

April 18, 2022

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC
20549-1090

RE: Proposed Amendments Regarding the Definition of “Exchange” and Alternative Trading Systems (ATSS) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities (File Number S7-02-22, RIN 3235-AM45)

Dear Ms. Countryman;

Symphony Communication Services, LLC (“**Symphony**” or the “**Company**”) respectfully submits this letter to present comments to the Securities and Exchange Commission (“**Commission**”) regarding the proposed amendment to Rule 3b-16 under the Securities Exchange Act of 1934 (“**Exchange Act**”)¹.

About Symphony

Symphony is a financial services market infrastructure and technology platform, providing secure and compliance enabling communication connectivity between more than 1,000 financial market institutions and over 500,000 individual users. Communications sent on Symphony’s platform are end-to-end encrypted and can be stored by Symphony’s customers, enabling them to comply with relevant regulatory recordkeeping requirements.

Symphony was created in 2014 as a messaging and open architecture platform to solve data security and compliance issues and facilitate real-time communication across the financial services industry by supporting cross-company and internal communication-based workflows.

Symphony’s platform enables customer retention and archiving of end-to-end encrypted communications to satisfy record keeping and other compliance obligations. The Company’s future strategy aims to streamline and automate its customers’ workflows. This includes enhancing existing collaboration products, partnering with technology providers that support the market infrastructure, and developing new solutions (including partnership solutions) in cloud

¹ See Amendments to the Definition of Exchange; Alternative Trading Systems That Trade U.S. Government Securities, National Market System Stocks, and Other Securities, 87 Fed. Reg. 15496 (Mar. 18, 2022) (the “**SEC Proposal**”).

computing, embedded collaboration, and transaction workflow digitization. These products, partnerships, and solutions would allow the financial services industry to use technology to efficiently communicate and collaborate, while Symphony's retention and archiving capabilities would facilitate satisfaction of compliance requirements through the platform's content export functionality.

With technology advancements changing how financial services infrastructures work, Symphony understands and supports the Commission's efforts to modernize its approach to oversight while fostering an environment where markets and the technology industry can thrive and continue to innovate. Technology providers like Symphony can support this goal, and enable those in the financial services industry to more easily comply with the Commission's regulatory requirements and longstanding mission to maintain fair, orderly and efficient markets. To that end, we offer the following comments to the proposed amendment.

Comments on the SEC Proposal

Communication Protocol Systems

The Commission does not expressly define a "Communication Protocol System" except to note that they "offer the use of protocols and non-firm trading interest to bring together buyers and sellers of securities."² By way of example, the Commission, explains that these systems, "offer the use of non-firm trading interest and establish protocols to prompt and guide buyers and sellers to communicate, negotiate, and agree to the terms of the trade..."³ The Commission then defines "trading interest" to include firm orders as well as "any non-firm indication of a willingness to buy or sell a security that identifies at least the security and either quantity, direction (buy or sell), or price,"⁴ and provides specific examples of certain systems that may constitute Communication Protocol Systems, including "Request-for-Quote" ("**RFQ**") and conditional order systems.

With respect to RFQ systems, the Commission explains that the system provider requires a participant to enter information into a communication with set protocols to help facilitate the negotiation of a trade. The Commission similarly describes conditional order systems as Communication Protocol Systems on which the system provider requires conditional orders to contain a symbol, side and size, and provides protocols for participants to send and receive messages to initiate a trade. The Commission highlights that a "system provider" sets the minimum structured format in both RFQ and conditional order systems. Technology providers such as Symphony, however, support the financial services industry by adopting a modular and open approach to platform architecture. The communications that take place within an environment that employs modular and open architecture can connect with third-party

² *Id.* at 15498.

³ *Id.* at 15500.

⁴ *Id.* at 15504.

applications, creating a bridge between technology and regulated platforms such as RFQ and conditional order systems. In such cases, the “system provider” does not set minimum requirements or the parameters for the communications, it merely provides an environment that supports financial services infrastructures through an open modular and flexible design.

Notably, the Commission states that “systems that only provide general connectivity for persons to communicate without protocols” would not meet the “communications protocols prong” of the exchange analysis under the proposed amendment to Rule 3b-16 because they “are not specifically designed to bring together buyers and seller[s] of securities or provide procedures or parameters for buyers and sellers for securities to interact.”⁵ Accordingly, we believe system providers such as Symphony, that provide a modular and open platform architecture which can be used by financial industry participants without themselves establishing a trading protocol, should not be captured by the proposed expanded definition and respectfully request further clarity from the Commission in this regard.

Based on the examples provided by the Commission, the framework offered by the Commission regarding what constitutes “Communication Protocol Systems” may inadvertently capture technology providers that make available automated and digitized workflows, thereby requiring such platforms to register as an Alternative Trading System (“**ATS**”). Given the broadly-worded description of Communication Protocol Systems, however, we respectfully request that the Commission further clarify that its expanded definition of “exchange” is not meant to capture a software provider such as Symphony.

