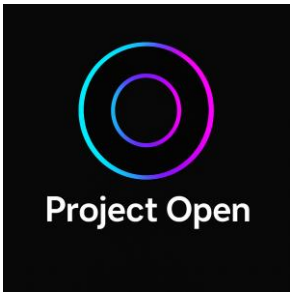

Project Open

Public blockchain infrastructure for on-chain equities issuance and trading

A Submission by:

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Objective. Public, open-source decentralized blockchain networks ("Covered Blockchain Networks") are designed for open access, enabling anyone with an internet connection to interact with and view the publicly available ledger, which is confirmed and secured by independent validators (each a "Validator"). Under an appropriate framework, Covered Blockchain Networks like the Solana network (the "Solana Network"), can reinforce—rather than undermine—market efficiency and financial stability if market intermediaries and participants are permitted to leverage the efficient, distributed, and transparent ledger infrastructures pursuant to clear principles and safeguards designed to protect investors and maintain fair, orderly, and efficient markets. This paper presents an analysis in support of the conclusions that Covered Blockchain Networks and Validators do not fall within the definitions of (i) "clearing agencies" as set forth in Section 17A of the Exchange Act; (ii) "exchanges" as defined in Section 3(a)(1); and (iii) "brokers" under Section 3(a)(4). Part I of this paper provides a description of Covered Blockchain Networks like the Solana Network and the core functions of Validators. Part II applies the existing definitions of the above-described terms under the Exchange Act. Part III describes why a Covered Blockchain Network can provide an appropriate infrastructure for on-chain equities issuance and trading. We look forward to the views of the Securities and Exchange Commission (the "Commission") and its staff on these issues, and we support the issuance of any further guidance or similar actions that the Commission deems necessary to confirm the conclusions set forth herein.

I. Framing Public Blockchain Technology for the Purposes of Establishing the Applicability of Certain Definitions Under the Exchange Act

Covered Blockchain Networks—such as the Solana Network—are a form of decentralized ledger technology that are decentralized and distributed peer-to-peer systems designed to record transactions in a secure, transparent, and immutable manner. Unlike traditional, centralized databases, a public blockchain network has no central authority and is maintained by a network of independently operating Validators that collectively confirm and chronologically order valid transactions to a synchronized ledger. Transactions are valid when a sender cryptographically signs and broadcasts the transaction to the network, and the transaction is processed through the network's consensus mechanism (*e.g.*, 'Proof-of-Stake'), where Validators independently verify that each transaction complies with the network's protocol code and any relevant smart contract logic. Once confirmed, a transaction is included in a new "block" that is cryptographically linked to the immediately preceding block, creating a practically immutable update to the ledger that is adopted by each node to ensure the network state is consistent across all participants. This on-chain verification and recordation of transactions is a process that occurs programmatically according to the rules of the public blockchain network—it does not involve an assessment of the nature or substance of the transaction. All transactions are processed in this manner, whether they involve transferring stablecoins, deploying a smart contract, or transferring on-chain equities.

Critically, Validators do not act as intermediaries or counterparties to any transaction. They do not take custody of or control user assets, and do not have access to users' private keys. Validators do not have the ability to unilaterally initiate transactions or alter the state of the ledger. Their function is strictly limited to confirming that transactions are valid pursuant to network and smart contract logic. As a result, Validators do not, and importantly, cannot, effect or intermediate transactions or act as counterparties.

II. Covered Blockchain Networks and Validators Are Not Clearing Agencies, Exchanges, or Brokers

A. *Clearing Agencies.* The term "clearing agency" is broadly defined in Section 3(a)(23)(A) as, "any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities."[1]

[1] 15 U.S. Code § 78c(a)(23).

The functions of a clearing agency are typically performed via one or more well-established models:

- *Central Counterparty ("CCP")*: A CCP, "interposes itself between the counterparties to a trade, acting functionally as the buyer to every seller and the seller to every buyer."[2]
- *Central Securities Depository ("CSD")*: A CSD "(i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates."[3] CSDs may provide other services as well, such as redemption services and the administration of corporate actions. The Depository Trust Company ("DTC") is currently the only registered clearing agency that operates as a CSD for equities in the U.S.
- *Securities Settlement System ("SSS")*: An SSS "enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules."[4] These functions may be performed by a CSD, such as DTC. Other than DTC, there is no registered clearing agency categorized as an SSS, and the Commission recently declined to adopt a proposed definition of a "securities settlement system."

