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September 16, 2022

Dr. Jessica Wachter
Director, Division of Economic Research and Analysis
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *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*¹

Dear Director Wachter:

INTRODUCTION. Thank you, the DERA team and your colleagues at Trading and Markets for taking the time on July 13, 2022, and August 23, 2022, to speak with Bloomberg. As a follow-up to our conversation and our prior letters on March 1, 2021, response to the Commission’s Concept Release², and our April 18, 2022³ on the proposed regulation (“Reg CPS/ATS”) referenced above, we wish to highlight a few additional points. As noted previously, we believe that the lack of definitions in the Reg CPS/ATS proposal has led to significant confusion and uncertainty in the markets, leading to a proposal that is unworkable in its current form. Bloomberg believes the Commission should consider a more targeted approach to the regulation of “Communication Protocol Systems” and we have provided an alternative framework that we believe is appropriately tailored to the needs of the Commission and the market. The focus of this letter, however, is on providing additional observations on the

¹ See Proposed Rule, Release No. 34-94062; File No. S7-02-22, 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. (Conformed to the Federal Register Version) <https://www.sec.gov/rules/proposed/2022/34-94062.pdf>.

² See “Bloomberg L.P. Concept Release Letter” from Gregory Babyak, on Release No. 34-90019; File No. S7-12-20 to Ms. Vanessa Countryman, March 1, 2021. <https://www.sec.gov/comments/s7-12-20/s71220-8440150-229700.pdf>.

³ See “Bloomberg L.P. Reg CPS/ATS Letter” from Gregory Babyak and Gary Stone, on Release No. 34-94062; File No. S7-02-22 to Ms. Vanessa Countryman, April 18, 2022. <https://www.sec.gov/comments/s7-02-22/s70222-20123988-280131.pdf>.

Commission's Cost Benefit Analysis ("CBA"). We believe the current CBA materially underestimates the aggregate burden that the proposal would impose on the market if finalized in its current form.

DEFINITIONAL ISSUE. We believe there is great confusion and uncertainty in the market among our clients and others flowing from the combination of the lack of a clear definition of key terms, the potential breadth of the "makes available" language, and the rule's admonition that it will be interpreted "expansively"⁴. In Appendix A, we have excerpted comments illustrating that market-wide uncertainty. Almost every comment letter, even the few that were generally supportive of the Proposal's approach of amending the definition of an exchange to regulate CPSs, either noted that the Proposal failed to define key terms, such as CPS, and was overly broad by taking a "case-by-case" or "circumstances" approach with "Makes Available". Indeed, we also included comments from the FIX Trading Community seeking assurances that the "FIX messaging protocol" (and other FIX standards) not be drawn into or conflated with the definition of CPS and several platform providers asking the Commission to provide an explicit exemption because the Proposal is not clear whether they would be subject to Regulation ATS.

Needless to say, the lack of a clear definition produces a formidable obstacle to the creation of a defensible cost-benefit analysis.

MORE TARGETED REGULATION. Bloomberg continues to advocate for the Commission to consider a more targeted "Regulation of Communication Protocol Systems" approach as an alternative framework to regulate Communication Protocol Systems rather than amending the definition of an exchange. Bloomberg's alternative is a proportional response to articulated problems and provides definitions to key terms including Communication Protocols, Trading Interest, a Communication Protocol System, and an Order Routing Communication System⁵.

RANGE ON COST BENEFIT ANALYSIS. Bloomberg created a cost-benefit analysis ("CBA") model to identify the number of impacted technology providers and their solutions that would become a CPS under the Proposal. The model was applied to a number of scenarios - ranging from the narrowest possible reading through to a more expansive, but entirely reasonable, interpretation of coverage.

We believe that even our most expansive assessment will likely significantly underestimate coverage. As an initial matter, Bloomberg did not include in its CBA the

⁴ See Proposal at 42.

⁵ "Bloomberg L.P. Reg CPS/ATS Letter", at 34-48.

approximately 288 crypto “exchanges”⁶, 200 crypto Automated Market Maker platforms⁷ and nine front-end/platforms that offer liquidity aggregation and (smart) order routing functionality to crypto-security “stream axe” like quotations – functionality that many in the market believe will be covered⁸. Bloomberg’s CBA also did not include potential extraterritorial effects, the consequences of which are discussed in Bloomberg’s comments⁹. As Douglas Cifu, Chief Executive Officer, Virtu Financial, in his letter observed: “Many broker-dealers that would be impacted by the proposed changes are subject to regulatory frameworks governing trading in foreign jurisdictions, such as MiFID II. The Proposal fails to address how the new proposed definition of exchange would interact with the obligations of market participants in non-U.S. jurisdictions, and it is unclear whether the Commission even consulted with those jurisdictions about the potential impact on market structure.”¹⁰ We also, of course, offer no conjecture on whether pending or currently contemplated regulations – for example the order-by-order competition being explored as part of the proposed market structure initiative – will expand the scope of impacted market participants.

Bloomberg’s CBA model took a bottom-up approach – first, identifying the operators of RFQ, Stream Axe, and EMS/OMS and ISV platforms for the covered (NMS equities, listed options, Government securities) and uncovered (corporate debt and municipal securities) security asset classes¹¹.

It is challenging to gain a sense of the SEC’s CBA methodology. The Proposal focuses on “platforms”, but the assumption behind the CBA for Communication Protocol Systems appears to be “entity-centric”. Footnote 750 at 328 explains that “The estimated respondents for the Rule 304/Form ATS-N collection of information is based on the assumption that systems that operate multiple marketplaces that are affiliated with a new or existing broker-dealer will all be operated by such broker-dealer, and that such systems will not register multiple broker-dealers to operate multiple affiliated ATSS”, while the discussion and associated tables describing the

⁶ See Top Cryptocurrency Spot Exchanges, CoinMarketCap, retrieved on August 25, 2022, from <https://coinmarketcap.com/rankings/exchanges/>.

⁷ See the Comparison tool to compare the top Automated Market Makers (AMM) on the market, “Best Automated Market Makers (AMM) of 2022” retrieved on August 25, 2022 from <https://slashdot.org/software/automated-market-makers-amm/>.

⁸ See Letters to Ms. Vanessa Countryman, SEC, from the “Blockchain Association and the DeFi Education Fund”, “Hedge Fund Association”, “Doug Davison and Joshua Ashley Klayman of Linklaters LLP”, “The Crypto Council for Innovation”, “Blockchain Association”, “Global Digital Asset & Cryptocurrency Association”, “DeFi Education Fund”, and “Michelle Bond, CEO, Association for Digital Asset Markets”. <https://www.sec.gov/comments/s7-02-22/s70222.htm>.

⁹ This bottom-up approach became the basis for Bloomberg’s statement in its comment letter that the Commission had underestimated the number of Communication Protocol Systems. See “Bloomberg L.P. Reg CPS/ATS Letter” at 19.

¹⁰ See Letter from Douglas Cifu, Chief Executive Officer, Virtu Financial (“Virtu Financial Letter”), April 19, 2022, to Ms. Vanessa Countryman, SEC. <https://www.sec.gov/comments/s7-02-22/s70222-20123990-280132.pdf>.

¹¹ See “Bloomberg L.P. Reg CPS/ATS Letter”, at 33-34.

landscape of the Treasury ATS market (at 359 and 361) is based on the “number of unique platforms.”

Bloomberg believes the “platform” analysis is the right approach to CPSs because it provides a more accurate accounting of the effort needed to comply with the various requirements applicable to each platform. The SEC CBA estimates that it will cost an entity that operates an NMS Stock, or Government Security CPS approximately \$209,000 for Form ATS-N (Tables VIII.9 and VIII.12, below).

