

February 25, 2025

**U.S. Securities and Exchange Commission**  
**Crypto Task Force**  
**crypto@sec.gov**  
**Re: Crypto Task Force Input**

Dear Task Force Members:

We appreciate the opportunity to submit our thoughts to the Task Force.

This is a critical time in the development of digital capital markets. Innovations in blockchain technology are enabling more efficient use of capital and new paradigms of value transfer. Despite regulatory uncertainty over the last several years, innovation in digital capital markets has nonetheless progressed, demonstrating the promises of tokenization of traditional securities. And as traditional financial markets go digital, we are beginning to see a convergence between the traditional finance (TradFi) and decentralized finance (DeFi) ecosystems. It is becoming apparent that we are on the threshold of a transformative change in how capital markets operate as new digital capital markets are created. Providing regulatory clarity at this critical juncture can accelerate the pace of innovation while ensuring that regulatory principles underpinning fair, orderly, and efficient capital markets are upheld.

Though we expect that most of the submissions you receive will focus on native digital assets (*i.e.*, what is colloquially referred to as “crypto”), our submission focuses on the tokenization of traditional securities (though we do provide our thoughts with respect to native digital assets in the final section of our submission). We focus on tokenization because we believe that tokenization is the future of finance. Its adoption is accelerating as the benefits—including real-time settlement, more efficient use of capital, and elimination of manual processes—are obvious and immediate. Nowhere is this more the case than with U.S. Treasuries; given the critical role they play in capital markets, improving their utilization as collateral for repo and other transactions through tokenization can bring transformative change to the financial system. Moreover, as traditional securities are tokenized on blockchain networks, they are able to be used as part of transactions among DeFi market participants (*e.g.*, using tokenized U.S. Treasuries as collateral for native digital asset transactions); the lines between TradFi and DeFi are beginning to blur. Accordingly, regulatory clarity on the tokenization of traditional securities is urgently needed, particularly as they already fall squarely within the Commission’s jurisdiction.

What does this regulatory clarity for tokenization of traditional securities look like? Answering this question requires understanding what tokenizing a security ultimately entails: utilizing a blockchain as the books and records for that security; and a blockchain is nothing more than a better set of electronic books and records, one that synchronizes automatically with the books and records of counterparties. Viewed from this perspective, the idea of tokenization of traditional securities loses some of its mystique as what is really happening is that traditional securities are now recorded on a much better set of books and records. And

questions around the regulatory treatment of tokenized traditional securities resolve, largely, into questions about what types of blockchain-based books and records are regulatorily appropriate.

Our recommendations below on how to answer these questions are guided by existing regulatory principles. Analogizing to current systems, would paper-based books and records be acceptable if they were on public display? And would existing electronic books and records be acceptable if they were accessible by anyone on the internet or if the ability to update them was dependent on unknown third-party validators? The answer would of course be: no. The same standards should apply to blockchain-based books and records. Accordingly, so long as existing regulatory principles are met—particularly, considerations around privacy, control, security, and transaction finality—the use of blockchain as electronic books and records should be permissible. This is where the Commission can provide critical regulatory clarity to ensure the development of fair, orderly, and efficient digital capital markets.

Informing our perspective is our practical experience. And our practical experience is centered on privacy. By privacy, we mean not just the ability to shield data but to be able to control—down to the level of each individual transaction—who exactly can see that data and who can possess that data. In other words, the privacy that matters is the ability to see and share data on a need-to-know basis.

From Digital Asset’s founding over ten years ago, it was clear to us that for blockchain to serve as the books and records for regulated financial institutions, this type of need-to-know privacy was necessary. Moreover, this need-to-know privacy would need to be built into the base layer—the Layer 1—of a blockchain network to ensure true interoperability. Only then could blockchain help create liquid digital capital markets. That is why we built our Canton blockchain technology with Layer 1 need-to-know privacy at its foundation. From this vantage point, we have seen firsthand both the promise of tokenization and blockchain technology in modernizing capital markets as well as the challenges posed by both poor regulatory guidance—and regulatory inaction.

