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Bloomberg

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Submitted Electronically

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

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:

Bloomberg L.P.[1] and Bloomberg Tradebook[2] are grateful for the opportunity to provide the Securities and Exchange Commission ("SEC" or "Commission") with our comments regarding the above-referenced proposed rule change ("Proposal").

I. Executive Summary

The Commission has issued a request for comment on proposals to expand Regulation ATS for alternative trading systems ("ATS") that trade government securities, NMS stock, and other securities; extend Regulation SCI to ATSs that trade government securities; and amend the SEC rule regarding the definition of an "exchange" to address the perception of a "regulatory gap".

[1] Bloomberg, the global business and financial information and news leader, gives influential decision makers a critical edge by connecting them to a dynamic network of information, people and ideas. The company's strength – delivering data, news and analytics through innovative technology, quickly and accurately – is at the core of the Bloomberg Terminal. Bloomberg's enterprise solutions build on the company's core strength: utilizing technology to allow customers to access, integrate, distribute and manage data and information across organizations more efficiently and effectively.

[2] Bloomberg Tradebook LLC, a broker-dealer registered with the U.S. Securities and Exchange Commission, a member of FINRA, Inc., and a wholly-owned subsidiary of Bloomberg L.P., operates various electronic trading services including RFQ systems for negotiating securities transactions.

Summary of our Comments

For at least seven years, the SEC, Treasury, Federal Reserve and a broad array of market participants have debated whether platforms trading government securities – platforms which would otherwise be subject to regulation as ATSs if they traded securities of private issuers – should continue to receive an exemption from ATS regulation.[3] That discussion accelerated in 2019 when the single largest government securities trading platform endured a technical malfunction resulting in an outage.[4] Given the significance of the liquidity center, the event disrupted the market until the outage was resolved.[5]

In September 2020, the SEC responded to this concrete problem by proposing to remove the exemption from Regulation ATS for ATSs that trade government securities. That proposal elicited comment and addressed issues related to how best to incorporate such ATSs under a thoughtful regulatory regime. Rather than proceed with the benefit of comment to adoption or further evaluation addressed to this discrete important topic, on January 26, 2022, the Commission re-proposed extending ATS regulation to ATS platforms trading government securities and, in an action that was certainly unexpected by market participants, the Commission also proposed changing the long-settled definition of an "exchange" in order to extend exchange or ATS regulation to entities that do not pose exchange-like risk.

Bloomberg supports the Commission moving ahead, adopting a rule to eliminate the exemption of government securities from Reg ATS. This has been debated for at least seven years and there appears to be consensus for such a change. However, Bloomberg favors that Government Securities ATSs file Form ATS-G for disclosures, as was put forward in the Original Proposal, because the Form was tailored specifically for Government Securities ATSs. The proposed amendments to Form ATS-N to support both equity and Government Securities ATS disclosures will be confusing to investors and increase their search costs trying to locate the form that they are looking for in EDGAR. For a variety of reasons discussed in more detail later, Bloomberg also does not support submitting Forms ATS-R and ATS-N through the EDGAR system.

Exchanges have historically been marketplaces, bringing together firm orders of many buyers and sellers of securities and using established, nondiscretionary rules to execute those

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[3] In 2015, the Commission asked for comments on whether they should consider eliminating the exemption in the proposal to change the "Regulation of NMS Stock Alternative Trading Systems". See ("2015 Reg ATS Proposal") [Release No. 34-76474; File No. S7-23-15], Nov. 18, 2015, https://www.sec.gov/rules/proposed/2015/34-76474.pdf at 88-96.

[4] See Proposal [Release No. 34-94062; File No. S7-02-22] https://www.sec.gov/rules/proposed/2022/34-94062.pdf at 370 and FN 835.

[5] See Stanton, E., Baker, N., Leising, M. January 11, 2009, "Treasuries Hit by One-Hour Outage on Biggest Electronic Platform" https://www.bloomberg.com/news/articles/2019-01-11/brokertec-inter-dealer-treasury-broker-suffers-outage.

orders. Under the Proposal, that definition of "exchange" would be expanded to include "Communications Protocol Systems" ("CPS") – a term that is not defined in the regulation but is intended to cover a broad array of messaging systems.

