

April 18, 2022

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE, Washington, D.C. 20549-1090

RE: Proposed Amendments to Exchange Act Rule 3b-16 (Release No. 34-94062; File Number S7-02-22)

Dear Ms. Countryman:

We at CoinList greatly appreciate this opportunity to provide comments on the amendments proposed by the U.S. Securities and Exchange Commission (the “Commission”) to Exchange Act Rule 3b-16 regarding the definition of “Exchange”; Regulation ATS for Alternative Trading Systems (“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 (the “Proposal”).

At CoinList, we help the best Web3 projects succeed. We do this primarily by helping them build communities, which we accomplish in part by making digital assets available for purchase or trade on CoinList Markets LLC (NMLS #1785267), our Money Services Business registered with the Financial Crimes Enforcement Network and certain states¹ as a money transmitter (“CLM”).

We contributed to the comment letter from the Global Digital Asset & Cryptocurrency Association (“Global DCA Letter”) and generally support the positions stated in the letters from the Blockchain Association and the Digital Asset Regulatory & Legal Alliance and Global Blockchain Convergence, so we will not rehash those points extensively herein. Rather, we would like to provide some more color from our experience with respect to the regimes and technologies impacted by the Proposal. To begin with, we do not believe that thirty days is a sufficient amount of time to consider a Proposal with such wide-ranging consequences, nor does the Proposal itself address all of the potential concerns of the digital asset industry (the “Industry”).² And with the potentially overlapping proposing release redefining of the term “dealer” (Release No. 34-94524)—this one mentioning digital assets explicitly, though only once in a footnote to reiterate that “securities” does indeed also mean digital asset securities—we tend to agree that a holistic approach recommended by Commissioner Peirce would most efficiently and effectively regulate the Industry.³

We are encouraged by President Biden’s leadership in this space exhibited by the issuance of the Executive Order on Ensuring Responsible Development of Digital Assets issued March 9, 2022 (the “Order”). Innovation thrives where regulatory clarity exists, and the Industry needs bright lines to distinguish the authority of the Commission and its sister agency, the Commodity Futures Trading Commission (“CFTC”), with respect to digital assets. Moreover, the Industry needs clarity about how rules written for traditional paper securities secured and validated

¹ CLM is currently unavailable to US persons resident in the following states and territories: Alaska, Hawaii, Minnesota, Nevada, New York and U.S. Virgin Islands.

² See Global DCA Letter at 5 “The Proposed Rules suffer from serious procedural defects as applied to the digital assets industry. Any attempt to apply the Proposed Rules to the industry without curing the defects would violate administrative due process.”

³ See Commissioner Hester M. Peirce, Response to Staff Accounting Bulletin Number (March 31, 2022), available at <https://www.sec.gov/news/statement/peirce-response-sab-121-033122>.

by intermediaries apply in practice to this new digital technology where the intermediaries play different roles or are themselves disintermediated.

Chairman Gensler recently stated that “crypto platforms play roles similar to those of traditional regulated exchanges. Thus, investors should be protected in the same way.” We wholeheartedly agree with Chairman Gensler that investors deserve the same type of protections of the law no matter the technology underlying their transaction. Yet the way they will be protected is actually quite different, given the intrinsic nature of the technology. For example, a transaction on a public blockchain leaves certain information in its wake, though not the type of information traditionally captured by financial intermediaries such as identity information, financial information and a participant’s investing profile, etc. So while we agree that the same activities should be regulated by the same principles irrespective of the asset, digital assets and thereby the exchanges on which they trade function differently than traditional securities, commodity, or foreign currency exchanges, and the fundamental differences in function necessitate adaptations to the existing rules. We cannot simply ignore the technological differences or pretend that they do not influence the function and effectiveness of the rules themselves. For example, where no intermediary exists in certain online transactions, a regime focused on regulating intermediaries does not offer a workable solution.

We also recognize that many challenges lie in the details of the rules, for instance in translating concepts like custody to assets on distributed protocols that rely on private cryptographic keys to control wallets storing those assets. In fulfilling the Order, we look forward to the opportunity to thoughtfully engage with the Commission to comprehensively address this new technology in harmony with all of the other applicable regulators. Our businesses have been partially constrained by uncertainty surrounding when tokens might be freely tradeable (i.e., whether the network on which they operate were ever to become “sufficiently decentralized”), and if not, where they might be traded as digital asset securities given that no ATS was authorized for much of the time that we have been in business.⁴

We should be leveraging the benefits of this technology, and the intrinsic features thereof that provide these benefits, to write better rules that will effectively provide the protections that the law seeks, while allowing innovation to thrive and for US persons to enjoy those benefits. As drafted, the Proposal as it relates to including “communication protocol systems” (CPSs) within the definition of exchange does not meet these goals and will likely have numerous negative consequences that have not been fully contemplated or duly considered. In light of the above, we strongly urge the Commission to not adopt the amendments in the Proposal relating to CPSs.

Thank you for this opportunity to comment and play this important role in the rulemaking process. Please contact Damien Scott by email at damien@coinlist.co with any additional questions about our views stated herein.

Sincerely,

DocuSigned by:

Damien G. Scott

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Damien G. Scott
Deputy General Counsel
CoinList

⁴ Gemini Galactic Markets is the first broker-dealer that we are aware of that was authorized by FINRA to operate an ATS to facilitate the trading of digital asset securities. See <https://www.gemini.com/blog/gemini-galactic-markets-approved-for-finra-membership-and-broker-dealer>.