

No Action Letter

FREIGHT TRUST & CLEARING CORPORATION

No Action Letter Request

dmoletters@cftc.gov

Director, Division of Market Oversight, Commodity Futures Trading Commission, Three
Lafayette Centre, 1155 21st Street NW., Washington, DC 20581

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Applicant agrees and consents that the notice of any proceeding before the Commission in connection with its application may be given by sending such notice by certified mail to the person named below at the address given:

No Action Letter

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No Action Letter

Introduction	5
Proposed transactions and activities	6
Relevant Statutes and Definitions	6
What are Bills of Lading	7
Nonnegotiable Bills	8
Reasons for seeking No Action Letter	8
Enabling Framework	10
Federal Bills of Lading Act	10
UCC	10
Token Mechanics	11
Signature Page	14
Citations & References	16
Works Cited	16
Federal Laws and Statutes	17

Introduction

FreightTrust and Clearing Corporation (here after “Freight Trust”)

This request relates to a proposed transaction and proposed activity, specifically the “dematerialization” of shipping documents, specifically “bills of lading” through a blockchain smart contract system in which businesses can use instead of paper-based documentation. Our concern lies in the nature of a bill of lading, which is considered a document of title to the underlying asset, in this case the freight being moved from one party to another. No speculative mechanism is enabled by our smart contract protocol, and all contracts are strictly for physical delivery.

A Document Retention Policy along with our governing rulebook that pertains to “on-chain” behavior can be found at: github.com/freight-trust/omnibus Our rulebook is modeled after a DCO, although we are not nor claim to be creating derivatives, we found applying recognized guidelines helpful in establishing and determining proper behavior between transacting business parties.

Proposed transactions and activities

1. Dematerialization/Tokenization of Bills of Lading (Non Negotiable).
2. Transference of dematerialized bills of lading between parties engaged in transaction.

Additional transactions and activities are possible, although these are not governed through our official network participants nor sanctioned by Freight Trust. It is our intention to follow regulatory approval on our most basic functionality, then build upon regulatory guidance in bringing further functionality to our network.

Relevant Statutes and Definitions

As defined in 17 CFR § 1.3, these are agreements to potentially purchase a commodity for physically delivery.

Commodity interest:

- (1) Any contract for the purchase or sale of a commodity for future delivery;
- (2) Any contract, agreement or transaction subject to a Commission regulation under section 4c or 19 of the Act;

However our protocol and platform does not arrange for the purchase the actual asset being transported: we only provide scheduling and proof of delivery of any asset (re: freight) being transported from one location to another. We do not offer the ability to schedule a physical delivery and purchase of a commodity good for example: we only offer the ability to schedule said physical delivery.

What are Bills of Lading

A bill of lading is an agreement between a consignor of goods and the carrier transporting the goods.

The bill of lading serves as both:

1. A receipt that provides the consignor with evidence of the goods' delivery to the carrier.
2. A contract that states the terms and conditions under which the carrier agrees to transport the goods.

The parties generally engaged in a transaction involving a bill of lading are:

1. The shipper or consignor. The shipper or consignor is the party sending the goods.
2. The carrier or bailee. The carrier (or bailee under the UCC) has possession of the goods and contracts to deliver them.
3. The consignee. The consignee is the party to whom the goods are delivered.

The carrier or its agent signs the bill of lading and issues it to the consignor.

The consignor then typically sends the consignee or its agent the bill of lading through mail or another means of communication. Any kind of carrier can issue a bill of lading, regardless of the transportation method (whether by land, water, or air).

The carrier issues the bill of lading to the consignor at either:

1. The place of shipment [x]. The destination point [y].
2. Any other designated place that the consignor requests.

The carrier then delivers the goods covered in the bill of lading to either:

1. The order of a consignor or consignee, if the bill of lading is negotiable (for an explanation of negotiable bills of lading, see Order Bill of Lading).
2. A specifically named consignee, if the bill of lading is nonnegotiable (for an explanation of nonnegotiable bills of lading, see Straight Bill of Lading).

Nonnegotiable Bills¹

1. A bill of lading is nonnegotiable if the bill states that the goods are to be delivered to a consignee. The endorsement of a nonnegotiable bill does not
 - a. make the bill negotiable; or
 - b. give the transferee any additional right.
2. A common carrier issuing a nonnegotiable bill of lading must put “nonnegotiable” or “not negotiable” on the bill.

