all, whether evaluating borrowers’ collateral counts as investment

<sup>51</sup> Advisers Act Analysis, Section I.B (discussing *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963)); Advisers Act Analysis, Section III.D.

<sup>52</sup> Advisers Act Analysis, Section I.B (quoting *Lowe v. Securities and Exchange Commission*, 472 U.S. 181, 208 (1985), for the proposition that Congress was “primarily interested in regulating the business of rendering personalized investment advice” and did not seek to regulate “nonpersonalized publishing activities”).

<sup>53</sup> Advisers Act Analysis, Section II.A (discussing *Capital Gains*, 375 U.S. at 191–92, and *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 17 (1979)).

<sup>54</sup> Advisers Act Analysis, Section II.A (discussing Investment Advisers Act Section 202(a)(11), 15 U.S.C. § 80b-2(a)(11), and Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services, Investment Advisers Act Release No. 1092, 52 Fed. Reg. 38,400 (October 16, 1987)).

<sup>55</sup> Advisers Act Analysis, Section I.C (roadmap); Advisers Act Analysis, Section III.I (applying the statutory test to each participant based on the functional nature of its contribution).

<sup>56</sup> Advisers Act Analysis, Section I.B (quoting Peirce, *supra* note 1, and reading the spectrum as one of retained human control).

advice, and whether fees drawn from borrower interest fall under the Act's limits on performance fees.<sup>57</sup>

The Report argues that where a vault's design reduces or removes the conflicts of interest and investor reliance the Act targets, the case for treating a role as "advising others" weakens. This hinges on post-deposit control: where no person retains material discretion over securities-related deployment, reallocation, or returns, the case for adviser status is weak; where a person does, it grows stronger. Where an advisory relationship does exist, the Report argues the law allows obligations to be calibrated to the role's actual scope as limited by code; fiduciary protections should be applied those who keep genuine discretion over decisions that materially affect depositors in ways depositors cannot evaluate, anticipate, or avoid on their own.<sup>58</sup>

The Report's main analytical tool is the same "Two-Sided Control Framework" set out in the Introduction. One side measures how much authority a role-holder has (Mandate, Execution, Governance, Disposition). The other measures whether depositors can understand, check, monitor, anticipate, receive advance notice of, and act on what the role-holder does (Comprehensibility, Verifiability, Observability, Predictability, Notice, Actionability; see *Diagram 5*).<sup>59</sup> For roles that do qualify as advisers, the Report identifies where the Act's compliance, custody, and anti-money-laundering requirements fit poorly with permissionless vaults (see *Diagram 6* on custody), and proposes fixes using the SEC's existing authority.<sup>60</sup>

- **For lending vaults, the Advisers Act may not apply at all.** The Act covers only advice about securities, so if a vault's positions are not securities, no one involved can be an investment adviser.<sup>61</sup> The analysis concludes that autonomous,

<sup>57</sup> Advisers Act Analysis, Section III.B (whether the activity concerns securities); Advisers Act Analysis, Section III.F (collateral evaluation); Advisers Act Analysis, Section IV.A (fees on lending income and Section 205); Advisers Act Analysis, Section IV.B (discussing automated execution, including a rule directing capital "to the highest-rate market among a pre-approved set").

<sup>58</sup> Advisers Act Analysis, Executive Summary and Section I.B (post-deposit control as the line for adviser status); Advisers Act Analysis, Section VI.A (calibrating obligations to the scope of the relationship, discussing Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248, 84 Fed. Reg. 33,669 (July 12, 2019)); Advisers Act Analysis, Section IX (fiduciary protections "should be directed where they are needed: at role-holders who retain genuine discretion and whose decisions materially affect depositor outcomes in ways depositors cannot independently evaluate, anticipate, or avoid").

<sup>59</sup> Advisers Act Analysis, Section I.A; Advisers Act Analysis, Section III.D (together, the two sides "operationalize the Capital Gains inquiry for vault architecture"); Introduction, Section IV.A.

