

Two Ocean Trust Paves the Way for Secure Cryptocurrency Investing

McDermott Will & Emery

THE SITUATION:

In recent years, cryptocurrency has presented an exciting opportunity to invest in a new asset class—at the cost of accepting certain risks. Unlike traditional financial assets, cryptocurrency has lacked legal protection and clarity around federal and state regulatory oversight.

As a result, the cryptocurrency industry has been plagued by impropriety, malfeasance and even outright theft. Without confidence that they could safely secure and efficiently manage these assets, many investors and their professional advisers have avoided investing.

One of the biggest obstacles involved registered investment advisers (RIAs). Federal regulations require RIAs to store their clients' assets with a “qualified custodian.” The cryptocurrency industry was collectively confused as to what constituted a qualified custodian: Banks and other financial institutions will not often custody cryptocurrency. The SEC and other regulators have issued very little guidance on the subject, leaving RIAs and others in the dark about how to store cryptocurrency. Given the regulatory uncertainty concerning custody, many RIAs and other financial advisers opted to avoid recommending investing in digital assets.

Wyoming-based trust company Two Ocean Trust identified this custody issue as an opportunity.

THE CHALLENGE:

Eyeing untapped potential, the company diverged from its competitors and sought regulatory support to act as a qualified custodian for cryptocurrency. With that unprecedented support, Two Ocean Trust would be authorized to protect customers' assets, providing registered investment advisers, high net-worth individuals, family offices and other investors with a safe, secure option for investing in cryptocurrency. As a key service differentiator, such regulatory support would also attract new clients and put Two Ocean Trust on the path to becoming a leader in cryptocurrency custody.

To help the company successfully navigate the complex, novel issues associated with cryptocurrency custody, and to provide a comprehensive view of the regulatory landscape, Two Ocean Trust turned to a sophisticated multi-disciplinary team at McDermott.

OUR OBJECTIVE:

The McDermott team's specialized knowledge and experience shaped their strategic approach to the regulatory challenges confronting Two Ocean Trust.

Private Client practitioners [Elise McGee](#) and [James Cundiff](#) used their trust and estate experience to complement the deep industry knowledge of FinTech and Blockchain advisers [David Taub](#) and [Joseph B. Evans](#). This collaboration was uniquely suited to helping Two Ocean Trust achieve its main business objective: Solving cryptocurrency's "qualified custodian" problem.

Drawing on their strong reputation and longstanding relationships with state banking regulators at the Wyoming Division of Banking, the McDermott team worked on Two Ocean Trust's behalf to develop a pathway for the company to be recognized as a qualified custodian of digital assets, including cryptocurrency. Over a period of several months, they applied their sophisticated FinTech and Blockchain understanding to a deep analysis of state and local laws, providing legal precedence, theories and rationale that addressed state regulators' concerns and brought them into agreement that Two Ocean Trust was appropriately positioned to become a qualified custodian for cryptocurrency.

The team also guided Two Ocean Trust through the federal requirements of investment, banking, trust and securities laws, seeking to strike a fine balance between state and federal interests. They needed to obtain the necessary authority from the Wyoming Division of Banking without provoking a negative reaction from regulators at the SEC.

THE OUTCOME:

Two Ocean Trust and its McDermott legal team's efforts culminated in ["no-action" relief from the Wyoming Division of Banking](#), allowing Two Ocean Trust to act as a qualified custodian of cryptocurrency. The company was the first to receive a letter issued by a state or federal regulator to acknowledge them as an appropriate qualified custodian of cryptocurrency.

Setting an important precedent for the industry, the Wyoming Division of Banking also issued the first-ever regulatory opinion by a state or federal banking regulator that a trust company is

permitted to act as a qualified custodian for digital assets under the Investment Advisers Act of 1940.

Following the opinion, SEC Commissioner Hester Peirce cited Wyoming as an “extremely progressive” regulator [during an interview](#), noting that the SEC could learn from its approach to cryptocurrency.

“McDermott was the perfect partner to help provide clarity in this rapidly evolving crypto space,” said Joel Revill, Two Ocean CEO. “McDermott’s work didn’t just benefit Two Ocean Trust; it set an important precedent for the entire digital asset industry. This landmark regulatory determination provides much-needed clarity concerning digital asset custody. We believe it will engender the confidence and regulatory certainty necessary to foster additional investments in digital assets by those who previously avoided this space due to custody concerns. Thanks to the no-action letter that McDermott helped us secure, there has been a very positive ripple effect across the entire digital asset investment ecosystem.”

GO FURTHER:

In securing regulatory support and obtaining a “no-action” letter, Two Ocean Trust has blazed a trail in cryptocurrency custody and put Wyoming on the map as a major US epicenter for the entire digital asset industry.

Today, Two Ocean offers a full-service wealth management platform to facilitate digital asset investing and to protect its customers’ investments in cryptocurrency. The firm has emerged as a leading voice in the adoption of digital assets by sophisticated investors, and continues to offer distinct private client investment and trust services to clients based around the globe.

McDermott’s team is honored to have played a part in forming an initial cryptocurrency regulatory framework, and they intend to continue urging greater regulatory clarity for market participants.

Learn more about McDermott’s [Private Client](#) and [FinTech and Blockchain](#) capabilities.

[Read our press release about the matter.](#)