

From paper to protocol: How trust companies became the backbone of RWA tokenization

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1. Introduction

Tokenization is an ever-increasingly prominent practice at the convergence of digital assets, emerging technologies, and an assortment of even more conventional business purposes and new and existing asset classes. It offers significant transformative potential for a wide array of industries and can drastically reduce frictions across many market economies, globally, by enabling instant settlement, around-the-clock market access, and fractional ownership.

Generally, the term ‘*tokenization*’ refers to the creation of digital representations, typically on blockchain or distributed ledger systems, of what are often called ‘*real-world assets*’ (or “**RWAs**”), which can include physical or conventional financial assets, like interests in real estate, currencies, stocks, bonds, funds, machines, commodities, art and collectibles, and more. The biggest barrier to the adoption of any particular form of tokenized RWA is finding a way to ensure tokens carry enforceable rights to the assets they represent. In the United States, trust companies have emerged as a flexible and widely suitable tool for achieving this.

Tokenization also forces a hard question that traditional market rails never had to answer at the speed and scale of software: When a token moves, what exactly is it that moves in the eyes of the legal system? Solving this mapping problem—between an onchain control event and an offchain legal right—is what separates a demo from a durable product. In the United States, the most practical way to make that mapping enforceable has been to house the relevant rights or assets inside a trust container maintained by a licensed fiduciary under an existing statutory perimeter that comes with clearly defined duties and a supervisor to oversee segregation, books and records, and vendor risks.

In their narrowest form, trust companies allow title to be held within a trust that follows a non-discretionary playbook that is written into the underlying instrument; in more expansive versions, trust companies can become the administrative backbone for issuance, redemption, corporate actions, and register updates that mirror token state. In this way, “tokenization” is not a single product design so much as a toolset for encoding enforceable rights on modern rails.

A working definition.

Tokenization has evolved significantly over the course of the last decade. For flexibility in discussing the use of a technology that is growing and changing rapidly, as used in this paper, ‘*tokenization*’ is intended broadly, meaning the representation of legal or economic rights in a digital record capable of onchain (*i.e.*,

on a blockchain or distributed ledger system) control or transfer. Generally, however, tokenization projects have emerged in principally two different design families and an ancillary but notable third.¹

- “*Ownership tokens*,” which evidence direct, onchain beneficial interests in a trust, with equitable title recorded on a distributed ledger, blockchain, or other electronic register maintained under the governing instrument;
- “*Rights tokens*,” which evidence contractual or other rights (e.g., payment, redemption, or governance claims) that reference or are tethered to offchain assets or arrangements. Here, enforceability hinges on well-drafted mapping between the token and the offchain promise, and, in the U.S., on achieving “control” under the 2022 amendments to Article 12 of the Uniform Commercial Code (UCC) for “controllable electronic records”;² and
- “*Tokenized twins*,” whereby tokens reference external assets with defined enforcement pathways, which is an option in certain jurisdictions that expressly tie token transfer to transfer of the underlying right by statute (e.g., Liechtenstein’s Token and Trustworthy Technology Service Provider Act and its ‘*token-as-a-container*’ model, with defined roles like a ‘*physical validator*’ to ensure linkage).³

The trust company’s role.

Following this introduction:

- Section 2 of this article briefly revisits the first wave of RWA pilots across real estate in the U.S. and adjacent efforts using NFTs (‘*non-fungible tokens*’) and LLCs (‘*limited liability companies*’), including as *special purpose vehicles*, tracing both their promises and failures. It also separates these lessons and tokenization projects generally from the distinct problems faced by tokenized securities, where broker-dealer custody constraints, resale restrictions, and thin ATS liquidity continue to hinder adoption.
- Section 3 explains the growing trend of using a trust company as the alternative: how the parties and documents fit together, how registers can be made electronic or blockchain-native, and why a supervised fiduciary can close the ownership and enforcement gaps that LLCs and other piloted designs, for example, have struggled to solve.

¹ The terms “ownership tokens” and “rights tokens” are intended only for ease of reference as part of this article’s discussion, describing the two different primary design families, and they by no means should be considered terms of common usage or otherwise relevant to matters outside the subject matter of this article.

² UNIFORM L. COMM’N, *2022 Amendments to the UCC (Article 12 and Conforming Article 9 Amendments)*, UCC: OVERVIEW & OFFICIAL MATERIALS, <https://www.uniformlaws.org/acts/ucc> (last visited Sep. 4, 2025); UNIFORM L. COMM’N, *Detailed Summary of the 2022 UCC Amendments* (May 29, 2025), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=09f06049-988c-759e-87a5-432e12085487>.

³ Token and TT Service Provider Act (TVTG) (Liech.), English translation, LGBI. 2019 No. 301 (Mar. 26, 2025) (available at <https://www.regierung.li/files/attachments/950-6-tvtg-250201-en.pdf>). Liechtenstein TVTG (English translation), (establishing a civil law statutory linkage between the disposal of tokens and the transfer of the underlying rights, and defining TT service provider roles such as the Physical Validator); see also GOV’T OF LIECH., *Short Definition Sheet: Token and Trustworthy Technology Service Provider Act* (TVTG) (Sep. 1, 2021) <https://www.regierung.li/files/medienarchiv/950-6-01-09-2021-en.pdf>; FIN. MKT. AUTH. (Liech.), *TT service providers* (Jan. 1, 2020), <https://www.fina-li.li/en/media-public/client-protection/safeguarding-client-protection-in-different-sectors/tt-service-providers> (explaining that, under the Liechtenstein Token and TT Service Provider Act (TVTG), TT service providers must register with the FMA, meet minimum suitability requirements—such as technical standards, internal controls, and minimum capital—and comply with ongoing safeguarding, reporting, and publication obligations to protect clients).

- Section 4 turns to relevant challenges and solutions in tokenized trust models: Jurisdictional differences in supervision, bankruptcy uncertainty when documents or operations do not meet formal documentary requirements, UCC Article 12 control and settlement mechanics, tax posture, and securities and promoter risk.
- Section 5 then situates these design choices in current U.S. policy—including the CLARITY Act bill’s market structure efforts and the now-enacted GENIUS Act’s custody template—followed by brief comparative notes abroad.
- In closing, Section 6 offers some key takeaways for both legal and industry professionals alike, and it gives some practical insights for tokenization project teams seeking to launch RWA products on enforceable terms without waiting on further federal legislative action.

2. The evolution from early RWA efforts

The idea of representing real-world assets onchain is not new. Early experiments from the early-to-mid 2010s—including *Colored Coins*,⁴ the *Omni Mastercoin*,⁵ and Overstock.com’s *tZERO*⁶—demonstrated basic mechanics for representing offchain value using digital asset tokens and, even without broad commercial adoption, supplied the template for later RWA designs.⁷ These efforts aimed for familiar outcomes: faster settlement, fractional participation, greater transparency, and the involvement of fewer intermediaries.

LLC- and NFT-based tokenization projects.

Real estate became a natural test bed because of its size, illiquidity, and paper-heavy closing stack.⁸ *RealT*⁹ was one such prominent pilot, issuing “RealTokens” tied to individual properties held in series LLCs.¹⁰ The

⁴ “Colored Coins” refers to a set of early Bitcoin protocols that “colored” specific satoshis with metadata to represent claims on offchain assets such as commodities, currencies, or securities, allowing database transactions on the Bitcoin network to serve as transfers of those real-world interests. See Yoni Assia, *Bitcoin 2.X (aka Colored Bitcoin): Initial Specs*, YONI ASSIA BLOG (Mar. 27, 2012), <https://yoniassia.com/coloredbitcoin/>; Meni Rosenfeld, *Overview of Colored Coins*, BITCOIL.CO (Dec. 4, 2012), <https://bitcoil.co.il/BitcoinX.pdf>.

⁵ Omni Layer (formerly Mastercoin) proposed a Bitcoin-based meta-protocol to issue and transfer user-defined tokens, including claims on off-chain assets like fiat, commodities, or securities, by embedding asset metadata in Bitcoin transactions so token movements could mirror real world ownership changes. See OMNI LAYER, *Omni Layer*, <https://www.omnilayer.org/> (last visited Aug. 4, 2025).

⁶ tZERO, launched in 2014 as part of Overstock’s Medici Ventures initiative, is a blockchain-based trading and issuance platform designed to enable the compliant tokenization and secondary trading of real-world assets such as equities and corporate bonds. See Cade Metz, *Overstock.com Assembles Coders to Create a Bitcoin-Like Stock Market*, WIRED (Oct. 6, 2014), <https://www.wired.com/2014/10/overstock-com-assembles-coders-build-bitcoin-like-stock-market/>.

⁷ See, e.g., James Holbein & Justin Holbein, *The Tokenization Rulebook: Compliance Strategies for the Digital Asset Revolution*, JD SUPRA: L. NEWS (Jun. 18, 2024), <https://www.jdsupra.com/legalnews/hot-topics-in-international-trade-june-5813134/> (“Tokenization offers a fundamental, transformative potential for capital markets: instantaneous settlement, full transparency, transformative liquidity in formerly static markets, and more efficient market structures across asset classes.”).

⁸ The real estate market is unique in its size, value, and notable illiquidity. Real estate transactions are full of friction, from title insurance and escrow services to registry filings and multi-party settlement chains, which is why they are heavily regulated and standardized. Early pilots for RWA tokens tested the grounds for representing and transacting with property interests onchain.

⁹ RealToken Inc. a.k.a. RealT (<https://realt.co>).

¹⁰ RealT attempted to tokenize rental real estate by issuing digital tokens that represent fractional ownership interests in individual properties, where each property would be held by a separate series within a U.S.-based Series LLC, and where RealTokens (which used ERC-20 tokens issued on the Ethereum network) would entitle holders to pro rata rental income distributed using stablecoins. See REALT, *Legally Compliant Ownership of Tokenized Real Estate* (Apr. 2019), https://realt.co/wp-content/uploads/2019/04/RealToken_White_Paper_US_v01.pdf.

tokens entitled holders to pro rata rental distributions, but transactions subject to limitations as exempted securities.¹¹ Notably, the Securities and Exchange Commission’s (SEC) exemptions from securities registration under the Securities Act of 1933,¹² including Reg D¹³ and Reg S,¹⁴ significantly limit their available market and impose restrictions on their transfer.

Roofstock¹⁵ offered another variant with a product called *onChain*,¹⁶ whereby each piece of real estate sits in a single-member Wyoming LLC, and a “Home onChain” NFT (*‘non-fungible token’*) is minted to embody the LLC’s sole membership interest.¹⁷ In this scenario, acquiring the NFT conveys the company (and therefore the control of the property interest), and onchain settlement coordinates with offchain entity and title records.¹⁸ The platform also paired purchases with wallet-native financing through Teller Protocol’s USDC Homes pool (with loans of up to about 80% *loan to value*), which allowed for an end-to-end transaction with far fewer closing frictions.¹⁹

As of the date of this article’s release, no U.S. court has squarely adjudicated the legal relationship between a tokenized instrument and the RWA it purports to represent. To date, court cases dealing with NFTs or tokenized LLC interests have grappled with some adjacent matters, but they are not dispositive.²⁰ Roofstock’s onChain is one of at least a small handful of projects that has shown this model can work in practice, however, suggesting a path for its continued development and potential future integration into more formalized legal and regulatory frameworks.

Broadly, these early tokenization projects exposed at least four different recurring tensions:

- *Ownership gap*: Regardless of what is shown by an RWA product’s front end or otherwise implied through the user experience, legal title to any property held by an LLC remains with

¹¹ RealT would handle property management and legal administration and offer tokens pursuant to exemptions from federal securities registration requirements, including Rule 506(c) under Reg D for accredited U.S. investors and Regulation S for certain non-U.S. investors. *See id.*

¹² 15 U.S.C. §§ 77a–77aa.

¹³ 17 C.F.R. § 230.506(c) (‘Reg D’).

¹⁴ 17 C.F.R. §§ 230.901–230.905 (‘Reg S’).

¹⁵ Roofstock Inc. (<https://www.roofstock.com/>). FULL DISCLOSURE: DLx Law PLLC, the sponsor of this article, previously advised Roofstock as a client; any corresponding references in this article are made independently of any relationship DLx Law has, or has had, with Roofstock, are not made on Roofstock’s behalf, are not advice, are for informational purposes only, and do not reflect any preference of the authors.

¹⁶ Roofstock onChain (<https://onchain.roofstock.com/>).

¹⁷ *See* Legal Ownership, ROOFSTOCK ONCHAIN ON GITBOOK: LEARN, <https://roofstock-onchain.gitbook.io/learn-about-roofstock-onchain/guides/how-it-works/legal-ownership> (last visited Aug. 28, 2025).

¹⁸ With legal title held by the LLC, the NFT would function as a kind of transferable proxy for the LLC’s sole membership interest. *See id.*, *see also*, BUS. WIRE, *Origin Protocol Partners with Roofstock onChain to Revolutionize Real Estate Transactions* (Sep. 28, 2022), <https://www.businesswire.com/news/home/20220928005236/en/Revolutionizing-Real-Estate-Transactions-Through-NFTs-Origin-Protocol-Partners-With-Roofstock-onChain> (last visited Aug. 28, 2025) (“Roofstock onChain titles each home in a single[-]member [LLC]. By using a blockchain to represent the ownership interest of each LLC in the form of an NFT, ownership of the corresponding property can be transferred on[chain in a legally enforceable manner.”).

¹⁹ *See* Teller, *Roofstock Leverages the Teller Protocol to Enable Financing of Tokenized Real Estate Properties with the USDC Homes Lending Pool* (Oct. 18, 2022), <https://blog.teller.org/roofstock-leverages-the-teller-protocol-to-enable-financing-of-tokenized-real-estate-properties-with-the-usdc-homes-lending-pool/>. In October 2022 a Columbia (South Carolina) property sold for \$175,000, with payment in USDC, using this structure for the first time. Circle, *Roofstock onChain Sells First Real Estate NFT Purchased with USDC Through On-Chain Home Financing* (Oct. 18, 2022), <https://www.circle.com/pressroom/roofstock-onchain-sells-first-real-estate-nft-purchased-with-usdc-through-on-chain-home-financing> (quoting the first buyer as stating that he was able to “buy a fully title-insured, rent-ready property with one click” and that, despite not being “a web3 expert,” the platform “made it simple and easy”).