Has the failure to regulate these undefined systems created articulated harm that will be remedied by this rule? It has not. Indeed, the primary argument for the Proposal seems to be the need to address a "regulatory gap" flowing from the fact that exchanges are regulated as exchanges while entities which are not exchanges avoid exchange regulation.

There is nothing unusual about varying levels of targeted regulation, both within the financial services industry and throughout the world of regulated activity. All regulation is a trade-off, imposing certain societal costs to generate societal benefits. The trade-off means that regulation should, where possible, be carefully calibrated to the risk of the activity in which an entity is engaged and the benefit that will redound to the public.

The catalyst for this discussion – the outage at an ATS which was neither subject to Regulation SCI nor the capacity, integrity, and security standards of Regulation ATS – illustrates this. The societal cost of regulation under Regulation ATS – and in this instance Regulation SCI – is proportionate and sensible in light of that balancing of risk and benefit. By contrast, the outage of a messaging system poses no such risk. Messaging systems do not hold liquidity. And, as we discuss below, messaging systems are characterized by high levels of redundancy. Thus, subjecting messaging systems to Regulation SCI is disproportionate. As will be discussed in detail later, it may be more appropriate to apply to some systems with the protections of Regulation ATS Rule 301(b)(6). Certainly, treating all trading related activities – and indeed messaging activities that do not even culminate in a trade – as if they were as risky as operating a central limit order book ("CLOB") imposes serious and unnecessary societal costs. While it is important to treat "like things alike", non-redundant liquidity centers are not "like" redundant messaging systems.

While the benefits of having one regulatory standard for activities posing vastly different risks is unclear, the downsides are much easier to grasp, and are in part conceded by the Proposal – including the fact that the SEC states that it is not sure whether the Proposal will hurt price efficiency and capital formation. One very significant cost will be the impact on electronic trading and the ecosystem of fintech providers whose engagement in improving electronic workflows have not only increased market efficiency and competition, but also increased the capacity for more effective regulation flowing from greater supervision.

"Exchange" is a foundational concept, central to the securities laws. If it is to be changed, it should be changed only after careful and methodical deliberation. The predictable impact on the market of getting it wrong is high and the prospects of significant unintended consequences higher.

A re-proposal is warranted if there is an intent to amend the definition of an exchange (Exchange Act Rule 3b-16). This would provide the Commission with an opportunity to gather the additional information that is necessary to ensure that any final rule is the result of reasoned decision-making. Bloomberg views this release as the functional equivalent of a concept release on par with other major changes to market structure, such as Regulation ATS and Regulation NMS. The Proposal notes that the changes to Rule 3b-16 and the introduction/creation of the Communication Protocol System ("CPS") concept are materially different from anything contemplated in the original 2020 Proposal and Concept Release.[6]

In Section V, Bloomberg spends considerable time discussing Considerations for an Alternative Approach to Regulating CPSs. Bloomberg is submitting this approach because it will benefit from greater market discussion. While the current Proposal fails to clearly articulate a justification for the regulation of CPSs, Bloomberg agrees in principle with the Proposal that there could be benefits from more direct supervision and operational disclosures of certain fixed income Fintech solutions. This can be accomplished from a targeted framework that starts with defining a "Regulation of Communication Protocol Systems", rather than risking the significant market disruption by pursuing a vague and unworkable recasting of the definition of an "exchange."

Bloomberg respectfully offers an alternative framework that builds on two of the concepts raised in the Proposal's "Reasonable Alternatives" section and on the SEC's historic approach to proportional regulation – particularly in the context of Regulation ATS and Regulation SCI. The centerpiece of the alternative framework is that a CPS should be operated by a broker-dealer. Bloomberg has a useful perspective as its various electronic trading services including RFQ systems for negotiating securities transactions were moved into its broker-dealer, Bloomberg Tradebook, in 2021.

