

Secretary 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 wish to express concern and oppose the proposed amendment to redefine “exchange” to include Communication Protocol Systems (CPS). While the intent of this amendment is “to protect investors and promote fair and orderly markets”, it will have the opposite effect of giving the “exchange” stamp of approval on CPS protocols that do not provide any semblance of the basic functional of “exchange”, namely providing a mechanism of fair and orderly price discovery.

CPSs that do not fall under the definition of “exchange”, such as Automated Market Makers (AMMs), are in fact not exchanges. The reason these protocols are not covered under the definition of “exchange” today is the same reason they will be unable to comply with regulation ATS after this amendment.

Contrary to the implications that this amendment will “address a regulatory gap”, these protocols were not designed for the purpose of avoiding regulations. Rather they were designed like this, because of the technical impossibility to enforce standard exchange rules governing the way “orders interact with each other” in open decentralized environments.

Meanwhile, the real issue here is how these AMMs are marketed to the retail public as real exchanges, with price feeds, order books, and typical exchange interfaces, while they are nothing of the sort.

Instead of defining CPS as exchanges, if anything, they should be clearly defined as “non exchanges”, and required to disclose to users how there is no internal price discovery mechanism, and that the validity of the prices rely on the ability for market-makers to arbitrage with liquid centralized exchanges that do have price discovery, and that orders are subject to miner/validator front-running with no recourse.

By bringing non exchanges into the exchange regulatory frameworks, this amendment will only farther muddle the consumers’ confidence that prices from exchanges are real, based on supply and demand, and not subject to manipulation.

As an analogy, imagine expanding the definition of “pen” to include pencils, for the purpose of subjecting pencils to “pen” rules which ban “erasable pens”, with the unintended effect of legitimizing the fraudulent practice of pencils being sold as “pens” in outside jurisdictions.

There are ample govt agencies and laws on the books for the Consumer Financial Protection Bureau, the Federal Trade Commission, and the Commodity Futures Trading Commission to investigate and prosecute the on-going frauds and scams in so called “defi”. There is no need to attempt to bring these under securities regulation.

I urge you to reconsider the redefinition of “exchange”, but instead focus on consumer education and prosecution of outright obvious frauds within the current laws on the books today.

Thank You,
Yehuda “Jay” Berg