Table VIII.9: Communication Protocol Systems that are Government Securities ATSS

Compliance	Num. of Entities	Aggregate Initial Costs	Aggregate Ongoing Costs
Regulation SCI	2	\$2.2 million ~ \$6.4 million ^a	\$2.3 million ~ \$5 million ^b
BD Registration	-	-	-
Fair Access	2	-	\$33,000 ^e
Other	4	\$209,000 ^d	\$59,000 ^e
Total	4	\$2.4 million ~ \$6.6 million	\$2.4 million ~ \$5.1 million

Table VIII.12: Communication Protocol Systems that are NMS Stock ATSS

Compliance	Num. of Entities	Aggregate Initial Costs	Aggregate Ongoing Costs
Regulation SCI	-	-	-
Fair Access	-	-	-
BD Registration	-	-	-
Other	4	\$209,000 ^a	\$59,000 ^b
Total	4	\$209,000	\$59,000

Table VIII.14: Other Communication Protocol Systems

Compliance	Num. of Entities	Aggregate Initial Costs	Aggregate Ongoing Costs
Rule 301(b)(6)	2	-	\$10,000 ^a
Fair Access	6	-	\$99,000 ^b
BD Registration	6	\$1.9 million ^c	\$360,000 ^d
Other	14	\$133,000 ^e	\$191,000 ^f
Total	14	\$2 million	\$660,000

The entity approach assumes that the ATS-N disclosure effort is uniform across “entities.” It isn’t. This assumption completely ignores the complexity across entities. While parts of Form ATS-N (e.g., Parts 1 and 2) may be the same if NMS equity or Government Security CPS/ATSS activities are under one broker-dealer (as FN 750 assumes), Part III ATS-N “Manner of Operations” disclosures (at 556) - how the platform actually operates - will be different depending upon the platform.

There are significant differences in the market structure, system operations, and platform complexities among the NMS equity, listed options, and Government Securities (covered) asset classes. Several of the comment letters submitted advised the Commission to revert to the 2020 Form ATS-G proposal, separating NMS equity disclosures and Government Security disclosures for these reasons¹².

Based on the experience from Form ATS-N for NMS equity ATSS, Part III is where the costs of Form ATS-N are borne. According to Bloomberg’s analysis, there are four operators of platforms that provide NMS Equity (ETF) RFQ functionality; there is one operator of a platform that provides listed option RFQ functionality; and there are two operators that offer platforms that provide NMS Equity (ETF) and listed option RFQ functionality. The SEC CBA “entity” based approach assumes that the disclosure effort of an entity (operator) that offers both NMS Equity (ETF) RFQ functionality (CPS) and a listed option RFQ functionality (CPS) would incur the same \$209,000 costs (Table VIII.12) as an entity (operator) that only has NMS Equity (ETF) RFQ functionality (CPS) or a listed option RFQ functionality (CPS) to disclose. The effort is not the same. In fact, an NMS Stock (ETF) RFQ platform and a listed options RFQ platform operate in very different market structures, different order types and workflows, and also could have very different subscriber (and fair access) requirements and potential segmentation. Bloomberg believes that a more accurate assessment of the cost should assume that each “platform” will be its own CPS/ATS, and each “entity” or operator will file a separate Form ATS-N for each in order to keep the disclosures required in Form ATS-N’s Part III, Manner of Operations, targeted and clear (and keep the activities segmented for the examination process).¹³

Similar entity vs. platform cost estimate issues emerges with Part III ATS-N “Manner of Operations” disclosures in Form ATS-N for Government Securities. Similar to NMS Equity and Listed Options, Government Securities RFQ, Repo RFQ and Government Securities Stream Axe platforms all operate in different market structures, provide different order types, and workflows, and also could have very different subscriber (and fair access) requirements and potential segmentation. If the Proposal moves forward with the CPS Reg ATS fair access requirements for covered securities, CPS/ATSS membership requirements are likely to vary across covered

¹² See Regulation ATS for ATSS that Trade U.S. Government Securities, NMS Stock, and Other Securities; Regulation SCI for ATSS that Trade U.S. Treasury Securities and Agency Securities; and Electronic Corporate Bond and Municipal Securities Markets, Release No. 34-90019; File No. S7-12-20, September 28, 2020, <https://www.sec.gov/rules/proposed/2020/34-90019.pdf>. See Letters to Ms. Vanessa Countryman, SEC, from “Healthy Markets Association” at 5, “Robert Toomey, Managing Director, Associate General Counsel, SIFMA” (“SIFMA Letter II”), June 13, 2022, at 5, “Securities Industry and Financial Markets Association” (“SIFMA Letter I”), April 18, 2022, at 19, “Bond Dealers of America”, April 18, 2022, at 3, “Bloomberg Reg CPS/ATS Letter” at 6, “Fidelity Capital Markets Letter” at 9, “Marcia E. Asquith, Executive Vice President, Board and External Relations, FINRA” (“FINRA Letter”) at 5-7, and “SIFMA Asset Management Group Letter” at 10. <https://www.sec.gov/comments/s7-02-22/s70222.htm>.

¹³ The SEC (at 423) understands that there is at least one CPS that provides listed option RFQ functionality yet Form ATS-N (at 557) does not provide the option for a listed option RFQ platform to file a Form ATS-N.

securities and the different platforms within a covered security. This alone would require each entity to segment its CPSs (each platform) and file a distinct ATS-N disclosure document.

According to Bloomberg's analysis, there are six operators of platforms that would have to provide disclosures for the operations of Government Security RFQ functionality; two operators of platforms that have to provide disclosures for the operations of Government Security stream axe functionality; and two operators of platforms that have to provide disclosures for the operations of Repo RFQ functionality. However, there is one operator that will have to provide disclosures for the three platforms (Government Securities RFQ, Repo RFQ and Government Securities Stream Axe) that it operates and another six operators that will have to provide disclosures for the Government Securities RFQ and Government Securities Stream Axe platforms that they operate. Again, the effort (Table VIII.9) of an operator disclosing the manner of operations for three platforms is not the same as an operator that has to complete Part III of Form ATS-N for two or even one platform.

Bloomberg notes that there is also some significant disagreement with the Commission's \$209,000 cost estimate. The "Virtu Financial Letter" (at 13), "SIFMA Letter I" (FN 24 at 9), and "The Fidelity Capital Markets Letter" (at 6, FN 9) both expressed reservations on the estimate of \$209,000 initial aggregate cost estimate to create the initial disclosures. Virtu and SIFMA note that the estimate significantly understates the number of dedicated personnel as well the time spent. For illustrative purposes only, assuming that \$209,000 is an accurate number, Bloomberg asserts that it is more likely to cost at least \$209,000 per platform disclosed in Part III of Form ATS-N than \$209,000 per entity because entities probably have different dedicated engineering teams and product managers per platform.

Accurate cost estimates are related to the number of platforms. The Bloomberg CPS CBA model defines three cohorts: a "**narrow view**", an "**expansive view**" and a "**total view**". The "**narrow view**" identifies technology provider/current platforms that operate electronic RFQ messaging workflows and/or aggregate and enable order routing to (more than one) dealer "stream axe." The "**expansive view**"¹⁴ is based on the market's general impression (see Appendix A) of what may constitute "makes available". The "expansive view" is a cohort that contains the technology providers/current platforms (e.g., EMS/OMS, and ISVs) that "makes available" other electronic RFQ messaging workflows and/or order routing to other trading venues or broker-dealers using an interactive bulletin board of trading interest and using communication protocols¹⁵. "**Total view**" is an analysis of the "narrow" and "expansive" views combined.