To illustrate the foregoing, the Solana Network, an example of a Covered Blockchain Network, in and of itself, is a multi-purpose technology protocol designed to support transfers of SOL, the native token of the Solana Network, and other tokens that meet the Solana Network's token standards. The Solana Network also supports decentralized applications. Neither the Solana Network nor any Validator are a party to transactions that occur over the network. Validators do not interpose themselves between counterparties to a transaction and do not, and importantly, cannot, receive the underlying assets in a transaction in any capacity. Additionally, transactions are directly settled between the parties involved in a trustless system, meaning that there is no need for an intermediary because funds and assets are automatically executed if base code and smart contract conditions are satisfied. Validators perform services on behalf of the Solana Network, not on behalf of any party to a transaction. Accordingly, the Solana Network and each Validator should not be viewed as functioning as a CCP, CSD, or SSS, as a result of the

[2] § 240.17ad-22(a).
[3] 15 USC § 78c(a)(23).
[4] *See* Sec. & Exch. Comm'n, Release No. 34-78963 (Oct. 13, 2016).

implementation of Project Open, and do not otherwise fit within the definition of a clearing agency.

B. *Exchanges.* Under the Exchange Act, an "exchange" is defined 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."[5]

Additionally, Exchange Act Rule 3b-16(a) functionally provides a test to determine whether a platform meets the above definition. If a platform "(i) brings together the orders for securities of multiple buyers and sellers; and (ii) 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 a trade" it meets the definition. Rule 3b-16(b) contains exclusions from the definition of exchange, including an exclusion for systems that allow orders to be executed against the bids and offers of a single dealer.

A Covered Blockchain Network does not meet the definition of exchange under the Exchange Act or the Rule 3b-16 functional test. A Covered Blockchain Network does not provide order book functionality, does not have established rules governing how orders interact with each other, and is not a trading facility. Instead, a Covered Blockchain Network is merely a digitally native distributed ledger that records transactions that are confirmed and broadcast by a network of independent third-party validators.

With respect to a transaction involving an on-chain equity (or tokenized equities) as a result of a trade, a Covered Blockchain Network itself does not engage in exchange activity. Any order matching that may occur is not orchestrated by a Covered Blockchain Network—it occurs either off-chain or through applications that run on the Covered Blockchain Network's infrastructure. Additionally, many public blockchain transactions occur without "order matching" at all via systems comprised of one or more autonomous, self-executing smart contracts (*e.g.*, an automated market-maker in which users swap tokens directly against algorithmically balanced liquidity pools). A Covered Blockchain Network does not provide centralized marketplace functionality or operate a marketplace. Absent any multilateral order interaction or trade pairing mechanism native to the validator layer of a Covered Blockchain Network, a Covered Blockchain Network does not meet the definition of an "exchange" under the Exchange Act.

[5] 15 U.S. Code § 78c(a)(1).

C. *Brokers*. Section 3(a)(4)(A) of the Exchange Act defines "broker" broadly to mean "any person engaged in the business of effecting transactions in securities for the account of others."[6] The Commission and various courts have found that the "effecting transactions" analysis focuses on the activities of the person or entity in the chain of distribution, and includes, among other things, identifying and soliciting potential investors, assisting an issuer in structuring securities transactions, advising potential investors as to the merits of an investment, and handling investor funds or securities.[7] A public blockchain network does not, and cannot, satisfy any of these factors.

A public blockchain network is not an intermediary. Rather, a public blockchain network is an immutable distributed ledger that cannot be modified and that requires compliance with a network consensus mechanism to record transactions. The independent validators that comprise a public blockchain network similarly do not act in an intermediary capacity. Validators only confirm that recorded transactions are compliant with network rules hard coded into the client software they run to interact with the network and validate transactions. Moreover, a Validator cannot unilaterally alter the immutable public blockchain record and does not have control, possession, or discretionary authority over the digital assets that are involved in the transactions being validated. Validators do not directly interact or communicate with users of the network or any party to a transaction regarding validation.