If the Commission is planning on adopting the Proposal, despite the concerns noted below, we would offer some guidance on timelines. In our experience, we found moving various electronic trading services including RFQ systems for negotiating securities transactions into a broker-dealer will take a CPS that is not currently registered as a broker-dealer significantly

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[6] Change in the definition of an exchange was not among the requested comments: "The Concept Release requested comments on a wide range of topics, including the different regulatory treatment among fixed income electronic trading platforms that use diverse trading protocols or business models and various aspects of government securities, corporate bonds, and municipal securities trading, including their operations, services, fees, market data, and participants." See Proposal at 6.

This is also noted in Question 12 of the Proposal, "Should the Commission adopt a more limited or expansive definition of Government Securities ATS than the definition that is being proposed? ***Given that, unlike the 2020 Proposal, the definition of Government Securities ATS would now include Communication Protocol Systems*** that transact in government securities and/or repos, do commenters believe that the definition of Government Securities ATS should be limited or expanded?" (emphasis added) at 79.

longer than 210 calendar days to "paper" its clients/subscribers.[7] Newly designated (CPSs) ATSs also will need time to define new business models and the impact of defining subscribers and asset classes to be included in the ATS (CPS). For newly designated Covered ATSs (CPSs) that cross certain thresholds, there will be significant engineering work for Regulation SCI compliance. And, given the different dependencies that a CPS has on its liquidity providers, significantly more guidance is needed with respect to direct and indirect SCI systems in the application of Regulation SCI to CPSs.[8] Given the complexity and breadth of the Proposal, and because there are so many details that the Commission may defer to Staff to make the Proposal workable, Bloomberg believes that the industry would require a minimum of at least 18 months to comply from the date that staff FAQs are published.

Given the time constraints in responding to the Proposal, there are some issues we have not been able to thoroughly explore, but we think we have offered a viable framework which would benefit from public input.

Our detailed comments are segmented into the following sections:

II. Response to Proposed ATS Regulation for Entities Trading Government Securities

Bloomberg Supports ATS Regulation for Entities Trading Government Securities

Bloomberg is supportive of the Proposal to eliminate the government securities exemption from Regulation ATS and to bring bank-operated government securities CLOBs under a common regulatory framework by requiring them to become operated by a broker-dealer and subject to Regulation ATS.

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[7] See Proposal § 242.301 Requirements for alternative trading systems (b)(1)(ii)(B) at 531.

[8] CPSs are fundamentally different than ATSs. For example, a user selects a counterparty to begin the negotiation process in an RFQ CPS. Liquidity providers accept and respond to inquiries, and accept and execute orders - directly supporting trading. A CPS is directly dependent upon its liquidity providers (systems) to provide those functions. Since Regulation SCI (states, "As adopted, the term 'SCI systems' in Rule 1000 means 'all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity that, with respect to securities, **directly support trading**, clearance and settlement, order routing, market data, market regulation, or market surveillance'", are dealer systems considered critical CPS SCI systems? See "Regulation SCI", Regulation SCI adopting release https://www.sec.gov/rules/final/2014/34-73639.pdf at 80).

Bloomberg also agrees with the Commission that the impact of an outage at a significant Government Securities ATS in 2019[9] demonstrates that it is appropriate for government securities CLOBs with significant volumes to be subject to Regulation SCI. This event was similar to the events that the Commission observed in the NMS Stock and OTC equity markets which led to the promulgation of Regulation SCI in 2014.[10]

Bloomberg Supports the Form ATS-G from the Original 2020 Proposal

Bloomberg does not agree with the Commission's new re-proposed approach to have all covered ATSs file a common Form ATS-N disclosure. We agreed with the Commission's original assessment in the 2020 proposal that it was appropriate to have two different forms, an ATS-N for equities and an ATS-G "tailored for Government Securities ATSs."[11] Bloomberg believes that both the public and the Commission would benefit from separate, more targeted, forms. Additionally, with both asset class disclosures labeled "ATS-N", it is uncertain how an investor would immediately be able to identify the EDGAR search/results between the two asset classes[12] if a broker-dealer operates, for example, an equities ATS, and a Government Securities ATS.

