

BY ELECTRONIC SUBMISSION

May 16, 2025

Crypto Task Force
Securities and Exchange Commission
100 F Street, N.E.
Washington DC, 20549-1090

Allen Overy Shearman Sterling US LLP
1221 Avenue of the Americas
New York, NY 10020
Tel +1 212 610 6300
Direct line +1-202 683-3840
susan.gault-brown@aoshearman.com

Re: The Use of YLDS Trading Pairs as a Settlement Mechanism for Non-Security Transactions

Dear Crypto Task Force Members:

Figure Market Holdings, Inc. (“**FMHI**”) is proposing to allow the use of Figure Transferable Certificates (the “**Certificates**” or “**YLDS**”) trading pairs as a settlement mechanism in connection with the sale of Bitcoin, Ether, or any other non-security crypto asset on a crypto platform (the “**Crypto Platform**”) operated by a FMHI subsidiary, as further described herein, (the “**Proposed Activity**”). In our last submission to you on April 8, 2025, we described the use of YLDS as a settlement mechanism for non-security transactions in general and explained why the such activity would not require registration of the Crypto Platform as a broker, securities exchange, or alternative trading system (“**ATS**”). In this submission, we describe the Proposed Activity, which involves the use of YLDS trading pairs, and explain why the Proposed Activity would not require registration of the Crypto Platform as a broker, securities exchange, or ATS.

PART 1: CRYPTO PLATFORM USE CASE

I. EXECUTIVE SUMMARY

We do not believe that the Proposed Activity amounts to broker, exchange, or ATS status with respect to the Crypto Platform for the following reasons.

First, while YLDS are securities, the YLDS trading pairs will only be used on a Crypto Platform as an optional method of bilateral settlement of Bitcoin or Ether (or other non-security crypto assets) with the buyer and seller transacting peer-to-peer on the Crypto Platform. The only intended use of the Crypto Platform will be to facilitate transactions in non-security digital assets, such as Bitcoin and Ether.

Second, the optional use of peer-to-peer transfer of YLDS by the buyer to the seller on a blockchain as payment of a non-security crypto transaction facilitated by the Crypto Platform is not a securities transaction effected on the Crypto Platform for the accounts of others nor does the transfer of YLDS involve “bringing together the orders for securities of multiple buyers and sellers.”

The use of YLDS as an optional mechanism for payment on a blockchain affords participants thereon a compliant, safe, and convenient way to transact in a digital environment. Unlike digital assets in bearer form, such as many existing stablecoins, YLDS are registered under Section 5 of the U.S. Securities Act of 1933 (“**Securities Act**”) and Figure Certificate Company (“**FCC**”), the issuer of YLDS, is registered as an investment company under the U.S. Investment Company Act of 1940, as amended (“**Investment Company Act**”), affording holders of YLDS the protections and disclosures under the Securities Act and the Investment Company Act. Transfers on a blockchain will be registered on the books of the investment company by a registered transfer agent in compliance with the U.S. Securities Exchange Act of 1934 (“**Exchange Act**”) and will be transparent. YLDS holders will benefit from the protections offered by the federal securities laws and particularly by the Investment Company Act, including protections against self-dealing and misappropriation of funds and full and fair disclosure.

YLDS are a useful innovation which combines the technological innovations of blockchain technology with proper regulatory and compliance oversight. Using YLDS as a payment rail offers better safety and soundness and customer protection through a registered investment company security than the stablecoins that are currently prevalent in the market, while offering the convenience, transparency and cost effectiveness of a digital asset payment mechanism versus traditional fiat payment rails.

II. FACTUAL BACKGROUND

FCC is registered as a face-amount certificate company with the Commission under the Investment Company Act. FCC will issue Figure Transferable Certificates, also called YLDS.¹ YLDS are interest-bearing debt securities. YLDS are issued as digital representations of securities using the Provenance Blockchain,² an open source, public, blockchain-based distributed ledger that is secured using cryptography. In the future, FCC expects YLDS to be transferable on other open source, public, blockchain-based distributed ledgers (each, a “**blockchain**”).