²⁰ Although various U.S. courts have seen some litigation involving NFTs, none are directly on point. *See, e.g., Free Holdings, Inc. v. McCoy*, No. 23-644, 2024 U.S. App. LEXIS 1045 (2d Cir., Jan. 17, 2024) (discussing NFT title claims, but not addressing enforceable ownership of real-world assets represented by tokens).

the LLC. An onchain transfer of a “membership-linked” token does not, by itself, admit the transferee as a member or give effect to an assignment recognized under state law or the LLC’s operating agreement.²¹

- *Governance mismatch*: LLC statutes were generally written for closely held membership and issuer-maintained ledgers. Without bespoke provisions that “opt in” to onchain registers and align transfer or admission mechanics, public, wallet-to-wallet secondary markets create reconciliation problems and notice gaps for votes and consents. Delaware’s statutory scheme underscores that membership, admission, and records are LLC agreement functions that must be written to expressly address token-based transfers.
- *Enforcement deficit*: In the LLC model, tokenholders often lacked information rights or standing to compel action when properties deteriorated. In 2025, the City of Detroit (Michigan) sued RealT-affiliated landlords for nuisance and housing code violations and later obtained a temporary restraining order that blocked evictions and rent collection until properties were brought into compliance. This anecdote helps to illustrate the gap between onchain entitlements and offchain responsibility in schemes involving often several different LLCs.²²
- *Bankruptcy exposure*: If an issuing LLC becomes insolvent, tokenholders typically hold only equity or contract claims on the LLC, placing them among unsecured claimants unless documents create seniority or security and otherwise putting the rights to the underlying assets at risk. By contrast, applicable law generally excludes trust property (or other property held as a fiduciary) from the estate of the trust company, regardless of whether the company enters receivership or becomes the subject of bankruptcy proceedings. This is the likely case at least to the extent the trust company holds bare legal title on the tokenholders’ behalf and not merely an equitable interest.²³

Using LLCs as SPVs (‘*special purpose vehicles*’) underlying tokenization project infrastructure can potentially still work, and, after all, trust companies carry chartering and examination costs that SPVs do

²¹ Under Delaware’s LLC Act, assignees do not become members or obtain management rights absent the LLC agreement or unanimous member consent, and admission formalities sit offchain by default. See 6 Del. C. § 18-301 (establishing default rules for the admission of members); 6 Del. C. § 18-704 (establishing the default rules relevant to the right of assignee to become a member of an LLC and clarifying that an admitted assignee assumes the rights and obligations of a member, including governance and fiduciary responsibilities).

²² See Aaron Mondry, Detroit Sues Crypto Landlord RealT Over Blight, Tenant Harm (Jul. 2, 2025), OUTLIER MEDIA, <https://outliermmedia.org/real-t-lawsuit-detroit-sues-crypto-landlord/>; City of Detroit, *City Scores Major Win for Tenants Living in Troubled Real Token Properties That Are Subject of Sweeping Lawsuit* (Jul. 23, 2025), available at <https://detroitmi.gov/news/city-scores-major-win-tenants-living-troubled-real-token-properties-are-subject-sweeping-lawsuit> (announcing a temporary restraining order in *City of Detroit v. Michigan Real Token I LLC*, No. 25-010288-CH (3d Cir. Ct., Wayne Cnty., Mich. Jul. 23, 2025), enjoining RealToken entities from selling or transferring tokenized Detroit rental properties amid allegations of systemic code violations, unsafe housing conditions, and speculative investment practices). Aaron Mondry, *Judge Blocks RealT From Evicting Tenants, Collecting Rent*, OUTLIER MEDIA (Jul. 23, 2025), <https://outliermmedia.org/real-t-detroit-judge-crypto-real-estate-evictions-rent/>; Aaron Mondry, *Crypto Investors Bought Up Hundreds of Detroit Homes: Tenants Say They’re Neglected*, OUTLIER MEDIA (Jun. 11, 2024), <https://outliermmedia.org/crypto-real-estate-real-t-cryptocurrency-detroit/>; Aaron Mondry, *RealT’s Detroit Properties Face Foreclosures, Leaving Investors Unaware*, OUTLIER MEDIA (Jul. 9, 2025), <https://outliermmedia.org/real-t-detroit-real-estate-properties-investors/>.

²³ 11 U.S.C. § 541(d) (providing that property in which the debtor holds only legal title and not an equitable interest becomes property of the estate only to the extent of the debtor’s legal title, thereby excluding from the estate assets the debtor holds in trust, escrow, or custodial capacity for others and confirming that beneficial ownership remains with the equitable owner).

not.²⁴ Nevertheless, although they can be cheaper to form and manage, LLCs tend to shift risk to governance workarounds and bankruptcy outcomes, which are not as ideal for many kinds of RWAs.

Taken together, these early lessons generally point to the need for a container that can (i) hold legal title, (ii) delegate mechanics to specialized agents, (iii) keep customer assets out of a custodian failure, and (iv) make its official register electronic in a way that gives legal effect to onchain control events. In the U.S., the most widely accepted solution for this need is a ‘trust’ instrument administered by a supervised trust company.

Tokenized securities projects.

A parallel wave of “tokenized securities” projects struggled for reasons much different from the LLC- and NFT-linked pilots. Here, the bottlenecks were, and in many ways continue to be, related to the use and application of conventional market infrastructure and regulations.

Custody rules have been one of the most significant and consistent chokepoints for digital asset tokens that represent securities. Broker-dealers that *custody* digital asset securities must satisfy Rule 15c3-3²⁵ under the Securities Exchange Act of 1934²⁶ (the “Exchange Act”). One part of Exchange Act Rule 15c3-3, known as the SEC’s Customer Protection Rule,²⁷ is underscored by the SEC’s 2019 Joint Staff Statement requiring possession or control of the assets, good control locations, and reserve computations subject to workflows that prove exclusive control and provide for reconciliation with broker-dealers’ books and records.²⁸ In May 2025, SEC staff withdrew the 2019 Joint Staff Statement²⁹ and issued guidance in its place in the form of a set of FAQs (‘*frequently asked questions*’) implying the Commission would assume a case-by-case application of existing rules (including Rule 15c3-3) over the course of at least the next few years rather than a blanket prohibition or safe harbor for the custody of digital asset securities.³⁰

²⁴ New York’s application fees and ongoing assessments are materially higher than South Dakota’s, and the state imposes periodic exam and bonding requirements that drive steady fixed costs. Compare N.Y. DEP’T OF FIN. SERVS., *Application Fees & Assessments*, https://www.dfs.ny.gov/virtual_currency_businesses, with S.D. DIV. OF BANKING, TRUST COMPANY INFORMATION PACKET, https://dlr.sd.gov/banking/trusts/documents/trust_information_packet.pdf (each last visited Sep. 4, 2025) (outlining the formation and examination costs for New York and South Dakota public trust company charters).

²⁵ 17 C.F.R. § 240.15c3-3.

²⁶ 15 U.S.C. §§ 78a–78qq.

²⁷ See 17 C.F.R. §§ 240.15c3-3(b), (c), (e).

²⁸ The SEC’s 2019 Joint Staff Statement underscored that any broker-dealer seeking to custody digital asset securities must satisfy Rule 15c3-3’s “Customer Protection Rule” in full. SECURITIES & EXCH. COMM’N, *Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities*, SEC.GOV: NEWSROOM: SPEECHES & STATEMENTS (Jul. 8, 2019), <https://www.sec.gov/newsroom/speeches-statements/joint-staff-statement-broker-dealer-custody-digital-asset-securities>.

²⁹ SECURITIES & EXCH. COMM’N, *Statement: Withdrawal of Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities*, SEC.GOV: NEWSROOM: SPEECHES & STATEMENTS (May 15, 2025), <https://www.sec.gov/newsroom/speeches-statements/withdrawal-joint-staff-statement-broker-dealer-custody-digital-asset-securities> [hereinafter SEC Withdrawal of 2019 Joint Staff Statement].

³⁰ SECURITIES & EXCH. COMM’N: DIV. OF TRADING & MKTS., *FAQs Relating to Crypto Asset Activities and Distributed Ledger Technology*, SEC.GOV: NEWSROOM: SPEECHES & STATEMENTS (May 15, 2025), <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology> [hereinafter SEC Crypto Asset FAQs].

The SEC's optional limited, conditional path for special-purpose broker-dealers ("SPBDs") narrowed rather than solved these frictions;³¹ to date, Prometheus Ember Capital³² is the only firm approved as an SPBD, and most carrying brokers have not integrated onchain custody into core stacks.³³ Secondary market depth has also been unable to compensate for the friction, resulting in thinning participation in ATSs ('*alternative trading systems*'),³⁴ where trading exists now, it is fragmented, permissioned, and small by legacy standards.

The legal wrapper adds frictions that do not vanish onchain. Private placement routes, like under Reg D or Reg S, bring holding periods, resale limits, and transfer agent or whitelist controls that must travel with the instrument.³⁵ In practice, routine tax reporting also recreates legacy frictions: Dividend or distribution events generally trigger reporting requirements on IRS Form 1099-DIV (and often Form 1099-B on dispositions), obligating platforms and intermediaries to maintain taxpayer information and reconcile offchain books with any onchain ledger entries.³⁶ If distribution broadens, Section 12(g) of the Exchange Act establishes thresholds based on assets plus holders of record that, if exceeded, can force reporting requirements on issuers, prompting platforms to gate retail and limit capitalization table growth.³⁷

³¹ A separate SEC statement in 2020 offered only narrow, conditional relief for certain SPBDs ('*special-purpose broker-dealers*') that limit their business to digital asset securities and build bespoke controls around key management, settlement, and recordkeeping. Custody of Digital Asset Securities by Special Purpose Broker-Dealers, 86 Fed. Reg. 11627 (Feb. 26, 2021) (available at <https://www.federalregister.gov/documents/2021/02/26/2020-28847/custody-of-digital-asset-securities-by-special-purpose-broker-dealers>).

³² Prometheus Ember Capital LLC (<https://prometheum.com/>).

³³ For almost 2 years no SPBDs were approved, and even after the Financial Industry Regulatory Authority's (a.k.a. FINRA) 2023 approval of Prometheus Ember Capital, the path remained narrow and operationally distinct from mainstream carrying broker models. See H. COMM. ON FIN. SERVS., McHenry, *Financial Services Republicans Press Regulators Regarding Prometheus Special Purpose Broker-Dealer Approval*, Press Release (Aug. 15, 2023), <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408950> (observing that no SPBD approvals were granted during the first two years following the rule's adoption); see also tZERO, *Aspen Digital Security Overview* (Nov. 2023), https://www.tzero.com/wp-content/uploads/2023/11/Aspen_Digital_Security_Offering_v17.pdf (explaining that trading of Aspen Digital securities on the tZERO ATS began on August 24, 2020); SECURITY TOKEN MARKET, *STM Market Report* (Mar. 2024), <https://medium.com/security-token-group/stm-market-report-march-2024-c68e3854130c> (identifying pronounced volume spikes and drawdowns for ASPD tokens). Emblematic flagship issuances like St. Regis Aspen's '*Aspen Coin*' saw intermittent bursts of activity but limited sustained volume. See *Beyond, Inc. Risk Disclosures*, Ex. 99, at 16, Form 8-K, SEC.GOV: Archives (Apr. 17, 2025), <https://www.sec.gov/Archives/edgar/data/2061269/000114036125015305/EX-99.pdf> (stating that Beyond, Inc., the parent company of tZERO, was aware that securities on tZERO's ATS are "usually thinly traded"); SECURITY TOKEN MARKET, *STM Market Reports* (Mar.-Apr. 2024), <https://medium.com/security-token-group/stm-market-report-march-2024-c68e3854130c> (reporting modest U.S. monthly volumes).

³⁴ Digital asset securities issuers were even themselves warning markets of illiquidity. See *Security Token Market* "STM Market Reports Mar.-Apr. 2024, MEDIUM: SEC. TOKEN Gr. (Apr. 5, 2024), <https://medium.com/security-token-group/stm-market-report-march-2024-c68e3854130c> (reporting modest U.S. monthly volumes in Q1 of 2024).

³⁵ See Exchange Act Rule 144 (17 C.F.R. § 230.144) (establishing holding periods, resale limitations, and other restrictions on private securities placements).

³⁶ Even when the authoritative register is onchain, cash and in-kind distributions typically trigger legacy federal information reporting obligations (e.g., Forms 1099-DIV or 1099-B); platforms either must serve as withholding or filing agents themselves or coordinate with their transfer agent, broker, or paying agent to issue forms and perform backup withholding. Emerging digital asset broker rules (Form 1099-DA) expand covered activity and data-retention duties. See TREASURY DEP'T: INTERNAL REV. SERV., *General Instructions for Certain Information Returns: Part M, Statements to Recipients*, IRS: Pubs, <https://www.irs.gov/pub/irs-pdf/i1099gi.pdf> (last visited Sep. 7, 2025); TREASURY DEP'T: INTERNAL REV. SERV., *Press Release: Final Regulations and Related IRS Guidance for Reporting By Brokers on Sales and Exchanges of Digital Assets*, IRS: FS-2024-23 (Jun. 2024), <https://www.irs.gov/newsroom/final-regulations-and-related-irs-guidance-for-reporting-by-brokers-on-sales-and-exchanges-of-digital-assets>.

³⁷ See SECURITIES & EXCH. COMM'N, Press Release No. 2023-253, *SEC Issues Staff Report on Accredited Investor Definition* (Dec. 15, 2023), <https://www.sec.gov/newsroom/press-releases/2023-253> (emphasizing that Exchange Act Section 12(g) registration is triggered for issuers with ≥ \$10 million in assets and ≥ 2,000 holders of record, or with ≥ 500 non-accredited investors).

In public securities markets (*i.e.*, public company stocks, exchange-traded funds, commercial bonds, etc.), the authoritative record lives with a transfer agent and, indirectly, at the CSD (*‘central securities depository’*) (*e.g.*, securities immobilized at the Depository Trust Company in the name of Cede & Co.).³⁸ An entry on a blockchain cannot displace that authoritative record absent a registered CSD or statutory change, so most “onchain” ledgers for listed securities function as shadow registers that must be harmonized offchain.³⁹

Microstructure also cuts against a breakout. Netting at the Depository Trust and Clearing Corporation (DTCC)⁴⁰ already reduces gross settlement obligations by roughly 98% on average; plus, t+1 settlement⁴¹ works well enough for most issuers, and fully atomic settlement can erode these netting and financing benefits.⁴² In also dealing with KYC-gated and often siloed venues, limited market making balance sheets, and intermittent disclosure in underlying private assets, however, market participants cannot rely on continuous liquidity and must instead conform to episodic flows.

Several early “full-stack” tokenized securities platforms pivoted toward narrower roles (like transfer agency, register tech, or qualified custody) that are operationally much clearer and carry less risk.⁴³ So far, the models that have seen steadier traction look different, favoring designs that tokenize either (i) a direct beneficial interest administered by a supervised trustee or (ii) a redemption or payment claim against assets held in trust.⁴⁴ Following either of these design concepts, tokenized securities projects are typically able to route settlement through a qualified custodian, keep a single authoritative register, and embed compliance logic in the governing instrument rather than in broker-dealer balance sheet workflows. Securities laws still

³⁸ See DEPOSITORY TR. & CLEARING CORP., *The First Stop for Securities*, at 4, DTCC: ISSUER SERVS: INDEX, <https://www.dtcc.com/issuer-services/index.html> (last visited Sep. 3, 2025) (describing the DTCC’s central counterparty multilateral netting, under which participants settle a single net obligation rather than gross trades, thereby materially reducing liquidity needs and credit exposure).

³⁹ See NAT’L ASS’N OF BOND LAWYERS, *Demystifying DTC: The Depository Trust Company and the Municipal Bond Market*, NABL.ORG (Mar. 31, 2017), <https://www.nabl.org/wp-content/uploads/2023/02/20170331-NABL-Demystifying-DTC.pdf> (explaining DTC immobilization and registration in the name of Cede & Co., the depository’s nominee).

⁴⁰ See DEPOSITORY TR. & CLEARING CORP., *White Paper on Advancing Together: Leading the Industry to Accelerated Settlement* (Feb. 2021), <https://www.dtcc.com/-/media/Files/PDFs/White%20Paper/DTCC-Accelerated-Settle-WP-2021.pdf> [hereinafter DTCC 2021 White Paper].