¹⁴ As noted, since there appears to be significant disagreement between the staff and the commenters on the "expansive view". See Appendix A for more detail.

¹⁵ See "Bloomberg L.P. Reg CPS/ATS Letter", at 27-30.

Narrow View: The Proposal’s estimate of 22 CPSs is based on the number of impacted “entities”. The description of Rule 304 (at 329) and Table VIII.7 (at 450) explains that the Commission anticipates 4 Form ATS-Ns for Government Securities CPSs, 4 Form ATS-Ns for NMS Stock, apparently zero for listed options and 14 Form ATSs for CPS entities offering RFQ or stream axe functionality in corporate debt or municipal securities.

Table VIII.7: Total Implementation Costs^a and Other Compliance Costs^b

Type of Entity	Number of Entities	Aggregate Initial Costs	Aggregate Ongoing Costs
Communication Protocol Systems (Government Securities ATS)	4	\$2.4 million ~ \$6.6 million ^c	\$2.4 million ~ \$5.1 million ^d
Currently Exempted Government Securities ATSs	7	\$1.5 million ~ \$3.5 million ^e	\$1.3 million ~ \$2.7 million ^f
Current Government Securities ATSs	17	\$1.4 million ~ \$3.5 million ^g	\$1.3 million ~ \$2.6 million ^h
Communication Protocol Systems (NMS Stock ATS)	4	\$209,000 ⁱ	\$59,000 ^j
Current NMS Stock ATSs	34	\$77,000 ^k	\$16,000 ^l
Other Communication Protocol Systems	14	\$2 million ^m	\$660,000 ⁿ
Other Current ATSs	59	\$374,000 ^o	\$115,000 ^p
Subscriber	-		\$10,000 ^q
Total	139	\$8 million ~ \$16 million	\$5.9 million ~ \$11 million

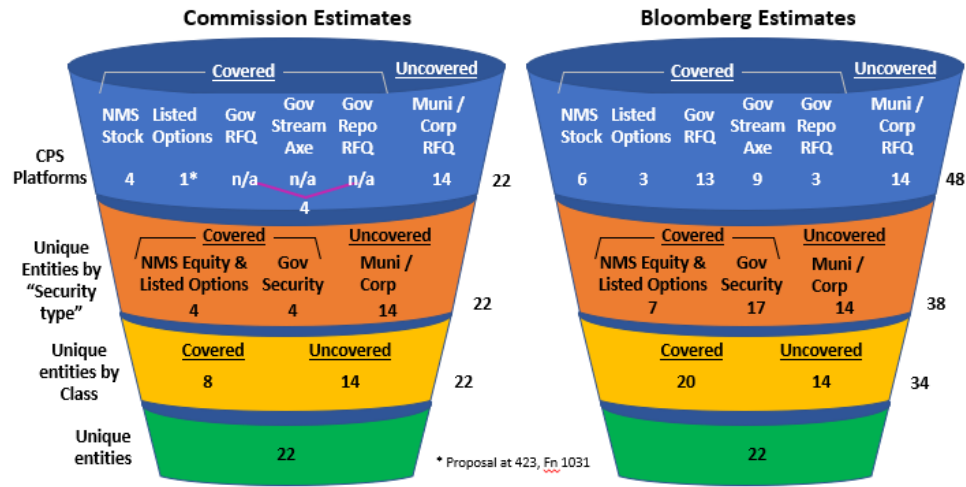
¹⁰⁹⁹ See *id.*

450

The description of Rule 304 (at 329) and Tables VIII.7, VIII.9, VIII.12, and VIII.14, show that the Proposal anticipates only 8 Form ATS-Ns, 14 Form ATSs and 22 Form ATS-Rs being submitted. As we discussed, Bloomberg used a bottom-up approach to create its estimates. Each “CPS” platform by security asset class was identified by operator. Using this approach, a single entity could have up to five covered CPSs (one NMS equity, one listed-options, and three Government Securities) and one “other” CPS for uncovered securities¹⁶. Bloomberg was able to replicate the Proposal’s estimate of 22 potential unique entities under this “narrow view”.

¹⁶ According to Bloomberg’s analysis, there are 10 entities that operate either a corporate debt or a municipal securities CPS and four entities that operate both a corporate debt and a municipal securities CPS. Thus, there are 14 to 18 platforms (CPSs). For the same reasons discussed in covered securities, the \$133,000 initial cost estimate in Table VIII.14 may understate the effort for the four entities that operate both a corporate debt and a municipal security CPS.

“NARROW VIEW” ESTIMATES - “RFQ & Stream Axe” Cohort



Based on the equity NMS ATS-N experience, under this proposal, the number of Form ATS-N, ATS and ATS-R to be reviewed and approved by the Commission is highly relevant. Virtu Financial notes that the SEC had to extend its time to declare the forms effective beyond the initial compliance date for virtually every NMS equity ATS that had to file a Form ATS-N¹⁷. There were only 34 NMS equity ATS Form ATS-Ns filed– Bloomberg estimates, using a narrow view methodology, that the SEC could be faced with a significantly more challenging experience with, in addition to *all of the* NMS equity ATSs refiling updated forms, an additional 48 CPSs will be filing a Form ATS-N or ATS for the first time. Presumably it was the NMS equity ATS-N experience that led to the Proposal reproposing to amend Rule 304(a)(1)(ii)(A)(1)¹⁸. The potential for more than 2x the number of filings under the “narrow view” alone was part of the basis of Bloomberg’s concern that the Commission did not evaluate whether it has adequate resources to deal with the number of ATS-N, ATS and ATS-R Forms that they would receive thus (again) becoming a bottleneck to innovation and competition as occurred with NMS equities.¹⁹

“Expansive View”: As documented in Appendix A, the combination of the lack of definition of key terms, the new interpretation of “established, non-discretionary”, use of “makes available” and the Proposal’s express commitment to an expansive interpretation has convinced the vast majority of the market that the Commission would take an expansive view of what would constitute “communication protocols”²⁰.

¹⁷ See “Virtu Financial Letter” at 13.

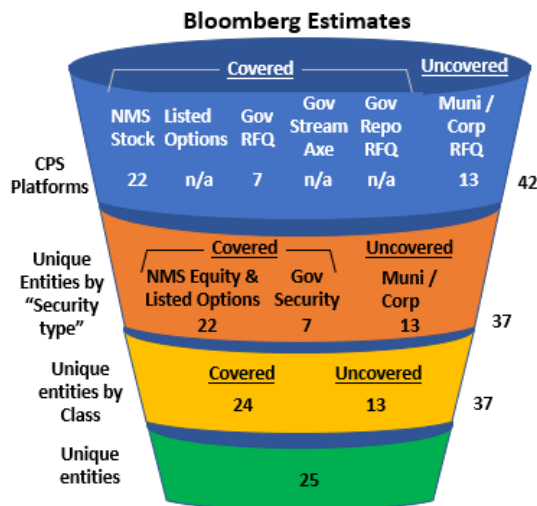
¹⁸ See Proposal at 136-137 and FN 430

¹⁹ “Bloomberg L.P. Reg CPS/ATS Letter” at 33.

²⁰ A discussion of the expansive view is detailed in the “Bloomberg L.P. Reg CPS/ATS Letter” at 16-20 and 27-29. See Proposal at 42 that “the Commission would take an expansive view of what would constitute “communication protocols” under this prong of Rule 3b-16(a).” Also, discussion in FN 116 and 117 at 42. Bloomberg submits that

The expansive view identified EMS, OMS, and ISV (CPS) platforms that have “interactive” bulletin board workflows – where a ticket to send an order to a trading venue could be launched from a bulletin board of “trading interest”. It also includes platforms that “makes available” activities that consist of the system that meets the criteria of Rule 3b-16(a), notwithstanding whether those activities are performed by a party other than the organization that is providing the market place.²¹ “The Commission has further recognized how a system may consist of various functionalities, mechanisms, or protocols that operate collectively to bring together the orders for securities of multiple buyers and sellers using nondiscretionary methods under the criteria of Rule 3b-16(a), and how, in some circumstances, these various functionalities, mechanisms, or protocols may be offered or performed by another business unit of the registered broker-dealer or government securities broker or government securities dealer that operates the ATS (“broker-dealer operator”) *or by a separate entity*”²² (emphasis added).

“EXPANSIVE VIEW” - “MAKES AVAILABLE” Cohort (does not offer RFQ/Stream Axe)



just because the “litmus test” suggested by FlexTrade may not have met the Commission’s requirements, that doesn’t obviate the need for a clear (series) of tests to determine what is a CPS, and a “system.” It is this lack of clarity, noted in greater detail in Appendix A, that makes the “expansive” and “total view” analysis/estimates highly relevant.

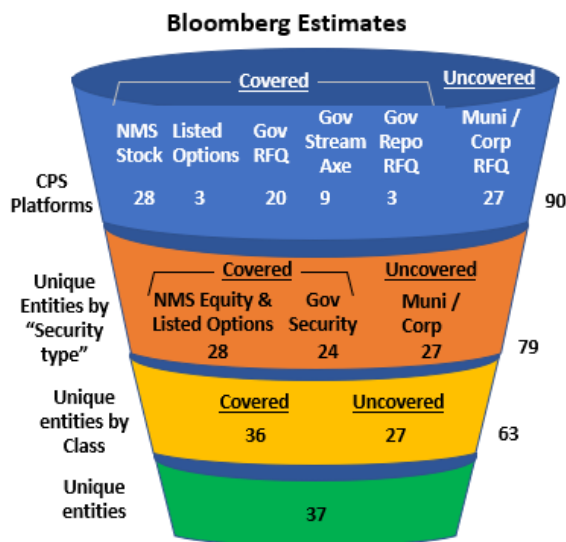
²¹ See Proposal at 38-39 and “Bloomberg L.P. Reg CPS/ATS Letter” at 27-28. Proposal FN 109 (at 39): “Depending on the activities of the persons involved with the marketplace, a group of persons, who may each perform a part of the 3b-16 system, *can together provide*, constitute, or maintain a marketplace or facilities for bringing together purchasers and sellers of securities *and together* meet the definition of exchange. In such a case, *the group of persons* would have the regulatory responsibility for the exchange” (emphasis added) verifies the accuracy of the Figure 4 in the “Bloomberg L.P. Reg CPS/ATS Letter” (at 27) that, under the Proposal, “‘Makes Available’ essentially require every part of the technology chain to become an ATS” (at 27).

²² See Proposal at 38 and “Bloomberg L.P. Reg CPS/ATS Letter” at 28.

Using the “expansive view”, not including any platforms or entities identified in the “narrow view”, Bloomberg identified an additional 42 CPSs or 25 distinct entities that would become subject to Regulation ATS.

Total View: The “Total View” combines the “narrow” and “expansive” views together. As was discussed in the “narrow view”, Bloomberg believes that an entity will segment its platforms and provide distinct filings to the Commission. The staff could be confronted with 90 filings from 37 distinct entities. This does not include that under the Proposal *all of the* NMS equity ATSs will have to update and refile their Form ATS-Ns. These estimates are a far cry from the CBA’s estimate of 22.

“TOTAL VIEW” - “RFQ” or “STREAM AXE” or “Makes Available”



In summary, when analyzing platforms rather than entities, and adding those brought into scope by the “makes available” language, we believe we are likely to see 90 or more platforms in scope, not the 22 analyzed in the Proposal. Costs – to both the market and the Commission – will be much higher than anticipated while benefits remain unclear.²³

²³ In our conversation, we relayed that our “total view” analysis indicated as many as 82 CPSs. Based on our conversation and subsequently rereading parts of the proposal and the comments in Appendix A, we shifted the methodology to provide the Commission with more detail which moved the estimates slightly. In the above funnel, “CPS Platforms”, we provided descriptive labels if entities produced a Form ATS-N for each platform. We had combined options and equities together, but in rereading the Commission’s description of the state of the options market, we separated them. Similarly, we had combined Government Securities Streaming, RFQ and Repo together. In rereading the section on Stream Axe functionality, given its unique behavior, how the platform operates, and that there appears to be dedicated teams in entities operating the platforms and its functionality, we separated it.

FINRA TRACE

In our prior letters Bloomberg did not address each and every compliance issue that may arise as a result of applying Reg ATS requirements to CPSs. However, we agree with a number of other commenters who noted that Rule 15c2-11, Rule 15c3-5, Rule 613, Rule 301(b)(5) of Reg ATS and FINRA Rule 6730 (TRACE reporting) will require significant Commission and/or FINRA guidance for proper implementation.²⁴ We also noted that FINRA is exploring with its membership proposals to gather important transaction information that could inform and justify - with data - potential regulation.

Reporting. Bloomberg believes that it is neither appropriate for CPSs to report to TRACE nor is it necessary for CPSs to become ATSs for FINRA to gather information concerning trading activity on communications platforms. FINRA has proposed enhancements to TRACE Reporting for U.S. Treasury Securities that would require the executing member to append an MPID representing the non-alternative trading system (ATS) platform that communicated the order from the liquidity seeker to the liquidity provider.²⁵ “CPS” identification could be expanded to all TRACE reporting. A FINRA proposal that identified a limited set of information needed for real-time trade transparency (reporting) and relegated other transaction details to end-of-day transaction reporting could be the basis of a simple solution that would provide FINRA with accurate transaction information for a Commission CBA. Many of the comments that the Commission received noted that the proposal failed to state a clear regulatory justification(s) for the Proposal, thus it was difficult to determine, measure and include the benefits in a Commission CBA.²⁶

²⁴ “Bloomberg L.P. Reg CPS/ATS Letter” at 23. Please also see Michael Decker, Senior Vice President for Public Policy, Bond Dealers of America to Ms. Vanessa Countryman, SEC, June 14, 2022, <https://www.sec.gov/comments/s7-02-22/s70222-20131336-301523.pdf> discussion on the interaction of Rules ATS and 15c2-11, “Scott Pintoff, General Counsel of MarketAxess Letter” (“MarketAxess Letter”) to Ms. Vanessa Countryman, SEC, April 18, 2022, <https://www.sec.gov/comments/s7-02-22/s70222-20123863-280036.pdf> discussions on problematic issues applying 15c3-5 to RFQ-CPSs for the similar reasons. Please also see and “Elisabeth Kirby, Head of U.S. Market Structure, Tradeweb Markets, Inc.” (“Tradeweb Letter”). <https://www.sec.gov/comments/s7-02-22/s70222.htm> discussion on problematic issues applying 15c3-5 and Regulation ATS Fair Access rules and “Application of CAT reporting rules should be carefully tailored with respect to Communication Protocol Systems that do not allow for trade execution” to RFQ-CPSs for similar reasons.

²⁵ See FINRA Regulatory Notice 20-43, “FINRA Requests Comment on Enhancements to TRACE Reporting for U.S. Treasury Securities”, December 23, 2020. <https://www.finra.org/sites/default/files/2020-12/Regulatory-Notice-20-43.pdf>. Also see “FINRA Letter” FN 11 at 4.