Bloomberg Does Not Support Filing Forms ATS and ATS-R's Through the EDGAR system

The Proposal seeks to "modernize" the filing of Forms ATS and ATS-R from the Commission's Kiteworks secured email to the SEC's EDGAR system. The Commission states that requiring these forms "to be submitted via EDGAR would be the most efficient way to facilitate their electronic filing."[13]

Bloomberg does not support this change.

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[9] See Proposal at 370, FN 835.

[10] See "Regulation SCI" at 11-18.

[11] See "Original Proposal and Concept Release", "Regulation ATS for ATSs that Trade U.S. Government Securities, NMS Stock, and Other Securities; Regulation SCI for ATSs that Trade U.S. Treasury Securities and Agency Securities; and Electronic Corporate Bond and Municipal Securities Markets" [Release No. 34-90019; File No. S7-12-20] https://www.sec.gov/rules/proposed/2020/34-90019.pdf at 86.

"Given the similarities of operations between NMS Stock ATSs and Government Securities ATSs, almost all requests for information on proposed Form ATS-G are similar to or derived from Form ATS-N; ***however, certain requests have been tailored for Government Securities ATSs.***" At 86 (emphasis added).

[12] As an example, see https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&filenum=013-00114&owner=exclude&count=40 – Each entry is Filings: "ATS-N" and Description is "….. to Form ATS-N (Rule 304(a)(2)(i)(xxxx))".

[13] See Proposal at 299.

Forms ATS and ATS-R are deemed confidential. In addition to the fact that these filings may contain commercially sensitive information, in principle, Bloomberg does not believe that confidential filings should be submitted to a public facing system (database). Specifically, Bloomberg has concerns submitting Form ATS-R Exhibits A, B and C to such a system. If the Proposal is adopted, these reports would require an ATS to submit highly confidential customer lists to this system. There have been prior instances of unauthorized access to the EDGAR database where non-public information was misappropriated. The latest (FY 2021) Federal Information Security Modernization Act of 2014 report from independent auditor, Kearney and Company, P.C., for the SEC as a whole, though not specifically the EDGAR system, adds to these concerns.[14] While the Proposal might find that the technology is more efficient, the Commission should carefully consider the benefits associated with increased efficiency against the potential security associated with using a public facing system.

III. Responses to the Proposed Amended Definition of Exchange

The Securities Market Structure Today is Clear and the Regulatory Components Work Together

As currently enacted, sections (a) and (b) of Exchange Act Rule 3b-16 work together. Section (a) sets forth a two-part test for assessing what constitutes "exchange" activity, and section (b) explicitly excludes certain systems that perform only traditional broker-dealer activities from the definition of an "exchange". Regulation ATS was appropriately calibrated according to this framework. As a result, Rule 3b-16 and Regulation ATS together provide bright lines that form clear regulatory perimeters. The regulations did not require extensive staff FAQs or enforcement actions to clarify and provide guidance.

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[14] See Fiscal Year 2021 Independent Evaluation of the SEC's Implementation of the Federal Information Security Modernization Act of 2014, Report No. 570, (December 21, 2121), https://www.sec.gov/files/FY-2021-Independent-Evaluation-SEC-Implementation-of-the-FISMA-of-2014-Report-No-570.pdf . Exhibit 1, Summary of SEC FISMA Ratings, the rating for Risk Management and Data Protection and Privacy are at Level 3, Consistently Implemented – Exhibit 5 shows that this rating scale is out of a possible Level 5, Optimized at ii.

The October 8, 2020 "The Inspector General's Statement on the SEC's Management and Performance Challenges" noted that the SEC's cybersecurity posture, specifically, "Processes for protecting cloud-based systems needed improvement" at 8.

