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March 31, 2017

VIA E-MAIL PUBCOM@FINRA.ORG

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Distributed Ledger Technology: Implications of Blockchain for the Securities Industry

Dear Ms. Asquith:

We are submitting this letter in response to the request by FINRA for comment on its recently published report, *Distributed Ledger Technology: Implications of Blockchain for the Securities Industry* (the "Report").

Over the last couple of years, there has been an enormous build-up of interest in DLT among both established financial institutions and FinTech innovators, as well as increasing interest, and varying degrees of receptivity, among global lawmakers and regulators. In connection with our¹ representation of distributed ledger technology ("DLT") innovators, including Overstock.com and its financial technology subsidiary, tØ (tee-zero) in connection with Overstock.com's inaugural public offering of a digital security that trades on a DLT-based trading platform, we have been among the many professionals on the front lines in considering the legal issues raised by innovation in DLT. We very much appreciate the opportunity to comment on the Report.

As an overall matter, we commend FINRA for issuing the Report as a step toward opening a dialogue with market participants about the use of DLT. In FINRA's engagement with DLT innovation, we fully support its commitment to the core principles of investor protection and market integrity. As with any dialogue, we view the Report as an important opportunity for both market participants and FINRA to comprehend and appreciate the varying perspectives on potential risks and rewards for the financial system of the application of DLT. We are optimistic that this dialogue might educate FinTech innovators about the most significant concerns that FINRA and other regulators have regarding DLT applications so that the next generation of DLT applications might incorporate novel and innovative solutions to address these regulatory

¹ The views and opinions set forth herein are the personal views or opinions of the authors; they do not necessarily reflect views or opinions of the law firm with which the authors are associated.

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concerns. At the same time, we are also confident that FINRA and other regulators will utilize input and feedback from those at the vanguard of DLT as a valuable resource for shaping an appropriate regulatory response to DLT so that regulatory requirements do not inhibit developments that could produce a more efficient and transparent securities industry.

In light of DLT's rapid development, we believe that it is important for regulators, including FINRA, to become fully proficient in the intricacies and complexities of the technology underlying DLT. A deep understanding of DLT will enable regulators to fully appreciate, accurately assess and properly address both the benefits and the risks posed by DLT applications. Such a deep engagement with the technology itself will enable regulators to better anticipate legislative and regulatory changes that might be necessary to mitigate risks posed by DLT applications, but also to recognize instances where existing laws and regulations might frustrate or impede applications that would be beneficial to the core goals underlying regulators' missions. In addition, we believe that a deep regulatory understanding of DLT could offer novel regulatory solutions that themselves incorporate DLT applications—for example, the implementation of regulatory nodes within DLT networks. As the dialogue among regulators, market participants and other key stakeholders continues, we encourage FINRA to continue to invest the necessary resources to develop full proficiency in the technological aspects of DLT and to keep pace with the rapid developments in this technology.

In considering responses to the many valid issues raised in the Report regarding the fit between DLT and the current U.S. legal framework, FINRA must also engage with global regulators with a recognition that global regulatory responses to DLT, while not dispositive, might inform the approach that U.S. regulators take to this novel technology. Preliminary regulatory responses to DLT have been varied, including through the adoption of so-called regulatory sandboxes, and U.S. regulators should critically evaluate the early successes and failures of such approaches. While the imperatives of investor protection and market stability will remain paramount, we believe that it is important that U.S. regulators critically assess the impact of the existing regulatory regime on global regulatory arbitrage and consider incorporating into the U.S. regulatory framework approaches, if any, that prove successful in other jurisdictions at fostering innovation, while maintaining investor and market protection.


The regulation of new technology will necessarily involve complex regulatory challenges. While premature regulatory changes might create unanticipated risk in the financial system, overly rigid regulation risks stifling innovation. In order to create a balanced regulatory environment, we encourage FINRA, as it engages in this worthwhile dialogue, to maintain a sufficiently flexible approach to the existing regulatory framework to ensure that the burden of regulatory compliance is proportionate to the level of protections afforded by the regulatory regime. To the extent such regulators deem it appropriate, we believe that proactive, affirmative interpretive guidance might go a long way toward providing clarity and certainty to market

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participants contemplating the deployment of resources toward DLT applications. In providing clear and efficient guidance, regulators could foster innovation, while maintaining the primacy of investor protection and market stability.

We appreciate FINRA's consideration of our comments. If FINRA's staff would like to discuss any of the foregoing, please contact Steve Obie or Peter Devlin at 212-326-3939.

Very truly yours,



Stephen J. Obie

cc: Haimera Workie, Senior Director
Kavita Jain, Director
Office of Emerging Regulatory Issues, FINRA