²⁶ For example, see the “Virtu Financial Letter” at 6-10, Letter to Chair Gensler from The Honorable Patrick McHenry, Ranking Member, House Financial Services Committee and The Honorable. Bill Huizenga, Ranking Member Subcommittee on Investor Protection, Entrepreneurship and Capital Markets, House Financial Services Committee, letter at 2, and letters to Ms. Vanessa Countryman, SEC, from “SIFMA Letter I” at 8, “SIFMA Asset Management Group Letter” at 9, “Fidelity Capital Markets Letter” at 5, and “David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation” at 4. <https://www.sec.gov/comments/s7-02-22/s70222.htm>.

Currently, FINRA requires ATSS to report transactions to TRACE. ATSS in this context execute and bind participants together into a transaction. When CPSs become ATSS, presumably they will have to report to TRACE also. Many CPSs, however, are messaging platforms and do not execute. Even when CPSs become ATSS, they will not be executing and binding participants to transactions. As a result, several commenters sought more clarity on CPSs reporting to TRACE.²⁷

Bloomberg believes that disclosed RFQ CPSs as ATSS should not report to TRACE because CPS operators are not a party to the transaction. While operators know of executed trades, which is one of the components that Bloomberg believes makes a CPS a “system”, disclosed CPSs do not execute – they are a communications /messaging platform. As we noted in our letter, “The last step in an RFQ, that the Proposal is missing in its description is - when the initiator selects their counterparty, an order is then routed to the liquidity provider. The liquidity provider then executes, binding both parties to the terms of the trade, and sends back through the system a notice of execution. The liquidity provider has the option to not execute. For numerous reasons, a CPS is clearly not carrying out ‘functions commonly performed by a stock exchange.’ Moreover, this is also a critical difference between CPSs and ATSS – there is no consideration of the operator’s credit worthiness in a CPS because the CPS does not stand in the middle – RFQ is a direct relationship between the responder and initiator.”²⁸ It is this direct relationship where a disclosed RFQ platform is not a part of and, therefore, does not know whether there were post-trade communications between the transaction parties that amended the details of the final execution. The guiding principle of almost every regulatory reporting regime is “report what you know”. CPSs should not report to TRACE “what they believed happened”.

Market Share Attribution. On our August 23 call, we discussed market share attribution. As we discussed in the “Bloomberg L.P. Concept Release Letter”, market and share attribution is extremely important information so that investors can locate the liquidity that they need. As we noted in the response to the concept release, to better understand the liquidity, market share attribution should be from the liquidity seeker’s perspective. Liquidity seekers want and need statistics to identify “where” liquidity is located. The operating principle to market share attribution should be that market share is based on the true execution activity (not give-up but the actual act of execution). Executing brokers-dealers that either “own” an order or are “suppliers” of liquidity should be credited. There are many different pathways to get to a liquidity provider. Voice, chat, and CPS RFQ messaging platforms are just some of the methods. From the liquidity seeker’s perspective, it’s irrelevant which workflow or pathway was used, rather it is critical to know which dealer is making markets. It’s critical to know which dealers are active to get the best prices.

²⁷ For example, see “Virtu Financial Letter” at 8, and “MarketAxess Letter” at 5, and “Tradeweb Letter” at 13. <https://www.sec.gov/comments/s7-02-22/s70222.htm>.

²⁸ See “Bloomberg L.P. Reg CPS/ATS Letter” at 23.

When considering market share attribution of trade messaging communication methods, such as disclosed-RFQ, Bloomberg created Table 2 in its concept release letter to clarify appropriate market share attribution²⁹. Disclosed-RFQ market share should not be credited to an ATS just because the workflow has been registered with the ATS. Similarly, disclosed-RFQ market share should not be credited to either a CPS (FINTECH) or broker-dealer operator of a communication messaging network. Trades associated with electronic methods, such as disclosed-RFQ, should be credited to the broker-dealer that “owned” the order or provided the liquidity, and was a party to the trade. Undisclosed-RFQ should be credited to the broker intermediary in the undisclosed-RFQ flow, and not the ATS.

Table 2.

Method	Operator	RFQ Destination	Market Share Credit	Comment
Disclosed RFQ	FINTECH	Broker-dealer B	Broker-dealer B	FINTECH is the technology provider and not a party to the trade; Broker-dealer B is the "owner" of the liquidity and a party to the trade.
Disclosed RFQ	Broker A's ATS	Broker-dealer B	Broker-dealer B	Broker-dealer B is the "owner" or provider of the liquidity and a party to the trade.
Un-Disclosed RFQ	Broker-dealer A	Broker-dealer B	Broker-dealer A	Although Broker-dealer B is the "owner" or provider of the liquidity, Broker-dealer A is the arranger/intermediary and a party to the trade.
Un-Disclosed RFQ	Broker A's ATS	Broker-dealer B	Broker-dealer A	The interpretation of market share is "who can I go to get liquidity?" It would be misleading to credit share to the ATS because it could be interpreted that the ATS has native liquidity when, in fact, Broker-dealer B is the "owner" or provider of the liquidity away from the ATS; To avoid any confusion, Broker-dealer A should be credited with the share because they were the arranger/intermediary and a party to the trade.

The principles in Table 2 provide a market share perspective from the liquidity seeker’s point of view. Again, liquidity seekers want and need statistics to identify “who” they should be sending their orders to - who is actually willing to provide liquidity. The identification of non-ATS

²⁹ See “Bloomberg L.P. Concept Release Letter” at 16.

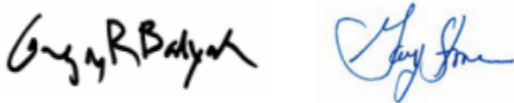
platforms would provide the Commission with data to form an understanding of the trading landscape and potential failures that may need to be addressed.

CONCLUSION. In closing, Bloomberg appreciates the opportunity to provide our comments on the Proposal and Concept Release. We believe there is great confusion and uncertainty in the market among our clients and others flowing from the lack of a clear definition of key terms, the potential breadth of the “makes available” language, and the rule’s admonition that it will be interpreted “expansively”. Those factors, along with use of an entity rather than platform level analysis, have undermined the accuracy of the Commission’s CBA. The “Bloomberg L.P. Reg CPS/ATS Letter” (at 34) devised a targeted proposal – tailored to the risk posed by a service or entity – built around clearly defined terms to address clearly defined problems. We believe this kind of approach would provide clearer boundaries, greater predictability, and a defensible means of assessing costs and benefits.

* * * * *

Thank you. We would be pleased to discuss any questions that the Commission may have with respect to this letter

Very truly yours,

The image shows two handwritten signatures in blue ink. The signature on the left is 'Gregory R. Babyak' and the signature on the right is 'Gary Stone'.

Gregory Babyak and Gary Stone

Regulatory Affairs, Bloomberg L.P.