⁴¹ The SEC’s amendment to Rule 15c6-1(a) under the Exchange Act, which took effect in May 2024, shortened the settlement period for most securities issuances and trades from two business days (t+2) to one business (t+1) day (*i.e.*, from the transaction date). 17 C.F.R. § 240.15c6-1; SEC Final Rule Shortening the Securities Transaction Settlement Cycle, 88 Fed. Reg. 13872 (Mar. 6, 2023) (available at <https://www.federalregister.gov/documents/2023/03/06/2023-03566/shortening-the-securities-transaction-settlement-cycle>).

⁴² See DTCC 2021 White Paper, *supra* note 40.

⁴³ Harbor, once positioned as a full-stack tokenized securities venue, was acquired by BitGo in 2020 as the industry consolidated around custody and transfer agency building blocks. See Nikhilesh De, *BitGo Acquires Harbor in Surprise Expansion Beyond Crypto Custody*, COINDESK: MARKETS (Feb. 18, 2020), <https://www.coindesk.com/markets/2020/02/18/bitgo-acquires-harbor-in-surprise-expansion-beyond-crypto-custody>; Tim Fries, *BitGo Acquires Harbor*, TOKENIST (Feb. 19, 2020), <https://tokenist.com/bitgo-acquires-security-token-platform-harbor-in-industry-first/>.

⁴⁴ For example, Galaxy Asset Management’s (<https://www.galaxy.com/asset-management-and-infrastructure-solutions>) ‘Opening Bell’ funds with Superstate use a registered transfer agent to maintain the authoritative register while enabling onchain interaction at the edges; trading still routes through qualified custody and transfer agency workflows. See Galaxy Digital Inc., *Press Release: Galaxy and Superstate Launch GLXY Tokenized Public Shares on Solana*, GALAXY: NEWSROOM (Sep. 3, 2025), <https://www.galaxy.com/newsroom/galaxy-superstate-launch-glxy-tokenized-public-shares>; Nate Wolf, *Galaxy Digital Tokenizes Its Stock: It Won’t Be the Last*, BARRONS: ARTS. (Sep. 3, 2025), <https://www.barrons.com/articles/galaxy-digital-tokenize-stock-fa4051d5>. Developer literature around the “Permuto Trust” model on the Chia network (<https://www.chia.net/>) similarly describes trust-based beneficial interests designed to trade natively onchain, though details vary by implementation and jurisdiction. See Gene Hoffman, *The Permuto Trusts Started as a Chia Blockchain-Only Offering*, CHIA.NET: CHIA BLOG (Apr. 9, 2025), <https://www.chia.net/2025/04/09/the-permuto-trusts-started-as-a-chia-blockchain-only-offering/>.

matter at issuance, but day-to-day operations depend on custody and register discipline more than on broker custody.⁴⁵

The practical lesson is to separate offerings from operations. If a token functionally represents any kind of ‘security’ interest, then tokenization project teams ought to anticipate a restricted distribution, transfer agent controls, and sparse secondary venues. If, however, a team’s goal is scalability and open settlement for direct claims on an asset pool (and for so long as the intended token transactions can avoid securities classification), then the team should instead consider structuring the token as a trust-administered beneficial interest or clearly drafted redemption right, preserving the economic benefits of programmability.

3. Trust companies as the legal bridge between tokens and things

A ‘trust’ is a legal arrangement in which a settlor transfers property to a trustee to hold and manage for the benefit of designated beneficiaries.⁴⁶ This split between legal title and equitable interests is the core feature that lets a trustee act, yet it makes the beneficiary the economic owner. Trusts serve many functions, including will substitutes,⁴⁷ charitable funds,⁴⁸ and financial purposes like investment, securitization, and employee benefit plan administration.⁴⁹ The archetype traces to English common law,⁵⁰ with analogs in Roman, Islamic, and Germanic law.⁵¹

A ‘trust company’ is a chartered fiduciary institution that holds and administers assets on behalf of clients.⁵² In modern practice, trust companies act as professional trustees that safeguard assets, execute transactions under the governing trust, and comply with fiduciary duties under applicable law.⁵³ Most operate under state law, but the Office of the Comptroller of the Currency (OCC) also charters national trust banks under federal law.⁵⁴ Trust companies may serve as trustee, executor, administrator, registrar, guardian, assignee,

⁴⁵ See SEC Withdrawal of 2019 Joint Staff Statement, *supra* note 29 (clarifying status of prior staff guidance and reinforcing need to comply with existing customer protection and books and records rules).

⁴⁶ See Rest. (3d) Trusts, § 2.

⁴⁷ See Lindsay Theodore, *What Is a Trust, and How Can It Benefit My Estate Plan?*, T. ROWE PRICE: PERSONAL INVESTING: RESOURCES: INSIGHTS (Jul. 1, 2025), <https://www.troweprice.com/personal-investing/resources/insights/what-is-a-trust-and-how-can-it-benefit-my-estate-plan.html>.

⁴⁸ See *What Is a Charitable Trust?*, WESTERN & SOUTHERN FINANCIAL GROUP: RETIREMENT (rev. Oct. 17, 2024), <https://www.westernsouthern.com/retirement/what-is-a-charitable-trust>.

⁴⁹ See *Role of the Trustee in Asset Securitization*, WILMINGTON TRUST: LIBRARY (Oct. 28, 2022), <https://www.wilmingtontrust.com/library/article/role-of-the-trustee-in-asset-securitization> (discussing the trustee’s role in asset securitization transactions, including safeguarding collateral, ensuring compliance with transaction documents, and protecting investor interests); *ERISA Compliance*, HUB INTERNATIONAL (Jul. 15, 2020), <https://www.hubinternational.com/products/employee-benefits/compliance-bulletins/2020/07/erisa-compliance> (discussing how ERISA requires all assets to be held in trust by statute).

⁵⁰ See John Morley, *Essay: The Common Law Corporation: The Power of the Trust in Anglo-American Business History*, 116 COLUM. L. REV. 2145, 2152 (noting that the concept of a trust arrangement, originally called a “use,” became popular in the “early 1300s and spread rapidly toward the late 1300s and early 1400s”) (available at <https://www.columbialawreview.org/content/the-common-law-corporation-the-power-of-the-trust-in-anglo-american-business-history/>).

⁵¹ See Avisheh Avini, *Comment: The Origins of the Modern English Trust Revisited*, 70 TUL. L. REV. 1139, 1140-62 (1996) (discussing the Roman fideicommissum, the Germanic salmannus, and the Islamic waqf as structurally analogous institutions predating the English trust) (available at <https://www.tulanelawreview.org/pub/volume70/issue4/the-origins-of-the-modern-english-trust-revisited>).

⁵² See *Trust Company*, BLACK’S LAW DICTIONARY (4th ed. 1968) at 1682.

⁵³ See Mark Cussen, *How Top Trust Companies Operate*, INVESTOPEDIA: ARTS.: RETIREMENT (Oct. 21, 2024), <https://www.investopedia.com/articles/retirement/08/trust-company.asp>.

⁵⁴ Although state trust company statutes vary, a good example is South Dakota’s (S.D. Codified Laws ch. 51A-6A), which provides a comprehensive framework for both public and private trust companies, including flexible asset protection, no state

or receiver, and they are subject to ongoing examination and fiduciary supervision.⁵⁵ They must segregate client assets, honor duties of loyalty and care, and maintain structures that keep those assets outside the custodian's bankruptcy estate.⁵⁶

Although the United States Trust Company of New York (1853) is often cited as the first dedicated trust company,⁵⁷ earlier institutions—such as the Farmers' Fire Insurance and Loan Company (1822)—foreshadowed the modern corporate fiduciary.⁵⁸ Although historically viewed as conservative institutions largely providing wealth management tools to affluent families,⁵⁹ trust companies were early to digital asset custody. New York limited purpose trust companies now anchor major crypto operations, with Paxos⁶⁰ and Gemini⁶¹ among the first movers in 2015,⁶² followed later by Coinbase.⁶³ South Dakota also started becoming an increasingly popular jurisdiction of choice for digital asset custodians since at least 2018, with the grant of a public trust company charter to BitGo.⁶⁴

Structurally, a trust company typically serves as trustee under a written agreement, taking legal title to the project assets and managing them under the governing instrument and applicable fiduciary law. That instrument can contract around many default rules, and state trust law offers significant flexibility. The OCC can charter national trust banks that limit operations to trust activities,⁶⁵ and the roster of active national trust banks is short but growing.⁶⁶ In RWA tokenization projects, the trust company functions as a bankruptcy-remote bridge between the project sponsor or issuer and the end users, aligning onchain state transitions with enforceable offchain rights.

Mechanics.

income tax on trust income, and favorable rules for directed trusts. The OCC's regulations for federally-chartered institutions exercising fiduciary powers can be found at 12 C.F.R. § 9.1.

⁵⁵ OFF. OF THE COMPTROLLER OF THE CURRENCY, OCC Interpretive Letter No. 1176 (Jan. 11, 2021), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1176.pdf>.

⁵⁶ *Id.* at 5 n.9 (discussing the fiduciary duties of trust companies, including the “*duty of loyalty* (acting in good faith, protecting the interest of the client, and taking no action in favor of the fiduciary that would impair the interest of the client); *duty of care or prudence* (exercising reasonable care, skill, and caution in performing activities); *duty to segregate funds* (keeping client assets distinct from other assets, including those of the fiduciary); *duty to safeguard* (protecting client assets from damage, loss, or destruction); *duty to invest* (acting as a prudent investor bearing the purpose and interest of the client mind); and *duty of accounting* (providing full and fair disclosure and keeping records of receipts, expenses, sales, purchases, exchanges[,] [or] distributions to account for the fiduciary's activities on behalf of the client”) (emphasis added).

⁵⁷ *See* Grant Butler & Robert Tammero Jr., *The Trust Company: An Old Tool for a New Age*, REUTERS: L.: NEWS (Jul. 22, 2022), <https://www.reuters.com/legal/transactional/trust-company-an-old-tool-new-age-2022-07-22/> (discussing the formation of the United States Trust Company of New York).

⁵⁸ *See* Bradley Hansen, *The First Trust Company in Institutions and Public Law: Comparative Approaches 11*, at 11-27 (Tom Ginsburg & Robert Kagan eds., Palgrave Macmillan 2005) (available at https://link.springer.com/chapter/10.1057/9780230619135_2).

⁵⁹ *See* Grant Butler & Robert Tammero Jr., *supra* note 57.

⁶⁰ Paxos Trust Company, LLC (<https://www.paxos.com/>).

⁶¹ Gemini Trust Company, LLC (<https://www.gemini.com/>).

⁶² *SEE* N.Y. DEP'T OF FIN. SERVS., *Press Release: NYDFS Grants Charter to “Gemini” Bitcoin Exchange Founded by Cameron and Tyler Winklevoss*, NYDFS: Reports & Pubs. (Oct. 5, 2015), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1510051; *see also* Leighton Dellinger, *Paxos Was Built to Protect Its Customers*, PAXOS: BLOG (Feb. 23, 2023), <https://www.paxos.com/blog/paxos-was-built-to-protect-its-customers> (“Our mission is to get every asset on the blockchain, which will create a more stable and transparent financial system that’s more accessible to the people who need it most.”).

⁶³ Coinbase Custody Trust Company, LLC (<https://www.coinbase.com/prime/custody>).

⁶⁴ BitGo Trust Company, Inc. (<https://www.bitgo.com/entities/bitgo-trust-company-inc/>).

⁶⁵ *See* 12 U.S.C. §§ 27(a), 92a; OCC Interpretive Letter No. 1176, *supra* note 55 (confirming OCC authority to charter a national bank limited to trust-company activities).

⁶⁶ *See* OFF. OF THE COMPTROLLER OF THE CURRENCY, *Active Trust Banks* (rev. Jul. 31, 2025), <https://occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/trust-by-name.pdf>.

A typical tokenization trust involves at least these four different roles:

- The settlor or sponsor (*i.e.*, someone contributing or purchasing the assets and setting the terms);
- The trustee, which is almost always a regulated trust company with fiduciary powers;
- The beneficiaries (who could be tokenholders, but not necessarily depending on the project design); and
- One or more administrators (*i.e.*, someone responsible for accounting, reporting, and taxes).

For the custody of underlying assets, the trustee will often appoint sub-custodians, subject to diligence and oversight. Wherever the real world state of the underlying asset must be attested onchain, agency or service agreements need to be put in place with independent oracles and physical validators. Liechtenstein's TVTG offers helpful design analogues by naming roles like "TT depository," "tokeni[z]ation service provider," and 'physical validator,' that preserve the link between token and thing.⁶⁷ U.S.-based projects can often implement the same logic by contract.

The governing instrument can make the trust's official register of beneficial interests native to a blockchain or distributed ledger. The Delaware Statutory Trust Act (DSTA) recognizes evidence of ownership "by means of [...] electronic networks or databases," including distributed networks, allowing end users' onchain token control to dictate the operative transfer of a beneficial interest if structured to do so.⁶⁸ Trust instruments also support electronic voting and proxy mechanics, and the DSTA provides for widely bespoke tailoring of trustee duties (including elimination of fiduciary duties for non-discretionary roles), allowing projects to, as needed, strip trustees of up to everything except the implied covenant of good faith and fair dealing.⁶⁹

Like with the various statutory pathways for configuring trust instruments themselves, trust companies' supervision and regulatory requirements can also vary widely from state to state. As one example, South Dakota examines trust companies at least every 36 months, sometimes more frequently, such as for public trust companies or higher risk profiles.⁷⁰ New York LPTCs are also subjected to significant supervision requirements. Over the past 10 years, the New York Department of Financial Services (NYDFS) has chartered over a dozen LPTCs to conduct what state regulations call "virtual currency business activity."⁷¹

The NYDFS has also issued crypto custody guidance emphasizing segregation and customer ownership that can serve as a benchmark even for trust companies in other chartering jurisdictions.⁷² Additionally, a

⁶⁷ Token and TT Service Provider Act (TVTG) (Liech.), English translation, LGBL 2019 No. 301 (Mar. 26, 2025) (available at <https://www.regierung.li/files/attachments/950-6-tvtg-250201-en.pdf>).

⁶⁸ 12 Del. C. § 3801(a) (recognizing that beneficial interests in statutory trusts may be evidenced by electronic networks or databases, including blockchain or distributed ledger technology).

⁶⁹ 12 Del. C. § 3806(c) (permitting governing instruments to expand, restrict, or eliminate fiduciary duties of trustees, while preserving the implied contractual covenant of good faith and fair dealing).

⁷⁰ S.D. Codified Laws § 51A-6A-31 (requiring trust companies to be examined at least once every 36 months or more frequently as necessary); S.D. DIV. OF BANKING, *Public Trust Company Mandates* (rev. Jul. 2022), https://dlr.sd.gov/banking/trusts/documents/public_trust_company_mandates.pdf (explaining that public trust companies are generally examined every 24 months, depending on complexity and risk profile).

⁷¹ N.Y. DEP'T OF FIN. SERVS., *Virtual Currency Business Licensing*, https://www.dfs.ny.gov/virtual_currency_businesses;

⁷² See id.; N.Y. DEP'T OF FIN. SERVS., *Guidance on Custodial Structures for Customer Protection in the Event of Insolvency*, NYDFS: INDUS. LETTERS (Jan. 23, 2023),

growing number of service providers and various decentralized network communities offer existing tooling that can support and enforce established custodial standards and principles.⁷³

Benefits.

The practical advantages of using a trust company follow directly from its mandate. Because the trustee's job is to act in the interests defined by the governing instrument, the instrument can be written to mirror the token's lifecycle and specify who keeps the books that matter. Where the project design does not require the trustee to make any discretionary decisions, duties can be tailored to a narrow set of ministerial actions and reconciliations; where judgment is needed (*e.g.*, corporate actions, collateral enforcement, tax allocations), the instrument can grant those powers but cabin them with standards and reporting.

- *Flexibility*: DSTA-based trusts are abundantly adaptable. Trustees and other actors' duties can be expanded, restricted, or eliminated by the governing instrument (subject to the implied covenant), which is a suitable fit for structured products that ensure the trustee follows a narrow, non-discretionary playbook. Registers can live onchain, and voting and proxies can be electronic, but neither is universally required. These tools allow the legal perimeter to mirror onchain logic without forcing LLC-style member admission steps.⁷⁴
- *Bankruptcy remoteness*: Property held *in trust* is generally not property of the trustee's bankruptcy estate; the estate takes only bare legal title if the trustee lacks the equitable interest, per 11 U.S.C. § 541(d). This principle is foundational for keeping customer assets out of a custodian failure and for structuring sponsor bankruptcy remoteness.⁷⁵ Remoteness is strongest, however, for *ownership tokens*, the first of the two primary design families discussed in Section 1 of this article, because they provide for cleaner property claims and potentially even blockchain-native registers (such as under the DSTA). Nevertheless, the ownership route also can bring likely securities implications for public sales, requiring the observance of transfer restrictions and notices and potentially complicating tax matters (*i.e.*, grantor *versus* partnership).⁷⁶
- *Enforceable property rights*: Because the trust holds legal title, the governing instrument can allow token control, together with a register update (such as is permitted by the DSTA), to give effect to the transfer of a direct beneficial interest.⁷⁷ Tokenholder rights can be made the strongest under the second of the two primary design families for tokenization, *rights tokens*, making them especially useful for payments, redemptions, governance, and participation. The model for rights tokens allows for broader flexibility and less friction with every token transfer because beneficial ownership in the trust can remain static, aligning with UCC Article 12's

https://www.dfs.ny.gov/industry_guidance/industry_letters/il20230123_guidance_custodial_structures [hereinafter NYDFS Guidance on Custodial Structures].

⁷³ For example, Protocol Labs (<https://protocol.ai>) builds software tools and services with which RWA project teams can integrate to establish an infrastructure on the Filecoin Network (<https://filecoin.io/>) to reliably support launch-ready custodial operations.

⁷⁴ 12 Del. C. § 3801(a).

⁷⁵ 11 U.S.C. § 541(d) (providing that property in which a debtor holds only legal title and not the equitable interest enters a bankruptcy estate only to the extent of the debtor's legal title).

⁷⁶ 12 Del. C. §§ 3801(a), 3806(c).

⁷⁷ 12 Del. C. § 3801(a).

“controllable electronic record” framework for perfection and priority.⁷⁸ This route does come with its own set of challenges, however, because enforceability depends on precise onchain-offchain mapping, cleanly meeting relevant standards for “control,” and maintaining clear disclosures to manage promoter and anti-touting risk.⁷⁹

- *Segregated custody*: The NYDFS’s 2023 guidance prohibits LPTCs from establishing a debtor-creditor relationship, and it requires clear and reliable asset segregation and plain disclosures that beneficial interest remains with the customer. Trust companies can operationalize this through omnibus or per-customer digital wallets with automated reconciliations to books and records.⁸⁰
- *Reliable pathways with qualified custodians*: For U.S. investment advisers, “qualified custodians” can include a “bank” under Section 202(a)(2) of the Investment Advisers Act of 1940⁸¹ (the “Advisers Act”). Notwithstanding that banks and trust companies are distinct in a couple fundamental ways, the Advisers Act’s bank definition also includes trust companies doing business under state or federal law and subject to appropriate supervision. This “Custody Rule” anchors advisers’ use of trust companies as custodians, and the SEC’s 2023 safeguarding proposal, although withdrawn, would have heightened controls rather than replace the existing qualified custodian baseline.⁸²
- *Regulatory examination and credibility*: Supervised charters—from state limited purpose or special purpose trust companies to national trust banks—can provide for reliable prudential oversight. OCC interpretive letters confirm national bank authority to provide crypto custody and to hold stablecoin reserves, with later clarifications that these activities are subject to supervisory nonobjection. These signals matter to project investors, institutional counterparties, and regulators that might seek to scrutinize any given tokenization project.⁸³
- *Breadth of possible fiduciary tooling*: Delaware statutes also allow for the creation of non-charitable purpose trusts, which commonly hold the equity of an “orphan” SPV as part of certain kinds of securitizations, including aircraft financing, to neutralize sponsor control.⁸⁴

⁷⁸ UNIFORM L. COMM’N, *A Summary of the 2022 Amendments to the Uniform Commercial Code* (Jul. 21, 2022) (available at https://higherlogicdownload.s3.amazonaws.com/UNIFORMLAWS/e05963be-bdeb-7741-fb65-058355e35221_file.pdf) (providing a plain language overview of UCC Article 12, including control definitions and the “take free” rule for qualified purchasers).

⁷⁹ See John Hutton III & Kevin Hoyos, *Proposed UCC Amendments to Article 12 Shed New Light on Transacting and Securing Interests in Digital Assets*, GREENBERG TRAURIG: INSIGHTS (Dec. 1, 2022), <https://www.gtlaw.com/en/insights/2022/12/proposed-ucc-amendments-to-article-12-shed-new-light>.

⁸⁰ N.Y. DEP’T OF FIN. SERVS., *Virtual Currency Business Licensing*, https://www.dfs.ny.gov/virtual_currency_businesses; NYDFS Guidance on Custodial Structures, *supra* note 72.

⁸¹ Investment Advisers Act of 1940, Section 202(a)(2), 15 U.S.C. § 80b-2(a)(2).

⁸² See 17 C.F.R. § 275.206(4)-2 (requiring advisers covered by the Investment Advisers Act with “custody” to maintain client funds and securities with a qualified custodian, provide client notice and quarterly statements, and undergo an annual surprise examination; “qualified custodian” includes a bank (which, by § 202(a)(2) of the Advisers Act, includes trust companies), a registered broker-dealer, a registered futures commission merchant, or certain foreign financial institutions; with exceptions for privately offered securities and an audit approach for pooled vehicles); SEC Proposed Rule on Safeguarding Advisory Client Assets, 88 Fed. Reg. 14672 (proposed Mar. 9, 2023) (to be codified at 17 C.F.R. pts. 275, 279) (proposing to extend the Custody Rule to all client assets, including digital assets, require qualified custodians, and make related amendments).

⁸³ OFF. OF THE COMPTROLLER OF THE CURRENCY, Interpretive Letter No. 1170 (Jul. 22, 2020), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/intl1170.pdf> [hereinafter OCC Interpretive Letter 1170] (providing supervisory nonobjection clarification on crypto custody and stablecoin reserves).

⁸⁴ 12 Del. C. § 3556 (authorizing the creation of noncharitable purpose trusts, which are commonly used in structured finance transactions—such as aircraft securitizations and other ABS structures—to hold assets in bankruptcy-remote “orphan” vehicles);

The full scope of possible product designs varies state by state and is largely only subject to any limitations imposed under state statutes on trusts or on trust companies' granted powers. Trust companies, in acting as a trustee and fiduciary, can also generally be operated under tight, often programmatically enforced, non-discretionary mandates.⁸⁵ The same tooling translates well into supporting tokenized structures that need a neutral, bankruptcy-remote owner of assets or IP (*'intellectual property'*).

- *Operational continuity*: A trust can persist through sponsor changes or protocol migrations. So long as the trustee, register, and custodial stack remain intact, tokenholder rights survive organizational churn. DSTA's electronic register mechanics can make these transitions more easily administrable.⁸⁶

Nonetheless, even well-drafted instruments need to survive contact with supervision, operations, and adversarial processes.

4. Risks and Legal Complexities

Trust company architectures can reduce, but do not eliminate, legal risks relevant to any given RWA tokenization product or design. Some of the most significant challenges for early projects arise from the fact that laws and supervisory regimes are far from ubiquitous.

New York's 2023 virtual currency custody guidance instructs BitLicensees and LPTCs to keep users' beneficial interests with the users, avoid taking on a debtor-creditor relationship with users, segregate books and wallets, document sub-custody arrangements, and deliver clear disclosures.⁸⁷ South Dakota, by contrast, emphasizes trust company examinations, capital, and records controls, with a baseline full-scope exam at least every 36 months (often more frequently), plus minimum capital and bonding requirements that can shape cost structures.⁸⁸ Multistate token distribution, sub-custody, and marketing therefore require careful strategic and legal planning and harmonized disclosures that can stand up to even the most demanding among various state regulatory frameworks.

Ross Antonacci, et. al, *Aviation Orphan Trust Structure*, MORRIS JAMES LLP (Nov. 13, 2014), <https://www.morrisjames.com/p/102jilb/aviation-orphan-trust-structure/> (noting that the aviation industry increasingly uses "an orphan Special Purpose Vehicle (SPV) to serve in the role that would traditionally be played by an Owner Trust, in a leveraged lease transaction").

⁸⁵ See TOKENY, *ERC-3643: The Institutional-Grade Token Standard* (2025), <https://tokeny.com/erc3643/> ("Transfer rules are embedded in the securities[,] [...] [and] [t]ransfers to ineligible investors are impossible through the fast and secure validation system."); ERC3643 Assoc., *ERC-3643 Documentation* (2025), <https://www.erc3643.org/> ("The transfer of ERC-3643 tokens can only be triggered when both the investor rules (via ONCHAINID) and offering rules are fulfilled, ensuring compliance at the smart contract level.") BITGO, Developer Documentation, <https://developers.bitgo.com> (last visited Sep. 5, 2025) (showing programmatic enforcement of whitelists/blacklists, spending limits, approval workflows, and freeze functions); AAVE, *ARFC: Add PAXG to Aave v3 Main Instance on Ethereum*, AAVE GOVERNANCE FORUM (Nov. 19, 2024), <https://governance.aave.com/t/arfc-add-paxg-to-aave-v3-main-instance-on-ethereum/19849> (noting governance discussion of PAXG integration, including contract upgradeability and multi-signature role structure); PAXOS TRUST CO., *PAX Gold (PAXG) Transparency*, <https://www.paxos.com/paxg-transparency> (last visited Sep. 5, 2025) (describing Paxos's mint-burn mechanics, multi-signature controls, and monthly auditor attestations required under New York Department of Financial Services oversight).

⁸⁶ 12 Del. C. § 3801(a).

⁸⁷ NYDFS Guidance on Custodial Structures, *supra* note 72.

⁸⁸ S.D. DIV. OF BANKING, *Trust Company Information Packet* (rev. Jul. 2022), https://dlr.sd.gov/banking/trusts/documents/trust_information_packet.pdf (providing guidance on licensees' exam cadence and capital, bonding, and records requirements).

Wyoming's digital asset statutes add another layer for bank custodians, allowing for custody to be structured as bailment with strict segregation or as an alternative relationship with omnibus options, each with mandated written notices about bankruptcy and segregation risk.⁸⁹ As with many other regulatory matters, especially in crypto, project teams should never be quick to assume a single U.S. "baseline." The custody posture that teams can advertise, and the remedies that customers might expect, will generally depend on the institution's charter and situs. It also raises the longstanding and so-far unclear answer to the question of whether a state trust company can offer services to clients in states outside their chartering jurisdiction.⁹⁰

Most other risks and challenges cluster around bankruptcy outcomes, UCC control and settlement mechanics, tax classification, securities law exposure for issuers and affiliates, and costs and operational load relative to uses for SPVs. Practically speaking, a trust's governing instrument, together with appropriate disclosures, need to be written carefully to ensure the project's onchain-offchain mapping is unambiguous and that can be tested by operations and examinations.

Bankruptcy.

In U.S. bankruptcy proceedings, property that a debtor holds strictly as a trustee or fiduciary is generally considered to be outside the debtor's estate.⁹¹ This, together with their strict rules and supervision, are why many trust companies are considered "bankruptcy-remote" institutions. Courts will respect true trusts and other fiduciary arrangements, but commingling, loose beneficiary language, or operational slippage can invite estate claims or tracing fights.⁹² Cross-border structures add conflict-of-laws risk under Chapter 15 of the Bankruptcy Code,⁹³ so governing documents and disclosures need to anticipate how relief will be sought and proved across forums.

Prime Trust's 2023 bankruptcy filing confirmed a practical point that had previously been largely theoretical: A state-chartered, non-depository trust company can proceed under Chapter 11 of the Bankruptcy Code. The case was not dismissed on eligibility grounds and advanced to a plan phase with a litigation trust pursuing recoveries, evidence that Chapter 11 is a real, though imperfect, resolution path alongside state receivership.⁹⁴ That does not resolve all questions of preemption or venue, but it means project teams should consider the possibility of either track. The operational consequences differ:

⁸⁹ See Wyo. Stat. § 34-29-104 (establishing requirements covering digital asset custodial services and bailment and omnibus options); 021-19 Wyo. Code R. § 19-4 (establishing requirements for Wyoming-chartered entities acting as "qualified custodians", including standards for the custody of digital assets and segregation of client property).

⁹⁰ To date, no state regulator has made any clear public indication of the extent of ability an out-of-state trust company or bank might have to serve clients within the regulator's state, and very few states statutorily exempt, or imply the exemption of, out-of-state state-chartered financial institutions from that state's licensing requirements. For further details, see *infra* note 127.

⁹¹ See 11 U.S.C. § 541(d) (providing that property in which the debtor holds only legal title and not an equitable interest becomes property of the estate "only to the extent of the debtor's legal title," thereby excluding from the estate assets that the debtor holds in trust or as custodian for others).

⁹² See *In re Columbia Gas Sys., Inc.*, 997 F.2d 1039 (3d Cir. 1993) (recognizing the trust-fund exclusion from estate property and applying tracing principles to determine whether collected funds belonged to customers or creditors rather than the debtor); see also *Begier v. IRS*, 496 U.S. 53 (1990) (explaining that funds withheld or collected in trust for the government are not part of the debtor's estate and applying tracing principles).

⁹³ 11 U.S.C. §§ 1501–1532.

⁹⁴ Prime Trust LLC's bankruptcy process remains ongoing as of the date of publication. For further information, See Caitlin Ostroff & Vicky Ge Huang, *Crypto Custodian Prime Trust Files for Bankruptcy Protection*, WALL ST. J. (Aug. 14, 2023), <https://www.wsj.com/articles/crypto-custodian-prime-trust-files-for-bankruptcy-protection-7f28553f>; Yun Park, *Prime Core's Ch. 11 Trust Sues to Reclaim \$10M Payout*, LAW360: BANKR. (Nov. 21, 2024), <https://www.law360.com/bankruptcy-authority/articles/2264282/prime-core-s-ch-11-trust-sues-to-reclaim-10m-payout>.