<sup>60</sup> Advisers Act Analysis, Section VI (compliance); Advisers Act Analysis, Section VII (custody); Advisers Act Analysis, Section VIII (actor-by-actor risk summary); Advisers Act Analysis, Section IX (conclusion).

<sup>61</sup> Advisers Act Analysis, Section III.B (discussing Investment Advisers Act Section 202(a)(11), 15 U.S.C. § 80b-2(a)(11), which defines an investment adviser by reference to advice about securities).

overcollateralized lending positions closely resemble consumer and commercial loans, which courts generally do not treat as securities.<sup>62</sup> Using the same reasoning, setting loan parameters for positions that are not securities “is credit-parameter setting, not advice about securities,” whether or not the role is curatorial. Vaults holding positions that may be securities, such as tokenized securities, structured products, or private credit, must still be tested under the Act.<sup>63</sup> So may a vault that accepts securities as collateral, if a person exercises material judgment over selling them.

- **Some vaults may not have an identifiable client.** The Act and its protections assume an identifiable client, tied to a personal advisory relationship.<sup>64</sup> For a vault with a legal wrapper, the Report adopts the fund model: the wrapped vault, not each depositor, is the client, and diligence, disclosure, onboarding, and gatekeeping happen at the vault or designated-compliance-entity level. Treating each pseudonymous depositor as the client is “a worse fit.” For unwrapped, permissionless vaults, the Report says the current framework “leaves a real gap” and asks the Commission to explain whether, and on what theory, such a vault can be the client. In the alternative, it argues that a participant using a published, impersonal strategy on disclosed terms may be using a product rather than receiving advice.
- **Adviser status turns on whether a vault role “advises others”; material discretion after deposit is how that question is answered.**<sup>65</sup> At one end, the Report argues that the Act does not apply to a vault deployed with unchangeable code and no administrative keys, which resembles a unit investment trust whose portfolio is fixed at launch. At the other, it accepts that a curator with full discretion may be an adviser, and asks the SEC to fit that curator’s duties to the role’s actual scope.<sup>66</sup> The

<sup>62</sup> Advisers Act Analysis, Section III.B (applying *Reves v. Ernst & Young*, 494 U.S. 56, 64–67 (1990), to vaults “whose operations are limited to facilitating such lending”); see Securities Act Analysis, Section C.

<sup>63</sup> Advisers Act Analysis, Section III.B (the Advisers Act analysis is “contingent” on the securities classification); Advisers Act Analysis, Executive Summary and Section III.C (setting loan parameters for positions that are not securities “is credit-parameter setting, not advice about securities”).

<sup>64</sup> Advisers Act Analysis, Section II.B (discussing *Goldstein v. Securities and Exchange Commission*, 451 F.3d 873, 880 (District of Columbia Circuit 2006)).

<sup>65</sup> Advisers Act Analysis, Section II.B (“Material discretion is how that characterization question gets answered.”); Advisers Act Analysis, Section IX (principle 4).

<sup>66</sup> Advisers Act Analysis, Section III.E (discussing immutable deployment by analogy to the unit investment trust under Investment Company Act Section 4(2), 15 U.S.C. § 80a-4(2), and full discretionary authority) and note 30 (noting that the unit investment trust analogy raises a separate question, outside its scope, of whether the person who structures and offers an immutable vault may be a broker-dealer).

hard middle-ground case is a curator who adjusts allocations within code-enforced limits. The case for adviser status is substantially weaker where the strategy is published, applied uniformly, and objectively constrained, and the curator has no custody and gives no personalized advice. The Report lists best practices for curators relying on that argument: a plain-language strategy, advance notice of changes, the ability to withdraw before risk-increasing changes, disclosure of conflicts and of any discretionary authority to lower caps or narrow allowlists, and an identifiable point of contact.