Appendix A

ILLUSTRATIVE EXCERPTS ON BROAD MARKET CONCERN REGARDING LACK OF CLARITY ON KEY TERMS, REACH OF “MAKES AVAILABLE”, AND THE NEED FOR CLEAR REGULATORY PERIMETERS

Excerpts regarding the lack of a definition for “Communication Protocol System”

- Scott Pintoff, General Counsel, MarketAxess, (at 4) “The Commission should exclude bilateral systems from the definition of “exchange” and clearly define “communication protocol systems.”” And, (at 5) “Despite the significance given to “communication protocol” systems in the Proposal, the Commission did not provide a clear definition of the term. Given the Commission’s statement that it “would take an expansive view of what would constitute “communication protocols”, we believe it is appropriate to clearly define the term and any associated exemptions rather than rely on a non-exhaustive list of examples. MarketAxess believes that clearly defining the perimeter of communication protocol systems at the onset may help to avoid a running debate in the future.”
- Robert Toomey, Managing Director and Associate General Counsel, The Securities Industry and Financial Markets Association (“SIFMA”) in his April 18 letter, (at 2), “Most notably, the Commission is proposing to expand the definition of “exchange” in several significant respects, including to require “communication protocol systems”—a term the Commission does not define—to either register as exchanges or operate as alternative trading systems (“ATs”)", and in his June 13 letter, (at 4) “However, SIFMA and its members continue to have significant concerns with core aspects of the Proposal, in particular the far-reaching implications of the proposed amendments to Rule 3b-16 and including “communication protocol systems” (which is an undefined and amorphous term) within the definition of “exchange” and, April 18 letter, (at 9) “The Commission also has the obligation to set clear policy and not relegate the responsibility to clarify poorly defined basic foundational matters, such as the definition of an “exchange,” to staff FAQs or to examiners or enforcement staff instead of the APA-mandated use of notice and comment. This is particularly true where later interpretations may not be consistent with the Commission’s regulatory intent and goals”
- Lindsey Weber Keljo, Asset Management Group - Head and William C. Thum, Managing Director and Assistant General Counsel, The Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA AMG"), (at 1) “Most notably, the Commission has proposed to require “communication protocol systems”— a term the Commission does not define — to either register as exchanges or operate as alternative trading systems (“ATs”)", (at 2) “Expanded Definition of “Exchange”: The proposed expansion to include “communication protocol systems” is inadequately defined and tailored and presents the real risk that innovative, cost-effective, and efficient communication, management, and other systems could be subject to the regulations.”

- Jennifer W. Han, Executive Vice President, Chief Counsel & Head of Regulatory Affairs, Managed Funds Association, (at 8) “If the Commission moves forward with amendments to Rule 3b-16 that include this term, the Commission should provide clear guidance to market participants to help understand the term, for example through the provision of specific examples, defining the term “communication protocol system,” or adopting clear exemptions from the definition of “exchange.” Hand in hand with much clearer parameters should be a more carefully considered economic analysis of systems that will and will not be in scope. MFA believes rigorous economic analysis is critical for interested persons to assess the impact of the Proposal and for the Commission to make an informed decision about whether and how to proceed.”
- Michael Nicholas, Chief Executive Officer, Bond Dealers of America, (at 4) “The Commission has introduced the term “communication protocol system” as a type of entity to be included within the Rule 3b-16 definition of “exchange.” Although the term is used 634 times in the proposing release, not once is it specifically defined. [FN] “Footnote 5 of the Proposing Release says that “[a] “Communication Protocol System” would include a system that offers protocols and the use of non-firm trading interest to bring together buyers and sellers of securities.” We respectfully submit that a definition that includes two of the three words of the term in the definition, is no definition at all.””
- Thomas Tesauro, President, Fidelity Investments, (at 5) “The definition of a “communication protocol systems” (“CPS”) is a critical component of the proposed revised definition of an “exchange”, but the SEC has not defined this key term in the Proposal, Rule 3b-16 or elsewhere in the Exchange Act. Instead, in the Proposing Release, the SEC provides several examples of what it considers to be, and what it does not consider to be, a CPS” and “While the marketplace is confused over what may, or may not be, a CPS, the SEC itself appears to have a clear understanding of what systems it intends to capture within the term. For example, in the cost benefit analysis of the Proposed Rule, the SEC estimates that there are twenty-two (22) current systems in the marketplace that would be classified as a CPS.” (at 8) “[T]he SEC believes these systems would be classified as CPS because the SEC has not shared what specific attributes these systems possess that justifies their classification as a CPS. Information on why these 22 identified systems would be considered a CPS by the SEC would be helpful to the marketplace’s understanding of the term. It is not clear why the SEC believes these systems would be classified as CPS because the SEC has not shared what specific attributes these systems possess that justifies their classification as a CPS. Information on why these 22 identified systems would be considered a CPS by the SEC would be helpful to the marketplace’s understanding of the term.” (at 6) “Market participants need a clear explanation of what is considered a CPS to understand what systems might meet the definition of “exchange” and comply with applicable rules under the short compliance implementation timeline the SEC has proposed. Because the new definition of “exchange” would apply to all asset classes, this is not simply an analysis for systems that interact with equity and fixed income securities, but systems for any type of security.”

- Charles V. Callan, Broadridge Financial Solutions, (at 2) “In the adopting release for Regulation ATS, the Commission provided twenty examples of systems that would, or would not, be included within Rule 3b-16. In the adopting release, the Commission provided an analysis of the language of Rule 3b-16, so that market participants and technology providers could better determine what aspects of a system or technology solution rendered it within (or outside of) the definition of an exchange under Rule 3b-16. Market participants and technology providers were able to apply that analysis to determine whether (and why) a system or technology solution fell within Rule 3b-16 -- or to take comfort in knowing that a technology system’s functionality did not make it an exchange subject to Rule 3b-16.”
- Douglas A. Cifu, Chief Executive Officer, Virtu Financial, (at 11) “The Proposal Fails to Define “Communication Protocol System” ... Moreover, the Proposal is woefully deficient in that the key term – “CPS” – is not even defined. The Proposal offers a few examples but fails to provide any rationale for the examples. We worry that this ambiguity could lead to the SEC effectively defining CPS through the enforcement process. We are also concerned that the Proposal underestimates the number of systems that could be deemed to be CPSs, and therefore is not supported by the Proposal’s already tenuous economic analysis.”
- Miller Whitehouse-Levine, Policy Director, The DeFi Education Fund1 ("DEF"), (at 3) “Even if we could understand the new "exchange" definition's limits, regulating CPSs under exchange/ATS rules is impracticable and will not achieve the Commission's stated objectives” and “Moreover, the Proposal's definition of an exchange is so expansive that, without further guidance from the Commission, the Proposal could be interpreted to regulate certain DeFi protocols.”
- Paul Grewal, Chief Legal Officer, Coinbase Global, (at 6) “Similarly, in analyzing the Proposed Rule under the Paperwork Reduction Act, the Commission estimated that a total of 22 Communication Protocol Systems would become subject to the Proposed Rule. Clearly, the Commission did not consider the broad scope of the Proposed Rule’s language and its potential to capture many more systems. If the Commission expects to apply the Proposed Rule more broadly in the future, including potentially to DEXes, it must issue a new proposed rule that clearly specifies the breadth of any such expanded application, and in so doing must comply with the Paperwork Reduction Act and contain revised estimates to consider the impact of such expansion.”
- Doug Davison, Joshua Ashley Klayman, Linklaters LLP, (at 2) “Unfortunately, as proposed, the amended definition of “exchange,” including the introduction of the concept of “communications protocol systems,” would, in many instances, make it extremely difficult for counsel to advise clients when their activities – either taken alone or viewed together with other independently operated or controlled market participants, technologies and factors1 – would or would not constitute functioning as an exchange, or even as a communications protocol system. This is particularly true of clients that operate within the digital asset space.”

