



June 13, 2023

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

Re: Supplemental Information and Reopening of Comment Period for Amendments to Exchange Act Rule 3b-16 Regarding the Definition of “Exchange” (Release No. 34-97309; File No. S7-02-22)

Dear Ms. Countryman:

The American Securities Association (ASA)¹ submits these comments in response to the reopening of public comments and supplemental information request issued by the Securities and Exchange Commission (SEC) regarding its January 2022 proposal to amend the definition of “exchange” under Exchange Act Rule 3b-16 (Request).

The ASA previously submitted comments on the January 2022 proposal outlining our concerns regarding 1) The shortened period the SEC allowed the public to comment on the original proposal; and 2) The proposal’s overly broad definition of a Communication Protocol System, which ignored the substantial regulatory regime that already applies to broker-dealers and trading desks.

Regrettably, the Request fails to acknowledge the concerns that ASA and many other commenters highlighted with respect to the January 2022 proposal. Instead, the request indicates that the SEC plans to maintain the core aspects of the original proposal and move forward on the initiative based upon a flawed premise and economic analysis. As Commissioner Peirce stated when the Request was issued:

“Rather than responding to commenters’ serious concerns about the breadth, ambiguity, unworkability, and potential disruption of the proposal, the reopener, with few exceptions, doubles down on the defects identified by commenters.”²

¹ The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA’s mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership of almost one hundred members that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

² Rendering Innovation Kaput: Statement on Amending the Definition of Exchange. Statement of Commissioner Hester Peirce (April 14, 2023)





american securities association

America's Voice for Main Street's Investors

ASA echoes these sentiments and urges the SEC to rethink fundamental provisions of the January 2022 proposal, in particular those dealing with the definition of Communication Protocol System.

Attached to this letter is ASA's April 2022 comment letter which we resubmit for consideration. We look forward to continuing the conversation and serving as a resource to SEC commissioners and staff on this critical issue.

Sincerely,

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April 18, 2022

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

Re: 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 (Release No. 34-94062; File No. S7-02-22)

Dear Ms. Countryman:

The American Securities Association (ASA)¹ submits these comments in response to the Securities and Exchange Commission’s (SEC) recent proposal regarding the definition of an “exchange” and amendments to Regulation ATS (Reg ATS) and Regulation SCI (Reg SCI) (Proposal). While the ASA appreciates the SEC’s efforts to review regulations for a market that continues to rapidly evolve, we believe the SEC must carefully consider the wide-ranging consequences of the Proposal on the \$22 trillion U.S. Treasury market along with markets for other securities that would be impacted.

I. The SEC has not provided sufficient time for the public to submit feedback on the Proposal and has failed to consider the cumulative impact of outstanding rule proposals.

The Proposal is just one of the many complex and consequential rulemakings the SEC has proposed in recent months. To date this year the SEC has proposed sixteen new rulemakings, in addition to several others that were proposed¹ at the end of 2021. Most of these proposals run to hundreds of pages in length, and often include hundreds of questions that commenters must consider when assessing the impact of potential new rules.

¹ The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA’s mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership of almost one hundred members that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.





The Proposal itself is 591 pages and includes over 200 specific questions, some of which hint at further mandates that are not fully explored or analyzed in the release. Yet the SEC provided the public only thirty (30) days to comment on the Proposal. This is simply an inadequate amount of time for the public to properly consider how the contents of the Proposal will affect the U.S. securities markets – particularly when many entities are simultaneously considering and developing comments on over a dozen other rulemakings from the SEC.

In her dissenting statement on the Proposal, Commissioner Peirce outlined her concerns over the short comment period:

I cannot comprehend why we insist on blindfolding ourselves, rather than embracing the notice-and-comment process that has been so valuable in unearthing issues for our consideration. Our self-imposed unrealistic time constraint will prevent us from thinking seriously about the possible effects—intended and otherwise—of our rules by refusing to give the public sufficient time to provide us with informed comment. We face no emergency in these markets that compels us to limit comments to 30 days; indeed, the Commission’s precipitous rush to plow through the comment period—almost as if it were a mere formality in our process—presents a greater immediate risk to the market than any of the issues that have led to this recommendation.²

The ASA echoes these sentiments and reiterates our call for the SEC to immediately extend the comment period for every outstanding rule proposal by a minimum of ninety (90) days. Doing so would allow the SEC to properly consider specific comments on each proposal and to assess the cumulative effect of its current regulatory agenda.³

II. The SEC should not use an overly-broad definition of Communication Protocol System.

The Proposal would include Communication Protocol Systems within the definition of an exchange, however such systems may decide between registering as a national securities exchange or registering as a broker dealer and complying with Reg ATS. As stated in the Proposal, the SEC believes that “many Communication Protocol Systems would likely choose to be regulated as an ATS because of the lighter regulatory requirements imposed on them, as compared to the regulatory requirements of registered exchanges, which are self-regulatory organizations (SROs).”⁴

The Proposal does not include a *clear* definition or set of criteria to determine what constitutes a Communication Protocol System that would have to either register as an exchange or a separate ATS.

² <https://www.sec.gov/news/statement/peirce-ats-20220126>

³ <https://www.americansecurities.org/post/asa-urges-sec-to-extend-comment-period-for-90-days>

⁴ Proposal at 44





The SEC must consider that a trading desk which may constitute a “Communication Protocol System” are not unregulated market participants and are not currently exempt from the securities laws. Typically, they are already subject to broker-dealer capital, oversight, and other requirements. It is unclear what regulatory benefits may derive from requiring a trading desk to become an exchange or a separately regulated ATS.

We therefore urge the SEC to establish a clearer set of criteria to define a Communication Protocol System and to not force registration requirements on trading desks of regulated broker-dealers who hold sufficient capital when additional regulatory requirements are not warranted.

Conclusion.

While we appreciate the opportunity to comment, as noted above we believe the SEC’s regulatory process could be substantially improved by allowing the public additional time to comment on outstanding rule proposals. We look forward to our ongoing engagement with SEC commissioners and staff on this and a host of other issues.

Sincerely,

Christopher A. Iacovella

Christopher A. Iacovella
Chief Executive Officer
American Securities Association