Accordingly, we first provide a brief background on the Canton Network in Section I. We then discuss our recommendations on how best to provide regulatory clarity in detail in Section II including, as a preliminary matter, the need to properly distinguish between native digital assets and tokenized traditional securities in rulemaking as existing rules and proposed rules have failed to make this fundamental distinction. In providing our recommendations, we draw on approaches taken by other policymakers in this space. Finally, in Section III we provide our recommendations for a new regulatory framework for native digital assets.

## **I. Introduction—Our Vision for Liquid Digital Capital Markets**

### *A. The Canton Network—Built with Layer 1 Need-to-Know Privacy to Enable the Creation of Liquid Digital Capital Markets*

The Canton Network is powered by Digital Asset’s Canton blockchain technology and thus is the only public blockchain network with Layer 1 need-to-know privacy. This gives network participants full control over who can see and possess data. Already, over \$3.6 trillion of assets have been tokenized on the Canton Network and it counts over 100 participants, including many major financial market participants.<sup>1</sup>

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<sup>1</sup> Discover the Canton Network Ecosystem, <https://www.canton.network/ecosystem>.

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The Canton Network's unique approach to privacy is best understood when contrasted with other public blockchain networks. Other public blockchain networks replicate the *entire* ledger across *all* parties. Even proponents of these ledgers will admit that this approach does not work for TradFi market participants, nor does it work well for DeFi market participants. Transparent data is a non-starter for these institutions and privacy needs to be added. Moreover, reliance on unknown third-party validators can pose AML/CFT risks. In these other public blockchain networks, these shortcomings are addressed through "Layer 2" chains and zero-knowledge proofs (ZKPs).

But moving assets to Layer 2 chains cuts off participants from the liquidity of the wider network by creating new data siloes that lack interoperability.<sup>2</sup> Compounding the liquidity challenge is that, though the Layer 2 solves for privacy as against other Layer 1 participants, within the Layer 2 itself, there is *no* privacy; all participants in a given Layer 2 can see the data of all other participants in that Layer 2. By way of example, a recent pilot program by the Brazilian central bank attempted to use a Layer 2 to address the Layer 1's privacy shortcomings, but it quickly became apparent this Layer 2 approach would not work because every participant on the Layer 2 would be able to see and be in possession of every other of the Layer-2-participants' data.<sup>3</sup>

And ZKPs, as implemented today, provide only a limited form of privacy—they only shield data and do not offer the need-to-know transaction-level privacy necessary for regulated financial markets. Moreover, ZKPs introduce severe security vulnerabilities—which can cause market vulnerabilities—by allowing for situations where a party can improperly hide the actual amount of an asset it holds. Specifically, if the promise of ZKPs is that a party can prove that they have a given amount of the asset without having to divulge its actual holdings of that asset, the reality is that security vulnerabilities mean that the party's actual holdings of an asset can differ from what it represents to others through the cryptographic proof.<sup>4</sup> In the context of tokenizing traditional securities, this would mean that a party utilizing tokenized U.S. Treasuries as collateral for a repo through a ZKP would not be able to know for certain whether the counterparty actually has the requisite amount of Treasuries needed for the repo due to security vulnerabilities in the ZKP algorithm's implementation, even after these vulnerabilities are discovered and patched. If the repo then needed to be unwound, the consequences could be catastrophic.

Canton, however, provides Layer 1 need-to-know privacy, ensuring full control over who can see and possess data. Instead of data being replicated across all parties, only parties permissioned to see data are in possession of it. Not only is this critical for participants in capital markets, but it also allows for regulators to be provisioned with a node that enables them to see transactions in real time—for example, transactions over ten thousand dollars—enabling more efficient and effective regulation. And transaction validation is always only between the parties to the transaction; there is never any need to rely on potentially unknown third parties and potentially uncertain consensus mechanisms for transaction validation (which could challenge transaction finality). This obviates the need for Layer 2s and ZKPs and ensures that all network participants have direct access to the liquidity of the wider network while transacting only with known parties.