Specifically, with EDGAR: "In response to the 2016 intrusion of the EDGAR system …As we reported in our October 2019 statement on the SEC's management and performance challenges, the SEC has taken corrective action sufficient to close 12 of the 14 recommendations, ***yet 2 recommendations remain open.*** We commend agency management for corrective action taken to date, ***and encourage management to fully implement all agreed-to recommendations to further strengthen the SEC's cybersecurity posture"*** (emphasis added) https://www.sec.gov/files/Inspector-Generals-Statement-on-the-SECs-Mgt-and-Performance-Challenges-Oct-2020.pdf at 8.

Bloomberg agrees with the Commission that dramatic changes in technology brought innovative electronified workflows and other non-ATS trading methods that enable market participants to find the liquidity that they need. Bloomberg also agrees with the Commission that, given the changes in communication, trading and supporting workflows for bringing together buyers and sellers, it is appropriate to reassess the associated regulatory landscape. However, any changes to the existing framework should be carefully calibrated to ensure that the core "functional test" under Rule 3b-16 is preserved and the exclusions for traditional broker-dealer activities are not discarded.

There are three levels of granularity (Figure 1) in the electronic workflows, communication methods and trading-related protocols: (1) Third-party service providers directly supervised by broker-dealers using the technology and indirectly supervised through outsourced technology standards set by both the Commission and FINRA; (2) Brokerage technology directly overseen by the Commission and FINRA; and (3) Liquidity centers – the ATSs subject to Regulation ATS. The regulation is appropriate to the risk of the activity. By contrast, the proposed change in the definition of "exchange" is predicated on the concept that all trading-related activities – and indeed messaging activities that may not even culminate in a trade – are as risky as operating a CLOB.

Today – under existing regulations – the methods investors leverage to efficiently implement their investment strategies have become more heavily supervised with more disclosure and greater resiliency. This is positive for investors and driven by automation (Figure 1).

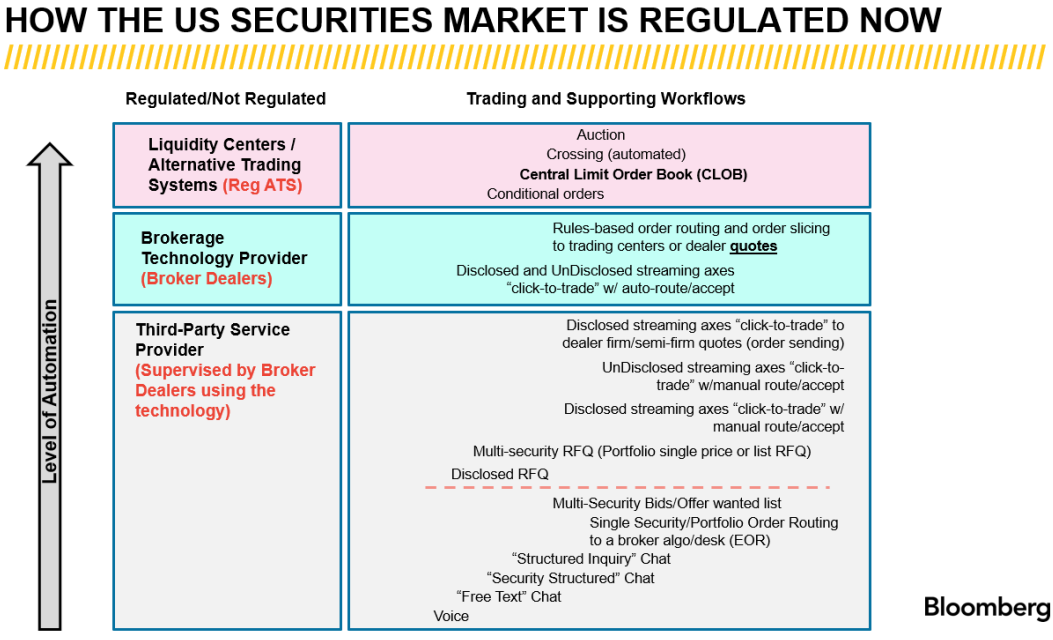

Figure 1. Although the entire ecosystem is supervised, Bloomberg agrees that there are certain third-party service provider activities that should be more directly overseen.