- Delphi Digital, (at 11) “‘Communication Protocol’ is Broad and Undefined”
- Kristin Smith, Executive Director, Jake Chervinsky, Head of Policy Blockchain Association, (at 1) “...we are concerned by the vagueness of the Proposal with respect to decentralized finance in light of the SEC’s recent efforts to regulate the industry.” (at 9) “the Proposal does not include sufficient discussion regarding the breadth of the expansion resulting from the replacement of the term “uses” with “makes available” in Rule 3b-16(a)(2). The Proposal includes a brief, vague and rather cryptic discussion regarding the SEC’s intention to capture any “party other than the organization, association or group of persons [that] performs a function of the exchange,” without describing what types of market participants would actually be captured as a result of the expansion. We are concerned that the SEC’s promulgation of this vague and expansive interpretation will only serve the goal of regulation through enforcement, rather than engaging in the meaningful and constructive stakeholder participation required by the Administrative Procedure Act.”
- Lee Saba, Co-chair, Global Steering Committee, FIX Trading Community, Director, FIX Protocol Limited, (at 1) “However, we do wish to raise a general point regarding the term “Communications Protocol” and seek assurances that this term, as we believe to be the case, is not intended to cover any of the standards developed and maintained by the FIX Trading Community. Our concern is that the choice of wording is so close to terms commonly used to describe FIX’s standards (e.g., ‘messaging protocol’ being a common term used for the FIX Protocol) that there is a risk that the FIX Protocol itself (and other FIX standards) may, perhaps accidentally, be drawn into or conflated with the definition of “Communication Protocol”. As such we are requesting assurances from yourselves that FIX standards such as the FIX Protocol are not examples of “Communications Protocols” as defined in this Proposal.”
- The Honorable Patrick McHenry, Ranking Member, House Financial Services Committee and The Honorable Bill Huizenga, Ranking Member Subcommittee on Investor Protection, Entrepreneurship and Capital Markets, House Financial Services Committee, (at 2), “The proposed rule would expand this definition further to include “Communications Protocol Systems” as exchanges, a step that exceeds the SEC’s statutory authority. While the SEC does not specifically define a “Communication Protocol System” in the proposed amendments to Rule 3b-16, it is our understanding the SEC intends to take an expansive view. This will cause significant uncertainty for market participants that currently do not meet the requirements of an “exchange.” This potential outcome is concerning and likely to stifle innovation.”
- Kate McAllister, Chair of the Board, and James Toes, President and CEO, STA, (at 3), “STA believes that the Proposal fails to clearly define certain attributes used in determining what is a Communication Protocol System in particular: non-firm trading interest and established protocols which prompt and guide” and “It is our view that the Proposal fails to clearly define what a Communication Protocol System is and furthermore, does not clarify what

additional trading systems or protocols the SEC intends to regulate under the expanded definition of ‘Exchange’.”

Excerpts regarding the broadness of “Makes Available” and the need for clear regulatory perimeters

- Elisabeth Kirby, Head of U.S. Market Structure, Tradeweb, (at 5) “The Commission should also give due consideration to how its revision of the definition to capture an organization that “makes available” methods, including communication protocols, for the interaction of buyers and sellers might affect various forms of software tools widely used in the securities industry.”
- Robert Toomey, Managing Director and Associate General Counsel, The Securities Industry and Financial Markets Association (“SIFMA”) in his June 13 letter, (at 9) “For example, front-end “GUI” software solutions, particularly those carrying pricing/market data and that interoperate with an ATS, run the risk of being characterized as an “exchange” – a circumstance which on its own would greatly increase the number of communication protocol systems well beyond the Commission’s estimate of 22 for all of the securities markets and particularly past the estimate of four new venues in the market for NMS stocks” and in the April 18 letter (at 2) “Notably, the undefined concept of “communication protocol systems” could capture a broad range of activity, beyond that which would typically be considered that of, or that actually functions as, an exchange or market place” (at 9) “Although estimates provided in the Commission’s economic analysis suggest an initial intent to capture relatively few systems, the lack of a definition for “communication protocol systems” and the examples used throughout the Proposal belie those estimates. This is a critical issue, particularly given the Commission’s statutory obligation to scope the effect of a proposed regulation and its associated costs” (at 6) “Some SIFMA members believe that, based on a review of existing EMSs, OMSs, and trade messaging and electronic trading platforms, the Commission could have substantially underestimated the number of potentially affected operators of “communication protocol systems”; however, the ambiguity in the undefined term “communication protocol system” makes estimating the full scope of the Proposals’ reach challenging. With a revised, more narrowly tailored proposal—and sufficient time for analysis—SIFMA and its members would be happy to work with the Commission and its staff to arrive at more accurate estimates of the impact and costs associated with increasing the scope of systems subject to Regulation ATS.”
- Lindsey Weber Keljo, Asset Management Group - Head and William C. Thum, Managing Director and Assistant General Counsel, The Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA AMG") (at 6) “SIFMA AMG is very concerned that the addition of the undefined term “communication protocol systems” will inevitably lead to confusion for the Commission and Staff as well as for all market

participants as to what is in and out of scope. The vague expansiveness of the listed examples is particularly worrisome given that Rule 3b-16(b) already provides that a system is not considered an “exchange” solely because it routes orders for execution to exchanges or to broker-dealers or because it permits persons to enter orders for execution against bids and offers of a single broker-dealer.”

- Sarah A. Bessin, Associate General Counsel, Investment Company Institute, (at 5) “While we believe that the Commission did not intend for the amended definition to apply to an OEMS, it has not clearly articulated whether it believes that such a system would meet these criteria, including whether it would constitute a “communication protocol system”” and (at 11) “The Commission neither clearly defines CPS nor provides parameters for what is or is not a communication “protocol,” apart from stating that a CPS would include a system that offers both “[structured] protocols and the use of non-firm trading interest to bring together buyers and sellers of securities,” Proposal at 15497 n.5, and providing a handful of non-dispositive examples. Id. at 15507. See also id. at 15500 (stating that “protocols” allow market participants to communicate with each other and negotiate a price or size of a trade). In fact, the Commission invites the broadest possible interpretation of its meaning and reinforces this approach with its own statement that it would take an “expansive view of what would constitute ‘communication protocols.’” Id. at 15507. As a result, we are concerned that many traditional activities not commonly understood by market participants to be activities performed by an exchange would need to be re-evaluated in light of amended Rule 3b-16. While we explain below why an OEMS itself does not provide “communication protocols,” see *infra* Section II.C, we request that the Commission provide greater clarity regarding the scope of this term” and (at 6) “Proposal is unclear regarding the Commission’s views. When discussing a negotiation system, for example, the Commission states that “[a] system may ‘scrape’ or obtain the symbol of trading interest that a participant is seeking from the participant’s order management or execution management system and use that to alert other participants on its system about potential contraside interest in seeking to initiate a negotiation.” (at 6) “Further, the Commission suggests that it is maintaining its long-held interpretation that certain types of order management and execution systems are not included in definition of an exchange. The Commission’s 1998 Regulation ATS rule release specifically excluded from the interpretation of “exchange” several types of activities that could be considered traditional brokerage activities, including internal broker-dealer order management and execution systems. Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 34-40760 (Dec. 8, 1998), 63 Fed. Reg. 70844, 70852 (Dec. 22, 1998) (“Regulation ATS Adopting Release”). In the Proposal, the Commission suggests that it is not changing the scope of this existing interpretation. See Proposal at 15502 n.72.” (at 6) “The Commission’s statements regarding a negotiation system interacting with an OEMS suggests that the Commission views an OEMS as separate and distinct from a CPS and not engaged in activity subject to proposed Rule 3b-16. Other statements in the Proposal, however, appear to contradict this. In particular, the Commission states that

“market participants can use [CPSs] to post and see non-firm trading interest on several trading venues simultaneously, thereby increasing their ability to find a counterparty and reduce search costs.” Bessin argues for the Commission to exclude these systems (at 11-12) “Applying Amended Rule 3b-16 to an OEMS Would Impose Significant Costs with No Benefit ; Applying Amended Rule 3b-16 to an OEMS Would Not Benefit Investors; Applying Amended Rule 3b-16 to an OEMS Could Inhibit Further Innovation ; Applying Amended Rule 3b-16 to an OEMS Would Not Promote Competition Among Trading Venues ; Applying Amended Rule 3b-16 to an OEMS Would Result in Inconsistent and Duplicative Regulation”... (at 13) “The Commission Should Confirm That an ETF Primary Market System is Not a CPS or Exchange Based on Amended Rule 3b-16.”