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<sup>2</sup> *Scaling Ethereum L1 and L2s in 2025 and beyond*, <https://vitalik.eth.limo/general/2025/01/23/1112future.html>.

<sup>3</sup> *Brazil's CBDC strives to overcome data-privacy 'obstacle' as pilot tests evolve*, <https://www.globalgovernmentfintech.com/brazil-cbdc-drex-data-privacy-pilot-testing-phase-two/>.

<sup>4</sup> *Critical Zcash Bug Could Have Allowed 'Infinite Counterfeit' Cryptocurrency*, <https://thehackernews.com/2019/02/zcash-cryptocurrency-hack.html>.

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At the core of the Canton Network is its decentralized public infrastructure, the Global Synchronizer. Over 20 market participants from both traditional and decentralized finance act as validators for the infrastructure. The core software necessary to build applications and connect to the network is available open source, ensuring that anyone can participate in the Canton Network. And the Global Synchronizer's independence is ensured through governance by the Global Synchronizer Foundation, an independent entity operated under the umbrella of the Linux Foundation, and which counts among its board members major market participants including global systemically important banks. The Global Synchronizer includes a native digital asset, Canton Coin, that is used to pay for traffic and application fees on the Global Synchronizer and that is minted by network participants to incentivize them to provide infrastructure and applications for the Global Synchronizer.

The Canton Network's Layer 1 need-to-know privacy and its public, decentralized infrastructure make it the only suitable public blockchain network for creating liquid digital capital markets consistent with regulatory principles.

### *B. Why Tokenization Matters: Collateral Mobility*

The recent discussion and excitement around the tokenization of traditional securities is no doubt promising. But what is often missing from this discussion is any consideration about how tokenized traditional securities would be used. From our perspective, and based on our experience, one of the signal benefits of the tokenization of traditional securities is to enhance collateral mobility in the financial system.

Collateral is fundamental to the proper functioning of the financial system, serving to secure transactions in repo markets, derivatives, securities lending, and margin management. Market dislocations often arise due to inefficiencies in collateral movement, exacerbating crises through liquidity shortages and operational bottlenecks. And yet, of the \$255 trillion of marketable securities in demand for use as collateral, only \$28 trillion—approximately 11%—are actually being used.<sup>5</sup>

With the tokenization of traditional securities and blockchain-based settlement, significant strides can be made towards global collateral mobility, enabling more resilient financial markets. Specifically, tokenization and blockchain-based settlement can enable:

- **24x7 collateral mobility**, allowing for liquidity optimization through programmable credit and leverage, with real-time valuation and tailored margining for faster capital deployment.
- **Atomic settlement**, eliminating counterparty risk and reducing intraday liquidity and operating costs, as well as other post-trade innovations such as automated asset servicing and reporting for institutional portfolios spanning TradFi and DeFi.
- **New institutional-grade investment products**, such as tokenized funds and programmable portfolios as well as integrated securities financing to unlock over \$2 billion in market efficiencies from tokenized collateral.

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<sup>5</sup> Capital Markets Fact Book 2024, <https://www.sifma.org/resources/research/statistics/fact-book/>.

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- **A unified market structure for TradFi and DeFi**, enabling seamless trading, settlement, and risk management through interoperable systems centered on privacy, compliance, and real-time transaction synchronization.
- **Regulatorily-aligned, trust-based digital capital markets**, where compliance is built into the infrastructure, reducing friction for regulated institutions, and providing market-wide transparency and auditability (including through regulator-operated nodes), fostering trust between institutional participants.