A. The Certificates (“YLDS”)

The ownership and transfer of YLDS is authenticated and recorded on a blockchain in a verifiable and permanent way. YLDS are capable of being transferred in peer-to-peer transactions, and a complete record of such transactions (excluding personal identifiable information) is viewable on the blockchain. Although records of peer-to-peer transactions are viewable on the blockchain, record and beneficial ownership of YLDS is reflected on the records of a registered transfer agent.³ The transfer agent’s records constitute the official YLDS holder records and govern the record ownership of YLDS in all circumstances. A peer-to-peer transaction is not final, and thus ownership of YLDS is not transferred, until it is recorded in the official record by the transfer agent.

¹ FCC also expects to issue Figure Installment Certificates in the future; however, these will not be used for payment and are not part of this analysis.

² Founded in 2018, Provenance Blockchain Network was designed specifically to serve the unique requirements of the regulated financial services industry. While much of the initial software development for the Provenance Blockchain was developed by Figure Technologies, Inc., the former parent of FCC, none of FCC’s affiliates nor FCC control the Provenance Blockchain network.

³ Figure Equity Solutions, an affiliate of FCC, is the transfer agent, pursuant to a transfer agency agreement.

YLDS currently are issued, transferred, and surrendered using blockchain technology. YLDS are not able to be issued or destroyed unless initiated by FCC, or the transfer agent acting on instructions from FCC, all consistent with the disclosure set forth in the YLDS prospectus and consistent with the requirements of the federal securities laws.

B. The Figure Markets Crypto Platform

FMHI, FCC's indirect parent, through one of FMHI's subsidiaries, operates a Crypto Platform, which facilitates the purchase and sale of Bitcoin and Ether and other non-security crypto assets. The Crypto Platform leverages multi-party computation ("MPC") self-custody technology to enable Crypto Platform users to use decentralized custody for their assets in MPC self-custody wallets.⁴ The MPC self-custody technology allows for any digital asset to be represented in the user's wallet in a tokenized (*i.e.*, a digital representation) form and subject to the exclusive control of the holder of the wallet. Users can transfer such controllable electronic records⁵ to other MPC self-custody wallets. At no point in the process does the Crypto Platform, FCC or the blockchain have control or custody of users' assets. Assets never leave a user's MPC self-custody wallet and are never controlled or custodied by an intermediary, but instead assets move directly and bilaterally to another user. Therefore, all transactions occurring on or through the Crypto Platform are peer-to-peer transactions.

The Crypto Platform operates as a portal which offers users an interface to view and submit orders for Bitcoin and Ether and other non-security crypto assets. However, the transactions are executed on a peer-to-peer basis, via the blockchain. Upon a non-security crypto asset trade match, the blockchain enables users to settle transactions bilaterally, transferring tokenized non-security crypto assets or various fiat equivalents between the users. The transfer of tokenized non-security crypto assets and the transfer of fiat equivalents are separate and distinct transactions which occur simultaneously.

Currently, the Crypto Platform offers USD and USDC, and YLDS as the settlement mechanisms that can be selected at a buyer's option in order to pay for non-security crypto assets. FMHI is proposing to add trading pairs which specify the "fiat equivalent" that will be used as a settlement mechanism for non-security crypto asset transactions. For example, in the case of a non-security crypto asset such as Bitcoin, the available trading pairs would be USD/BTC, USDC/BTC, and YLDS/BTC. A seller of a non-security crypto asset will be able to decide among the three pairing options and therefore choose the fiat equivalent the seller wishes to receive in exchange for the seller's non-security crypto asset. The Crypto Platform will have no role in whether or not a seller chooses YLDS as a settlement mechanism or another fiat equivalent. Buyers and sellers who choose the YLDS trading pair will be able to settle an agreed transaction matched by the Crypto Platform by initiating a transaction whereby YLDS will be transferred from the buyer's wallet as the method of payment to purchase the seller's non-security crypto asset.