Specifically, Symphony believes that a technology provider that does not establish any protocols with respect to securities transactions, but rather provides modular and open software architecture whereby financial industry participants can communicate with each other should not be deemed to be acting as an “exchange”. With respect to embedded or integrated collaboration or transaction workflow digitization products offered to financial industry participants, the technology provider itself would not establish any non-discretionary methods (i.e., protocols) specifically with respect to the trading of securities. The establishment of any non-discretionary methods with respect to the trading of securities would be made by the financial industry participants to which the technology provider offers the service and that have the regulatory authority to establish such protocols. Rather, the technology provider would simply provide software that can be customized by its clients, and would not itself perform any exchange-like activities.

Symphony does not believe it advances any public policy objective to designate a technology platform like ours as an ATS, particularly because our users are all highly regulated financial services market participants, registered with and regulated by a wide range of regulatory authorities with various types of recordkeeping and information sharing obligations. In other words, treating Symphony like an ATS would not provide the Commission with any new

⁵ *Id.* at 15507-08.

information, as (i) that information is encrypted and unreadable by Symphony and (ii) the Commission can likely obtain the information directly from Symphony’s institutional customers.

The SEC Proposal does not expressly account for or offer guidance for open-architecture platforms that integrate with or embed in third-party applications, and whether this would constitute “making available” communication protocols. Before finalizing the SEC Proposal, we ask the Commission to provide more guidance on this point such that open-architecture platforms like Symphony can continue to develop and support the financial services industry without concerns that it might inadvertently become a “Communication Protocol System.”

Symphony respectfully asks the Commission to either define or further clarify what “Communication Protocol Systems” covers to ensure open-architecture platforms this letter describes would not be treated as such a “Communication Protocol System.” This will also encourage the continued advancement of technology for financial services infrastructures. We believe such an approach in an adopting release related to the SEC Proposal is consistent with the Commission’s stated intentions, and that clarity and certainty through confirmation would help to continue to promote technological innovation.⁶

Platforms that embrace innovation and connect to applications that support efficiency in the markets should be viewed solely as technology providers for those in the financial services industry. Regulated venues and third-party applications outside of the technology provider’s environment should be considered the “exchange” where the transaction may be concluded, therefore the proper venue for regulatory oversight.

Finally, in the SEC Proposal, the Commission provides an open-ended statement that “[i]f adopted, however, the Commission would continue to monitor market developments to ascertain whether [certain] systems may warrant further regulation in the future.”⁷ Consistent with other commenters, Symphony believes that the definition of exchange and ATS should be definite, and remains concerned that this framework could be inappropriately expanded in the future beyond the parameters contemplated in the SEC Proposal.⁸ Symphony asks the Commission to clarify its intent in this statement such that it, and other developing technology service providers whose interest is facilitating secure communications, can understand the Commission’s potential future interest in systems that may be the subject of Commission

⁶ See *id.* at 15507 (“The Commission preliminarily believes that certain systems would not fall within the criteria of Exchange Act Rule 3b–16(a), as proposed to be amended, because the organization, association, or group of persons would not be considered to be providing a trading facility or communication protocol and therefore would not be considered to be making available established, non-discretionary methods under Rule 3b–16(a)(2).”).

⁷ *Id.*

⁸ See *id.* at 15507, n.119 (citing SIFMA Letter that systems that merely act as informational conduits should remain outside the scope of Regulation ATS and FlexTrade Systems Letter at 2–4 that software vendors that provide functionality for displaying prices do not meet the definition of an exchange).

regulation. Without such clarity, investment in technology service providers could be stifled, and continued innovation will be limited or delayed.

Data Security

ATS regulatory requirements will also pose challenges and have unintended consequences for communication platforms, and the technology industry as a whole. Communication platforms employ various levels of encryption to ensure their customers' security. Symphony, for example, utilizes end-to-end encryption, thereby offering those in the financial services industry a platform with a high level of data security. This encryption standard prevents Symphony, as the technology provider, from viewing its customers' data and allows the customer to leverage the platform's retention and archiving capabilities to meet their compliance requirements.

If structured communications on platforms require technology providers to register as an ATS or exchange, data security will need to be degraded to satisfy ATS compliance and reporting requirements. If required to register as an ATS, Symphony would need to view customer data in order to meet transaction processing requirements. This would have far-reaching implications for communication platforms, cloud hosting providers, and the financial services industry generally, as financial services firms trust that their technology providers do not access their communications. Additionally, the proposed amendment does not make clear whether technology providers that are required to report or process communications between two counterparties on a platform would constitute a "multilateral" communication, as the technology provider could be seen as a "third party". Symphony requests that the Commission confirm that a platform provider would not be considered a "third party" in a communication platform on its and, thus, bilateral communications between platform users would not constitute a "multilateral" communication.

Conclusion

We thank the Commission for the opportunity to comment on the proposed amendment, and hope this submission is viewed as constructive.

Respectfully Submitted,

Corinna Mitchell

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General Counsel
Symphony Communication Services, LLC