With digital capital markets and 24x7 collateral mobility, approximately \$10 trillion of U.S. Treasuries could be tokenized and seamlessly pledged as collateral. We can see over \$1 billion in annual capital savings through real-time repo and intraday collateral mobilization of U.S. securities, and a 25-50% reduction in clearing costs and a \$3-5 million reduction in counterparty costs with intraday repo.<sup>6</sup>

Indeed, Euroclear and Digital Asset have just announced a collateral mobility initiative—to create a Global Collateral Network—on the Canton Network.<sup>7</sup> And in 2024, Digital Asset, together with DTCC and numerous market participants—four banks, three custodians, two financial market infrastructures (in addition to DTCC), four investors, and observers from law firms, regulators, and academia—demonstrated through a pilot how U.S. Treasuries could be tokenized and mobilized as collateral on the Canton Network.<sup>8</sup>

### *C. How Can This Vision of Liquid Digital Capital Markets be Achieved?*

Technologically, our firm belief is that liquid digital capital markets can only be built with a public blockchain network with Layer 1 need-to-know privacy. Only then will all of the applications on the network be interoperable and transact on the same layer, giving all participants access to the network's liquidity pool. The rapid adoption of the Canton Network by leading market participants in both TradFi and DeFi has validated our technological approach.

The alternative approach—of starting with a “transparent by default” Layer 1 and adding Layer 2 chains and ZKPs—leads only to fragmented liquidity, limited privacy—the Layer 2 data is still transparent among its participants and ZKPs do not provide need-to-know privacy—and severe security vulnerabilities. This approach, adopted by every other public blockchain network to date, does not enable the creation of liquid digital capital markets. Particularly in the context of U.S. Treasuries, which are the linchpin of capital markets and the global financial system, if they are not tokenized on the right network with the right privacy and security features, then their utility as collateral is severely limited and their role in the proper functioning of financial markets is curtailed.

Regulatorily, what is required to create liquid digital capital markets is clarity as to the circumstances under which a blockchain can be used as a security's books and records. As we have discussed above, a blockchain is ultimately a better set of electronic books and records, one that synchronizes automatically with the books

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<sup>6</sup> *Distributed Ledger Repo for Capital Markets*, <https://www.broadridge.com/financial-services/capital-markets/transform-trade-life-cycle/distributed-ledger-repo>.

<sup>7</sup> *Euroclear and Digital Asset initiate collateral mobility initiative*, <https://www.globalcustodian.com/euroclear-and-digital-asset-initiate-collateral-mobility-initiative/>.

<sup>8</sup> *Unlocking collateral mobility through tokenization: US Treasuries use case*, <https://www.digitalasset.com/hubfs/Canton%20Network%20Files/Canton%20Network%20Pilot%20Program/unlocking-collateral-mobility-through-tokenization-us-treasuries-use-case.pdf>.

and records of counterparties and, so long as existing regulatory principles are met—for example, considerations around privacy, control, security, and transaction finality—the use of blockchain as electronic books and records should be permissible. Clarity on how a blockchain network can satisfy these principles can go a long way towards bringing much-needed modernization to capital markets through tokenization.

Below, we discuss in detail our recommendations on how the Task Force can provide this clarity.

## II. Recommendations to Provide Regulatory Clarity for Tokenized Traditional Securities

### A. *Definitional Precision on Digital Assets: Properly Distinguishing Between Native Digital Assets and Tokenized Traditional Securities Can Allow for Better Rulemaking for Tokenized Traditional Securities*