At transfer, the following steps will occur:

- (1) Party A, the buyer, and Party B, the seller, both choose the YLDS/non-security crypto asset trading pair and agree on price;
- (2) in connection with the transfer, no account suspensions may be in place;

⁴ A "wallet" is software that enables owners to store and manage the cryptographic information necessary to identify and transfer their assets, and thus allows asset owners to make transactions on the associated blockchains. Wallets provide users with a "public key," which is the user's blockchain "address" that can be shared with others, and a "private key," which operates as a password and is needed to transfer a crypto asset.

⁵ Uniform Commercial Code Article 12 defines a Controllable Electronic Record as "a record stored in an electronic medium that can be subjected to control." UCC § 12-102(a)(1).

- (3) if both accounts meet this condition, the YLDS are transferred seamlessly from Party A’s account to Party B’s account as settlement for the transfer of the non-security crypto asset from Party B to Party A, and FCC’s transfer agent updates the YLDS ledger to note the transfer of the YLDS;
- (4) if one or both accounts fail to meet the condition above, Party A and Party B would be notified of the failed transfer. The two parties to the failed transfer would then be able to contact FCC’s transfer agent to resolve any account-related suspensions.

Although YLDS are available for early surrender, there is no liquidation of YLDS into cash at any point in the transfer process.

III. LEGAL ANALYSIS

A. Figure Markets is not a “broker”

Section 3(a)(4) of the Exchange Act defines the term “broker” to mean “any person engaged in effecting transactions in securities for the accounts of others.” The two-part test requires that any person who is “engaged in the business” of “effecting transactions in securities for the accounts of others” is required to register with the Commission. Both parts must be met before broker-dealer⁶ registration is required. A person effects transactions in securities if he or she participates in such transactions “at key points in the chain of distribution.” Such participation includes in relevant part, among other activities, negotiating between the issuer and the investor, taking, routing or matching orders in securities, facilitating the execution of a securities transaction, handling customer securities, or extending credit for the purpose of purchasing securities. A person is “engaged in the business” if, among other things, he or she receives transaction-based compensation from securities transactions or solicits securities transactions. A determination of whether a person acts as a broker is based on the totality of the facts and circumstances.

As a threshold matter, the transactions facilitated by the Crypto Platform in non-security crypto assets are not securities transactions. The Crypto Platform facilitates transactions in Bitcoin and Ether and other non-security crypto assets, none of which are securities.

FMHI will not engage in broker activity by virtue of offering users access to the Crypto Platform or operating the Crypto Platform because the use of the YLDS trading pair is a means of payment at the option of the buyer and seller and therefore does not constitute “effecting” transactions in securities.

Moreover, the transaction at issue is not a “transaction in securities” as the YLDS trading pairs is simply a settlement mechanism for a transaction of non-security crypto asset, such as Bitcoin or Ether. The use of YLDS trading pairs is similar to the use of a settlement “currency.” Taking Bitcoin as an example, a Bitcoin seller will be able to choose among the three trading pairs (USD/BTC, USDC/BTC and YLDS/BTC) to determine which “currency” it will accept to settle its Bitcoin transaction. While the seller may choose the YLDS/BTC trading pair due to the yield provided by YLDS, the Bitcoin seller’s purpose in using the Crypto Platform is to sell its Bitcoin rather than to buy YLDS (which the Bitcoin seller could just as easily obtain directly from FCC at par at any time). There would not be any reason, including any investment purpose, for people to go to the Crypto Platform to buy/sell YLDS when the same price is available directly from the issuer. As a result, as a practical matter, the only items being “purchased” or “sold” on the Crypto Platform are non-securities, *e.g.*, Bitcoin and Ether. Thus, there is no “securities transaction.”

⁶ While “broker-dealer” is a term of art which encompasses both “broker” and “dealer” activity, we will not explore the “dealer” definition as it is not relevant to this analysis, as neither FMHI, FCC, nor any approved blockchain will be acting through its “own account.”

