March 24, 2022

Ms. Vanessa A. Countryman
Via email: rule-comments@sec.gov
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090


Dear Ms. Countryman:

The Chamber of Digital Commerce (the “Chamber”) is submitting this letter with respect to the above-referenced proposals (the “Proposals”)\(^1\) published by the U.S. Securities and Exchange Commission (the “Commission”).

Established in 2014 as the world’s first and largest blockchain trade association, the Chamber’s mission is to promote the acceptance and use of digital assets and blockchain technology. We are supported by a diverse membership that represents the blockchain industry globally, including more than 200 of the world’s leading startups, software companies, financial institutions, and investment firms, as well as other market participants, including digital asset mining firms. Membership is open to all companies committed to supporting and growing this thriving marketplace.

We have the following concerns regarding the Proposals:

1. **Lack of Customary Public Comment Period**

   The Commission has established a public comment period for the Proposals of 30 days from the date of publication in the Federal Register. The Chamber

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\(^1\) See Release No. 34-94062 (January 26, 2022), -- FR -- (--).
shares the concerns expressed by many other commenters regarding the worrying trend around the shortened length of comment periods provided by the Commission around recent significant rulemaking proposals.

Historically, the Commission’s practice has been to provide a 90-day comment period from Federal Register publication for significant rulemaking proposals. This has not been the case under Chair Gensler’s leadership, as described in the letter dated January 10, 2022 to Chair Gensler from Representative Patrick McHenry and Senator Pat Toomey (the “Letter”).\(^2\) In the Letter, Mssrs. McHenry and Toomey note that:

“[p]roperly scrutinizing a proposed rulemaking often requires a significant investment of time and resources. This is especially true when a proposal consists of several hundred pages and is intended to interact with complicated financial markets and existing securities laws. Truncated comment periods pose particular difficulties—and are of particular concern—when overlapping with holidays, year-end operational or regulatory obligations, or other times when commenters’ staff are expected to manage other deadlines.

President Obama’s White House appropriately recognized that public comment periods on most rulemakings should be at least 60 days. Extended comment periods, for example, for 90 days or 120 days, are also appropriate when taking up particularly complex rulemakings or when numerous rulemakings are simultaneously outstanding. The Administrative Conference of the United States, an independent federal agency within the executive branch charged with recommending improvements to administrative process and procedure, similarly endorses a comment period of at least 60 days for significant regulatory actions.

Despite these recommended practices, the majority of SEC proposals put forward under your chairmanship have thus far allowed less than 60 days for public comment. Two proposals provide 60-day comment periods, three proposals provide 45-day comment periods, and six proposals provide 30-day comment periods. Moreover, several of these proposals with shorter comment periods coincide with federal holidays (Christmas, New Year’s Day, and/or Martin Luther King Jr. Day) yet do not allot extra days in light of those holidays.”

We also note that the Administrative Procedure Act requires agencies to provide the public with adequate notice of a proposed rule followed by a meaningful opportunity to comment on the rule’s content. We further note that the concepts within the 2020 Reg ATS rulemaking proposal discussed by the Commission in the Proposals provided a comment period of 60 days from publication in the Federal Register.

In our view, providing a mere 30-day comment period from the date of publication in the Federal Register is grossly inadequate and will not ensure that the public can provide a substantive analysis regarding over 600 pages of rulemaking. We respectfully request that the Commission extend the time frame for public comment until at least 60 days from publication in the Federal Register.

2. Introduction of Concept of Communication Protocol Systems and Potential Application to Digital Asset Intermediaries

In the Proposals, the Commission introduces the concept of “Communications Protocol Systems,” “which offer the use of protocols and non-firm trading interest to bring together buyers and sellers of securities.” The Commission goes on to state that:

“Communication Protocol Systems today perform similar market place functions of bringing together buyers and sellers as registered exchanges and ATSs and have become an increasingly preferred choice of trading venue, particularly for fixed income securities. However, as a function of how Exchange Act Rule 3b-16 currently defines the terms in Section 3(a)(1) of the Exchange Act, Communication Protocol Systems do not fall within the definition of exchange. As a result, Communication Protocol Systems are not subject to the same regulatory requirements as registered exchanges and ATSs and the investors using them do not receive the investor protection, fair and orderly markets, transparency, and oversight benefits stemming from exchange regulation. Further, by Communication Protocol Systems falling outside the definition of exchange, a disparity has developed among similar markets that bring together buyers and sellers of securities, in which some are regulated as exchanges and others are not. This regulatory disparity can create a competitive imbalance and a lack of investor protections.”

The Commission further states that:

“The proposed amendments to Exchange Act Rule 3b-16(a) would include Communication Protocol Systems that make available for trading any type of security, including, among others, government securities, corporate bonds, municipal securities, NMS stocks, equity securities that are not NMS stocks, private

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3 See Release 34-90019 (September 28, 2020) 85 FR 87106 (December 31, 2020)
restricted securities, repurchase agreements and reverse repurchase agreements, foreign sovereign debt, and options. Including Communication Protocol Systems within the definition of “exchange” would appropriately regulate a market place that brings together buyers and sellers of securities, extend the benefits of the exchange regulatory framework to investors that use such systems, and reduce regulatory disparities among like markets.”