When the Commission first provided guidance on digital assets in 2018, “digital assets” were synonymous with what is colloquially referred to as “crypto”—i.e., digital assets native to a blockchain. Hence, the Commission’s 2019 “Framework for ‘Investment Contract’ Analysis of Digital Assets” was really only about native digital assets. And this unitary view of digital assets persisted in other guidance from the Commission. For example, the digital asset custody rule for broker-dealers,<sup>9</sup> the proposed Safeguarding Rule,<sup>10</sup> and the now-repealed SAB 121<sup>11</sup> all define a “digital asset” to mean “an asset that is issued and/or transferred using distributed ledger or blockchain technology,” using or relying on cryptographic techniques or protocols. Nowhere in these definitions is any distinction allowed between, on the one hand, native digital assets and, on the other hand, tokenized traditional securities. Yet today, this distinction is very real and requires a more precise and thoughtful approach to defining what constitutes a “digital asset,” with a different regulatory approach required based on the type of digital asset.<sup>12</sup>

As one possible approach, we believe that the framework constructed by the Basel Committee on Banking Supervision can be instructive here. In its *Prudential Standards for the Treatment of Cryptoasset Exposures*, the Basel Committee starts with roughly the same definition for “cryptoasset” as the Commission has used for “digital assets,” defining “cryptoassets” as “digital assets that depend on cryptography and distributed ledger technologies (DLT) or similar technologies,” with “digital assets” defined by the Basel Committee as a “digital representation of value, which can be used for payment or investment purposes or to access a good or service.”<sup>13</sup>

Though these definitions make no distinction between native digital assets and tokenized traditional securities, the Basel Committee makes this distinction in its operative rules by classifying cryptoassets based on their characteristics. Specifically, a cryptoasset will be classified as a tokenized traditional security *only if* certain classification conditions are met. Among these is a classification condition that focuses on the functionality of the tokenized security and its underlying blockchain network, requiring that “[t]he

<sup>9</sup> Custody of Digital Asset Securities by Special Purpose Broker-Dealers Release No. 34-90788 (April 17, 2021), available at <https://www.sec.gov/files/rules/policy/2020/34-90788.pdf>.

<sup>10</sup> Safeguarding Advisory Client Assets, Investment Advisers Release No. 6249 (Feb. 15, 2023), available at <https://www.sec.gov/rules/proposed/2023/ia-6240.pdf>.

<sup>11</sup> SEC Staff Accounting Bulletin No. 121, 17 C.F.R. pt. 211 (Apr. 11, 2022), <https://www.sec.gov/oca/staff-accounting-bulletin-121>.

<sup>12</sup> See “Uneven Terrain: Drawing a Regulatory Perimeter Around a Rapidly Evolving Digital Asset Landscape,” <https://georgetown.app.box.com/s/ifqs8egf6nl3yagql7iabgp2hauoiw2o>.

<sup>13</sup> *Prudential Treatment of Cryptoasset Exposures* at p.32, <https://www.bis.org/bcbis/publ/d545.pdf>.



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functions of the cryptoasset and the network on which it operates, including the distributed ledger or similar technology on which it is based, are designed and operated to sufficiently mitigate and manage any material risks.”<sup>14</sup> The Basel Committee elaborates on these risks, requiring that “[t]he functions of the cryptoasset, such as issuance, validation, redemption and transfer of the cryptoassets, and the network on which it runs, do not pose any material risks that could impair the transferability, settlement finality or, where applicable, redeemability of the cryptoasset.”<sup>15</sup>

Notably, the Basel Committee subsequently stated that when a traditional security is tokenized on a *permissionless* blockchain network, then that security would not be considered a tokenized traditional security but rather receive the same treatment as a native digital asset because “the use of permissionless blockchains gives rise to a number of unique risks, some of which cannot be sufficiently mitigated at present. . . [s]ome of the most significant risks stem from the networks’ reliance on third parties to carry out basic operations . . . Similar analysis applies to political, policy, and legal risks, AML/CFT risks, and risks around settlement finality, privacy, and liquidity.”<sup>16</sup>

Ultimately, for the Basel Committee, the risks posed by different types of digital assets warrant different regulatory treatment, and the risks are in part determined based on the characteristics of the blockchain technology underlying the digital asset.