The peer-to-peer bilateral settlement of the a transaction in YLDS is similar to a physical transfer of a certificated security by its holder to a third party (typically specially endorsed to the purchaser or endorsed in blank such that the seller to whom it is transferred has exclusive control thereof), but instead of being represented on a paper certificate, the security is represented as a record on the blockchain. Certificated securities have been issued in the United States since the 1700s and are evidence that the owner is registered on the books of the issuer (or its transfer agent) as a securityholder.⁷ Generally, under the Uniform Commercial Code, “voluntary transfer of possession” is all that is required to effect such a transfer.⁸ Such transfers of securities, without a broker-dealer intermediary, are allowed and are customary. For example, upon a corporate action, the transfer agent will transfer ownership or credit new shares on a company’s share register, without the involvement of a broker-dealer. The Commission has acknowledged that matching of orders and settlement with respect to digital assets can be a process separate and distinct from settlement, and that settlement may happen bilaterally outside of a trading platform.⁹

The intended use of the Crypto Platform is only to facilitate the purchase and sale of non-security crypto assets and thus will not be “routing or matching orders in securities.” On the Crypto Platform, the parties seeking a peer-to-peer transaction must become aware of counterparties on their own and the Crypto Platform is not involved in helping parties find counterparties and is not involved in the negotiation between the buyers and sellers nor does it match orders in anyway. The Crypto Platform simply provides a trading platform for non-security crypto assets and would provide settlement options in USD, USDC, and YLDS. The use of YLDS trading pairs will be optional, because sellers will always have the option of choosing the USD trading pair or the USDC trading pair (or any other trading pair involving a fiat equivalent eligible for settlement on the Crypto Platform). Further, there is no expectation that sellers would use the Crypto Platform for the purpose of purchasing or selling YLDS itself, because YLDS are available for purchase and sale directly via FCC at par value.

The Crypto Platform will neither “handle” customer securities nor the funds delivered in settlement of the trade.¹⁰ YLDS are digital representations of securities on an approved blockchain and are held through the MPC self-custody wallets of each user. These MPC self-custody wallets exist independently of the Crypto Platform, and the Crypto Platform does not hold or custody any YLDS credited to such wallets. The Crypto Platform will charge a volume-based fee on the transaction volume of non-security crypto assets and will not receive any remuneration – transaction-based or otherwise – from the usage of YLDS. FMHI will not extend credit for the purpose of purchasing YLDS. FMHI will not make any recommendations with respect to YLDS or any other security, and will not communicate with users, apart from technical issues with respect to the platform, about YLDS. Finally, neither the Crypto Platform nor any approved blockchain will be involved in negotiating any terms between users with respect to the use of YLDS.

⁷ See generally, Securities and Exchange Commission, Release No. 34-76743, Transfer Agent Regulations (Dec. 22, 2015).

⁸ See Uniform Commercial Code § 8-301(a), which states that delivery of a certificated security to a purchaser occurs when the purchaser acquires possession of the security certificate. “Delivery” means voluntary transfer of possession. Uniform Commercial Code § 1-201(15).

⁹ See Securities and Exchange Commission, Letter to FINRA re ATS Role in the Settlement of Digital Asset Security Trades (Sep. 25, 2020).

¹⁰ Note that offering a non-custodial wallet which simply provides technical infrastructure for users to arrange transactions on another platform does not constitute brokerage activity, even when such transactions or the other platform involves securities. See SEC v. Coinbase, Inc., No. 23 Civ. 4738, 2024 WL 1304037 at *82-83 (S.D.N.Y. Mar. 27, 2024).

The Commission has moreover recognized in no-action letters issued to operators of “passive bulletin board systems” that provide information to prospective sellers and buyers of a company’s securities, that such systems are not effecting securities transactions when:

- (1) no transactions would be effected by the systems themselves;
- (2) the companies would have no role in effecting transactions between participants; and
- (3) all transactions would be effected only by direct person-to-person contact between the bulletin board participants.¹¹

These letters acknowledge the fact that bulletin board participants could transfer securities between each other through a transfer agent, without an intermediary. Likewise with the Crypto Platform, the YLDS trading pairs will allow YLDS to be used as a payment mechanism bilaterally between two users through the use of a transfer agent, and the Crypto Platform would not be involved in such transaction.

