

April 12, 2022

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

Re: 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 (Release No. 34-94062)

The Security Traders Association¹ (“STA”) appreciates the opportunity to provide comments in response to the aforementioned proposal (the “Proposal”)² published by the U.S. Securities and Exchange Commission (“SEC” or “Commission”). STA is an organization comprised of individuals who are involved in the trading of financial securities in the U.S and Canada. Our members are employed at retail brokerage firms, agency only broker dealers, asset owners and managers, liquidity providers and exchanges.

The Commission is proposing to amend Rule 3b-16 under Securities Exchange Act of 1934 (“Exchange Act”), which defines certain terms used in the statutory definition of “Exchange” under Section 3(a)(1) of the Exchange Act to include systems that offer the use of non-firm trading interest and communication protocols to bring together buyers and sellers of securities. In addition, the Commission is re-proposing amendments to its regulations under the Exchange Act that were initially proposed in September 2020 for an ATS to take into consideration systems that may fall within the definition of exchange because of the proposed amendments and operate as an ATS.

Recommendation

STA has the following concerns regarding the Proposal: (1) The unusual short comment period for a significant rulemaking; (2) introduction of a new concept, Communication Protocol Systems and the proposed expansive impact of the term; and (3) the market confusion of including multiple, new proposed changes into a single rulemaking release. For these reasons, we urge the Commission to rescind the Proposal, and issue three distinct proposals on (1) the definition of “Exchange”; (2) Government Securities ATS; and (3) Form ATS-N updates that are informed by comments received from interested parties.

1. Unusually Short Comment Period for Significant Rulemakings

¹ STA is a trade organization founded in 1934 for individual professionals in the securities industry. STA is comprised of 24 affiliate organizations in North America with individual members who are engaged in the buying, selling and trading of securities. STA is committed to promoting goodwill and fostering high standards of integrity in accord with the Association’s founding principle, Dictum Meum Pactum – “My Word is My Bond.” For more information, visit <https://securitytraders.org/>.

² See 87 FR 15496 (March 18, 2022).

Prior to providing feedback on the Proposal, STA wishes to offer comments on the SEC's recent rulemaking process. In particular, we express our great concern regarding the recent Commission practice of 30-day comment periods for significant rulemaking proposals. We believe providing only 30-days for feedback from the date of publication in the *Federal Register* is extremely insufficient and will not ensure that the public can provide a substantive analysis of the over 600 pages of rulemaking and over two hundred questions, many of which included multiple parts. Notably, a mere 30-day comment period for rulemakings with significant impact on the marketplace and investors goes against the grain of the Commission's actions historically as well as guidelines for rulemaking set forth under the Administrative Procedures Act³. STA recently joined a number of industry associations in a letter to the Commission⁴ to emphasize the importance of appropriate length of comment periods. We continue to encourage the Commission to provide 60-to-120-day comment periods for significant rulemakings to ensure the public can provide the agency with substantive, well-researched feedback. Furthermore, the concepts released within the 2020 Reg ATS rulemaking proposal⁵ discussed by the Commission in the Proposal provided a comment period of 60 days from publication in the *Federal Register*. We recognize the SEC's appreciation of a significant rulemaking in that instance and urge the Commission to extend a similar time frame for public comment on this rulemaking until at least 60 days from publication in the *Federal Register*.

2. New Concept of Communication Protocol Systems

The introduction of the newly formed and undefined term "Communication Protocol Systems" in the Proposal has created great confusion across industry and stakeholders are still processing if and how it will impact their particular business model and their ability to comply with any related implementation. Notably, STA is concerned that the Proposal greatly expands on the SEC's September 2020 proposal to extend Reg ATS and Reg SCI to alternative trading systems (ATSs) for government securities ("2020 Proposal").⁶ We believe the SEC's re-proposal goes far beyond the scope of what was originally intended in the 2020 Proposal by including Communication Protocol Systems that use non-firm trading interest to bring together buyers and sellers of securities in the definition of what is considered an "Exchange".

³ <https://www.archives.gov/federal-register/laws/administrative-procedure/553.html>.

⁴ See Letter by Alternative Credit Council (ACC); Alternative Investment Management Association (AIMA); American Bankers Association (ABA); American Council of Life Insurers (ACLI); American Investment Council (AIC); Banking Policy Institute (BPI); Bond Dealers of America (BDA); FIA Principal Traders Group (FIA PTG); Financial Services Forum (FSF); Institute of International Bankers (IIB); Institute for Portfolio Alternatives (IPA); Investment Adviser Association (IAA); Investment Company Institute (ICI); Loan Syndications and Trading Association (LSTA); Managed Funds Association (MFA); National Association of Corporate Treasurers (NACT); National Association of Investment Companies (NAIC); National Venture Capital Association (NVCA); Real Estate Roundtable (RER); Risk Management Association (RMA); Securities Industry and Financial Markets Association (SIFMA); Securities Industry and Financial Markets Association Asset Management Group (SIFMA AMG); Security Traders Association (STA); Small Business Investor Alliance (SBIA); and U.S. Chamber of Commerce (the Chamber) Center for Capital Markets (CCMC) (collectively, the Associations), "Importance of Appropriate Length of Comment Period" (April 5, 2022).