This approach, however, should *not* be considered a violation of technology neutrality. Though historically, technology neutrality may have been an unobjectionable financial regulatory principle, transposing this principle to the new domain of digital assets may not be a simple application of old rules. The principle of technology neutrality is no doubt still important, but given the intrinsic relationship between a digital asset and its underlying blockchain technology, financial risk is no longer independent of technology choice. Rather, the interdependence between technology choice and financial risk means that regulators should be expected to take into account technological architectures when constructing regulatory frameworks for digital assets.<sup>17</sup>

A similar approach could inform the Commission’s work. For example, among the many critiques of the now-repealed SAB 121, one that stood out to us was the uncertainty it created for institutions looking to custody tokenized traditional securities. As noted above, SAB 121 (as well as the Commission’s other rules relating to digital assets), made no distinction between native digital assets and tokenized traditional securities. Instead, it applied a broad brush to *all* digital assets, insinuating that *all* posed the same (high) risk to institutions seeking to custody them. To the extent this approach wrongly considered the risks of native digital assets, it was even more so the case with tokenized traditional securities. The failure to date to take this distinction into account has put a brake on the modernization of the financial system.

Ultimately, not all digital assets are the same, and regulatory guidance must take this into account. Definitional precision on digital assets can guide new regulatory thinking, particularly on rules around custody and the need for special purpose broker-dealers for digital assets. The Basel Committee’s approach provides a useful framework, where the technological characteristics of the digital asset and its underlying

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<sup>14</sup> *Id.* at p. 10.

<sup>15</sup> *Id.*

<sup>16</sup> *Cryptoasset Standard Amendments*, <https://www.bis.org/bcebs/publ/d567.pdf>.

<sup>17</sup> For a longer discussion on applying technology neutrality to tokenization, see *Technology Neutral Tokenization?*, <https://blog.digitalasset.com/blog/technology-neutral-tokenization>.

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blockchain network, such as transferability, settlement finality, privacy, security, and liquidity, impact the risk profile of the digital asset and determine its regulatory treatment.

### *B. Consider Tokenized Traditional Securities from the Perspective of Books and Records*

A key point in the above recommendation is that the relationship between a digital asset and its underlying blockchain network must be taken into account. The Commission’s thinking to date, in addition to having focused on native digital assets at the expense of tokenized traditional securities, has focused on the digital asset and not the underlying blockchain technology. Yet the two are inseparable; digital assets do not exist in the ether.

As discussed above, a blockchain is ultimately a better set of electronic books and records, one that synchronizes automatically with the books and records of counterparties. Viewed from this perspective, questions around the regulatory treatment of tokenized traditional securities resolve, largely, into questions about what types of books and records are regulatorily appropriate.

From a books-and-records perspective, it becomes clear that guidance from the Commission as to what constitutes acceptable blockchain-based books and records would be enormously helpful to market participants looking to tokenize traditional securities. The discussion above on definitional clarity can be instructive here as well: if the characteristics of a blockchain network—particularly around privacy, security, and settlement finality—affect the regulatory treatment of a digital asset, then it follows that those same characteristics should affect whether a blockchain network can serve as the official books and records of the digital asset. For example, the Commission can provide clarity on whether a transparent-by-default Layer 1 blockchain is a regulatorily appropriate set of books and records, as well as whether parties relying on Layer 2s and ZKPs can meet books-and-records requirements.

### *C. Defining “Control” for Custody and Safeguarding Purposes—UCC Article 12 as a Blueprint*

Distinguishing between native digital assets and tokenized traditional securities, while valuable in constructing appropriate regulatory mental models, does not however mean that we should continue to view the TradFi and DeFi ecosystems as separate. Though the underlying assets may have different characteristics and require different regulatory treatment, we are already seeing both native digital assets and tokenized traditional securities used together in transactions—for example, tokenized U.S. Treasuries being used as margin collateral for native digital asset derivatives trading. The unification of the TradFi and DeFi financial systems suggests that regulatory guidance is also required that addresses common challenges for all digital assets.