The Proposals also include several examples of Communication Protocol Systems, and note that Communication Protocol Systems perform similar marketplace functions as registered exchanges and ATSs, providing a “market place” for bringing together purchasers and sellers of securities.

The proposed rule changes included in the Proposals, however, fail to include the term Communication Protocol System or a definition of such term. We have significant concern that a lack of a specific definition for such a broadly explained term will cause ongoing confusion and, as a result, increase the potential for a market participant to inadvertently run afoul of the obligations set forth in the Proposals.

We also note that while the Commission may interpret the definition of “exchange” under the Securities Exchange Act of 1934 (the “Exchange Act”), it does not have discretion to amend that definition, even as it might seek to change the definition in its rules. In addition, we note that if the final rule does not include a requirement that a Communication Protocol System “effect” trades, it would violate the Exchange Act definitions of “exchange”, “broker” and "dealer" and the Commission's own interpretations of the definitions of “broker” and “dealer” (every ATS must be a registered broker-dealer).

We, like other commenters, also have significant concerns that the Commission intends that the Proposals encompass stakeholders who may not be readily identified in the Proposals. For example, it is completely unclear whether the Commission proposes that the term Communications Protocol System includes digital asset or cryptocurrency markets since there is no reference to digital assets or cryptocurrency trading platforms anywhere in over 600 pages of regulatory discussion.

In fact, the Proposals appear to circumvent the Administrative Procedure Act’s notice and public comment requirements by, for example, inadequately stating the scope and intended asset classes that would be covered by the Proposals. If, in fact, the Commission intends for the Proposals to expand the Commission’s authority over spot digital asset markets and peer-to-peer decentralized networks, it is the Commission’s duty to make that expansion of its scope clear, and to request comment on that concept.

We respectfully request that the Commission specifically address whether or not the Proposals encompass any digital asset market participants, and, if so, provide
examples of the types of digital asset participants that it believes would be required to comply with the proposed rules.

3. Transition Period Upon Effectiveness of the Proposals

To the extent that a company who is currently exempt from the definition of exchange is deemed to be included in the definition of Communication Protocol System, and thus required to register as an exchange or to comply with Regulation ATS and register as an Alternative Trading System, we have significant concerns that the proposed 210-day transition period for compliance with the proposed rules is wholly inadequate. As a general matter, the process to obtain FINRA approval for a new member application takes a minimum of six months once all required application documentation, which is extensive, is prepared and associated technology is operational. Our understanding is that there is currently a backlog on broker dealer applications at FINRA, so the approval process may take significantly longer than 6 months, particularly if the applicant is involved in the blockchain industry in any way. In addition, a company cannot apply to be approved to operate an ATS until after FINRA approves its new member application. Preparation of the ATS application is also time consuming and it generally takes weeks, if not months, to prepare the required materials and complete the application. To that end, we request that the Commission provide an adequate transition period in line with the realities of the required FINRA and Commission application and approval processes.

4. Paperwork Reduction Act

To the extent that the Commission’s proposed expansion of the definition of “exchange” to encompass Communication Protocol Systems might be deemed to encompass digital asset trading intermediaries, we have significant concerns regarding the fact that the Paperwork Reduction Act segment of the Proposals provides no analysis of the scope of impacted market participants or the economic burden that would be imposed by the proposed expansion of the definition of “exchange” to include digital asset trading platforms. The Commission’s failure to provide a specific analysis of the impact of the expansion of the definition of an “exchange” to include digital asset intermediaries which would need to register with FINRA as broker dealers prior to registering to operate an ATS with the Commission, represents a serious procedural flaw that must be rectified before the Proposals move forward to adoption. We note, for example, that the Commission estimates that there are only 6 Communication Protocol Systems not currently registered as or affiliated with a broker-dealer that would need to register using Form BD. That estimate is significantly deficient and provides no reasonable estimate of the initial or annual cost and time burden that would be associated with compliance with the Proposals.
The Chamber greatly appreciates the opportunity to comment on the Proposals and appreciates the Commission’s consideration of the above comments and concerns.

Please feel free to contact us with any questions regarding our comments.

Very Truly Yours,

[Signature]

Teana Baker-Taylor
Chief Policy Officer
Chamber of Digital Commerce

Co-Signatories

3.0 Capital LLC  Bates Group  Binance.US
Bitwise Asset Management  Bloq  Brownstone Research
Castle Island Ventures  Celsius  Chainalysis
Circle  CleanSpark  Compass Mining Inc.
Compute North  Cooley LLP  Drive Digital
Figure Technologies Inc.  Donna Redel  Fundstrat
IOTA Foundation  Marathon Digital Holdings  Martin Davis, PLLC
Off The Chain Capital  Overstock, Inc.  River Financial
Sequoi  The Rodman Law Group  TrustToken, Inc.
tZERO Group, Inc.  UDHC LLC  Vault12
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