

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2306**

December 9, 2020

The Honorable Jay Clayton  
Chairman, Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Chairman Clayton:

We write to encourage the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) to address the issue of broker-dealer custody of digital securities.<sup>1</sup> On July 22, 2020, the Office of the Comptroller of the Currency (OCC) issued an interpretive letter clarifying that national banks may provide custody services for cryptographic assets. In light of this development, we encourage the SEC to develop requirements necessary to custody digital securities and enable FINRA to approve broker dealer applications that meet these requirements.

The United States benefits greatly from its vibrant, transparent, and liquid securities markets. Strong financial markets attract investment, facilitate capital formation, and serve as the foundation for a healthy economy. The adoption of innovative technologies, including the issuance of securities via distributed ledgers, would improve the functioning of securities markets by making them more efficient, accessible, and transparent, which should be welcomed and encouraged.

Following the OCC's lead, the SEC and FINRA should address the need for regulated safekeeping services for cryptographic assets. Both agencies acknowledged the issue in their joint statement on July 8, 2019; and yet, to date, the SEC has not provided any guidance that would allow for FINRA to grant broker-dealer applications involving the custody of digital securities, a position that threatens to stymie the progress of the digital security industry in the United States. Failing to approve broker-dealer applications involving the custody of digital securities leaves the industry without the infrastructure to operate in a regulated way.

Additionally, in the absence of guidance from the SEC, FINRA has not outright denied any broker-dealer applications that involve the custody of digital securities, which would render the applications eligible for appeal. Rather, FINRA has allowed the applications to languish—often for years—or asked the applicants to withdraw such applications.

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<sup>1</sup> The term “digital securities” refers to both securities issued on a blockchain or distributed ledger (referred to as “blockchain” for purposes of this letter) and distributed ledger-based representations of traditional securities.

To address this unsustainable situation, the SEC should take the following three actions: First, explicitly confirm that banks may act as good control locations for the custody of digital securities. Second, advise FINRA on the requirements for broker-dealers to be able to custody digital securities for their customers as well as for their own account. Third, instruct FINRA to approve broker-dealer applications that meet the requirements necessary to custody digital securities. Doing so would greatly increase the uniformity and efficiency of safekeeping mechanisms for all security types, resolving uncertainty and creating an environment for the digital securities industry to flourish.

Sincerely,



Tom Emmer, Member of Congress



Warren Davidson, Member of Congress



Bill Foster, Member of Congress



David Schweikert, Member of Congress



Darren Soto, Member of Congress



Ted Budd, Member of Congress



Dan Crenshaw, Member of Congress



Ralph Norman, Member of Congress

A handwritten signature in black ink, appearing to read "Ro Khanna". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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Ro Khanna, Member of Congress

CC: Commissioner Hester M. Peirce  
Commissioner Elad L. Roisman  
Commissioner Allison Herren Lee  
Commissioner Caroline A. Crenshaw  
Robert W. Cook