

## MEMORANDUM

**To:** Crypto Task Force Meeting Log  
**From:** Crypto Task Force Staff  
**Re:** Meeting with Representatives of Figure Markets

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On March 17, 2025, Crypto Task Force Staff met with representatives from Figure Markets.

The topic discussed was approaches to addressing issues related to regulation of crypto assets. Figure Markets representatives provided the attached documents, describing the issues discussed at the meeting.

**MEETING WITH SEC CRYPTO TASK FORCE  
(March 17, 2025)**

**Attendees**

Mike Cagney, Co-Founder and Chief Executive Officer, Figure Markets  
June Ou, Co-Founder and President, Figure Markets  
Clare Hove, Chief Operating Officer, Figure Markets  
Timothy Spangler, Partner, Practus LLP

**Agenda**

1. YLDS as settlement for crypto transactions
2. Making YLDS available on other Layer 1 blockchains
3. International issues regarding YLDS

July 3, 2024

Bernard Nolan  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington DC, 20549-1090

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**Re: Figure Certificate Company (“FCC”)**

Dear Mr. Nolan:

During our call on June 14, 2024 with the staff of the U.S. Securities and Exchange Commission (the “**Commission**”), including the staff of the Division of Trading and Markets, the staff asked Figure to provide it with an explanation of why the use of Figure Transferable Certificates (the “**Figure Certificates**” or “**Certificates**”) as a payment mechanism in connection with the purchase of Bitcoin and Ether on the crypto platform (the “**Crypto Platform**”) operated by a subsidiary of Figure Markets Holdings, Inc. (“**FMHI**”), as further described herein, (the “**Proposed Activity**”) would not require registration of the Crypto Platform as a broker, securities exchange, or alternative trading system (“**ATS**”).

## **I. EXECUTIVE SUMMARY**

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

First, while Figure Certificates are securities, they will only be used by the buyer as an optional method of bilateral settlement with the seller of Bitcoin or Ether matched on the Crypto Platform. The only transactions on the Crypto Platform will be for non-security digital assets, such as Bitcoin and Ether.

Second, the optional use of peer-to-peer transfer of a Figure Certificate by the buyer to the seller on the Provenance Blockchain as payment of a Bitcoin or Ether transaction matched on the Crypto Platform is not a securities transaction effected on the Crypto Platform for the accounts of others nor does the transfer of the certificates involve “bringing together the orders for securities of multiple buyers and sellers.”

The use of Certificates as an optional mechanism for payment on the Provenance 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 so-called stablecoins, the Certificates will be registered under Section 5 of the U.S. Securities Act of 1933 (“**Securities Act**”) and the issuer will be registered under the Investment Company Act of 1940, as amended (“**Investment Company Act**”),

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affording holders the protections and disclosures under the Securities Act and the Investment Company Act. Transfers on the Provenance 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**”) will be transparent and require market participants to have an approved FCC account.

Due to these controls, the non-bearer Certificates are less likely to be used for illicit purposes and are less likely to be lost to any erroneous transfers. Furthermore, Certificate holders will benefit from the protections offered by the Investment Company Act, including protections against self-dealing and misappropriation of funds and full and fair disclosure. The Certificates are a useful innovation which combines the technological innovations of blockchain technology with proper regulatory and compliance oversight. Using the Certificates 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 digitally native payment mechanism versus traditional fiat payment rails.

## **II. FACTUAL BACKGROUND**

FCC is seeking to register as a face-amount certificate company with the Commission under the Investment Company Act. If registered, FCC will issue Figure Transferable Certificates.<sup>1</sup> Figure Certificates are interest-bearing debt securities. The Certificates will be issued as digital asset securities using the Provenance Blockchain,<sup>2</sup> an open source, public, blockchain-based distributed ledger that is secured using cryptography (referred to as a “blockchain”).

### **A. The Figure Certificates**

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

Certificates will be issued, transferred, and surrendered on the Provenance Blockchain. As applied to the Certificates, the Provenance Blockchain offers three key controls. The first control ensures that Certificates are only transferred between two parties, each of whom has received a copy of the related Securities Act registration statement, with FCC accounts that have been approved through the AML/KYC process. In this regard, Provenance Blockchain will permit FCC to write onto the Provenance Blockchain approved AML/KYC attributes to each Certificate holder’s account. In case an account needs to be locked, FCC will be able to revoke the AML/KYC attributes on a Certificate holder’s account,

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<sup>1</sup> FCC will also issue Figure Installment Certificates; however, these will not be used for payment and are not part of this analysis.

