



The Security Traders Association of New York, Inc.

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Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Release No. 34-94062; File No. S7-02-22 Amendments to Exchange Act Rule 3b-16 Regarding the Definition of "Exchange"; Regulation ATS for ATSS That Trade U.S. Government Securities, NMS Stocks, and Other Securities; Regulation SCI for ATSS That Trade U.S. Treasury Securities and Agency Securities

Dear Ms. Countryman:

On behalf of the members of The Security Traders Association of New York, Inc. ("STANY")¹ we respectfully request that the U.S. Securities and Exchange Commission ("Commission") extend the comment period for the above-captioned proposal ("Proposal") from the current 30-day period to a 90-day period from the date of publication in the Federal Register to provide the industry and the public with adequate time in which to evaluate and comment on the Proposal.²

The Commission typically provides a short comment period of 30 days only in rare instances and then typically only when proposals address ministerial rulemakings. In a case of significant and complicated rulemaking, such as the current 654-page proposal, the Commission has historically provided the public with a 60 or 90-day period in which to submit comments. We believe that a 90-day comment period is more

¹ STANY, a membership association representing professionals engaged in the trading of securities since 1937, is committed to be a leading advocate of policies and programs that foster investor trust, professional ethics, and marketplace integrity and that support capital formation, marketplace innovation, and education of market participants. As an industry organization comprised of individuals employed in the securities markets, STANY does not represent a single business or business model, but rather provides a forum for trading professionals representing institutions, hedge funds, broker-dealers, ATSS, trading centers and technology companies to share their unique perspectives on issues facing the securities markets.

² See Release No. 34-94062 (January 26, 2022)

appropriate and, in this case, required to engender meaningful feedback.

The Commission is proposing to amend the statutory definition of “exchange” under Section 3(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) to include systems that offer the use of non-firm trading interest and “communication protocols” to bring together buyers and sellers of securities. In addition, the Commission is proposing amendments to Regulation ATS (“Reg ATS”) under the Exchange Act to take into consideration systems that may fall within the definition of exchanges because of the proposed amendments and operate as an ATS. In doing so, the proposed rule changes would greatly expand the scope of Reg ATS. The proposed expansion of the definition of “exchange” goes well beyond the fixed income market for government and Treasury securities which were the subject of the Commission’s prior proposed amendments to Regulation ATS and Regulation SCI for Government Securities ATs (“2020 Proposal”)³ and would encompass all “communication protocol systems” which would be required to register as Exchanges or ATs. Likewise, although not mentioned by name, we anticipate that the long-term effect of the proposal would impact Defi, cryptocurrency, blockchain and digital assets. The proposal applies to “trading any type of security” and includes request-for-quote systems, systems that display continuous non-firm interest, conditional order systems, and negotiation systems within communication protocol systems. In short, the Proposal will have broad impact upon the securities markets well beyond government securities, the fixed income market, and the markets for traditional securities.

Given the breadth of the Proposal and the impact on a broadest possible range of market participants, the 30-day comment period is insufficient and inconsistent with the spirit of the Administrative Procedure Act⁴ which requires agencies to provide the public with adequate notice of proposed rules and a meaningful opportunity to comment. Significantly, the Commission acknowledges in the release that they can only estimate some costs and do not know other costs associated with the proposed changes. For example, the Commission admits that it cannot estimate costs associated with broker-dealer registration including those for non-broker dealer operated Communication Protocol Systems without a broker dealer affiliate, costs related to trade reporting obligations and restructuring costs to name but a few.⁵ The Commission has asked questions of the industry regarding various costs.⁶ Such analysis, required by law, takes time and is inconsistent with an abbreviated comment period.

On this, and other complex regulatory proposals, public comments, and market participant feedback from a broad range of experiences play a significant role in identifying potential unintended negative consequences attendant to new and revised rules. STANY and its members are interested in working with the Commission and its staff to minimize unintended consequences of rulemaking and to ensure that regulations best serve the U.S. capital markets and the Commission’s objective. Industry and public feedback make for better rulemaking.

We therefore respectfully request that the Commission extend the comment period on the Proposal so that STANY member firms and the public have 90 days in which to evaluate, analyze, and provide meaningful comments. We also request that the Commission announce an extension as soon as possible to allow firms and industry groups time to solicit feedback from interested market participants which they can use to shape

³ See, Securities Exchange Act Release No. 90019 (September 28, 2020), 85 FR 87106 (December 31, 2020).

⁴ See, Administrative Procedure Act, 5 U.S.C. § 553 (2006).

⁵ See, Release No. 34-94062 at pages 490-491

⁶ See, Id at pages 548-549

their comments to the Commission.

Respectfully submitted,

/s/ Kimberly Unger
Kimberly Unger, CEO

cc:

The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner