



Expanding access to  
Non-traditional investments



February 21, 2022

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

VIA ELECTRONIC MAIL: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Re: File No. S7-02-22 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

Dear Ms. Countryman,

Aditum Alternatives and Aditum Asset Management welcome the opportunity to respond to the SEC’s request for comments on Release 34-94062, which includes proposals to amend Rule 3b-16, Regulation ATS and Regulation SCI. Our comments are directed toward the proposed amendment to Rule 3b-16 under the Securities Exchange Act of 1934, which would expand the definition of “Exchange”.

While we appreciate the intent behind the Commission’s proposed expanded definition of “Exchange”, we believe that Rule 3b-16 as proposed is too broad. Given the expansive application of the term “communication protocols” suggested by the Commission, we believe that

- a) paragraph (a)(2) of the proposed definition should be narrowed by further qualification; and
- b) the proposed expanded definition of “Exchange” be applied only to address risks faced by the general public.

As noted in the release, the Commission would take an expansive view of what would constitute “communication protocols.” Despite this expansive view, the Commission noted sets of functionalities that it would not deem to be “communication protocols” subject to registration. These include:

- “systems that passively display trading interest, such as systems referred to in the industry as bulletin boards, but do not provide means for buyers and sellers to contact each other and agree to the terms of the trade on the system”
- “a system that displays trading interest and provides only connectivity among participants without providing a trading facility to match orders or providing protocols for participants to communicate and interact”

While we appreciate this guidance from the Commission, we believe that, in the current technological world, these are distinctions with a difference. The features identified by the Commission, whose absence would allow a system to avoid registration, are features that can be easily incorporated using software in the public domain. So, we believe that this parsing of functionality, may incite technological inefficiency and stagnation in markets, either deliberate or casual. This outcome would be a disservice to industry participants.

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The Commission's "expansive view" of communication protocols is based in part on the concept that "communication protocols" are the product of a "system provider." Many modern systems are simply the integration of software available in the public domain. In many cases, entities integrate such software to provide the public with a particular set of features which are used by participants on a de-centralized basis, without the on-going participation of the integrating party. In cases where the integrating party or another party has an on-going governing role, that role is often performed without a profit motive and the costs of system participation are applied completely to the on-going maintenance and operation of the system itself. This approach is reflected in many, distributed blockchain based systems. Systems constructed and maintained in this manner are expressly developed to provide peer-to-peer access at an easily observed cost and speed. Participants then can make an informed choice of which system to use. We believe that this approach, in which a "communication protocol" is operated and maintained without a profit motive and for the benefit of market participants, is consistent with the public interest and should be encouraged by the Commission. Accordingly, we suggest that the proposed definition of "Exchange," requiring registration with the Commission, be narrowed by revising paragraph (a)(2) as proposed to read:

"Makes available, **with the intent to profit from trades to which they are not a party**, non-discretionary methods (whether by providing a trading facility or communication protocols, or by setting rules) under which under which buyers and sellers can interact agree to the terms of a trade."

There are and will always be markets that can benefit and develop from the participation of intermediaries motivated by profits, especially those that are thinly traded. In those instances, we believe that the expanded definition of exchange will serve to discourage new market development. As such, we suggest that the expanded definition of "Exchange" be applied only to address risks faced by the general public, as a whole or individually. We believe that this is limited to: (i) markets that are of systemic importance to the U.S. economy, such as the U.S. government securities market and (ii) other markets in which securities available to the general public are transacted, i.e., markets involving securities other than those restricted to accredited investors or qualified institutional buyers.

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Thank you again for the opportunity to comment on these matters of critical importance to the investing public. Should you have any questions, please feel free to contact me.

Respectfully,



Ken McGuire  
President  
Aditum Alternatives & Aditum Asset Management