A key common challenge for all digital assets is demonstrating control over the assets. Indeed, the proposed Safeguarding Rule notes that “it may be difficult actually to *demonstrate* exclusive possession or control of crypto assets due to their specific characteristics.”<sup>18</sup> Here, again, other regulatory approaches may provide a helpful blueprint for the Commission to tackle this challenge. And whereas before we looked to a

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<sup>18</sup> See Safeguarding Advisory Client Assets, Investment Advisers Release No. 6249 (Feb. 15, 2023), available at <https://www.sec.gov/rules/proposed/2023/ia-6240.pdf> (emphasis original).



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supranational body for guidance, we now turn to state law—the Uniform Commercial Code, in particular the 2022 amendments that added a new Article 12.

Article 12 addresses the challenge of how to perfect a security interest in a digital asset. And it does so by relying on the demonstration of control over the digital asset. Specifically, control is established through, among other things, demonstrating the exclusive powers (1) to prevent others from availing themselves of the benefit of the digital asset and (2) to transfer control of the digital asset to another person or cause another person to obtain control of the digital asset.

A similar approach may be helpful in custody considerations. Notably, Article 12 does not actually use the term digital asset; rather it uses the term “controllable electronic record,” reinforcing the point that a books-and-records perspective can be regulatorily beneficial.

### *D. No-Action Relief for Core Market Activities Using Tokenized Traditional Securities*

If definitional clarity is provided for digital assets—properly distinguishing between native digital assets and tokenized traditional securities, if blockchains with the appropriate characteristics are permitted to serve as valid electronic books and records, and if clear custody rules are established for digital assets, then market participants will have the clarity necessary to build digital capital markets through tokenization and blockchain networks.

To accelerate this innovation, sandboxes can be a helpful tool. However, given the accelerating adoption of tokenization and the demonstrated ability of certain blockchain technologies to serve as reliable infrastructure for production transactions, including to process over \$1 trillion a month in tokenized repo transactions,<sup>19</sup> we think it is equally important that the Commission provide clarity to enable market participants to continue to adopt blockchain technology for production transactions. Specifically, the Commission should provide no-action relief for market participants looking to conduct core market transactions, such as repo, securities lending, and derivative transactions, so long as these transactions are done within the frameworks established by the Commission. As part of this no-action relief, tokenized traditional securities should be permitted to be used as collateral, similar to what was proposed recently by the CFTC’s Digital Asset Markets Subcommittee.<sup>20</sup>

Moreover, tokenization enables real-time settlement, eliminating the counterparty risks posed even by T+1; to make this a reality, the Commission should consider rule amendments to allow for real-time settlement. Importantly, this does not mean that all settlement needs to happen instantaneously, but rather that the parties to a transaction are able to choose the settlement cycle that is most appropriate for their transaction rather than being constrained by technological limitations.

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<sup>19</sup> *Distributed Ledger Repo for Capital Markets*, <https://www.broadridge.com/financial-services/capital-markets/transform-trade-life-cycle/distributed-ledger-repo>.

<sup>20</sup> *Recommendations to Expand Use of Non-Cash Collateral Through Use of Distributed Ledger Technology*, [https://www.cftc.gov/media/11581/GMAC\\_DAM\\_UseofDLTasDerivativesCollateral\\_112124/download](https://www.cftc.gov/media/11581/GMAC_DAM_UseofDLTasDerivativesCollateral_112124/download).

### III. Recommendations for a New Framework for Native Digital Assets

Finally, we turn to native digital assets. As a first step, the 2019 “Framework for ‘Investment Contract’ Analysis of Digital Assets” should be rescinded. In addition to failing to provide clarity, it also stands on a shaky legal foundation and its conception of how native digital assets can be utilized is outdated.

