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July 9, 2024

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

Re: File Number S7-02-22

Dear Ms. Countryman:

We write on behalf of our client Uniswap Labs, a developer of decentralized finance ("DeFi") software, in light of new Supreme Court authority, to supplement our initial June 13, 2023 comment letter (attached as Exhibit A) in response to the U.S. Securities and Exchange Commission's Supplemental Information and Reopening of Comment Period for Amendments Regarding the Definition of Exchange.

The Supreme Court's recent decision in *Loper Bright* confirms that the Commission should refrain from adopting the proposed amendments. *Loper Bright* makes it all but certain that the interpretation of the Exchange Act adopted by the Commission to justify the proposed amendments will be rejected by the courts. There is no reason to spend the Commission's limited resources on that issue, or to force the industry to do the same, now that—for better or

worse—the Commission will not be able to claim the benefit of *Chevron* deference to defend its aggressive and atextual interpretation of its statutory authority.

As our initial comment letter explained (before *Loper Bright* was decided), the Commission has proposed staggeringly broad and unprecedented readings of the Securities Exchange Act of 1934 ("Exchange Act") that were already likely to draw, and unlikely to survive, a judicial challenge. The proposed amendments seek to expand the Commission's jurisdiction over DeFi protocols by interpreting the statutory term "exchange" in a manner that cannot be squared with the text of Section 3(a)(1) of the Exchange Act. 15 U.S.C. § 78c(a)(1). The Exchange Act defines an exchange as "a market place or facilities *for* bringing together purchasers and sellers of securities." *Id.* (emphasis added). That text has *never* been read to include communication services or unaffiliated persons with no shared endeavor. Yet the Commission proposes to sweep that and more into its proposed amendments without specific statutory authority to do so—even though those amendments threaten great harm to decentralized technology innovation that has already facilitated trillions of dollars in transactions and on which many businesses and individuals rely.

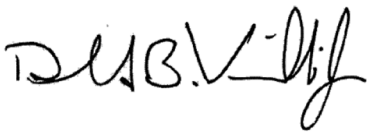
The disconnect between the statutory language and the proposed amendments is of heightened importance following the Supreme Court's *Loper Bright* decision last month holding that federal agencies can no longer rely on *Chevron* deference to justify agency rules. *Loper Bright Enterprises, et al. v. Raimondo*, --- S. Ct. ----, Case No. 22-451, 2024 WL 3208360, at *16 (June 28, 2024). Whatever may have been true before *Loper Bright*, and whatever one may think of the *Loper Bright* decision itself, there is now no realistic possibility that a court could uphold the proposed amendments if challenged. The Commission's proposed amendments must be consistent with the "best reading" of the Exchange Act as *Loper Bright* requires, rather than reflecting a simply "permissible" interpretation under now-defunct *Chevron* deference. And the Commission would be hard-pressed to even attempt a "best reading" argument here, given that it has interpreted all of these statutory terms differently in the past, in ways that reflect dictionary and customary usage of the terms much more accurately and that cannot be reconciled with the new interpretation required for the proposed amendments. Thus, if the Commission moves forward with its proposed amendments, a reviewing court "exercis[ing] independent judgment in determining the meaning of [the Exchange Act's] provisions" is certain to conclude that the Commission's interpretation of the Exchange Act stretches the statutory text too far. *Loper Bright*, 2024 WL 3208360, at *13.

The breadth of the proposed amendments would also require the Commission to continue down a path of regulation-by-enforcement, as the amendments themselves provide no discernible limits for the public, and the courts therefore would be required to identify and impose those limits in individual cases. As one court recently observed, the Commission's "decision to oversee this billion dollar industry through litigation—case by case, coin by coin, court after court—is probably not an efficient way to proceed, and it risks inconsistent results that may leave the relevant parties and their potential customers without clear guidance." *SEC v. Binance Holdings*

Ltd., et al., Case No. 23-CV-1599, ECF No. 248, at 21 (D.D.C. June 28, 2024). And still another court rejected at the pleadings stage the Commission's attempt to apply the securities law to certain decentralized crypto services. *See SEC* v. *Coinbase, Inc*., No. 23 CIV. 4738 (KPF), 2024 WL 1304037, at *1 (S.D.N.Y. Mar. 27, 2024). The Commission should heed these warnings from Article III judges—and even more so after *Loper Bright*.

For all of these reasons, the Commission should not adopt the proposed amendments. The Commission drafted the proposed amendments against a legal backdrop that no longer exists and has been replaced by something dramatically less forgiving of agency efforts to stretch the meaning of the statutes they enforce. The public's comments were made against that now-discarded backdrop as well. At a minimum, the Commission should reopen the comment period for its proposal to solicit input on the impact of *Loper Bright*, which the Commission and the public have had no opportunity to address.

Very truly yours,



Donald B. Verrilli, Jr.

DBV