Articles
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How the Characteristics of Digital Assets Affect Compliance With the Custody Rule

When a mysterious individual, or group, under the moniker of Satoshi Nakamoto published a white paper describing an "electronic peer-to-peer cash system" called Bitcoin to an obscure cryptography mailing list in 2008, the last thing on his, her, or their mind was likely the U.S. federal securities laws, much less a rule under the Investment Advisers Act of 1940 (Advisers Act), known as the "Custody Rule." But with the popularity of Bitcoin and other digital assets, registered investment advisers must now consider application of the Custody Rule, among other federal securities laws and regulations, to investments in these new assets on behalf of clients.

Today, there are thousands of different types of digital assets, from cryptocurrencies like Bitcoin to non-fungible tokens like CryptoKitties. These digital assets are a form of virtual property that exists as data in a ledger safeguarded by a peer-to-peer virtual network of connected computers, known as a blockchain. Subject to local laws, anyone can establish a "digital wallet" address on a public blockchain and hold a variety of digital assets. Each digital wallet is associated with an alphanumeric code, known as a private key, that the wallet holder must keep secret like a password. Possession of this private key enables one to access and transfer the digital assets maintained in the digital wallet.

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