- **When depositors have more agency, the depositor’s reliance on the role-holder that the Act guards against is weakened.** If a vault allows depositors to understand its strategy, verify its code, watch its activity in real time, predict its behavior, receive advance notice of changes, and exit before those changes take effect, the Report argues that using it is “more analogous to using a financial tool than to engaging a financial adviser.”<sup>67</sup> It is important that depositors have the ability to evaluate the vault, even if every depositor does not exercise that ability, and the freedom to exit is an important condition.<sup>68</sup> But the conditions “reduce the reliance dynamic; they do not displace the Act where a person exercises material discretion over another’s securities investments for compensation.” The Report also acknowledges that “retail users will not read code,” so comprehensibility requires plain-language disclosure and an identifiable point of contact. The Report also flags limits: for example, where price data from outside sources (“oracles”) cannot be independently verified, protections must be built into code rather than merely disclosed, and not every vault meets these conditions.<sup>69</sup>
- **Evaluating collateral is more akin to credit analysis than investment advice.** When a lending-vault curator checks whether an asset meets collateral standards, such as loan-to-value limits, the Report argues it is managing the vault’s own risk, not advising anyone whether to buy or sell.<sup>70</sup> CCI asks for interpretive guidance confirming that applying preset, objective collateral criteria, without more, is not

<sup>67</sup> Advisers Act Analysis, Section V.G (“The depositor is not delegating judgment; she is exercising it.”).

<sup>68</sup> Advisers Act Analysis, Section V.F (actionability as “the most critical of the six conditions”).

<sup>69</sup> Advisers Act Analysis, Section III.E (the conditions “do not displace the Act where a person exercises material discretion”; the framework is “diagnostic, not exculpatory”; protections must be enforced in code, not merely disclosed); Advisers Act Analysis, Section V.A (“retail users will not read code”); Advisers Act Analysis, Section V.B (off-chain inputs and oracles).

<sup>70</sup> Advisers Act Analysis, Section III.F (contrasting collateral evaluation with advice “as to the advisability of investing in, purchasing, or selling securities” under Investment Advisers Act Section 202(a)(11), 15 U.S.C. § 80b-2(a)(11)).

advice about securities. It expressly does not seek a carveout modeled on the 2006 rating-agency exclusion, citing that history only as support for the textual reading. The Report acknowledges that a curator who chooses among competing investments with discretion may be giving advice, and limits its request to criteria-driven screening, “not to discretionary allocation in collateral clothing.”<sup>71</sup>

- **Most vault roles other than curators are not advisers, and should be judged by what they actually do.** A guardian or similar role is protective only when its authority is limited to preset, objective triggers, such as pausing after a documented security incident or oracle failure, or vetoing a pending action during a timelock, and it cannot direct capital or affect returns. Discretionary authority to change exposures, even for risk-reducing reasons, should at least be disclosed.<sup>72</sup> Similarly, developers and auditors act before any advisory relationship exists; operating a website front end or relaying transactions that depositors sign themselves is not advice, though some of these activities may raise separate broker-dealer questions.<sup>73</sup> A front end, wallet provider, or distributor that recommends a particular vault or strategy to a user may itself be giving advice. The Report asks for SEC guidance on two gray areas that fall in between activity that is clearly not advice and activity that likely is: governance votes on specific allocations, where token holders who vote may be making judgments about securities, and dashboards that rank “top-performing vaults,” and may be recommendations rather than factual reports.<sup>74</sup>
- **If a vault role is an adviser, the Act’s compliance and anti-money-laundering rules should be adapted to better fit vaults.** The Report finds gaps in the current rules that are mostly procedural: required disclosures are largely available on-chain but

<sup>71</sup> Advisers Act Analysis, Section III.F (requesting interpretive guidance on preset, objective collateral criteria; disclaiming a carveout modeled on the rating-agency exclusion, Investment Advisers Act Section 202(a)(11)(F), 15 U.S.C. § 80b-2(a)(11)(F), added by the Credit Rating Agency Reform Act of 2006, Public Law No. 109-291, 120 Stat. 1327).