<sup>2</sup> 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.

<sup>3</sup> Figure Equity Solutions, an affiliate of FCC, will be the transfer agent, pursuant to a transfer agency agreement.

rendering the Certificate holder unable to transfer or receive Certificates. The second control, leveraging the Provenance Blockchain forced-transfer feature, will allow FCC to clawback Certificates in response to issuance errors, fraud, or legal contingencies. This control will permit the correction of Certificate records, at the request of FCC. This control also will help mitigate risks associated with Certificates being issued to the wrong accounts or correcting fraudulent Certificate transfers. Third, the Provenance Blockchain will prevent the transfer of Certificates that the holder does not have the power to transfer. Certificates will not be 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 Securities Act registration statement and consistent with the requirements of the Investment Company Act.

## **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. The Crypto Platform leverages multi-party computation ("MPC") technology to enable Crypto Platform users to use decentralized custody for their assets in MPC wallets.<sup>4</sup> The MPC 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. This process allows for digital assets that are not native to the Provenance Blockchain, such as Bitcoin or Ether, to be represented on the Provenance Blockchain. Users can transfer such controllable electronic records<sup>5</sup> to other MPC wallets. At no point in the process does the Crypto Platform, FCC or the Provenance Blockchain have control or custody of users' assets. Assets never leave a user's MPC 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. However, the transactions are executed on a peer-to-peer basis, via the Provenance Blockchain. Upon a Bitcoin or Ether trade match, the Provenance Blockchain enables users to settle transactions bilaterally, transferring tokenized Bitcoin or Ether or various fiat equivalents between the users. The transfer of tokenized Bitcoin or Ether and the transfer of fiat equivalents are separate and distinct transactions which occur simultaneously.

Currently, transactions on the Crypto Platform can be settled in USD and the USDC stablecoin. FMHI is proposing to add Figure Transferable Certificates as a payment mechanism. In this case, the Figure Transferable Certificates will be treated as a "fiat equivalent." A buyer will be able to choose Figure Transferable Certificates as a payment mechanism, and the Crypto Platform will have no role in whether or not a user chooses Figure Transferable Certificates, USD, or USDC. Users who choose Figure Transferable Certificates as a fiat equivalent will be able to settle an agreed transaction matched by the Crypto Platform by causing a Certificates to be transferred from the buyer's wallet as the method of payment to purchase Bitcoin or Ether.

At transfer, the following steps occur:

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<sup>4</sup> 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.

<sup>5</sup> 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).

- (1) Party A, the buyer, directly transfers Figure Transferable Certificates to Party B using the Provenance Blockchain;
- (2) in connection with the transfer, both accounts must have current AML/KYC attributes and no account suspensions may be in place;
- (3) if both accounts meet these criteria, the Figure Transferable Certificates are transferred seamlessly from one account to the other, and the transfer agent updates the Certificate ledger to note the transfer of the Figure Transferable Certificates;
- (4) if one or both accounts fail to meet these criteria, the Certificate holder initiating the transfer would be notified of the failed transfer. The two parties to the failed transfer would then be able to contact the transfer agent to resolve any account-related suspensions.

Although Certificates are available for early surrender, there is no liquidation of the Figure Transferable Certificates 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-dealer<sup>6</sup> 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 Bitcoin and Ether are not securities transactions. The Crypto Platform facilitates transactions in Bitcoin and Ether, neither of which are securities.

FMHI will not engage in broker activity by virtue of offering users access to the Crypto Platform or operating Crypto Platform because the use of Figure Transferable Certificates as a means of payment is at the option of the buyer, part of the agreed terms accepted as to the character of eligible fiat equivalents by Crypto Platform participants, and therefore does not constitute “effecting” transactions in securities. There is no “purchase” or “sale” of a security through the Crypto Platform or the Provenance Blockchain. Indeed, it makes little sense for people to go to the Crypto Platform to buy or sell Certificates as the Certificates can be purchased from and surrendered to 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 Certificates when the same price is available directly from the issuer. The only items being “purchased” or “sold” on

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<sup>6</sup> 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 the Provenance Blockchain will be acting through its “own account.”

the Crypto Platform are non-securities, *i.e.*, Bitcoin and Ether. Rather, for payment, there is the peer-to-peer transfer of a registered security, through a transfer agent. Thus, there is no “securities transaction.”