The Three Clusters of Trading and Support Workflows

(1) ***Third-Party Service Provider*** – A variety of communication and trading solutions are currently offered by third-party service financial technology ("Fintech") providers. In deploying these solutions, broker-dealers implement supervisory systems to ensure compliance with all applicable securities laws and regulations. Electronification initially digitized manual (voice-dominated) workflows and discretionary interactions putting them on an electronic highway. The technology introduced new digitized workflows, providing innovative ways for brokers-dealers to communicate with their customers. The technology did not introduce new intermediaries but constituted a new set of tools that broker-dealers were able to deploy in connection with traditional broker-dealer activities. It also created searchable, time stamped audit trails for market surveillance.

Fintech providers created real-time chats as the digitized equivalent to voice. Free text chats evolved to contain structured components, for example, linkages to a security's identifier and description. This reduced operational risks by creating security-specificity. It also fostered efficient workflows to investment analytics such as valuation analysis, trade analytics, and liquidity analysis. Adding other components to the structure ("structured inquiry chats"), enabled specific investment trade ideas inquiries to be more efficiently communicated. For example, structured messages that contain what the Proposal considers "trading interest" are needed to efficiently communicate trade ideas such as "money fills" (calculations to determine investment dollars to investable par value calculations for security/investment selection) and "swap/switch" (portfolio strategy adjustments that identify portfolio holdings that are quantitatively "rich" and consider other investments within the context of the portfolio's goals to pick-up yield). Structured order routing messages emerged that enabled investors to send (with audit trails for compliance purposes) specific instructions to their broker to execute a security (single equity order routing). Different communication methods connected customers to their dealers (OTC market makers and brokers operating in a principal capacity). To assist in seeking best prices in competition, electronic request for quote (RFQ) emerged. This replaced the process of voice-calling dealers to place them in competition – it also created time-stamped audit trails of the competitive process.

Fintech companies help broker-dealers communicate with their customers and develop unique innovative tools to optimize associated workflows. In more liquid securities, digitization enabled indicative curated pre-trade data to be organized to assist with dealer selection to seek best execution. Soon, communication protocols enabled multiple security lists and portfolio trade messaging inquiries.

There is no regulatory gap in Fintech solutions. Indeed, as described above, electronic trading and supporting workflows have not only increased market efficiency and competition, but also increased the capacity for effective regulation flowing from greater supervision.

It is a misnomer to suggest that just because Fintech companies are not ***directly*** overseen there is somehow a regulatory gap. There isn't. Technology solutions are supervised by registered broker-dealers that are using/relying on the technology. Under FINRA and Commission rules, those broker-dealers must perform due diligence which also includes knowing how the system works. These rules are discussed below. The Proposal did not address comments that the entire ecosystem is already closely overseen by FINRA and the SEC itself.[15] The Proposal also does not demonstrate how investors are being harmed under the current regime or why the current supervision of "communication protocol systems" under FINRA's and the SEC's current standards and regulations for brokers relying on outsourced technology is inadequate.

In fact, FINRA has worked closely over the years with its broker-dealer members to implement robust standards for cybersecurity and business continuity when outsourcing technology. As early as 2012, and repeatedly since, FINRA has included as a priority in its Regulatory and Examination Priorities to "review firms' due diligence and risk assessment of providers of outsourced services and their supervision of those services."[16] In connection with this priority, FINRA has set forth a demanding and carefully overseen set of expectations: "FINRA expects member firms to develop reasonably designed supervisory systems appropriate to their business model and scale of operations that address technology governance-related risks, such as those inherent in firms' change and problem-management practices. Failure to do so can expose firms to operational failures that may compromise their ability to serve their customers or comply with a range of rules and regulations, including FINRA Rules 4370 (Business Continuity Plans and Emergency Contact Information), 3110 (Supervision) and books and records requirements under 4511 (General Requirements), as well as Securities Exchange Act of 1934 (Exchange Act) Rules 17a-3 and 17a-4."[17] Similarly, the 2022 SEC Department of Examinations Information Security and Operational Resiliency exam priorities include "practices to prevent interruptions to mission-critical services", "overseeing vendors and service providers" and "reviewing registrants' business continuity and disaster recovery plans."[18]

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[15] See Proposal at 387, FN 890.