<sup>72</sup> Advisers Act Analysis, Section III.I (a role is protective only when its authority is limited to preset, objective triggers and it cannot direct capital or affect returns; discretionary risk-reducing changes are curatorial and should at least be disclosed). See also Investment Advisers Act Section 202(a)(17), 15 U.S.C. § 80b-2(a)(17) (excluding from the definition of “person associated with an investment adviser” anyone whose functions are “clerical or ministerial”), which the Advisers Act Analysis cites only as general support that the Act distinguishes ministerial from advisory functions.

<sup>73</sup> Advisers Act Analysis, Section III.E (pre-deployment design); Advisers Act Analysis, Section III.I and note 46 (discussing Division of Trading and Markets, U.S. Securities and Exchange Commission, Staff Statement Regarding Broker-Dealer Registration of Certain User Interfaces Utilized to Prepare Transactions in Crypto Asset Securities (April 13, 2026), and possible broker-dealer questions under Securities Exchange Act Section 15(a), 15 U.S.C. § 78o(a)).

<sup>74</sup> Advisers Act Analysis, Section III.I (infrastructure and distribution participants; governance voting is “not easily resolved”); Advisers Act Analysis, Section III.E (reports and analyses, discussing Missouri Innovation Center, Securities and Exchange Commission No-Action Letter (October 17, 1995), and Datastream International Inc., Securities and Exchange Commission No-Action Letter (March 15, 1993)).

hard to deliver to pseudonymous depositors; the blockchain is a more complete record than traditional books and records, just not in the required format; and code-enforced limits do much of a compliance program's work without a designated compliance officer.<sup>75</sup> The SEC's "robo-adviser" framework, built for personalized advice to known clients, does not fit either.<sup>76</sup> The Financial Crimes Enforcement Network's (FinCEN) 2024 anti-money-laundering rule for advisers assumes known customers and a central operator, which a permissionless vault may lack.<sup>77</sup> The Report supports a tailored framework that maintains full anti-fraud rules and creates a separate SEC category for vaults that meet specific design standards, relying on independent audits, attestations, and a designated compliance entity rather than staff review of code. It argues that anti-money-laundering duties belong with parties that actually custody assets or control the customer relationship, such as exchanges and custodial wallet providers, and not with front ends that have neither, or with stablecoin issuers as such. Whether Section 205's performance-fee limit applies depends on design: returns paid as newly issued tokens look like income, while growth in a receipt token's value looks more like capital appreciation.<sup>78</sup>

- **Custody assessments should distinguish between what code permits and what a contract promises.** The SEC's custody rule covers any authority to obtain client assets. A curator may hold no private keys and still face a custody argument, because it directs where vault assets go. The Report responds to the SEC's proposed custody rules (IA-7023), which would treat possession of "any portion" of a client

<sup>75</sup> Advisers Act Analysis, Section VI.B (discussing Form ADV, 17 C.F.R. § 275.203-1; the books-and-records rule, 17 C.F.R. § 275.204-2; and the compliance program rule, 17 C.F.R. § 275.206(4)-7).

<sup>76</sup> Advisers Act Analysis, Section VI.D (discussing Division of Investment Management, U.S. Securities and Exchange Commission, IM Guidance Update No. 2017-02, Robo-Advisers (February 2017), <https://www.sec.gov/investment/im-guidance-2017-02.pdf>).

<sup>77</sup> Advisers Act Analysis, Section VI.E (discussing Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers, 89 Fed. Reg. 72,156 (September 4, 2024), and the delay of its compliance date to January 1, 2028, 91 Fed. Reg. 36 (January 2, 2026)).