Bankruptcy tends to be slower, with more process and potential administrative “leakage,” even where customer assets are ultimately recognized as customer property rather than property of the estate.⁹⁵

Outcomes still turn on paperwork and performance. Where the custody stack cleanly segregates assets and keeps a one-for-one record (and, if applicable, opts into UCC Article 8 securities intermediary treatment), courts have favored returning assets to clients;⁹⁶ where providers rehypothecated, pooled, or blurred title, clients were left with unsecured claims, as the non-trust company failures of FTX,⁹⁷ Celsius,⁹⁸ and Voyager⁹⁹ illustrate. Generally, if a filing lands in bankruptcy court, then a trust company’s clients can likely expect more delay than in a state resolution but not a different result for so long as the records and segregation are sound.¹⁰⁰

Control, settlement, and enforceability.

The 2022 UCC amendments (Article 12 and conforming Article 9 changes) introduced a new category of property called “controllable electronic records” (or “CERs”), referring to digital records whose value turns on the ability to exercise control over those records (*i.e.*, native digital assets, tokenized payment claims, smart contract positions, etc.). UCC Article 12 attempts to supply the rules for how rights in CERs are created, perfected, and prioritized. A person has “control” of a CER only if it (i) can avail itself of substantially all of the record’s benefits, (ii) has the exclusive power to prevent others from doing so, (iii)

⁹⁵ See Proskauer Law Firm, *The Other Side of the Coin: Cryptocurrency Assets in Bankruptcy*, PROSKAUER: BLOCKCHAIN & L. BLOG (Jul. 21, 2022), <https://www.proskauer.com/blog/other-side-of-the-coin-cryptocurrency-assets-in-bankruptcy> (providing an overview of the treatment of digital assets held by bankrupt custodians and suggesting that, if the court characterizes the relationship between either Voyager Digital, a digital asset exchange in bankruptcy, or the Celsius Network, a digital asset lender in bankruptcy, and its customers as “custodial,” then the custodied assets should remain the property of the customer and not be subject to dilution by general unsecured claimholders); see also *In re Voyager Digital Holdings*, 649 B.R. 111, 127 (Bankr. S.D.N.Y. Mar. 2023) (maintaining that digital assets held by Voyager Digital on behalf of its customers are not to be considered part of the bankruptcy estate, and also holding that all customer digital assets segregated on the books of Voyager Digital and assumed by Binance.US as part of the approved transfer “will always be held in strict trust and in custody for customers”).

⁹⁶ See, e.g., *Off. Comm. of Unsecured Creditors v. BlockFi, Inc. (In re BlockFi Inc.)*, Adv. No. 23-01144 (MBK), slip op. at 4 (Bankr. D.N.J., Oct. 10, 2023) (available at https://www.govinfo.gov/content/pkg/USCOURTS-njb-3_23-ap-01144/pdf/USCOURTS-njb-3_23-ap-01144-0.pdf) (explaining that the court had determined that “digital assets held in Wallet Accounts by customers were not property of the bankruptcy estate and should be distributed to the appropriate account[] holder”).

⁹⁷ See *FTX Customer Claims Portal*, FTX CLAIMS: WELCOME, <https://claims.ftx.com/welcome>; Sallee Ann Harrison, *A Timeline of the Collapse at FTX*, AP NEWS (May 8, 2024), <https://apnews.com/article/ftx-bankruptcy-binance-timeline-c519d50b9059aa8bf0ce8b6cd26c40e>.

⁹⁸ Celsius Network LLC (<https://celsius.network/>); see Dietrich Knauth, *Crypto Lender Celsius Network Cleared to exit bankruptcy*, REUTERS: MARKETS: DEALS (Nov. 10, 2023), <https://www.reuters.com/markets/deals/crypto-lender-celsius-network-cleared-exit-bankruptcy-2023-11-09/>.

⁹⁹ Voyager Digital, LLC, (<https://www.investvoyager.com/>); see Danny Nelson & David Morris, *Behind Voyager’s Fall: Crypto Broker Acted Like a Bank, Went Bankrupt*, COINDESK (Jul. 12, 2022), <https://www.coindesk.com/layer2/2022/07/12/behind-voyagers-fall-crypto-broker-acted-like-a-bank-went-bankrupt>.

¹⁰⁰ Prime Trust’s collapse is notable in part because of how unusual trust-company failures are; the benchmark historical episode remains Knickerbocker Trust in 1907. See Carola Frydman *et al.*, *Economic Effects of Runs on Early ‘Shadow Banks’: Trust Companies and the Impact of the Panic of 1907*, J. POL. ECON. (2015) (available at https://www.nber.org/system/files/working_papers/w18264/w18264.pdf) (providing an overview of the collapse of the Knickerbocker Trust and the subsequent “Panic of 1907”). The limited record of failures usually includes receivership of the trust company, not bankruptcy: no public records to date indicate that a state-chartered trust company has ever successfully filed a bankruptcy petition before Prime Trust. In fact, “there is little consistency among experts on what the law says, or even what the relevant law is” when it comes to the bankruptcy of a trust company. Edward Klees, *How Safe Are Institutional Assets in a Custodial Bank’s Insolvency?*, 68 BUS. L. 103 (Nov. 2012) (warning that, although “the financial community regards the sanctity of custody accounts as a truism,” the law supporting this assumption is in fact unsettled and applied inconsistently, and that protection in solvency is highly dependent on verifiable documentation and segregation).

has the exclusive power to transfer control, and (iv) can demonstrate those powers by reference to the system's records or an agreed control record.¹⁰¹

The 2022 amendments pair these control rules with choice-of-law and transfer consequences. Parties can specify, in the system or control record, the governing law for CER priority and control; absent an effective designation, default UCC rules fill the gap. A transferee that gives value, takes control in good faith, and lacks notice of competing claims can qualify as a qualifying purchaser and take the CER free of many property-based adverse claims.¹⁰²

The changes to UCC Article 9 conform by allowing perfection by control (and super priority) for security interests in controllable payment intangibles and controllable accounts. Selecting a “CER jurisdiction” in the trust and governing instruments and contracts can help to address potential choice-of-law issues for purposes of perfection and priority.¹⁰³ Several edge cases potentially warrant extra care. Protocols with upgrade keys, governor timelocks, or oracle-driven state changes can potentially jeopardize “exclusivity” if any third party can unilaterally redirect the CER; this creates a compelling need to cabin such powers contractually and, where feasible, with technical guardrails (*e.g.*, dual-control or veto rights in favor of the custodian of record). Pooled wallets are generally acceptable only if clients' exclusive powers are preserved via the control record (and other applicable books and records) in a way that makes entitlements unambiguous.

Tokenized securities (or any issuer-level equity-like interests) generally fall outside of UCC Article 12 and fit better under Article 8. An issuer can “opt in” to UCC Article 8 to make the beneficial interest an uncertificated security; control then rides on issuer books or on a securities account at a securities intermediary, and Part 5 entitlement rules insulate customer property from intermediary creditors for an entity in distress.¹⁰⁴ For most other RWA designs—especially payments, redemption claims, or programmable participation rights—Article 12's CER regime generally offers day-to-day settlement with less friction (provided the control arrangement is documented and operationalized to the standard an examiner or court can verify).¹⁰⁵

Tax treatment.

¹⁰¹ Possession of a protocol or admin key, standing alone, is not enough if others can unilaterally use or reassign the CER; by contrast, custody or multi-signature arrangements can establish control when they allocate exclusive powers (including transfer) and make that allocation objectively provable. *See* UNIFORM L. COMM'N, 2022 *Amendments to the UCC (Article 12 and Related Article 9 Updates)*, (available at https://higherlogicdownload.s3.amazonaws.com/UNIFORMLAWS/e05963be-bdeb-7741-fb65-058355e35221_file.pdf) (providing an overview of the 2022 UCC amendments and their adoption status across the states).

¹⁰² *See id.*

¹⁰³ A security interest in a CER—or in a controllable payment intangible or controllable account evidenced by a CER—can be perfected by control, and a secured party with control enjoys priority over a filer. *See id.* Perfection by filing (*i.e.*, using UCC-1 statements) remains available (and sometimes prudent) backup, but the security interest will be junior to a competing party that attains control. For tokenized assets used as collateral, documents typically ought to specify who can transfer control upon default, how notices are delivered onchain and offchain, and what happens if the system is upgraded, forked, or paused; these terms should also be testable in operation so that “exclusive power” does not break in multi-signature or sub-custody arrangements.

¹⁰⁴ Many digital asset custodians already use UCC Article 8 for this reason. The tradeoff is architectural: Onchain entries function as shadow registers unless harmonized with the issuer's official records or transfer agent.

¹⁰⁵ According to the UCC Official Comments, “the definition of ‘securities account’ must be interpreted in light of the substantive provisions in Part 5, which describe the core features of the type of relationship for which the commercial law rules of Revised Article 8 concerning security entitlements were designed.” U.C.C. Law § 8-501, cmt. 1. Recently promulgated amendments to the UCC, which have been introduced in New York state senate, confirm that “many of the duties set forth in Part 5 will often be relevant to a digital asset such as a ‘controllable electronic record’ (Section 12-102), or a ‘controllable account’ or ‘controllable payment intangible’ (Section 9-102) evidenced by a controllable electronic record, treated as a financial asset credited to a securities account.” U.C.C. § 8-102 cmt. 9 (UNIF. L. COMM'N 2022).

U.S. tax outcomes largely turn first on how the RWA vehicle and the token are classified. Many tokenization projects seek grantor trust treatment (income taxed to the grantor) or disregarded entity status to avoid partnership-level complexity,¹⁰⁶ but a small handful of projects elect partnership status and pass items through to tokenholders on Schedule K-1.¹⁰⁷ Also, where interests in an LLC or other pass-through entity are “readily tradable on a secondary market (or the substantial equivalent),” the vehicle can be treated as a publicly traded partnership (PTP) taxed as a corporation unless a qualifying-income exception applies, an important risk consideration for projects deploying different forms of LLC or SPV designs.¹⁰⁸

For protocol-level rewards, the of the U.S. Treasury Department’s Internal Revenue Service (IRS) continues to treat virtual currency as property and generally characterizes mining income (such as on *proof-of-work* or ‘*PoW*’ systems)¹⁰⁹ and staking rewards (such as on *proof-of-stake* or ‘*PoS*’ systems)¹¹⁰ as ordinary income from the time when the taxpayer is deemed to have “dominion” and “control” over the tokens received as rewards, regardless of whether, for example, tokens received as rewards are subject to lockup or unbonding periods.¹¹¹ This has been the IRS’s foundational position since at least 2014, and it is the position that has been consistently contested by digital asset industry participants and advocates, many of which consider many aspects of tax relevant to digital assets to be unsettled.¹¹² The functions and purposes of protocol rewards delivered to participants in DePINs (*‘decentralized physical infrastructure*

¹⁰⁶ Treas. Reg. § 301.7701-3 (establishing IRS rules on entity classification); 26 U.S.C. §§ 671–679 (establishing grantor-trust rules); INTERNAL REV. SERV., *Partner’s Instructions for Schedule K-1 (IRS Form 1065)*, <https://www.irs.gov/instructions/i1065sk1>.

¹⁰⁷ IRS Schedule K-1 (rev. 2024), <https://www.irs.gov/pub/irs-pdf/f1065sk1.pdf>.

¹⁰⁸ If token interests look like “partnership interests” in form or function, publicly traded partnership (PTP) risk likely ought to be actively managed: Under 26 U.S.C. § 7704 and its implementing regulations, a partnership whose interests are “traded on an established securities market or readily tradable on a secondary market (or the substantial equivalent)” is generally taxed as a corporation unless it fits a qualifying-income exception. Electronic trading systems and matching mechanisms can count as “secondary markets,” though the regulations also describe “qualified matching service” features that can mitigate PTP status. See *id.*; Treas. Reg. § 1.7704-1 (2025), <https://www.ecfr.gov/current/title-26/section-1.7704-1> (defining when partnership interests are considered by the IRS to be “readily tradable”); Treas. Reg. § 1.7704-3, <https://www.ecfr.gov/current/title-26/chapter-I/subchapter-A/part-1/subject-group-ECFR1c6d714d9aed32/section-1.7704-3> (defining “qualified income” for the purposes of the PTP exception).

¹⁰⁹ See INTERNAL REV. SERV., *Notice on the Application of General Tax Principles to Transactions Using Virtual Currency*, IRS Notice 2014-21, at 4 (Mar. 25, 2014), <https://www.irs.gov/pub/irs-drop/n-14-21.pdf>.

¹¹⁰ See Rev. Rul. 2023-14, 2023-33 I.R.B. 484 (Aug. 14, 2023), <https://www.irs.gov/pub/irs-irbs/irb23-33.pdf>.

¹¹¹ In the IRS’s view, digital assets are property, and mining, staking, and potentially other protocol-level service fee proceeds are ordinary income at fair market value when received. See *Id.*; INTERNAL REV. SERV., *Virtual Currency: IRS Issues Additional Guidance on Tax Treatment and Reminds Taxpayers of Reporting Obligations* (May 29, 2025), <https://www.irs.gov/newsroom/virtual-currency-irs-issues-additional-guidance-on-tax-treatment-and-reminds-taxpayers-of-reporting-obligations>. Earlier litigation ended without a merits ruling, so the ruling stands as the government’s view. See *Jarrett v. U.S.*, 3:21-cv-00419 (M.D. Tenn. filed 2021), <https://www.courtlistener.com/docket/59940467/jarrett-v-united-states/>.

¹¹² See *POSA Deems New IRS Stance on Staking Rewards Duplicative and Burdensome Taxation for Millions of Staking Participants*, PROOF OF STAKE ALLIANCE (Jan. 24, 2023), <https://www.proofofstakealliance.org/12423-posa-response-to-irs-stance-on-staking>; Emily Ekshian, *POSA Applauds Bipartisan Bill to Codify Fair Taxation of Staking Rewards*, CRYPTO COUNCIL FOR INNOVATION (Apr. 30, 2024), <https://cryptoforinnovation.org/press-release-posa-applauds-bipartisan-bill-to-codify-fair-taxation-of-staking-rewards/>.

networks’)¹¹³ are also usually treated as ordinary income upon receipt.¹¹⁴ In the same vein, hard fork and airdropped token amounts are generally deemed income when the taxpayer can control, transfer, or dispose of the new units.