- Jennifer W. Han, Executive Vice President, Chief Counsel & Head of Regulatory Affairs, Managed Funds Association, (at 3) “In our view, however, the proposed changes to the definition of “exchange” in Rule 3b16 under the Exchange Act are not sufficiently circumscribed or defined and therefore potentially capture too many systems under the definition of “exchange ...We are particularly concerned that many buy-side systems that bear no resemblance to “exchanges” or ATSS will be captured by the proposed provisions. Consequently, we cannot support the proposed amendments to Rule 3b-16 as described in the Proposal, as we believe they will impair the ability of our members and other market participants to access the securities markets.”” And (at 7) “MFA believes that the Commission’s proposed changes to Rule 3b-16 represent a substantial step beyond the substance of the 2020 Proposal and could be taken to represent a significant reconceptualization of key features of the broader securities market’s structures to encompass entities and activities that have never been considered previously to be an “exchange” or a system appropriate for regulation under the Regulation ATS regime” (at 8) “This is particularly the case given the Commission’s statement that it would broadly interpret the phrase, and although the Proposal includes a number of examples of the types of systems that the Commission would consider to be included within the term, the Proposal is significantly less clear on the systems that the Commission would consider not to be included” (at 8-9) In particular, we believe the following systems should be specifically excluded from the definition of “exchange”... Order/Execution Management Systems. MFA does not believe that order/execution management systems used by a single entity to buy and sell securities are intended to be captured by the Proposal.....Order routing systems. Systems that are merely routing orders should not be considered exchanges.””
- Scott Eisenberg, Head of Legal, DirectBooks LLC, DirectBooks, (at 2) “The Proposal should not apply to a primary market transaction communication system such as that operated by DirectBooks.”
- William J Vulpis, former Head of BondPoint, (at 2) “As proposed, a Communication Protocol System can still meet the criteria of Exchange Act Rule 3b-16 even if it has no role in matching counterparties nor displays trading interest. In addition, neither the current rule

nor the proposed amendments require that, for a system to be an exchange, an execution occur on the system; rather, that the buyers and sellers agree to the terms of the trade on the system is sufficient” and “Clarity is needed or exemptions provided for technology messaging services, such as a technology firm providing the management of “connectivity” where by FIX messaging protocols of various execution platforms or direct bilateral counterparties are used to transmit orders, intentions, requests, executions and done trade messaging. Additional clarity is needed for retail/wealth management “aggregator” technology that provide a firm’s clients and Financial Advisors the ability to interact with offerings and orders that are originating from ATSS and/or received directly from bilateral counterparties. This aggregator technology routes orders and intentions to both ATSS and bilateral counterparties for execution.”

- Miller Whitehouse-Levine, Policy Director, The DeFi Education Fund ("DEF"), (at 1) “The Proposed "Exchange" Definition Is Overbroad”, (at 4) “We find even more troubling the proposal to regulate as exchanges those who “make available” a “communication protocol” that could be used in connection with trading activities. Would this aspect of the Proposal require original developers of a software that could be used for trading to register as an exchange, even if they have no ongoing involvement with or control over the transactions using the software? What about a vendor who sells the software? A contractor who maintains the software? Requiring any of these parties to register with the Commission and take responsibility for recording, reporting, and policing transactions in which they have no actual role would be misguided and unworkable”
- Michael Nicholas, Chief Executive Officer, Bond Dealers of America, (at 5) “The expansion of the definition of exchange to include “communication protocol systems” is overly inclusive and with no demonstrable benefit to the market or market participants”, (at 5) “BDA opposes expanding the definition of exchange to entities that play a passive role, connectivity protocols, communications conduits, and single-dealer systems in the fixed income market. Any system that either provides portals for connectivity or hosts passive platforms that merely allow buyers and sellers to meet, should not satisfy the new definition.... Examples of systems that should not be included in the definition would be...”
- Charles V. Callan, Broadridge Financial Solutions, (at 1) “However, as drafted, the Proposal could have the unintended consequence of encompassing many technology systems and solutions that do not function as “exchanges,” including systems and solutions that simply transmit messages.”
- Delphi Digital, (at 1) “The Commission’s Proposed Amendments do not make one single reference to cryptocurrencies, decentralized finance (“DeFi”), financial technology (“FinTech”), blockchain, or the like. Nevertheless, because the proposal can be read to require open-source software developers and others involved in “communication protocols” to register as broker-dealers or exchange operators, it has significant potential implications that are of great concern among the communities that Delphi serves. Of special concern is the

risk that the Proposed Amendments, if adopted in their current form, may constitute a de facto prohibition on many open-source software systems operated on global, peer-to-peer, decentralized networks such as Bitcoin and Ethereum.”

- Joanna Mallers, Secretary, FIA Principal Traders Group (“FIA PTG”) at 2, “We are unsure of the impact of these changes on equity securities markets or digital asset securities markets, and the economic analysis provided in the Proposal provides little clarity. We encourage the Commission to consider providing additional clarity regarding the intended scope of the new “exchange” definition across asset classes, and to further re-affirm the clear intent to only capture truly multilateral trading venues.”
- Kristin Smith, Executive Director, Jake Chervinsky, Head of Policy Blockchain Association, (at 4) “Making Available Established Non-Discretionary Methods - By contrast, the Proposal states that “[t]he term ‘makes available’ is also intended to make clear that, in the event that a party other than the organization, association, or group of persons performs a function on the exchange, the function performed by that party would still be captured for purposes of determining the scope of the exchange under Exchange Act Rule 3b-16.” In other words, the Proposal aims to expand the group of persons subject to the Exchange Act to include those who expressly do not fall under the statutory language of Section 3(a)(1). In the case of Decentralized Protocols, this could be interpreted to include the prospective buyers and sellers themselves, as well as the creators and maintainers of code, smart contracts, and online websites that merely provide access to Decentralized Protocols, all of whom are beyond the statutory definition Congress specified in the Exchange Act”, (at 5) “The Proposal attempts to sidestep the active language animating the rule by noting that Regulation ATS “attribute[d] the activities of a trading facility to a system if that facility is offered by the system directly or indirectly (such as where a system arranges for a third party or parties to offer the trading facility)” And, “But that analogy does not extend to prospective buyers and sellers communicating on Decentralized Protocols, or to persons that create or provide access to Decentralized Protocols, as none “constitute[], maintain[], or provide[]” a market place or facilities for securities transactions”, (at 7) “The SEC focuses much of the Proposal’s cost-benefit analysis on government securities and NMS stock alternative trading systems, identifying only 14 entities as “Other Communication Protocol Systems” that would be subject to regulation. While we do not believe Decentralized Protocols should be subject to the Proposal, the Proposal’s vagueness with respect to such Decentralized Protocols suggests that the SEC may intend to target more than just the 14 entities referenced therein. But the Proposal is silent about the substantial number of Decentralized Protocols that could be subject to SEC regulation through the Proposal’s expansion of Rule 3b-16”, (at 9) “the Proposal does not include sufficient discussion regarding the breadth of the expansion resulting from the replacement of the term “uses” with “makes available” in Rule 3b-16(a)(2). The Proposal includes a brief, vague and rather cryptic discussion regarding the SEC’s intention to capture any “party other than the organization, association or group of

persons [that] performs a function of the exchange,” without describing what types of market participants would actually be captured as a result of the expansion.”