<sup>78</sup> Advisers Act Analysis, Section VI.E.5 (AML/CFT duties should attach to actors that custody assets or control the customer relationship); Advisers Act Analysis, Section VI.F (supporting a tailored framework under Investment Advisers Act Section 211(a), 15 U.S.C. § 80b-11(a)); Advisers Act Analysis, Section IV.A (whether a fee falls under Section 205 depends on whether returns are paid as income or accrue as appreciation). CCI's four requests are that the Commission (1) recognize that noncustodial architecture and code-enforced constraints can satisfy some safeguarding objectives through structure; (2) calibrate disclosure to front-end materials, on-chain data, and an identifiable point of contact or designated compliance entity; (3) use Section 205(e) where structural protections and client gating or attestation justify relief; and (4) coordinate with Treasury and FinCEN so that AML/CFT duties attach to actors that custody assets or control the client relationship. Advisers Act Analysis, Section VI.F.

crypto asset's key materials as self-custody. CCI proposes a single test instead: a person has custody only if it can, alone or with related persons, move client assets or bring about an equivalent economic transfer without the independent approval of an unaffiliated party and without a timelock that lets depositors exit. On that test, holders of required but non-controlling key shares, such as independent guardians and fund directors, are not custodians, while a role that can list collateral it controls and borrow against it without a check is.

The Report distinguishes limits enforced by code from limits set by contract, and a curator's strategy authority from custody authority. Custody authority is the power to move client assets outside the authorized perimeter; strategy authority is the power to deploy them within a disclosed perimeter.<sup>79</sup> CCI proposes a conditional compliance pathway for vaults that meet the Report's design safeguards, phased in through SEC staff guidance or conditioned no-action relief, and then rule amendments. It also asks the SEC to permit vault receipt tokens held in a controlled wallet where redemption is code-enforced, and to accept on-chain vault records as substitute compliance for account statements.<sup>80</sup>

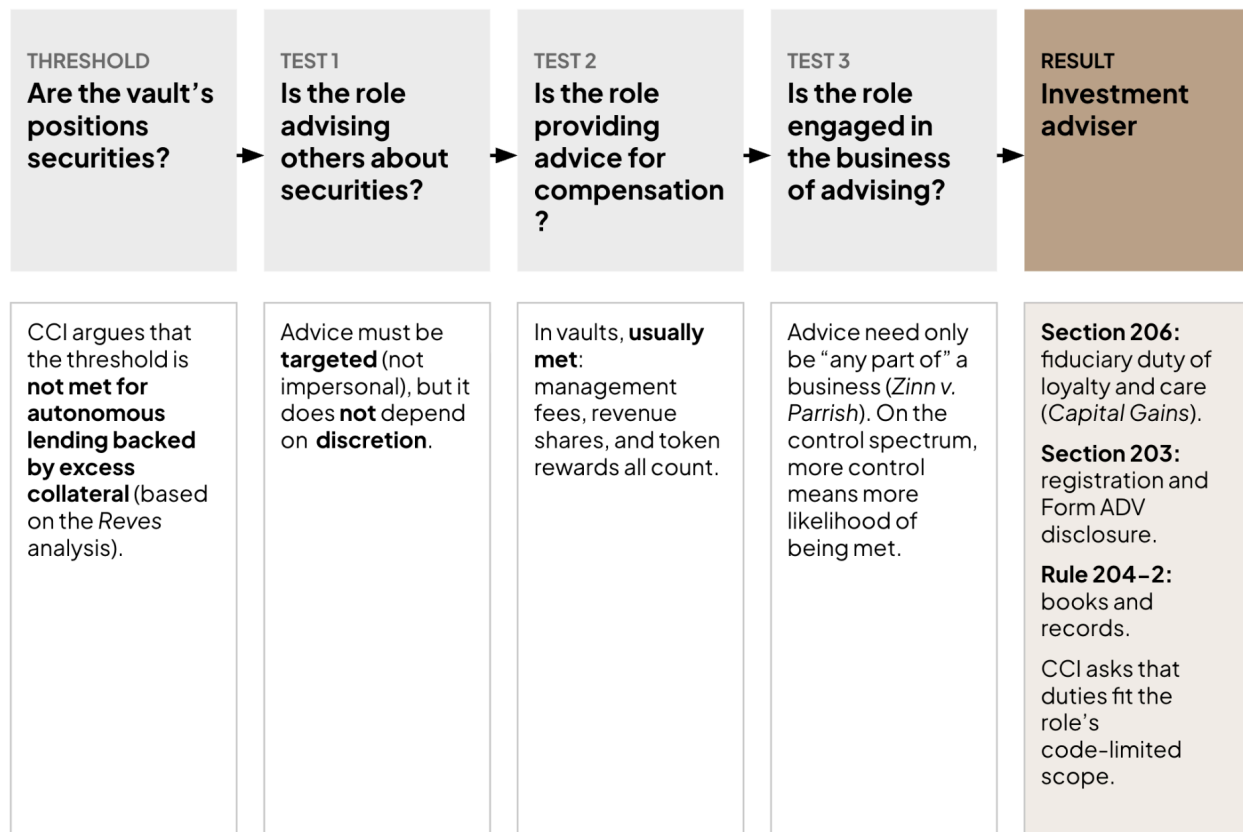
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<sup>79</sup> Advisers Act Analysis, Sections VII.A–D (responding to Adviser and Regulated Fund Custody Rules; Crypto Custody Rules, Investment Advisers Act Release No. IA-7023, File No. S7-2026-35 (proposed)); Advisers Act Analysis, Section IX (principle 8). The analysis lists design features that move a vault back toward custody; Advisers Act Analysis, Section VII.D.