Because neither a public blockchain network nor validators are acting as intermediaries and "effecting transactions," neither should be classified as a broker within the meaning set forth in the Exchange Act.

III. Key Components of a Public Blockchain as Infrastructure for On-chain Equities

A. *Intermediary Role in Payments or Deliveries*. Covered Blockchain Networks are architected to facilitate direct, peer-to-peer transactions between users. Validators on a Covered Blockchain Network do not act as intermediaries in the payment or delivery of securities. They do not function as the buyer to every seller or the seller to every buyer, nor do they interpose themselves in the transaction chain. For tokenized securities, ownership transfer is effected directly between whitelisted wallet addresses, with the issuer's register reflecting the change in ownership. As such, Validators do not perform the intermediary functions characteristic of a CCP or clearing agency.

[6] 15 U.S. Code § 78c(a)(4)(A).
[7] *SEC v. Zubkis*, No. 97-8086, 2000 WL 218393 (S.D.N.Y. Feb. 23, 2000).

B. *Facilities for Comparison, Netting, and Settlement Allocation*. Project Open does not propose to utilize a Covered Blockchain Network to provide facilities for the comparison of settlement data, netting of transactions, or allocation of settlement responsibilities. Each securities transaction is proposed to settle on a gross basis, directly between the transacting parties, without netting or multilateral settlement. This approach is consistent with Project Open's focus on direct ownership and transfer, reducing the relevance of netting and centralized settlement allocation typically required in traditional markets dominated by intermediaries.

C. *Custodianship and Central Handling of Securities*. Validators comprising a Covered Blockchain Network do not serve as custodians or central handlers of securities. Tokenized securities issued under Project Open are able to be held through a qualified custodian or directly by owners in whitelisted wallets, with no third-party control or access to private keys. Transfers, loans, or pledges of securities are executed directly by the owner or their designee, not by the network or its validators. This structure precludes the existence of a centralized, fungible pool of securities managed by a custodian, as is the case with a CSD.

D. *Facilitation of Settlement, Hypothecation, or Lending Without Physical Delivery*. While a Covered Blockchain Network validates and records transactions through consensus among validator nodes, it does not itself facilitate the settlement, hypothecation, or lending of securities in the manner contemplated by the clearing agency definition. Validators merely confirm the validity and order of transactions; they do not control or intermediate the delivery of securities or funds. Each transaction is able to be executed and settled instantaneously on-chain, with no delayed or net settlement, and no systemic risk arising from centralized intermediation.

E. *Systemic Risks.* Participation in Project Open on a Covered Blockchain Network does not introduce the systemic risks typically associated with clearing agencies. Validators operate independently, and issuers retain continuous access to up-to-date ownership records. In the event of network disruption, issuers can transition to alternative recordkeeping systems without loss of data or control. This decentralized, resilient structure aligns with the policy objectives of investor protection and market integrity, while obviating the need for clearing agency registration or oversight.

IV. Conclusion

Based on the foregoing analysis, we believe there is clear support for the conclusions that a Covered Blockchain Network, its Validators, and related entities do not perform the core functions of clearing agencies, exchanges, or brokers as these terms are defined in the Exchange Act or in accompanying regulations. The on-chain infrastructure contemplated by Project Open ensures that

securities transactions are direct, transparent, and settled on a gross, peer-to-peer basis, with no centralized intermediation, custody, or netting. Accordingly, there is a strong basis for the Commission to confirm that participants in Project Open are not subject to clearing agency, exchange, or broker-dealer registration or regulation, thereby supporting the modernization of securities markets through compliant blockchain infrastructure. We therefore respectfully request that the Commission confirm its agreement with the conclusions set forth in this paper, issue staff guidance or a formal policy statement recognizing these principles, or otherwise provide exemptive and/or no-action relief.

We appreciate the Crypto Task Force's desire to engage transparently on issues relating to digital assets, and in particular, the matters discussed above. We look forward to being a resource to the Crypto Task Force, and continuing this productive dialogue with the Staff.