B. Figure Markets is not a “exchange” or “alternative trading system”

Section 5 of the Exchange Act makes it unlawful for any broker, dealer, or exchange, directly or indirectly, to effect any transaction in a security, or to report any such transaction, in interstate commerce, unless the exchange is registered as a national securities exchange under Section 6 of the Exchange Act, or is exempted from such registration. Section 3(a)(1) of the Exchange Act defines an “exchange” as “any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.” 15 USC § 78c(a)(1).

Exchange Act Rule 3b-16(a) provides a functional test to assess whether a trading system meets the definition of exchange under Section 3(a)(1) of the Exchange Act. Exchange Act Rule 3b-16(a) provides that an organization, association, or group of persons shall be considered to constitute, maintain, or provide “a marketplace or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by an exchange” as those terms are used in Section 3(a)(1) of the Exchange Act if such an organization, association, or group of persons:

- (1) *brings together the orders for securities* of multiple buyers and sellers; and
- (2) uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of the trade.

Rule 3b-16(c) defines an order to mean “any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order.” Rule 3b-16 also requires that a system bring together the orders of multiple buyers and sellers. As explained in the Regulation ATS Adopting Release,¹² a system “brings together” orders if it “displays, or otherwise represents, trading interests entered on the system to system users.” A system could display

¹¹ See Portland Brewing Co., SEC No-Action Letter (Dec. 14, 1999); Flame-master Corp., SEC No-Action Letter (Oct. 29, 1996); PerfectData Corp., SEC No-Action Letter (Aug. 5, 1996); Real Goods Trading Corp., SEC No-Action Letter (June 24, 1996).

¹² See Securities Exchange Act Release No. 40,760 (Dec. 8, 1998), 63 Fed. Reg. 70,844 (Dec. 22, 1998) (Regulation ATS Adopting Release).

subscribers' "orders" to other market participants but would not be encompassed by Rule 3b-16 if subscribers contacted each other and agreed to the terms of their trades outside of the system.¹³

An "alternative trading system" ("ATS") means any organization, association, person, group of persons, or system (i) that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of Rule 3b-16 under the Exchange Act, and (ii) that does not set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system, or discipline subscribers other than by exclusion from trading.¹⁴

As a threshold matter, the Crypto Platform does not "bring together the orders for securities." The Crypto Platform facilitates transactions in non-security crypto assets. The Crypto Platform does not facilitate transactions or bring together orders in YLDS. YLDS will not be available for sale on the Crypto Platform. When a user selects the YLDS trading pair and chooses YLDS as the settlement method, the user is executing a blockchain transaction through a user interface, not trading through an exchange, since YLDS are not liquidated. As discussed above, this is similar to the physical delivery of a certificated security and update of records through a transfer agent, which does not involve an "exchange." The only parties that are involved are the users and the transfer agent, interacting through a blockchain. Moreover, unlike an exchange, the Crypto Platform does not provide any price discovery mechanism for YLDS. YLDS is an interest-bearing debt security, which is solely backed by the assets of the FCC, and always has a price of \$0.01/certificate, which will not be impacted by the interactions among the users on the Crypto Platform in any way.

Similarly, for the same reasons that the Crypto Platform is not an "exchange," it is not an "alternative trading system." There are no securities being transacted on the Crypto Platform. The transfer of YLDS happens peer-to-peer, through the transfer agent, and not through the Crypto Platform, and there is no price discovery mechanism for YLDS.

IV. CONCLUSION

For the reasons discussed above, the usage of the YLDS trading pairs as a peer-to-peer settlement mechanism should not subject the Crypto Platform to the registration requirements under the Exchange Act as a broker-dealer, exchange, or ATS.

Very truly yours,

Susan Gault-Brown
Partner

cc: Michael Cagney, Chief Executive Officer, Figure Markets Holdings, Inc.

¹³ *Id* at 70,850-70,851.

¹⁴ Regulation ATS, Rule 300(a).