While a securities law regime is appropriate for “initial coin offerings”—sales of native digital assets that occur before any operational blockchain network exists—clear guidance around when securities laws would *not* apply, *i.e.*, when transactions involving native digital assets are *not* investment contracts, can promote meaningful innovation around native digital assets.

Central to any new framework for native digital assets should be a clearer definition of decentralization. The totemic “sufficient decentralization” standard that has served as the lodestar for those looking to navigate the last six years of regulatory uncertainty was never defined with sufficient precision as to be useful. From our perspective, a serious flaw in the approach to date is that it has implied a one-dimensional view of decentralization—*i.e.*, decentralization through having a large number of validators on the network. But the reality is that decentralization is multi-dimensional; it can be measured in terms of the number of validators, the number of technical contributors, or the number of applications on the network. And depending on the dimension on which decentralization is being measured, it can be achieved either with many participants or none. For example, from the perspective of technical contributors, decentralization can be achieved when there are no parties making meaningful contributions to the code, thus taking a literal view of decentralization, that there is no control by a single, central party. We believe that a good model for a workable definition of decentralization that is faithful to the technical realities of blockchain networks as well as to the principles of *Howey* can be found in the Financial Innovation and Technology for the 21st Century Act.<sup>21</sup>

An additional area where guidance from the Commission would be helpful is around the concept of an “issuer” for native digital assets. Though there is of course an issuer of a native digital asset in an ICO context, when native digital assets are minted by network participants on technologically mature, decentralized blockchain networks, it is not as clear whether the concept of an issuer is still relevant. Though there is no doubt that some entity created the underlying technology, if the network is technologically mature such that it would continue to function when the technology creator steps away, and network participants would be able to continue minting the native digital asset, then traditional understandings of an issuer seem inapplicable. Clarification that native digital assets may not have *any* issuer in certain circumstances would be helpful.

These issues crystalize when viewing blockchain networks that have “pre-mined” native digital assets—*i.e.*, those that are issued by the technology developer via ICO before there is any operational network and where, usually, a large portion of these initially-issued native digital assets are held by the issuer—versus blockchain networks that do not pre-mine, *i.e.*, the first native digital assets are minted by network participants only after the blockchain network is operational. In the former, pre-mine scenario, there is clearly an issuer, and because the native digital assets tend to be held by the issuer, decentralization (on any dimension) becomes difficult to achieve because the initial distribution of the native digital asset skews the

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<sup>21</sup> For a deeper discussion of our view on decentralization, see *Decentralizing Howey (Sufficiently?) The Role of Decentralization in the Financial Innovation and Technology for the 21st Century Act*, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5065072](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5065072).

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incentives that shape future network development; the expectations of the holders of the native digital assets in this scenario would suggest that securities laws would be applicable. In the latter scenario, where there is no pre-mine—and thus no sale of the digital asset for money, decentralization (considered multi-dimensionally) not only becomes achievable but is actually realized through the ordinary operation of the network as more participants join and mint the native digital asset, the concept of an issuer no longer holds, and the applicability of securities laws is not as apparent.

A new framework for native digital assets that takes the above into account can go a long way towards fostering responsible innovation in an industry starved for regulatory guidance.

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Our capital markets today lead the world. This is because they offer deep liquidity and regulatory clarity. As we transition to digital capital markets—built on blockchain technology and tokenized traditional securities—these twin pillars of deep liquidity and regulatory clarity must be upheld. Maintaining the deep liquidity we have today requires blockchain networks with Layer 1 need-to-know privacy. And regulatory clarity will come from regulations that take into account the technological realities of blockchain networks and tokenization to ensure that they operate consistent with existing regulatory principles.

We are confident that the Commission can promulgate clear rules that enable the creation of liquid digital capital markets, and we hope our recommendations are a constructive contribution to aid the Task Force in its deliberations on regulatory changes in the digital asset space.

Regards,

Digital Asset Holdings, LLC