The Treasury and the IRS recently reversed course on what had been a tightening of tax reporting rules in recent years under former President Joe Biden’s administration, revoking the noncustodial ‘DeFi broker’ tax reporting rule in July 2025.¹¹⁵ The custodial ‘digital asset broker’ reporting rule that remains could still be applicable to trust company operations if not to other intermediaries involved in certain RWA designs.¹¹⁶

More expansive and restrictive tax rules could potentially return under another Democratic administration, but even existing tax rules can further complicate the requirements for tokenization project teams involving cross-border distributions of RWA tokens. Multinational projects can implicate certain withholding and treaty questions under Chapters 3 and 4 of the Internal Revenue Code (e.g., portfolio interest eligibility for debt-like tokens, source and character of income on Treasuries held in trust, potential PTP look-through for non-U.S. holders, etc.).¹¹⁷ Given ongoing rulemaking and unsettled characterization of many digital assets-

¹¹³ Many DePINs often natively run RWA mechanics involving contributions of income-generating machines, or of some other passive service, as a form of RWA, and, in exchange for making those contributions to the network, network participants often receive network-native tokens as rewards. See Kraken Learn Team, *What Is DePIN?*, KRAKEN: LEARN (Nov. 26, 2024), <https://www.kraken.com/learn/what-is-depin> (explaining that DePINs “incentivize individuals to create and maintain physical infrastructure, offering rewards for contributions like sharing resources and building infrastructure”); *Ongoing Industry Trends and Challenges in Digital Assets, Blockchain, and Emerging Technologies*, DLX LAW: 2025 INDUS. GUIDE FOR LAWYERS & DEV. TEAMS: PT. 1 (Jan. 9, 2025), https://dlxlaw.com/leaderships_blog/ongoing-industry-trends-and-challenges-in-digital-assets-blockchain-and-emerging-technologies/ (“[DePINs] typically reward users with digital tokens for maintaining local network hardware, effectively broadening mobile coverage and improving service reliability.”).

¹¹⁴ The activities of DePIN participants and allocation of their rewards (i.e., rewards for the contribution of bandwidth, storage, compute, or income-generating machines to the network) generally resemble those of PoW miners and PoS stakers and are similarly considered necessary to the underlying functioning and security of the decentralized network. See Kostiantyn Tsentsura, *DePIN Networks Explained: How Real-World Infrastructure Meets Web3 Incentives*, YELLOW.COM: LEARN (Apr. 8, 2025) <https://yellow.com/learn/depin-networks-explained-how-real-world-infrastructure-meets-web3-incentives> (explaining that the structure of DePINs gives participants “a stake in the network’s success” and “foster[s] long-term commitment”).

¹¹⁵ In July 2024, the Treasury Department (under Secretary Janet Yellen) and the IRS (under Commissioner Danny Werfel) had finalized certain digital asset broker reporting rules meant to implement requirements of the Infrastructure Investment and Jobs Act of 2021, introducing Form 1099-DA and phasing in gross proceeds (and later basis) reporting for digital assets. *IRS Final Rule on Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions*, 89 Fed. Reg. 56480 (Jul. 9, 2024) (available at <https://www.federalregister.gov/documents/2024/07/09/2024-14004/gross-proceeds-and-basis-reporting-by-brokers-and-determination-of-amount-realized-and-basis-for>) [hereinafter IRS Digital Asset Broker Reporting Rule]. In December 2024, the Treasury and the IRS also finalized what is often called the “DeFi regulations” that would have been applicable to “trading front-end service providers” providing only the user interface on applications that give users the tools to independently submit database transactions on a decentralized trading network, regardless of whether they ever take control of the user’s digital assets. *Id.*, see also *Gross Proceeds Reporting by Brokers That Regularly Provide Services Effectuating Digital Asset Sales*, Treasury Decision 10021, Pub. Inspection F.R. Doc. No. 2024–30496 (Dec. 27, 2024), <https://public-inspection.federalregister.gov/2024-30496.pdf> (advance copy of the 89 Fed. Reg. 56480 made available prior to its official publication in the *Federal Register*). The IRS’s DeFi regulations significantly raised the existing scope of privacy concerns under Biden-era tax policy, which brought legal, industry, crypto, and tech communities to advocate for their revocation. Then, in July 2025, the Treasury Department (under Secretary Scott Bessent) and the IRS (under Commissioner Billy Long, shortly before his removal by the President on August 8, 2025, and his replacement with Bessent as Acting Commissioner) revoked the final DeFi regulations under an IRS Bulletin. INTERNAL REV. SERV., Notice 2025-36, 2025-30 I.R.B. 192 (Jul. 21, 2025) (available at https://www.irs.gov/irb/2025-30_IRB).

¹¹⁶ See 26 C.F.R. §§ 1.6045-1, 1.6045-2, 1.6045-4 (codifying IRS Digital Asset Broker Reporting Rule, *supra* note 115, 89 Fed. Reg. at 56958-60).

¹¹⁷ 26 U.S.C., chs. 3-4.

related activities, tokenization project teams most often build their tax posture into their documentation and operations from the outset.¹¹⁸

Securities risks.

A trust company that limits itself to passive fiduciary functions generally avoids “issuer” or “promoter” status. The trust itself (and therefore the trust company in acting as trustee) will often be the issuer where securities are implicated, so any marketing activities of the trust company should be accompanied by caution. The Securities Act’s anti-touting statute makes compensated promotional communications risky without full disclosure of consideration and source;¹¹⁹ “promoter” is broadly defined in Rule 405,¹²⁰ and Exchange Act Section 20(a)¹²¹ can create control person exposure for those who direct messaging or operations.¹²² Project teams or sponsors will often restrict themselves from doing any “off-trust” marketing or even discussing on social channels if the trust is the issuer; instead, they centralize issuer communications at the trust level, and they train personnel on compensation and endorsement disclosures.

For registered investment advisers, custody of “funds” and “securities” generally follows the Custody Rule’s “qualified custodian” framework,¹²³ and, although “funds” are not defined under the Act, transactions involving RWA tokens or other digital assets that might be classified as either “funds” or “securities” could carry additional risks.

The SEC’s 2023 safeguarding proposal had generated significant uncertainty in the digital assets industry,¹²⁴ and, although it was withdrawn in June 2025,¹²⁵ the Commission’s May 2025 FAQs still generally encourages broker-dealers’ continued reliance on qualified custodians for custody while it potentially considers further rulemaking.¹²⁶ In practice, the vast majority of advisers therefore continue to use banks or trust companies for custody that meet robust supervision criteria, with so far only a small handful servicing client assets that are not on a significantly capitalized layer-1 blockchain network.¹²⁷

¹¹⁸ Documentation typically clearly states who recognizes which items, when, and with what character, and then any reporting parties need to collect and regularly refresh W-8 or W-9 certifications and maintain auditable fair value and timestamp practices to support basis, proceeds, and withholding determinations.

¹¹⁹ 15 U.S.C. § 77q(b) (establishing the Securities Act’s anti-touting requirements).

¹²⁰ 17 C.F.R. § 230.405 (containing the definition of “promoter” for purposes of the Securities Act).

¹²¹ Exchange Act § 20(a), 15 U.S.C. § 78t(a).

¹²² *Id.*

¹²³ 17 C.F.R. § 275.206(4)-2 (Advisers Act custody rule requiring use of a qualified custodian, client statements/notice, and an annual surprise exam, with an audit alternative for pooled vehicles and limited exceptions); SEC’s Final Rule on Custody of Funds or Securities of Clients by Investment Advisers, 68 Fed. Reg. 56692 (Oct. 1, 2003) (available at <https://www.federalregister.gov/documents/2003/10/01/03-24813/custody-of-funds-or-securities-of-clients-by-investment-advisers>).

¹²⁴ INV. CO. INST., Comment Letter on SEC Proposed Rule, Safeguarding Advisory Client Assets (May 8, 2023), <https://www.ici.org/system/files/2023-05/23-cl-sec-safeguarding-advisory-client-assets.pdf>.

¹²⁵ SEC Withdrawal of Proposed Regulatory Actions, 90 Fed. Reg. 25531 (Jun. 17, 2025), (available at <https://www.federalregister.gov/documents/2025/06/17/2025-11110/withdrawal-of-proposed-regulatory-actions>).

¹²⁶ SEC Crypto Asset FAQs, *supra* note 30; *see also* SECURITIES & EXCH. COMM’N: DIV. OF INVESTMENT MGMT., EO 12866 Meetings: Agenda, RIN 3235-AN46 (Apr. 2025), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=3235-AN46> (indicating the SEC’s Division of Investment Management will likely recommend to the Commission a proposed rulemaking under the Advisers Act and the Investment Company Act intended to modernize custody regulations).

¹²⁷ The SEC’s enforcement action against Galois Capital Management LLC highlights the operational and legal risk of custody processes for digital asset securities that sit outside of qualified custodian flows, reinforcing the expectation that registered investment advisers use banks or trust companies that satisfy the custody rule. In a settled order, the Commission found that a registered adviser failed to maintain crypto asset securities with a qualified custodian, kept assets at online trading platforms (including FTX), and ultimately exposed clients to loss. *See* Securities & Exch. Comm’n, *SEC Charges Galois Capital Management with Misleading Investors and Failing to Safeguard Crypto Asset Securities*, SECURITIES & EXCH. COMM’N, Press

Advisers who do so generally take the approach of carefully documenting any workflows not involving qualified custodians (e.g., MPC, ‘multi-signature’ arrangements) where they are not holding client “funds” or “securities,” or where a qualified custodian for any given token or network is unavailable.

5. Policy Analysis

Digital asset-related policy in the U.S., both federally and at the state level, is beginning to mature. Historically, and as is likely to continue, federal financial regulation focuses on market integrity, investor protection, prudential safety, and illicit finance. Federal market regulators like the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC), oversee market conduct in securities, commodities, and derivatives markets, and often require licensing or registration of most market intermediaries.

By contrast, state regulation tends to focus on the supervision of particular business activities for which chartering or licensing is most often required before it can be conducted in each state (e.g., state banks, trust companies, lenders, money transmitters, “virtual currency” businesses, etc.). Under the U.S.’s “dual banking” system, the Office of the Comptroller of the Currency (OCC) can also issue charters for, and supervise, national banks, trust banks, and industrial loan corporations at the federal level, preempting state law and allowing those charters to generally operate in all states.

Ever since 2021, when the OCC made a dramatic change to its licensing framework in issuing Interpretive Letter 1176,¹²⁸ the OCC’s national trust bank charter has become an increasingly popular licensing route among digital assets-focused trust companies.¹²⁹ Anchorage¹³⁰ and Protego¹³¹ were among the first (applying that very same year). Almost immediately after the Senate passed the GENIUS Act of 2025¹³² (but before it was signed into law), Circle¹³³ and Paxos¹³⁴ also had applied to the OCC for a trust bank charter to support its payment stablecoin operations.¹³⁵

Release No. 2024-111 (Sep. 3, 2024), <https://www.sec.gov/newsroom/press-releases/2024-111>; *In Re Galois Capital Management LLC*, Advisers Act Rel. No. 6670, at 2-4 (Sep. 3, 2024), <https://www.sec.gov/files/litigation/admin/2024/ia-6670.pdf>.

¹²⁸ OCC Interpretive Letter No. 1176, *supra* note 55.

¹²⁹ Mickey Marshall, *Flood of National Bank Trust Charter Applications Demands Policy Response from OCC*, IND. CMTY. BANKERS OF AM.: NEWSROOM: BLOGS: MAIN STREET MATTERS, (Aug. 11, 2025), <https://www.icba.org/newsroom/blogs/main-street-matters/2025/08/11/flood-of-national-bank-trust-charter-applications-demands-policy-response-from-occ> (discussing how the OCC Interpretive Letter 1176 eliminated its requirement that applicants engage exclusively in fiduciary activities, leading to a great increase in applicants with a non-fiduciary background, who were unable to apply before the letter).

¹³⁰ Anchorage Digital Bank, NA (<https://www.anchorage.com/>).

¹³¹ Protego Trust Bank, NA (<https://progotrust.com/>).

¹³² S.1582, 119th Cong. (2025) (available at <https://www.congress.gov/bill/119th-congress/senate-bill/1582>).

¹³³ Circle Internet Group, Inc. (<https://www.circle.com>).

¹³⁴ Paxos Trust Company, LLC (<https://www.paxos.com/>); Rajashree Chakravarty, *Paxos Seeks OCC Trust Charter*, BANKING DIVE: NEWS (Aug. 13, 2025), <https://www.bankingdive.com/news/paxos-seeks-occ-national-trust-charter-crypto-stablecoin/757621/>.

¹³⁵ See Circle Internet Group, Inc., *Press Release: Circle Applies for National Trust Charter*, Circle.com: Pressroom (Jun. 30, 2025), <https://www.circle.com/pressroom/circle-applies-for-national-trust-charter>. The GENIUS Act created a framework that makes an OCC trust company charter application by stablecoin issuers expected, but the phenomenon is not without controversy. Critics, including representatives of the banking industry, argue that granting a stablecoin issuer like Circle a trust charter represents a circumvention of banking regulations. Traditionally, trust companies did not take deposits, and although stablecoins are not deposits per se, they share some functional similarities. Bank deposits are generally FDIC-insured, while stablecoins are not, and if Circle were to have been granted an OCC charter consumers could be misled about the scope of protection. Critics further contend that a “run” on stablecoins (where holders rush to redeem tokens for dollars) could trigger liquidity stress, fire-sale dynamics in the treasury markets, and broader contagion across the economy. For further information, See IND. CMTY.

Although unknown to the authors of this article whether any national trust banks have done so to date, the charter could, at least theoretically, also be flexible enough to allow the institution to create trust instruments under the laws of different U.S. states (where it has established offices or branches) wherever most advantageous for the purposes of different kinds of tokenization projects.¹³⁶ State trust company supervision is generally less onerous than what comes with a national charter, however, and a single state charter is often considered sufficient to support the rollout of an RWA tokenization project to users nationwide.¹³⁷

Although, to date, no state regulatory agencies have made any public indication as to their position, they also have not appeared to contest the ability of state trust companies to support clients (or RWA token end users) on a nationwide level for so long as they (i) centralize fiduciary decisionmaking in the home state (or obtain host state approval when powers will be exercised there), (ii) avoid, or obtain a license for, engaging in any non-fiduciary activities that could independently trigger other states' regulations (e.g., money transmission), and (iii) document choice-of-law and control mechanics such that token-level rights are enforceable under widely adopted UCC Article 12 provisions, even as the precise "doing business" and solicitation thresholds remain fact-specific and unsettled across the states.¹³⁸

Recent and continuing developments in federal and state policy will undoubtedly hold additional implications for tokenization projects. Although the U.S.'s scheme of layered government can tend to create a lot of friction, the digital assets industry is unlikely ever to escape it. To support a tokenization project, teams will generally need to combine at least federal market rules with state fiduciary and custody standards and UCC property mechanics.

BANKERS OF AM., *ICBA opposes Circle's application for a national trust bank charter*, ICBA.ORG: NEWSROOM (Jul. 31, 2025), <https://www.icba.org/newsroom/news-and-articles/2025/07/31/icba-opposes-circle-s-application-for-a-national-trust-bank-charter>.

¹³⁶ National trust banks exercise fiduciary powers under 12 U.S.C. § 92a, and pursuant to 12 C.F.R., pt. 9, by reference to the state where the bank is acting in a fiduciary capacity, whereas the trust itself can be governed by a *different* state's trust law chosen in the instrument (e.g., Delaware), offering a dual-track choice-of-jurisdiction framework that lets national trust banks serve a wider range of projects.

