

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: Proposed Amendments to Exchange Act Rule 3b-16 (Release No. 34-94062; File Number S7-02-22)

Dear Ms. Countryman,

I am writing as a passionate user of decentralized finance systems, and as a lawyer and small business owner whose clientele is primarily fellow users and developers, to express my grave concerns with and opposition to the SEC's proposed amendments to Regulation ATS issued on January 26, 2022 (the "Proposal"). The Proposal includes a revised and vastly expanded definition of "exchange" which could dramatically expand the SEC's authority to regulate technologists who "make available" peer-to-peer "communication protocols" used in decentralized finance. These technologists and the system they create are not and cannot feasibly become regulated securities intermediaries or alternative trading systems ("ATSs"), and thus the proposed amendments amount to a back-door prohibition of a vast swath of actual and potential peer-to-peer finance protocols.

Background:

I believe it is vital that decentralized finance systems be kept freely available, and that such systems are a hugely beneficial evolution of finance to end users of all kinds. Personally, as of April 2021, I've started a small business in Maryland and "hung a shingle" as a sole proprietor attorney helping fellow decentralized technology users and developers navigate the daunting legal and regulatory environment, leaving my position as an associate at a large law firm to do so. I now receive over 80% of my income "on-chain", and I continuously seek to give back to the community and industry by participating in nonprofit educational organizations and "open-sourcing" as much of my knowledge base and materials as possible, where appropriate. The ability to interact with financial systems that do not rely on intermediaries (and all of the incentive and security concerns that accompany such centralized intermediaries) and that do not discriminate with respect to services provision and access is a concept that I firmly believe that American regulators should not only recognize, but also welcome and facilitate.

Decentralized finance and open source permission-less technology innately address many of the originally intended purposes of securities regulations by virtue of their lack of intermediary control and publicly verifiable code: combatting information asymmetry between the general public and intermediaries, and combatting fraudulent market activity often enabled by such information asymmetry or obscurity. To extend regulatory burden to peer-to-peer communication protocols could not only eviscerate American participation and leadership in this burgeoning industry, but also encapsulate wide swaths of valuable and useful decentralized products and services that could not, in fact, become ATSs or regulated intermediaries in any manner similar to centralized products and services.

Overview of peer-to-peer communications protocols:

Peer-to-peer communication protocols may include automatic-market-making "smart contracts" ("AMMs") which are permissionlessly accessible on Ethereum and other decentralized blockchain systems. These "smart contracts" are simply machine-readable code (often publicly verified and thus reviewable by the

general public) that is stored on a distributed ledger and will be executed by miners or validators (on an anonymous, decentralized basis) for users who pay fees as part of cryptographically signed transaction messages (on an anonymous, decentralized basis). Once written and deployed to a blockchain, no person controls or can limit access to such smart contracts. Even the miners, who are necessary to run the smart contract code, do not individually have the power to limit access to these smart contracts nor surveil the users of these smart contracts. Unlike a broker/dealer or other securities intermediary, neither the code developers nor the miners have a contractual or fiduciary relationship with the users. A redesign of the system which requires an off-chain relationship between miners/validators, on the one hand, and users, on the other hand, would defeat the entire purpose of this technology (and the massive structural benefits thereof) by requiring users to have trust in and expose their personal data to the miners/validators. When Congress intended in creating the Securities Exchange Act of 1934, it cannot have intended to mandate intermediation or to prohibit people from communicating or transacting in digital assets on a peer-to-peer basis using new technologies.

Peer-to-peer communications protocols encompassed in the Proposal:

In AMMs, users may indicate their “non-firm trading interest” in selling certain digital assets by depositing digital assets into a smart contract (i.e., cryptographically signing a transaction whereby the smart contract code will release the tokens to new users if specified conditions are met). This facilitates trustless, disintermediated trading of digital assets and ensures that users are not trapped in illiquid positions in their digital asset holdings. When the relevant conditions are satisfied (usually a user on the buy-side sending a transaction message plus a digital asset purchase amount), a trade is automatically executed. Thus, an AMM may resemble “a system that electronically displays continuous firm or non-firm trading interest....to sell or buy [a digital asset]...[which] can....be executed immediately’.”

Since the SEC also maintains that certain digital assets are securities², this means that persons who “make available” AMMs or interfaces for utilizing AMMs may now be required by the SEC to register those AMMs as ATSS or securities exchanges. This may include:

- individuals and private entities who write and publish smart contract code as a hobby or business, or even merely for their own use, who may have no training in the securities industry, may not work for a broker-dealer and may not otherwise be subject to the jurisdiction of the United States;
- individuals and private entities who run “miners” or “validators” on the underlying blockchain where the AMM is stored (i.e., persons who have configured computers to automatically perform mining and validation services on the network, with minimal human oversight);
- persons who provide liquidity to such AMMs (since the AMM cannot operate without their participation);
- persons who run websites which facilitate use of AMMs, including academic “block explorers” (which provides for human-readable interfaces to blockchain code and state, an imperative feature for further lessening information asymmetry) with smart contract interaction functionality; and
- persons who write “blockchain client software” which is run by independent miners/validators and enables general mining, validation and transacting on the blockchain network.

¹ [The Proposal](#), page 20; [Statement on Government Securities Alternative Trading Systems](#).

² [Committee on Banking, Housing, and Urban Affairs Oversight of the US Securities and Exchange Commission September 14, 2021](#), page 9.

None of these persons are securities professionals or intermediaries as currently understood. Furthermore, they would be unable to comply with existing regulations, such as obtaining and maintaining records about the legal identities of “subscribers” – applicable to securities exchanges and ATSS as the systems themselves are pseudonymous by virtue of their cryptographic security. These systems are designed to give users a way to exchange digital assets without hiring a broker/dealer or placing their assets into another person’s custody; thus, these systems are also designed to avoid any persons having powers similar to a broker/dealer or exchange operator.

Accordingly, regulating these systems as “exchanges” would be tantamount to banning them in their current form. Although the SEC has broad authority, it does not have authority to determine which technologies are legal or illegal to “make available.” But such would be a potential perverse effect of this amendment.

I urge you to reconsider the over-broad provisions in the Proposal. This sweeping expansion to the definition of “exchange” to apply to any communication protocol system (not limited to just autonomous cryptosystems or block explorers) is an impediment to innovation; it would ultimately force builders and users of decentralized finance systems like me to leave the United States, recommend our clients to leave the United States and avoid US-based operations or clients, or devote our skills and effort to companies and technologies being built outside of the United States—a nation-wide “brain drain” of cutting-edge technologists from which the United States might never recover. Thank you for your consideration and time.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Erich Dylus', written in a cursive style.

Erich Dylus