



TEXTURE CAPITAL

Secretary  
Securities and Exchange Commission  
100 F Street, NE Washington, DC 20549-0609

Via email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

April 22, 2021

Re: Release No. 34-90788 File No. S7-25-20 Response to Request for Comments on SEC Policy Statement: *Custody of Digital Asset Securities by Special Purpose Broker-Dealers*

To Whom It May Concern:

Texture Capital, Inc. (“Texture”, “Texture Capital”) appreciates the opportunity to comment on the U.S. Securities and Exchange Commission’s (the “SEC” or the “Commission”) Statement on Custody of Digital Asset Securities by Special Purpose Broker-Dealers (the “Statement”) issued on December 23, 2020<sup>1</sup>.

Texture Capital is a FINRA member broker dealer focused on issuance of digital asset securities and secondary market trading via our SEC registered Alternative Trading System (“ATS”).

Texture, as one of few broker dealers that currently meet the definition of Special Purpose Broker Dealers (“SPBD”) as described in the Statement, applauds this action by the Commission. This Statement, in conjunction with the previously released no-action letter regarding the ATS Role in the Settlement of Digital Asset Security Trades<sup>2</sup> provides a much-needed framework and guidance for SPBDs who are seeking to innovate using blockchain within regulated securities markets. Blockchain is a revolutionary technology that has the potential to transform capital markets by improving transparency, auditability and transaction processing. As companies and countries around the globe adopt blockchain technology, it is important that the regulators in the United States support policies and guidance that enable innovative companies to design a better market structure while ensuring high, or higher, standards of customer protection.

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<sup>1</sup> <https://www.sec.gov/rules/policy/2020/34-90788.pdf>

<sup>2</sup> <https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf>

Please see our comments on this Statement below:

1. Many commenters have suggested that the limitation of this no-action guidance to Special Purpose Broker Dealers is too prohibitive and that brokers who conduct traditional securities business or cryptoasset trading activities should be permitted to take advantage of the Statement. Texture does not share this opinion. We believe that limiting the scope of the Statement to SPBDs strikes the right balance, by fostering innovation from those companies with specific expertise in digital asset securities who are best able to innovate. We agree that it makes sense to exclude traditional broker dealers from this no action, in order to more easily segregate risks.
2. Notwithstanding the above paragraph, we request that the Commission clarify certain provisions of the statement:
  - a. **SPBDs should be permitted to facilitate the use of non-security stablecoins for settlement of trades in a digital asset security ATS.** When the assets on both sides of a trade (the cash leg and the securities leg) are digital, it is possible to enable Delivery-vs-Payment settlement at the same time of the trade. This type of ‘atomic’ settlement could represent a significant improvement over current market structure. In order to facilitate the use of non-security stablecoins in settlement, it is not necessary for the SPBD to also custody the non-security stablecoin. Indeed, this could add significant complexity as the requirements for custodying non-security digital assets are quite different from custodying digital asset securities as we will discuss later in this letter.
  - b. **The prohibition on SPBDs conducting traditional securities business should exclude activities that do not include issuance, trading, clearing or settlement of traditional securities.** There are numerous broker dealer activities that do not include issuance, trading, clearing or settlement of traditional securities, that an SPBD could perform without increasing risk or requiring bifurcated processes (for traditional vs digital asset securities). For example, this could include referral fees, research provision or entering into a Commission Sharing Agreement with another broker dealer. In all these examples, the SPBD would not be involved in the issuance, trading, clearing or settlement of traditional securities.
  - c. **Securities where the issuer intends to tokenize at a later date should be included in the definition of Digital Asset Security.** It is currently common practice with digital asset securities for the initial primary offering to be conducted as a traditional private placement transaction

with the intent to tokenize at a later date – typically one year after primary issuance in order to fall into Rule 144 safe harbor requirement that restricts resales of private securities within the first year after issuance. SPBDs should be able to continue to conduct this type of business.

3. The Commission’s Statement makes numerous references to “industry best practices” with respect to digital asset custody. We feel it is important to highlight that best practices with respect to custody of digital asset securities have yet to develop and that best practices for digital assets such as cryptoassets may not be applicable to digital asset securities given the different nature of the respective assets. Digital assets such as Bitcoin and Ether are bearer assets, whereas securities (digital or otherwise) are generally not bearer assets under US securities regulations. This important difference in representation suggests that there should be differences in custodial best practices. Just as non-digital securities can be reassigned in compliance with a court order in the event of divorce, death, bankruptcy or fraud, the same should apply to digital asset securities. Digital asset security smart contract functionality currently supports these actions and can be applied to enable SPBDs to protect customer securities when acting as a custodian. Thus, risk of theft or loss of digital asset securities is lower than for non-security digital assets and industry best practices should reflect this.
4. As Special Purpose Broker Dealers like Texture Capital submit Continuing Member Application business plans incorporating digital asset security custody activities, we trust that the Commission will coordinate closely with the Financial Industry Regulatory Authority (FINRA) to ensure such applications are processed expeditiously, enabling the United States to remain at the forefront of financial technology innovation.

In conclusion, we reiterate our support for this Statement, which provides a valuable framework for continued innovation leveraging blockchain technology while ensuring investor protections.

Sincerely,



Richard Johnson  
CEO, Texture Capital Inc.