

# The Compliance Landscape: What Can I Tell My Clients About Bitcoin?

Max Schatzow

# Into – Who I am and What I do?

- Investment Management and Regulatory Attorney
- Partner at Stark & Stark, PC (Not your lawyer)
- Digital Asset Realist (Some might call skeptic)
- [Mschatzow@stark-stark.com](mailto:Mschatzow@stark-stark.com)
- @Advisercounsel
- 609-219-7450
- [www.advisercounsel.net](http://www.advisercounsel.net)

# What Can You Tell Your Clients About Bitcoin?

# Depends on Your Current Situation

- i. Where you work?
  - i. Owner/Operator of RIA
  - ii. Employee of a Large Financial Institution
  - iii. Independent Contractor

# Need to Follow Your Firm's Policies and Procedures

- i. Recommendations Regarding Held Away Assets
- ii. Recommendations Regarding On Platform Assets
- iii. Discretionary Authority?
- iv. Custody – Access to Wallet, Key or Password?
- v. Personal Trading and Reporting

# Division of Examinations - Risk Alert

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## Portfolio Management

- i. Due Diligence of Digital Assets
- ii. Evaluate and mitigate risks related to trading venues and trade execution or settlement facilities
- iii. Manage risks and complexities associated with digital assets

# Overall Fiduciary Duty

1. Duty to provide investment advice that is in the best interest of the client, including a duty to provide advice that is suitable for the client
2. Understanding of the client's objectives
3. Understanding the asset
  - a. The cost (including fees and compensation)
  - b. Characteristics (including any special or unusual features),
  - c. Liquidity
  - d. Risks and potential benefits
  - e. Volatility
  - f. Likely performance in a variety of market and economic conditions
  - g. Time horizon
  - h. Cost of exit
4. Duty to Seek Best Execution
5. Duty to Monitor?

# Recordkeeping Obligations

- Rule 204-2
  - Financial Information
  - Trading Information
  - Client Communications



# Custody

- i. Review for unauthorized transactions or theft of digital assets
- ii. Controls around safekeeping digital assets (e.g., employee access to private keys and trading platform accounts)
- iii. Business continuity plans where key personnel have exclusive access to private keys
- iv. How the adviser evaluates harm due to the loss of private keys
- v. Reliability of software used to interact with relevant digital asset networks
- vi. Storage of digital assets on trading platform accounts and with third party custodians (**The Custody Rule Issue**)
- vii. Security procedures related to software and hardware wallets.

# Disclosure

- i. Review of solicitations, marketing materials, Form ADV Part 2 and fund documents
- ii. Sufficient disclosure regarding the specific risks
  1. complexities of the products and technology underlying such assets
  2. technical, legal, market, and operational risks (including custody and cybersecurity)
  3. price volatility
  4. illiquidity
  5. valuation methodology
  6. related-party transactions
  7. conflicts of interest

# Other Issues

- Valuation and Advisory Fee Calculations
- Regulatory Assets Under Management Calculation Issues
- Errors and Omissions Insurance Coverage
- Review and Revise of Investment Advisory Agreements
- Review and Revise Code of Ethics (Personal Trading)

# Questions?

## Thank You!

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