

June 9, 2017

Honorable J. Christopher Giancarlo
Acting Chairman
U.S. Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: LabCFTC and FinTech Guidance

Dear Chairman Giancarlo,

I am writing today on behalf of Ouisa Capital, LLC (“Ouisa”) in response to the Commodity Future Trading Commission’s (“CFTC”) recent announcement of the formation of LabCFTC. Ouisa is a financial technology (“FinTech”) company and broker-dealer registered with the U.S. Securities and Exchange Commission (“SEC”) and FINRA. Ouisa is the operator of an alternative trading system (“ATS”) that plans to use blockchain technology as part of the operation of the ATS.

Ouisa believes that the formation of LabCFTC represents an important step forward in the regulation of FinTech in the United States in a manner that promotes collaboration with the industry. Given the rapid advancements in the industry in recent years and the lack of regulations that specifically address FinTech, LabCFTC is well-suited to help innovators and regulators as they work to develop new technologies in a manner that is compliant with applicable laws. We believe that LabCFTC will help foster innovation by allowing early stage FinTech companies that drive innovation and job creation to develop in an environment that does not impose unnecessary, burdensome oversight. Further, it will allow the CFTC to learn about these new FinTech companies and to develop regulations that are better suited to their innovative technologies. Ouisa believes FinTech has the potential to help revolutionize financial services and views LabCFTC as an effective and thoughtful approach to regulation.

Background

Ouisa plans to facilitate transactions involving the issuance and secondary trading of digital assets, that can be deemed a commodity or commodity futures- a space in which the CFTC has initiated several enforcement actions against FinTech companies in the past couple of years.¹ While we appreciate the desire of the CFTC to enforce applicable laws, we believe regulation through enforcement actions is inconsistent with the spirit if not the letter of the Administrative Procedure Act which is designed to give the public, including innovators, the opportunity to provide comments on proposed CFTC rules and regulations.

¹ *In the Matter of Coinflip, Inc., d/b/a Derivabit, and Francisco Riordan*, CFTC Docket No. 15-29 (Sept. 17, 2015), available at:

<http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinfliporder09172015.pdf> and *In the Matter of TeraExchange, LLC*, CFTC Docket No. 15-33 (Sept. 24, 2015), available at:

<http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfteraexchangeorder92415.pdf>, and *In the Matter of BFXNA Inc. d/b/a BitFinEx*, CFTC Docket No. June 2, 2016), available at:

<http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfbfxnaorder060216.pdf>.

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Currently, it is unclear exactly what type of CFTC registration is appropriate for entities that facilitate the trading of digital assets in a way that is similar to the trading of commodities or futures. Such lack of clarity runs the risk of impeding innovation as FinTech firms struggle to determine where they fit within existing regulatory framework. We are aware that a related petition for rulemaking has already been filed,² but believe that petition is unnecessarily narrow.

Recommendation

Ouisa believes the CFTC should engage in a more comprehensive review of the regulation of FinTech and digital assets that are not deemed securities and are outside the jurisdiction of the SEC. Publication of a concept release followed by formal rulemaking would allow the CFTC to engage in a meaningful discussion with the public and the FinTech industry to develop regulations that are tailored to its needs. We believe that such an approach will provide the FinTech industry with the needed guidance and allow the CFTC to develop effective regulation.

Conclusion

Ouisa believes FinTech is revolutionizing the financial services industry with the development of new and innovative digital assets and the facilitation of the trading, clearance, and settlement of those assets. In many cases the trading of such assets does not fit clearly under the existing regulatory framework. We believe the pace of change must be tempered by the statutory duties of the CFTC to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. To help promote stability and innovation in the industry, Ouisa believes the CFTC should publish a concept release on the regulation of FinTech, outlining when a digital asset is subject to regulation by the CFTC, and what type of registration is required by firms facilitating the trading of digital assets.

We hope that you, the Commissioners, and the CFTC staff find these comments informative. Ouisa welcomes the opportunity to discuss with you how the CFTC may develop a regulatory framework that harnesses the potential of the industry by creating more transparency and efficiency.

If we can be of any further assistance to you in this matter, please do not hesitate to contact us at the above address or at 646-595-1737 or our counsel Richard B. Levin of Polsinelli PC at 202-772-8474.

Very truly yours,



Vincent R. Molinari
Chief Executive Officer



Joseph K. Latona

cc: Commissioner Sharon Y. Bowen

² *Steptoe & Johnson LLP Petition for Rulemaking* (July 1, 2016); available at: [https://poloniex.com/press-releases/2016.10.18-Our-request-for-no-action-relief/Steptoe-Petition-for-CFTC-Rulemaking-\(07-01-2016\).pdf](https://poloniex.com/press-releases/2016.10.18-Our-request-for-no-action-relief/Steptoe-Petition-for-CFTC-Rulemaking-(07-01-2016).pdf).
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