Project Open

Proposing the *Open Platform for Equity Networks*

A Submission by:

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Objective. Public blockchain networks create more efficient and accessible capital markets while advancing the Securities and Exchange Commission's ("SEC") core policy goals of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. If securities are issued and traded on public blockchain infrastructure, certain objectives of the existing securities regulatory framework can be achieved in a more efficient, transparent, and effective way. At the same time, certain core components must be retained but updated. We request that the SEC exercise its exemptive authority under Section 28 of the Securities Act of 1933, as amended (the "'33 Act") and Section 36 of the Securities Exchange Act of 1934, as amended (the "'34 Act"), and publish accompanying guidance to permit the issuance and trading of equity securities on public blockchain networks, as described more fully herein (such resulting framework, "Project Open"). Part I of this paper describes the key components of Project Open. Part II presents a visual model for compliant securities issuance and trading. Part III identifies certain securities regulatory issues to be further addressed in forthcoming exemption and guidance requests submitted by a coalition of Project Open participants.

I. Key Components of the Project Open Securities Issuance and Trading Exemptions and Guidance

A. *Time Limited*. The initial exemptions and guidance should be limited in duration for eighteen (18) months. During this period, the SEC would request public comments and host public discussions to further consider whether any

modifications or additional conditions and components are appropriate to include in a permanent rule set.

B. *Pilot Issuer Cohort; Registered Digital Token Share Class*. Initial issuers would be limited to a pilot cohort, which number may grow as the project progresses. Each pilot issuer which would register an existing or new class of shares as digital tokens ("Token Shares") with the SEC via standard forms with appropriate exemptive relief. These Token Shares would be issued and traded on an existing public blockchain under the Project Open construct.

C. *Registration Statement*. Project Open issuers would issue their Token Shares via a registration statement (which we expect would mirror in many ways the material and content required in traditional SEC securities registration statements) filed with the SEC. Issuers of Token Shares under the applicable registration statement would also be subject to the periodic reporting requirements under the 34'Act.

D. *Investor Eligibility*. Project Open Token Shares would be held in individuals' digital wallets. All wallets eligible to hold and transact in Token Shares would be subject to a whitelist onboarding process that (A) performs Know-Your-Customer ("KYC") checks over the wallet owner, and (B) requires the owner to complete market educational and investor appropriateness curriculum via Project Open's modernized investor eligibility program (a program offered to address policy objectives to ensure appropriate investor education). It would be the responsibility of the registered Transfer Agent (discussed below) for the subject Token Shares to ensure that all whitelisted wallets had undergone a KYC and educational onboarding process—either directly or via service providers / vendors.

E. *Transfer Agent; Records*. All issuers must, either directly or via engaging a registered Transfer Agent, track and maintain the ownership record of their Token Shares. The Transfer Agent will use the blockchain as its primary system of books and records to perform this role. Only individuals with whitelisted wallets who have completed KYC and the investor eligibility process and thus made their ownership information available to the Transfer Agent will be eligible to hold, transfer, and receive Token Shares. In addition, issuers will coordinate with their independent Transfer Agent to ensure that the Transfer Agent retains a super administrative authority over the Token Shares in order to give these digital Transfer Agents identical capabilities as traditional transfer agents to address

idiosyncratic circumstances (errors and corrections, hacks, theft, lost or destroyed credentials, *etc.*).[1]

F. *Custody*. All Token Shares must be held in either (i) non-custodial/self-custodial trader wallets or (ii) sub wallets created for a trader and held, but not controlled, by a Broker-Dealer or other appropriate third party custodian. To the extent that a master-wallet structure is employed, it would operate consistent with SEC Rule 15c3-3 or appropriate interpretation or exemptive relief.

G. *Instantaneous Settlement; No Clearing*. The smart contract settlement of purchase and sale transactions in Token Shares is instantaneous at execution. It occurs on the blockchain, wallet to wallet. There is no concept of delayed or net settlement or open / uncleared transactions. All trades must be fully funded with available funding assets at execution—or the trades will fail to execute.

H. *Trading via Smart Contract Protocols; Liquidity Formation*. While investors may transact in Token Shares in a traditional over-the-counter manner with negotiated settlement terms,[2] it is anticipated that the majority of transactions could also occur via various immutable smart contract protocols that will be deployed to permit users to engage in transactions involving Token Shares—relying on bilateral transaction permissions such as under Section 4(a)(1) of the '33 Act.[3] Liquidity would be direct or, potentially, via liquidity pool tools such as automated market makers. Similarly, it is anticipated that Token Shares would be purchased and sold in secondary transactions for other digital assets, including stablecoins, cryptocurrencies or other digital asset tokens.[4] In any event, the transactions would not be "regular way" for Reg NMS purposes.

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[1] Blockchain technology developments, such as token extensions available for the Solana blockchain, facilitate adding multiple facets of functionality, features control, and governance options to tokens.

[2] Traditional non-smart contract enabled bilateral transactions may involve settlement and counterparty risk as a commercial matter, between the two counterparties.

[3] Section 4(a)(1) of the '33 Act provides that the registration requirements do not apply to "transactions by any person other than an issuer, underwriter, or dealer."

[4] This approach is already contemplated by private securities that trade bilaterally on-chain, in whitelisted environments, today.

II.   Illustrative Diagram of a Token Shares Issuance and Trading Ecosystem
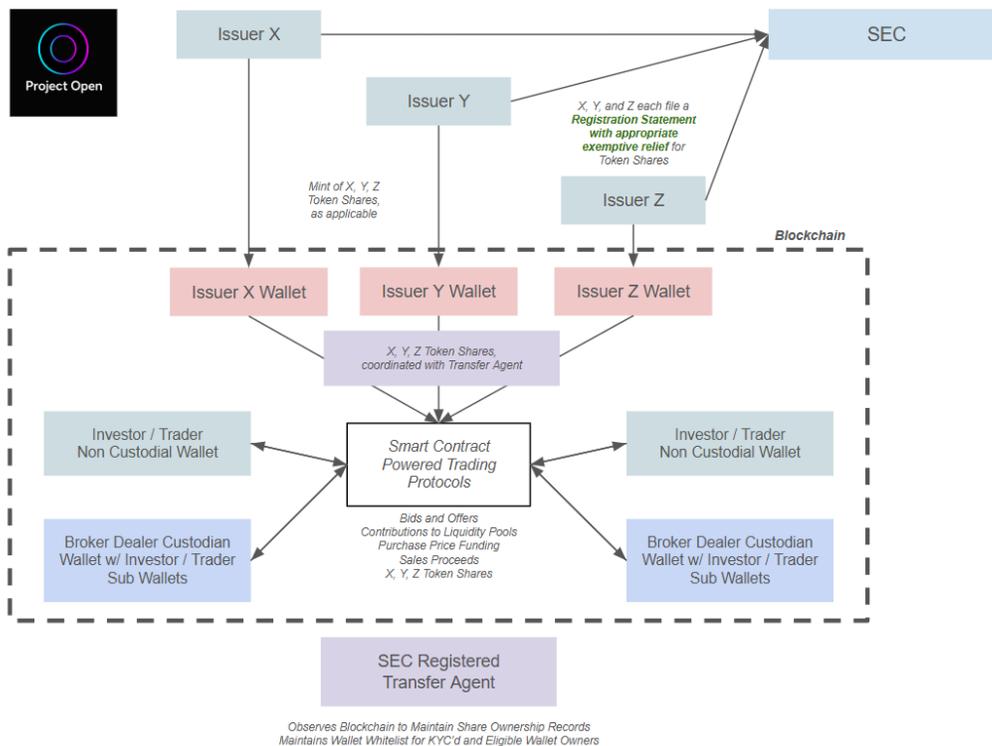
III.   Key Open Areas to Address Further in Long Form Request Submission

This Section identifies a non-exhaustive selection of issues and areas that we would expect to be addressed (and for which solutions / approaches would be proposed) in supplemental submissions and proposals. No issue is necessarily excluded solely because it is not listed here; and in the same way, no issue becomes a definitive "condition precedent" to issuing and trading securities on the blockchain solely because it is articulated here. In parallel, aspects of the Token Shares issuance and trading model may evolve as the concepts described above benefit from refinement, and therefore we would expect that the specific underlying issues for guidance, exemption, or clarification will evolve as well.

  A. *Key Exemptive Relief or Confirmatory Guidance*:
  1. A blockchain, used as a technology tool, does not itself require or compel any SEC registration.
  2. Blockchain network fees are technology costs, and are not securities transaction related fees.
  3. Peer-to-peer transactions via a smart contract protocol are permitted and are not the regulatory equivalent of trading on an exchange or ATS (because they are bilateral transactions such as those contemplated by, for example, Section 4(a)(1) of the '33 Act).

4. Exemption for broker-dealers to participate in 4(a)(1) transactions with limited administrative role.
5. Neither a non-custodial/self-custodial wallet (nor its publisher) are a broker-dealer.
6. Holding Token Shares in a properly whitelisted and KYC'ed non-custodial/self-custodial wallet is permitted.
7. A broker-dealer may create sub-wallets for customers to hold their Token Shares and that is proper "possession and control" of the securities, for broker-dealer custodian purposes.
8. A Transfer Agent, if it has owner KYC and modernized eligible investor educational information of whitelisted wallets, may use the blockchain to perform its duties.
   a) Ability to enforce transfer restrictions.
   b) Ability to enforce legends (*e.g.*, securities held by affiliates).
9. Registration Statement with appropriate exemptive relief that may be used to register Token Shares.
   a) To propose — specific content and form requirements.
   b) To propose — approach to periodic reporting.
10. Buying shares directly from an issuer, in the manner contemplated above, does not make the purchaser an underwriter or broker-dealer; such purchases are not being made in the business of being a broker or dealer.
11. Appropriate exemptions from Reg NMS (*e.g.*, Order Protection Rule, Best Execution, Access Rule, *etc.*).

B. *Examples of Additional Issue Spotting / Areas for Research*:
1. Responsible parties for audit trail / trade reporting.
2. Price transparency / price publishing / opening and closing price.
3. Trade conduct and trade surveillance; e.g., position limits, insider trading / restricted lists.
4. Corporate governance, proxy voting, corporate actions, and dividends.
5. Standards for smart contract protocols / what a Transfer Agent must observe before whitelisting a protocol.
6. Standards for eligible layer 1 blockchain environments.
7. Identifying how Project Open accomplishes the protections and policy goals traditionally served by exchanges and related rules.
8. FINRA considerations; ensuring appropriate broker-dealer permissions.
9. State law analysis.
10. Secured transactions analysis (as appropriate).