¹³⁷ In practice, many state-chartered trust companies serve clients nationwide without obtaining a separate charter in each state, so long as fiduciary powers are exercised from the home state and the company does not establish a physical office or otherwise "act" in a host state in a way that triggers that state's trust institution licensing or notice regime. Several state banking departments expressly distinguish where fiduciary powers are exercised (e.g., accepting appointments, executing governing documents, making discretionary investment or distribution decisions, etc.) from non-fiduciary activities (e.g., advertising, general marketing, answering account questions, etc.), with the former far more likely to require host state approval. South Dakota's Division of Banking, for example, instructs that exercising trust powers outside the chartered location might require the approval of a Trust Service Office (TSO), and it lists several examination factors—including the location of board meetings, account administration, discretionary decisions, and even marketing services—to determine whether powers are being exercised in a host state; at the same time, it clarifies that advertising, marketing, and solicitation are not themselves fiduciary functions (though they remain relevant facts in the "doing business" analysis). See S.D. DIV. OF BANKING, *Interstate Trust Guidance* (rev. Jul. 2022), https://dlr.sd.gov/banking/trusts/documents/interstate_trust_guidance.pdf. To streamline cross-border operations where host-state approvals are needed, many states use the CSBS Uniform Application for Interstate Trust Activities, which facilitates multistate notice and approval for offices that will exercise trust powers. Conference of State Bank Supervisors, *Uniform Application for Interstate Trust Activities of State-Chartered Trust Institutions*, https://www.csbs.org/sites/default/files/2017-12/uniform_appl_interstate_trust.pdf (last visited Sep. 4, 2025).

¹³⁸ There are two different caveats that matter most for tokenization programs. First, non-trust money transmission or exchange functions can trigger separate state licensing unless an exemption applies; treatment varies by jurisdiction and by activity (e.g., custody versus exchange or redemption). Some states explicitly allow state-chartered banks and trust companies to provide "virtual currency" custody under existing banking powers, separately warning that Internet delivery can constitute doing business "in the state" for money transmission purposes if the firm engages in transmission activity with state residents. See, e.g., TEX. DEP'T OF BANKING, *Virtual Currency Guidance*, <https://www.dob.texas.gov/consumer-information/virtual-currency-guidance> (last visited Sep. 4, 2025). Second, even where no host state trust charter is required, a tokenization project still needs to ensure legal enforceability nationwide—most notably via the 2022 UCC amendments—and, where relevant, meet jurisdiction-specific virtual currency frameworks (e.g., New York's alternative path of a limited purpose trust company charter authorizing virtual currency business activity instead of a BitLicense).

Federal digital assets policy.

Digital asset-focused federal legislative efforts have generally bifurcated into two different policy areas that matter for tokenization. The first area is the regulation of digital asset market infrastructure, on which the Congress likely still has work to do (though this year marks the furthest it has come, yet). The second area is stablecoins and principles relative to custody and reserves, on which the Congress has now passed comprehensive, bipartisan legislation.

In July 2025, the House passed a comprehensive market infrastructure bill called the CLARITY Act of 2025,¹³⁹ but it faces long odds in the Senate in this Congress (2025–2026), where competing drafts are in play, the rest of the 2025 calendar is unaccommodating, and partisan gridlock and factioning is poised to continue if not increase.¹⁴⁰ Although there is welcome room for improvement in many areas of the text of the CLARITY Act bill, it has come further to becoming law than any similar bill preceding it. The bill would not displace adviser custody requirements or state trust supervision, but it would draw clearer lines between securities, what it calls ‘digital commodities,’ and other digital assets, and it would introduce registration regimes for digital commodity intermediaries (*e.g.*, venues, brokers). The bill—which, as of the date this article, has an uncertain future—would additionally create listing and reporting pathways either via decentralization criteria or via issuer reporting, and it would bring certain actors within the coverage of the Bank Secrecy Act’s anti-money laundering rules.

Also in July 2025, the President signed the GENIUS Act¹⁴¹ into law after lawmakers on both sides of the aisle in the Senate and the House were able to come to a consensus on some key policy decisions relevant to what the Act calls “payment stablecoins.” Stablecoins are sometimes considered to be a kind of RWA and do involve many of the same mechanics of tokenization covered by this article but are far more operationally challenging and capital intensive.

The GENIUS Act is set to take effect on market participants by January 2027.¹⁴² The Act codifies requirements on reserve quality, segregation, redemption at par, and supervised custody. Many large issuers already align with pieces of this framework (*e.g.*, using state trust companies for reserve custody),¹⁴³ but

¹³⁹ Digital Asset Market Clarity Act of 2025 (a.k.a. CLARITY Act of 2025), H.R. 3633, 119th Cong. (2025) (available at <https://www.congress.gov/bill/119th-congress/house-bill/3633/text>).

¹⁴⁰ See Joe Light & Elsa Ohlen, *Crypto Industry Notches a Victory as Congress Passes Stablecoin Bill*, BARRON’S: ARTS. (Jul. 17, 2025), <https://www.barrons.com/articles/bitcoin-price-crypto-bill-altcoins-soar-ed0335e9> (discussing how the CLARITY Act bill faces greater challenges in the Senate); *House Passes CLARITY Crypto Market Structure Bill*, DLX LAW: NEWS & EVENTS (Jul. 18, 2025), <https://dlxlaw.com/news-events-blog/house-passes-clarity-crypto-market-structure-bill/>.

¹⁴¹ The GENIUS Act of 2025, Pub. L. No. 119-27, §§ 10(c)(2)(A), 16(a), 16(c), 139 Stat. 456, 461–62 (2025).

¹⁴² Industry-applicable provisions take effect on the earlier of (i) 18 months after enactment or (ii) 120 days after final rules from the “primary federal payment stablecoin regulators.” The applicable agencies have already opened implementation dockets, with comment periods that imply rulemaking well within the 18-month window. GENIUS Act § 19 (establishing the effective date as the earlier of 18 months after enactment or 120 days following the issuance of final rules by primary regulators); TREASURY DEP’T, *Request for Comment Related to the GENIUS Act*, TREASURY.GOV: NEWS: PRESS RELEASES (Aug. 18, 2025), <https://home.treasury.gov/news/press-releases/sb0228> (announcing a public comment process for GENIUS Act implementation and setting timelines for regulatory proposals).

¹⁴³ Many stablecoin issuers already use a trust company to segregate reserves, including Gemini (for its GUSD stablecoin) and Paypal (who partnered with Paxos to issue PYUSD). See Gemini Trust Co., *The Gemini Dollar: A Regulated Stable Value Coin (White Paper)*, GEMINI.COM, <https://www.gemini.com/static/dollar/gemini-dollar-whitepaper.pdf> (last visited Aug. 13, 2025); PayPal USD (PYUSD), Paxos Trust Company, <https://www.paxos.com/pyusd> (last visited Aug. 12, 2025).

the implementing rules that the Treasury Department and other federal agencies are tasked with promulgating will need to harmonize expectations and disclosures under the statutes nationally.¹⁴⁴

Importantly, this new stablecoin law can provide a working template for bankruptcy-remote, supervised custody and clean redemption mechanics, the same themes that govern RWA tokenization. Projects can borrow GENIUS-style playbooks even when the asset is not a payment stablecoin. For example, a tokenized Treasury bill program that uses a Delaware statutory trust and a state trust company for custody can mirror the Act's mechanics by (i) holding reserves with a supervised custodian, (ii) clearing daily reconciliations, (iii) documenting redemption rights clearly and in plain English, and (iv) providing disclosures to clarify the exact rights or interests of the end users. Following a similar roadmap can reduce slippage in insolvency and goes a long way toward satisfying institutional due diligence checklists.

Custody and control under applicable federal and state rules.

Against the federal-state backdrop, custody remains the practical hinge for any tokenization project team hoping to reach institutional users. For registered investment advisers, the existing Advisers Act Custody Rule still governs because the SEC withdrew its 2023 “Safeguarding” proposal; “qualified custodians” therefore continue to include banks and trust companies subject to either state or federal supervision, and the adviser’s documentation, account statements, and audit trail must reflect that choice.¹⁴⁵ In parallel, the OCC’s interpretive letters confirm that nationally chartered institutions, including national trust banks, are able to provide digital asset custody and, in defined circumstances, hold stablecoin reserves, subject to risk management and supervisory nonobjection. The OCC’s letters frame the internal controls, vendor diligence, key management, and incident response expectations that tokenization projects should strive to meet even when the tokens involved are not payment stablecoins.¹⁴⁶

State supervision, however, often supplies the most concrete operational blueprint. New York’s 2023 custody guidance requires asset segregation, clear disclosures of who owns the beneficial interest, detailed sub-custody oversight, and insolvency scenario test cases that avoid creating any form of debtor-creditor

¹⁴⁴ See *DLx News Alert: The GENIUS Act’s Signing Triggers Countdown to New Stablecoin Rules*, DLx LAW: NEWS & EVENTS (Jul. 19, 2025), <https://dlxlaw.com/news-events-blog/DLx-News-Alert-The-GENIUS-Act-Signing-Triggers-Countdown-to-New-Stablecoin-Rules/>.

¹⁴⁵ SEC Withdrawal of Proposed Regulatory Actions, 90 Fed. Reg. 25531 (Jun. 17, 2025) (available at <https://www.federalregister.gov/documents/2025/06/17/2025-11110/withdrawal-of-proposed-regulatory-actions>) (withdrawing, among other proposals, the Safeguarding Advisory Client Assets rule); 17 C.F.R. § 275.206(4)-2 (requiring an adviser with “custody” to maintain client funds and securities with a qualified custodian); Genna Garver, *et al.*, *Senate Banking Committee Releases Draft Digital Asset Market Structure Bill and Request for Information*, CONSUMER FIN. SERVS. L. MONITOR (Aug. 4, 2025), <https://www.consumerfinancialserviceslawmonitor.com/2025/08/senate-banking-committee-releases-draft-digital-asset-market-structure-bill-and-request-for-information/>.

¹⁴⁶ The OCC’s Interpretive Letter 1170 (Jul. 2020) concluded that national banks may provide cryptocurrency custody services. Interpretive Letter 1179 (Nov. 18, 2021) clarified that a bank could engage in the crypto-asset activities addressed in Interpretive Letters 1170, 1172, and 1174 only after it notified its OCC supervisory office and received written nonobjection. On March 7, 2025, Interpretive Letter 1183 rescinded Interpretive Letter 1179 and reaffirmed the permissibility of those activities under ordinary supervision- in other words, without a special nonobjection step. See OCC Interpretive Letter No. 1170, *supra* note 83; OFF. OF THE COMPTROLLER OF THE CURRENCY, Interpretive Letter No. 1179 (Nov. 18, 2021), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1179.pdf>; OFF. OF THE COMPTROLLER OF THE CURRENCY, Interpretive Letter No. 1183 (Mar. 7, 2025), <https://occ.gov/topics/charters-and-licensing/interpretations-and-actions/2025/int1183.pdf>; OFF. OF THE COMPTROLLER OF THE CURRENCY, *OCC Clarifies Bank Authority to Engage in Certain Cryptocurrency Activities* (Mar. 7, 2025), <https://www.occ.treas.gov/news-issuances/news-releases/2025/nr-occ-2025-16.html>; James Field, *Tim Scott Hopes for Bipartisan Digital Asset Bill Package*, COINGEEK (Aug. 21, 2025), <https://coingeek.com/tim-scott-hopes-for-bipartisan-digital-asset-bill-passage>.

relationship.¹⁴⁷ These expectations have in many ways also become the de facto national checklist for token programs run by trust companies chartered in other states.¹⁴⁸

The 2022 UCC amendments now also supply uniform definitions and rules for CERs and the consequences of control and qualifying purchaser status, currently (as of the date of this article) effective or enacted in all material respects by 29 different states and the District of Columbia,¹⁴⁹ with bills to adopt the full uniform amendments having been introduced in the legislatures of another 7 states.¹⁵⁰ Given the amendments' growing adoption, trust instruments and custody agreements likely ought to tie onchain, token-level control to offchain records to allow perfection and priority to follow their intended path.¹⁵¹ In practice, this requires tokenization projects to designate the token (or the register entry it references) as the authoritative record in the governing instrument, aligning private key mechanics and transfer workflows with UCC Article 12's control standards, reconciling onchain balances to books and records daily, and evidencing sub-custody due diligence in a way that satisfies both examiners and counterparties.

Considerations for tokenization projects.

The most durable tokenization projects pick a structural “lane” early and draft to it. If tokens represent beneficial interests in a state statutory trust or similar vehicle, the program gains stronger bankruptcy remoteness and a cleaner property rights story, but the offering will often implicate securities laws and tax reporting. Plus, transfer mechanics must honor notice and restriction provisions in the trust instrument.

If tokens represent contractual rights—for example, a redemption claim against assets held by the trustee—teams can gain operational flexibility and reduce friction in each secondary transfer. In addition to satisfying UCC Article 12 control standards and defining the redemption claim in the trust instrument with precision, however, tokenization projects need to be careful to address public communications risk so that “promoter” or anti-touting issues do not migrate outside the issuer perimeter.

States vary widely in their processes and requirements for trust company formation, creating opportunities for jurisdictional arbitrage. Plus, formation and ongoing compliance costs can be substantial, depending on the jurisdiction.¹⁵² Because state law governs key factors like required insurance coverage, annual supervisory fees, auditing obligations, and other capital-intensive elements of the business, prospective tokenization projects and RWA custodians should approach their choice of jurisdiction strategically.

¹⁴⁷ NYDFS Guidance on Custodial Structures, *supra* note 72.

¹⁴⁸ *Id.*

¹⁴⁹ As of the date of this article, the District of Columbia and each of the following 28 states have materially adopted the 2022 UCC amendments in full: Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Minnesota, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, and Washington.

¹⁵⁰ As of the date of this article, each of the following 7 states have legislatures that in their current sessions are considering bills to materially adopt the 2022 UCC amendments in full: Massachusetts (*Mass. H.B.1282*; *Mass. S.B.684*), New York (*N.Y. S.B.1840*), North Carolina (*N.C. S.B.117*), Ohio (*Oh. H.B.195*), South Carolina (*S.C. H.B.3454*), Tennessee (*Tenn. H.B.640*), and Texas (*Tex. S.B. 2075*).

¹⁵¹ UNIF. L. COMM'N & AM. L. INST., *Uniform Commercial Code—2022 Amendments* (Art. 12), <https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=7c1d92fd-28ab-4c7e-9178-e03b4f6eac7c&tab=librarydocuments>.

¹⁵² Compare S.D. DEP'T OF LAB. & REGUL., DIV. OF BANKING, *Trust Company Information Packet* (rev. Jul. 2022), https://dlr.sd.gov/banking/trusts/documents/trust_information_packet.pdf (specifying South Dakota's \$5,000 application fee) with N.Y. DEP'T OF FIN. SERVS., *Application Fee Schedule* (2025), https://www.dfs.ny.gov/apps_and_licensing/application_fee_schedule (specifying New York's \$12,500 application fee).

Certain states are particularly receptive to the digital asset industry's adoption of these structures. South Dakota, for example, already a leading state for trust company charters, has adopted policies based on principles that are accommodating to digital asset businesses, becoming a popular situs for digital asset-focused trust companies, including BitGo and Aegis Custody.¹⁵³ North Carolina and Wyoming's public trust company charters have also been attractive to many businesses seeking to engage in digital asset and tokenized RWA custody under existing fiduciary powers.¹⁵⁴ Notable examples in North Carolina include Surus¹⁵⁵ and also Zero Hash¹⁵⁶ (as of 2025)¹⁵⁷ and, in Wyoming, Two Ocean Trust.¹⁵⁸ As of March 2025, Wyoming law also now offers a path for the conversion of its unique special purpose depository institution charters into public trust companies.¹⁵⁹

In addition to selecting a trust jurisdiction, early on, tokenization project teams should also work to identify what non-fiduciary functions and other licensed services they will need to support any parts of their technology stack that need to move money or exchange value. Several states explicitly permit state-chartered banks and trust companies to provide digital asset custody under existing powers, yet money transmission or digital asset exchange activities could still require separate licensure or exemptions depending on how fiat and tokens flow through the platform. Texas,¹⁶⁰ Nebraska,¹⁶¹ and Nevada¹⁶² provide useful illustrations of how state banking and financial innovation statutes can recognize digital asset custody within the scope of permissible prudential activities while preserving separate licensing tracks for non-fiduciary activities.