The peer-to-peer bilateral settlement of the transaction is similar to a physical transfer of a certificated security by its holder to a third party (typically specially indorsed to the purchaser or indorsed in blank such the seller to whom it is transferred has exclusive control thereof), but instead of being represented on paper certificate, the security is represented as a record on the Provenance 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.<sup>7</sup> Generally, under the Uniform Commercial Code, “voluntary transfer of possession” is all that is required to effect such a transfer.<sup>8</sup> Such transfers of securities, without a broker-dealer intermediary, are allowed and is customary. For example, upon a corporate action, the transfer agent will transfer ownership or credit new shares on the 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 process from settlement, and that settlement may happen bilaterally outside of a trading platform.<sup>9</sup>

The Crypto Platform will only deal in non-securities, and thus will not be “routing or matching orders in securities.” The use of Figure Transferable Certificates will be optional to the buying user; Bitcoin or Ether will not be offered or sold in exchange or be denominated in Figure Transferable Certificates. Selling users will always have the option of settling in fiat or through USDC (or any other fiat equivalent eligible for settlement on the Crypto Platform). The Crypto Platform will neither “handle” customer securities nor the funds delivered in settlement of the trade.<sup>10</sup> The Figure Transferable Certificates exist natively on the Provenance Blockchain and are held through the MPC wallets of each user. These MPC wallets exist independently of the Crypto Platform, and the Crypto Platform does not hold or custody any Certificates credited to such wallets. The Crypto Platform will charge a volume-based fee on the transaction volume of Bitcoin and Ether and will not receive any numeration – transaction-based or otherwise – from the usage of Figure Transferable Certificates. FMHI will not extend credit for the purpose of purchasing Certificates. FMHI will not make any recommendations with respect to Certificates or any other security, and will not communicate with users, apart from technical issues with respect to the platform, about the Figure Transferable Certificates. Finally, neither the Crypto Platform nor the Provenance Blockchain will be involved in negotiating any terms between users with respect to the use of Figure Transferable Certificates.

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

- (1) no transactions would be effected by the systems themselves;

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

<sup>8</sup> 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).

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

<sup>10</sup> 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).

- (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.<sup>11</sup>

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, a Figure Transferable Certificate is 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,<sup>12</sup> a system “brings together” orders if it “displays, or otherwise represents, trading interests entered on the system to system users.” A system could display 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.<sup>13</sup>

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<sup>11</sup> 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).

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

<sup>13</sup> *Id* at 70,850-70,851.

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.<sup>14</sup>

As a threshold matter, the Crypto Platform does not “bring together the orders for securities.” The Crypto Platform facilitates transactions in Bitcoin and Ether, which are not securities. The Crypto Platform does not facilitate transactions or bring together orders in Figure Transferable Certificates. Figure Transferable Certificates will not be available for sale on the Crypto Platform. When a user selects Figure Transferable Certificates as a payment method, the user is executing a blockchain transaction through a user interface, not trading through an exchange, since the Certificates 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 the Provenance Blockchain.

Similarly, for the same reasons that the Crypto Platform is not an “exchange,” it is not a “alternative trading system.” There are no securities being transacted on the Crypto Platform. The transfer of the Figure Transferable Certificates happens peer-to-peer, through the transfer agent, and not through the Crypto Platform.

#### **IV. CONCLUSION**

For the reasons discussed above, the usage of Figure Transferable Certificates as a peer-to-peer payment 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: Barbara Stettner, Partner, Allen Overy Shearman Sterling US LLP  
Bill Satchell, Of Counsel, Allen Overy Shearman Sterling US LLP  
Cyndi Rodriguez, Chief Legal Officer & Corporate Secretary, Figure Markets Holdings, Inc.

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<sup>14</sup> Regulation ATS, Rule 300(a).