<sup>80</sup> Advisers Act Analysis, Sections VII.E–F (discussing DeFi deposits and vault receipt tokens, and on-chain records as substitute compliance under Request for Comment 113); Advisers Act Analysis, Section VII.G (recommending staged implementation from staff guidance or conditioned no-action relief to rule amendments); see Investment Advisers Act Section 206A, 15 U.S.C. § 80b-6a.

### Diagram 4: Application of the Investment Advisers Act to Vaults

A vault role is an investment adviser only if there is a person who advises others about securities, for pay, as a business. Section 202(a)(11) defines an investment adviser by those three elements, which the SEC applies as separate tests. Applying the tests to vault roles, the Report works through them role by role, after a threshold question. Each gray box in the diagram poses a test, and the card below it gives the Report's answer for vaults. A role that meets every test is an investment adviser and takes on the obligations in the gold box.



### Diagram 5: Two-Sided Control Framework: Advisers Act

Under the Advisers Act, vaults should be assessed on the level of control curators and other role-holders can hold, and how dependent depositors are on their judgment. On the role-holder side, four dimensions (Mandate, Execution, Governance, and Disposition, or "MEGD") describe what a curator or other role-holder can do. However, CCI argues that code and retained depositor agency can fulfill many of the policy objectives behind the Advisers Act.

Where both sides align (role authority is bounded and depositor agency is meaningful), the predicate for Advisers Act coverage weakens.



## Diagram 6: The Code-Versus-Contract Distinction

Under the custody rule, Rule 206(4)-2, an adviser has custody if it has “any authority to obtain possession” of client assets. A curator may hold no private keys and still face a custody argument, because it directs where vault assets go. The Report distinguishes limits enforced by code from limits set by contract, and a curator’s strategy authority from custody authority. CCI proposes a conditional compliance pathway, grounded in the SEC’s exemptive authority under Section 206A and its pending custody rulemaking.

This diagram illustrates an example of a curator inside the perimeter the vault’s smart contract enforces (dashed box). Solid arrows are moves the code allows; the X marks a move the code definitively blocks. The gray card in the lower left corner lists risk factors that move the analysis toward custody.