Reasons for seeking No Action Letter

“For any electronic bill of lading to be successful, it is essential for it to be given sufficient support from the legal infrastructure. It is no different from acknowledging that a paper-based bill of lading would only be a piece of paper in the absence of empowering legislation. By way of example, suppose that the parties to a sale contract have agreed on the use of an electronic bill of lading and the seller has concluded a carriage contract under which the carrier has agreed to issue such a bill of lading. Their arrangements will work amongst themselves. If any of them fails to honor their arrangements, normal remedies for breach of contract will be available. However, their agreements have no effect on third parties in the absence of support from the applicable legal systems. Thus, such agreements may not be sufficient to enable the buyer to assert his title against third parties such as a creditor of the seller seizing the goods, the trustee of the seller’s bankruptcy estate, or another buyer who has bought the same goods from the same seller.

The past and present projects of electronic bills of lading have been dogged by the lack of sufficient support from the legal infrastructure, resulting in the reluctance of banks to accept electronic bills of lading as adequate collateral.² By the same token, a blockchain-based bill of lading would not take off unless it is given sufficient support from the applicable legal systems.” (Takahashi). There is a clear need for at least some sort of regulatory acknowledgement to further enable technological progress in a critical field of both financial and technological development.

¹Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1346.

²See Faria (n 4) fn 134. It is clearly in the interests of the banking industry to promote paperless trading, as exemplified by its support for BOLERO (Bill of Lading Electronic Registry Organization) through SWIFT (Society for Worldwide Interbank Financial Telecommunication), as well as its initiative in developing the Bank Payment Obligation (BPO), a new trade finance product. At the level of individual transactions, however, banks cannot feel secure in accepting an electronic bill of lading as adequate collateral unless the applicable law enables them to treat it as such.

No Action Letter

Based on the above examples, the question that arises is - how can the benefits of SCF be fostered across the entire supply chain? The answer lies mainly in managing information flows and creating security interests. This is because electronic platforms are used to provide real-time transparency of physical and financial flows in various SCF solutions. Cross-border information flows have recently caught the attention of both international and national policymakers. In addition to efforts at UNCITRAL, several international institutions such as UN/ESCAP, UN/CEFACT, UNCTAD, WCO and WTO are currently working on various aspects of information flows to facilitate trade. It is our belief that the United States of America, and relevant regulatory agencies such as the CFTC can be the leaders in this area of global trade and finance, not only in ensuring our national interest but also in securing our leadership in technological and financial innovation globally.

Enabling Framework

Freight Trust has sought to build not only a technologically sound and proficient system to enable the dematerialization of shipping documents, we have also developed a governing rulebook upon which governs network participants.³ Depending on where the goods are transported, a bill of lading is governed by either or both:

- The Federal Bills of Lading Act (Federal Act) (49 U.S.C. §§ 80101 - 80116) (see Federal Bills of Lading Act).
- Article 7 of the Uniform Commercial Code (UCC) (UCC §§ 7-101 - 7-603) (see UCC Article 7).

The Federal Act and Article 7 are generally consistent with each other. However, in transactions where both laws are applicable and there is a conflict, the Federal Act governs.

Federal Bills of Lading Act

The Federal Act governs bills of lading that are used in interstate or foreign commerce. Specifically, the Federal Act applies to all bills of lading that a common carrier issues for goods transported.

UCC⁴

Since we can posit that the shipper/member of the model blockchain is a person engaged in the business of directly or indirectly transporting or forwarding goods, the issue that the blockchain platform structure — including the bundle comprised of the blockchain network itself, the “token” representing the goods and the smart contract encoding the contract of carriage — should constitute a bill of lading under the UCC⁵.

3. Please see our documentation rulebook located: <https://freight-chain.github.io/docs>

4. Article 7 of the UCC governs bills of lading when the transaction or shipment relates to intrastate commerce.

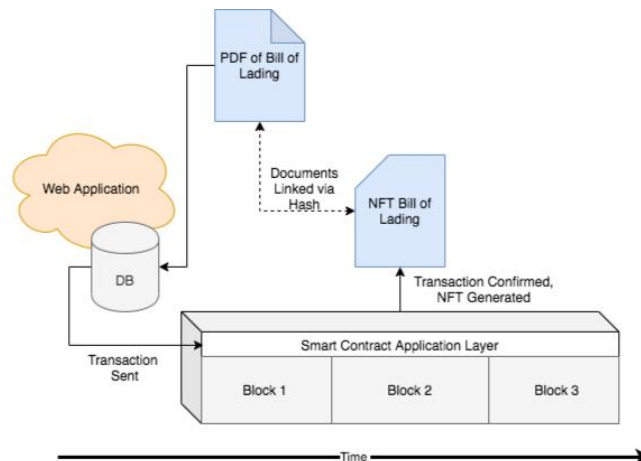
5. Article 7 of the UCC supplements, but is generally consistent with, the Federal Act.