⁵ See Release 34-90019 (September 28, 2020) 85 FR 87106 (December 31, 2020).

⁶ See Release 34-90019 (September 28, 2020) 85 FR 87106 (December 31, 2020).

In describing Communication Protocol Systems, the Proposal states that “advances in technology have facilitated innovations and more efficient or diverse methods to bring together buyers and sellers of securities. In the Commission’s experience, Communication Protocol Systems, use various technologies and connectivity, generally 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 without relying solely on the use of orders.”

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.

The text of the Proposal then offers a non-exhaustive list of what may be a Communication Protocol System, including:

Request for Quote Systems, “RFQ’s” – A system designed to allow market participants to obtain quotes for a particular security by sending messages to one or more participant on the system.

Stream Axes Systems – A system that electronically displays continuous firm or non-firm trading interest, or “stream axes,” in a security or type of security to participants on the system.

Conditional Order Systems – A system that offers the use of trading interest that may not be executable until after a user takes subsequent action.

Negotiation Systems – A system that focus on providing a forum for buyers and sellers to see displayed non-firm trading interest, access liquidity, find a counterparty, and negotiate a trade through the use of their communication technology. Such as a system that 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 contra-side interest in seeking to initiate a negotiation.

The SEC also provides in the Proposal a list of activity it would not consider included in definition of “Exchange”, such as systems that perform only traditional broker-dealer activities, including systems that route orders to a national securities exchange, a market operated by a national securities association, a broker-dealer for execution, or systems that allow persons to enter orders for execution against the bids and offers of a single dealer if certain additional conditions are met.

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”. We believe the uncertainty around the

application of the Communication Protocol Systems will stifle innovation by creating unreasonable barriers to entry due to lack of regulatory clarity, negatively impact investor protection, as well as limit investor choice due to the inevitable confusion in the implementation of the Proposal. We believe any negative impact will be greater in systems that deal in less liquid securities where, as the Proposal states, Communication Protocol Systems are “particularly useful to market participants”⁷. Furthermore, without the adoption of a clear definition of Communication Protocol System the term would be subject to potentially broad and evolving interpretation by the SEC staff.

3. Expansive Impact of the Communication Protocol System Proposal

STA has consistently recommended that rules and regulations be changed incrementally to better identify and address unintended consequences. It is STA’s view that the expanded definition of Exchange to include, as the Commission has described, “Communication Protocol Systems” represents a significant change that requires great clarity around the scope and definition of coverage as well as considerable time to understand the implications. Particularly, STA is concerned that SEC’s estimate of the new element of Communication Protocol Systems may likely have a significantly broader impact than the Commission’s estimate of twenty-two existing platforms that are currently non-ATS entities. Unfortunately, the short comment period does not provide enough time for data to be captured in this area.

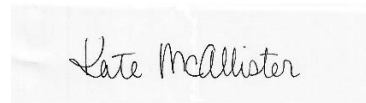
As the Proposal is currently drafted, it is unclear whether the Commission intends the Proposal to incorporate stakeholders who may not be clearly identified in the Proposal, such as digital asset or cryptocurrency markets. While there is no specific reference to digital assets or cryptocurrency trading platforms in the Proposal, the discussion around Communication Protocol Systems leaves the scope and intended asset classes that would be covered vague enough to create great confusion among industry. If the Commission intends to include such platforms, among others, under the purview of the rule, we urge the Commission to make that expansion of its scope clear, and to request feedback on all relevant concepts.

Conclusion

Over the course of our 88 year history, STA has engaged extensively with the Commission on rulemaking. While we have not always agreed with the Commission’s findings, it had been our experience that the notice and comment periods provided frequent opportunities for interested parties to provide meaningful input. This attribute ensured that rules were adequately designed and that interested parties continued to engage in a process viewed as fair and transparent.

⁷ See 87 FR 15496 at page 22 (March 18, 2022).

More recently, and acutely as it pertains to the Proposal, the Commission has significantly altered its approach on a rulemaking process that has served investors well for close to 90 years. The combination of numerous rule filings, many of which are complex and would lead to major market structure changes; new terminologies and amendments introduced late into the rulemaking process; and short comment periods and lack of clarity of proposed rules, gives us concern that the notice and comment process of rulemaking is being devalued. Our markets, while not perfect, are operating efficiently. We hope that the Commission can return to its historical norm because doing so is in the best interests of the markets and the investors who rely on them for their financial wellbeing.



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