Comparative notes on policy abroad.

The trust company is a product of Anglo-American common law. Some commonwealth jurisdictions (*i.e.*, former British colonies) recognize similar private and commercial fiduciaries,¹⁶³ though many civil code

¹⁵³ Aegis Custody (<https://www.aegiscustody.com>).

¹⁵⁴ See WYO. DIV. BANKING, *No-Action Letter on Custody of Digital Assets and Qualified Custodian Status to McDermott Will & Emery LLP* (Oct. 23, 2020), <https://wyomingbankingdivision.wyo.gov/documents/No-Action-Letters/Two-Ocean-No-Action-Letter.pdf>.

¹⁵⁵ Surus Trust Company (<https://www.surus.io/>).

¹⁵⁶ Zero Hash Trust Company, LLC (<https://zerohash.com/custody/>).

¹⁵⁷ Zero Hash's receipt of approval for a North Carolina public trust company charter was announced only shortly before the date of this article, in September 2025. See <https://www.globenewswire.com/news-release/2025/09/02/3142632/0/en/zerohash-Trust-Company-is-Approved-to-Launch.html>.

¹⁵⁸ Two Ocean Trust (<https://www.twoocean.com/>).

¹⁵⁹ See Wyo. Stat. Ann. § 13-5-523.

¹⁶⁰ See TEX. DEP'T OF BANKING, *Supervisory Memorandum 1037: Regulatory Treatment of Virtual Currencies Under the Money Services Modernization Act*, (rev. Jan. 28, 2025), <https://www.dob.texas.gov/sites/default/files/files/consumer-information/sml1037.pdf>; TEX. DEP'T OF BANKING, *Industry Notice 2021-03: Authority of Texas State-Chartered Banks to Provide Virtual Currency Custody Services to Customers* (Jun. 10, 2021), <https://www.dob.texas.gov/public/uploads/files/news/Industrynotices/in2021-03.pdf>.

¹⁶¹ Nebraska Financial Innovation Act, Neb. Rev. Stat. ch. 8, art. 30 (2024 & Supp. 2025) (available at <https://ndbf.nebraska.gov/sites/default/files/doc/8-3001%20to%208-3031%20Nebraska%20Financial%20Innovation%20Act%20LB251%202025%20%20FINAL.pdf>).

¹⁶² See NEV. FIN. INSTS. DIV., *Statement on Regulation of Cryptocurrency in Nevada* (Aug. 19, 2019), <https://www.business.nv.gov/news-media/press-releases/2019/financial-institutions/nevada-financial-institutions-division-statement-on-regulation-of-cryptocurrency-in-nevada/>.

¹⁶³ See Western Australia Trustee Companies Act 1987 (available at [https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_23366.pdf/\\$FILE/Trustee%20Companies%20Act%201987%20-%20%5B04-a0-06%5D.pdf](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_23366.pdf/$FILE/Trustee%20Companies%20Act%201987%20-%20%5B04-a0-06%5D.pdf)) (as of Mar. 2, 2012); Bermuda Trusts (Regulation of Trust Business) Act 2001 (available at <https://www.bma.bm/viewPDF/documents/2019-01-10-11-01-27-Trusts---Regulation-of-Trust-Business-Act-2001.pdf>); New Zealand Trustee Companies Act 1967 (available at <https://www.legislation.govt.nz/act/public/1967/0035/latest/DLM381180.html>) (as of Oct. 28, 2021).

systems achieve comparable results through other vehicles. For example, the French *fiducie*¹⁶⁴ and the German and Swiss *treuhand*¹⁶⁵ are typically administered by licensed financial or professional actors. In Latin America, statutory fiduciary estates like the *fideicomiso* vest management in licensed institutions and often mirror key trust company functions.¹⁶⁶

Still, existing and emerging policy frameworks in other countries point in the same general direction: Regulators want the authoritative, auditable record of ownership to sit with a licensed and supervised actor to be able to support a bridge between the token and the thing it represents.

Brazil's Drex program keeps assets on bank balance sheets under prudential rules while using programmable rails for delivery versus for payment and settlement, a design that echoes U.S. trust company custody paired with onchain transfer.¹⁶⁷ Singapore's Project Guardian relies on regulated financial institutions as "trust anchors" for identity, custody, and issuance within permissioned pools, which mirrors the U.S. practice of centering tokenization in a fiduciary container with controlled access at its boundaries.¹⁶⁸

Dubai's land registry experiments keep the public registry as the book of record and synchronize onchain certificates to that system, reinforcing the theme that tokens should map to an official ledger maintained by a public or licensed body.¹⁶⁹ Liechtenstein's Token and Trustworthy Technology Service Act (a.k.a. the "TVTG") goes further by statutorily defining a token container model and supervised roles (such as the "TT Depositary and Physical Validator") so that a token transfer can dispose of the underlying right when structured accordingly,¹⁷⁰ an approach that U.S. teams can approximate by using a trust instrument that designates the token register as the operative record for beneficial interests and by documenting Article 12 control.¹⁷¹

¹⁶⁴ The *fiducie* is a contractual tool creating a separate fiduciary estate managed by a regulated institution, designed to be bankruptcy-remote. See *The Concept of the Trust Is Finally Incorporated into French Law*, LAWYERS INCYPUS, <https://www.lawyersincypus.com/the-concept-of-the-trust-is-finally-incorporated-into-french-law/> (last visited Aug. 14, 2025).

¹⁶⁵ The 'Treuhand' is a contractual fiduciary arrangement transferring legal title to a trustee without creating a separate fiduciary estate. See Irina Gvelesiani, *German "Treuhand" vis-à-vis Austrian "Treuhand" (Terminological Study)*, 5511 EUR. SCI. J. 133 (Apr. 2015, spl. ed.) (available at <https://eujournal.org/index.php/esj/article/view/5511>).

¹⁶⁶ See Wenceslao Renovaes & Gabriel Uribe, *Fideicomiso: Flexible Friend*, STEP JOURNAL (Sep. 1, 2014), <https://journal.step.org/step-journal-augsept-2014/fideicomiso-flexible-friend> (detailing the Mexican fideicomiso); Javier Canosa, *Beefed-Up Trusts: Regulation of Trusts Under the New Argentine Civil and Commercial Code*, STEP JOURNAL (Nov. 5, 2015), <https://journal.step.org/step-journal-november-2015/beefed-trusts-regulation-trusts-under-new-argentine-civil-and-commercial> (analyzing the Argentinian trust system).

¹⁶⁷ BANCO CENTRAL DO BRASIL, *DREX – Digital Brazilian Real*, https://www.bcb.gov.br/en/financialstability/drex_en (last visited Aug. 14, 2025).

¹⁶⁸ MONETARY AUTHORITY OF SING., *Project Guardian* (Aug. 4, 2025), <https://www.mas.gov.sg/schemes-and-initiatives/project-guardian>.

¹⁶⁹ See DUBAI LAND DEP'T, *DLA Launches the MENA's First Tokenized Real Estate Project Through the Prypco Mint Platform* (May 28, 2024), <https://dubailand.gov.ae/en/news-media/dld-launches-the-mena-s-first-tokenized-real-estate-project-through-the-prypco-mint-platform>.

¹⁷⁰ Operating under Liechtenstein's *Token and Trustworthy Technology Service Provider Act*, LCX is a company that takes on legal responsibility for ensuring that onchain tokens fully and exclusively represent rights in a specific physical asset. As Physical Validator, LCX contracts for qualified storage, prevents asset access or removal without token authorization, deletes tokens upon asset withdrawal, and, unlike a standard warehouse, assumes statutory liability for failure to maintain the asset-token link. See LCX Team, *End-to-End Tokenization Framework Announcement: Real-World Assets, Legally Tokenized*, LCX.COM (May 29, 2025), <https://www.lcx.com/end-to-end-tokenization-framework-announcement-real-world-assets-legally-tokenized/>.

¹⁷¹ See *Liechtenstein's Parliament Approves Blockchain Act Unanimously*, UNITED STATES EMBASSY OF THE PRINCIPALITY OF LIECH. (Oct. 3, 2019), <https://www.liechtensteinusa.org/article/liechtensteins-parliament-approves-blockchain-act-unanimously>; Nick Erly, *Tokenization and the Physical Validator: LCX and the Future of Real-World Asset Custody*, 88 ALB. L. REV. 563 (2024) (available at <https://www.albanylawreview.org/article/75407-liechtenstein-s-blockchain-act-and-the-implementation-of-the-physical-validator>).

The comparative takeaway here is practical rather than theoretical: U.S. trust company structures already align with where global supervisors are converging. This is one reason a single, well-drafted fiduciary container can support cross-border distribution with fewer surprises, as long as local licensing and legal planning are a forethought.

6. Conclusion

The life and durability of any RWA tokenization designs and methods will likely depend on ensuring discipline in private law, supervised custody, and thoughtfully drafted instruments that can be reliably mapped and enforced based on *technical* and *real world* events. Generally, in practice, that means four things: (i) User assets are segregated and never part of a custodian's balance sheet; (ii) a single register of interests exists, and transfers update that register with legal effect; (iii) onchain control is generally aligned with the "control" standards established under the 2022 amendments to the UCC for CERs, as applicable; and (iv) public communications and disclosures closely track the instrument rather than the marketing decks.

These points are testable, and they invite evidence: Daily reconciliations with tolerances, sub-custody due diligence files, key management and incident response playbooks, and audit trails that an examiner or a court can follow, end to end. New York's custody guidance,¹⁷² the OCC's interpretive letters,¹⁷³ and the banking agencies' recent risk management statements already describe that evidentiary record.

Design discipline follows. If the token is meant to move equitable interests, then teams likely ought to draft the governing instrument so the register that matters can be electronic or onchain-native and so an authorized transfer updates that register as a matter of law. If the token is meant to carry payment, redemption, governance, or participation rights, then teams instead likely ought to keep beneficial ownership static and memorialize the claim in terms that fit UCC Article 12's control framework and choice-of-law rules; then, prove the control arrangement in operations rather than by assertion. Article 12 was written to support this kind of certainty; the choice-of-law scaffolding that accompanies the 2022 amendments is equally important for multistate distribution.

Policy direction helps, even where texts are still moving. Federal bank supervisors have reconfirmed that nationally chartered institutions may provide digital asset custody and related execution services subject to risk management and supervisory nonobjection,¹⁷⁴ and the FDIC has clarified the path for state nonmember banks to engage in permissible crypto activities without prior approval.¹⁷⁵ Those signals do not replace private law engineering but do tell teams what "good" looks like when custody is performed by a regulated fiduciary. Project teams generally can choose a supervised bank or trust company, then build to those expectations and satisfy the audience that matters most for scale: institutional allocators, regulated counterparties, and examiners.

¹⁷² N.Y. DEP'T OF FIN. SERVS., *Industry Letter: Guidance on Custodial Structures for Customer Protection in the Event of Insolvency* (Jan. 23, 2023), https://www.dfs.ny.gov/industry_guidance/industry_letters/il20230123_guidance_custodial_structures.

¹⁷³ OCC Interpretive Letter No. 1170, *supra* note 83.

¹⁷⁴ See OFF. OF THE COMPTROLLER OF THE CURRENCY, Interpretive Letter No. 1184, OCC: CHARTERS & LICENSING: INTERPRETATIONS & ACTIONS (May 7, 2025), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2025/int1184.pdf>.

¹⁷⁵ See FED. DEPOSIT INS. CORP., *FDIC Clarifies Process for Banks to Engage in Crypto-Related Activities*, FIL-7-2025 (Mar. 28, 2025), <https://www.fdic.gov/news/financial-institution-letters/2025/fdic-clarifies-process-banks-engage-crypto-related>.

Congress has drawn some lines and left others to be finished. The House-passed CLARITY bill sketches market structure pathways without disturbing adviser custody or state supervision; the GENIUS Act, which is now law, encodes reserve quality, segregation, redemption, and supervised custody for payment stablecoins on a timetable that gives agencies room to implement. Tokenization project teams do not need to wait for the rest. The custody and disclosure patterns in those texts can be generalized and adapted for non-stablecoin RWAs: Issuers ought to ensure disclosures are aligned with the trust or other instrument, make reserves legible and reconcile them, define redemption precisely, and limit the discretion and scope of activities of the token issuer (which is often but not always the trust company). This approach reduces failure mode variance in bankruptcy, shortens diligence cycles, and travels across borders more easily.

The international picture is converging on the same center of gravity. Jurisdictions that differ on venue permissions are coalescing around at least one simple proposition: A supervised actor must sit at the bridge between token and thing, keep a definitive record, and submit the plumbing to examination.

The economically efficient path is the one that minimizes verification, enforcement, and insolvency costs while preserving programmability. That points toward the need for technology-neutral, outcomes-based legal architectures, and trust companies are the longstanding U.S. instantiation of credible commitment. Policymakers ought to continue to pursue the same modest but consequential agenda, preserving functional equivalence across ledgers and legacy records and focusing prudential standards on verifiable outcomes (segregation, auditability, redemption at par, etc.) rather than on particular technologies.

If rules are, as economists and philosophers often suggest,¹⁷⁶ a kind of coordination technology, then the equilibrium worth pursuing is one in which code expresses rights that institutions can actually enforce.

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¹⁷⁶ For example, Scottish philosopher David Hume (often considered the father of early modern metaphysics) argued that social and legal conventions, including the rules of justice, property, and contracts, emerge from the recognition of practical necessities. See David Hume, *A Treatise of Human Nature*, bk. III, pt. II (1739). Assuming an economic lens, Israeli philosopher Edna Ullmann-Margalit applied game theory (*i.e.*, an economic theory modeling situations where the outcome of one person's action depends on the choices of others, creating the problem of deciding whether to coordinate or act on selfish motives) to explain the emergence of social norms, categorizing them based on the social dilemma they solve. See Edna Ullman-Margalit, *The Emergence of Norms* (Cambridge Univ. Press 1977).

involvement, knowledge, or consent. Additionally, the technical concepts and legal structures relevant to tokenization and RWAs are likely to continue to evolve just as well as they have up until the date of this article. To date, very little, to no, research has been published (from legal or academic scholars, industry participants, or otherwise) on the uses of trusts or trust companies relevant to the concepts discussed in this article. Therefore, some of the conclusions or assertions made by this article, as well as some underlying facts, could still be subject to continuous review, discussion, and contention, not just by the authors but by industry participants, developers, scholars, researchers, and legal and regulatory authorities. The discussion advanced in this article and the views expressed by its authors should not be interpreted as unwavering or as attributable to other persons and organizations across the industry, including those who may have helped influence or support the production of this article.