Token Mechanics

Whether our tokenized bill of lading constitutes an “electronic document of title” under the UCC To be an electronic document of title, a document of title must be:

- (1) evidenced by a record
 - (2) consisting of information stored in an electronic medium.
1. On our blockchain network, the transaction data — which includes the token— stored in a block would seem to clearly constitute a record. A record is “information ... that is stored in an electronic or other medium and is retrievable in perceivable form.”[1] The transaction data in the model blockchain is stored in a computer (an electronic medium) and is retrievable in perceivable form when the data is displayed on a member’s computer monitor.
 2. In the regular course of business: A carefully constructed blockchain system should satisfy the “regular course of business” requirement as well, at least over time. Courts have tested the idea of “regular course of business” by looking to established industry practice.[2]

Further, recent additions to the UCC providing for electronic documents of title suggest that the statutory scheme does not intend for this requirement to impede the development of new technologies.[3] To mitigate this risk, a transaction on our blockchain network includes a PDF of an executed industry standard bill of lading, linking the token back to more traditional, established industry standards. Freight Trust incorporates such a mechanism, as pictured below.



No Action Letter

While Article 7 of the UCC does not specifically define the term “issue” in the context of a document of title, Article 3 does define the term in the context of the issuance of instruments, such as promissory notes, as “... the first delivery of an instrument to a holder or a remitter”.[12] “Delivery” is defined in connection with an electronic document of title as “voluntary transfer of control”. Control of an electronic document of title is also specifically defined, and is deemed to exist in favor of a person if “... a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.”[4] [McDermott, et al]

Conclusion

We thank the commission and the staff at the CFTC for taking their time to read our formal letter, and look forward to receiving any guidance on this matter. We are more than willing to work with the CFTC and any other regulators in establishing considerate regulations for this new technology and hope to implement any relevant regulatory comp

No Action Letter

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No Action Letter

Signature Page

I hereby certify that the material facts set forth in the attached letter dated [DATE] are true and complete to the best of my knowledge.

Name: Sam Bacha

Title: Founder & CEO

Date: 02/12/2020

Signature:

A handwritten signature in black ink, appearing to read 'S. Bacha', with a stylized, cursive script.

I have held the title of CEO since the corporations founding on 10/9/2019.

My business experience lies in the logistics industry as well as various technology startups.

I have no business affiliation in the securities industry or OTC derivatives industry. I have had no order of the Commission with respect to such person pursuant to Section 5e of the Act, no conviction or injunction within the past 10 years, no disciplinary action within the last five (5) years, and no disqualification under Sections 8b, and 8d of the Act.

I am the sole member of the Board of Directors and there is no equity holder in the corporation other than me at the date of this letter was sent.

PGP: C856 27EB FBAA 05A7 28F0 5AA5 2B7C 9FF4 47B9 DEC5

No Action Letter

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Citations & References

1. BLOCKCHAIN TECHNOLOGY AND ELECTRONIC BILLS OF LADING : TAKAHASHI : (2016) 22 JIML
2. Freight Trust Network and Clearing Rulebook. 2020, <https://freight-chain.github.io/docs>
3. Bills of Lading and Smart Contracts. 2017. Christopher McDermott, Jeffrey Nagle, Martin Horowitz and Stephen Johnson [McDermott, et al].
4. 4 Draft Model Law on Electronic Transferable Records with explanatory notes, A/CN.9/920 (4 January 2017) <https://documents-ddsny.un.org/doc/UNDOC/GEN/V17/000/10/PDF/V1700010.pdf?OpenElement>
5. United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, United Nations Publication, Sales No. E.09.V.9, (2009) http://www.uncitral.org/pdf/english/texts/transport/rotterdam_rules/Rotterdam-Rules-E.pdf
6. UNCITRAL Model Law on Secured Transactions, United Nations publication

Works Cited

1. UCC 1-201(31).
2. See, e.g., Bank of New York v. Amoco Oil Co., 35 F.3d 643, 651 (C.A.2 (N.Y.), 1994).
3. See Report on Revised Article 7 of the Uniform Commercial Code, New York City Bar, <http://www2.nycbar.org/pdf/report/uploads/20072201-ReportonRevisedArticle7oftheUniformCommercial-Code.pdf>. "The concept of an electronic document of title itself allows for commercial practice to determine what records issued by bailees are 'in the regular course of business or financing' and are 'treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers'." Id. at 3.
4. UCC 3-102(1)(a).
5. UCC 7-106(a).
6. UCC 7-102(a)(1).

Federal Laws and Statutes

- The Federal Bills of Lading Act (Federal Act) (49 U.S.C. §§ 80101 - 80116) (see Federal Bills of Lading Act).
- Article 7 of the Uniform Commercial Code (UCC) (UCC §§ 7-101 - 7-603) (see UCC Article 7).
- UCC 1-201
- UCC 7-501(b)(3). Note that “purchase” as used in this provision has a broad meaning, encompassing the grant of liens and security interests as well as absolute transfers. UCC 1-201(29). [13] UCC 7-507.