[16] See FINRA 2016 Regulatory and Examination Priorities Letter (January 5, 2016) https://www.finra.org/rules-guidance/communications-firms/2016-exam-priorities. In 2012, FINRA expressed its concern about information technology (IT) and cyber security threats and became more aware of member firms interested in outsourcing, offshoring or third-party relationships. They identified three particularly important priorities: Integrity of Supervision and Internal Controls; Information Technology and Cybersecurity; and Outsourcing. See FINRA 2012 Regulatory Priorities (January 31, 2012), https://www.finra.org/rules-guidance/communications-firms/2012-regulatory-and-examination-priorities-letter.

[17] See FINRA Regulatory Notice 21-29, (August 13, 2021), "Vendor Management and Outsourcing" https://www.finra.org/sites/default/files/2021-08/Regulatory-Notice-21-29.pdf at 3.

[18] See U.S. Securities and Exchange Commission, 2022 Examination Priorities, Division of Examinations, (March 20, 2022) https://www.sec.gov/files/2022-exam-priorities.pdf at 15.

Different regulatory treatment is not a sign of a regulatory failure. The space is regulated. Bloomberg noted in its Comment Letter[19] on the Original Government Security ATS Proposal and Concept Release[20] that differing regulatory treatment of providers in the space often represents choice. Some Fintechs ***elected*** to become brokers for business model or other purposes. For a variety of reasons, Bloomberg made the choice in 2021 to move its RFQ and price negotiation platforms into its broker-dealer, Bloomberg Tradebook.

Differing regulatory treatment also reflects the substantive differences in the underlying activities that rightfully result in a different regulatory outcome. For example, some brokers-dealers became ATSs because they operated in a clearly defined ATS/exchange-like capacity.

As inaccurate as it is to infer that somehow different regulatory treatment is an indication of a regulatory failure,[21] (it is not) evening out "inconsistent regulatory treatment" between ATSs and the newly created catch-all "Commission Protocol Systems" is not a valid justification for expanding the regulatory perimeter. It does not explain ***why*** these systems should be treated like exchanges. Even if the Commission were to correct a major flaw in the Proposal – the lack of a definition – and provide a definition for Communication Protocol Systems, these systems are not trading centers. They do not hold firm liquidity. They do not match or cross orders. Systems using communication protocols would not be "performing with respect to securities the functions commonly performed by a [stock] exchange."[22] Although Bloomberg has concerns that the cost of the additional regulation in the Proposal is understated, it is clear there are costs and that is conceded in the Proposal. The benefit, however, is not articulated.

Build on existing regulatory landscape. FINRA and the SEC already regulate broker-dealer activity. The Proposal never demonstrates how investors are currently being harmed and does not discuss how FINRA's (or even the Commission's) current standards for broker-dealers relying on outsourced technology are inadequate. How are investors going to be more protected by regulating the passing of messages when a dealer is already directly regulated?

Bloomberg does believe that some of the activities of certain third-party service providers do warrant a measure of direct supervision and, in Section V, Bloomberg provides some concrete regulatory justifications that the Commission may consider in a re-proposal. But as currently constituted, the Commission's Proposal to draw these types of entities under the definition of exchange as a CPS and thus into exchange or ATS registration is unfocused and mismatched to any identified regulatory gap.

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[19] See "Gregory Babyak Letter", Gregory Babyak, Bloomberg L.P., (March 1, 2020), https://www.sec.gov/rules/proposed/2020/34-90019.pdf.

[20] See "Concept Release", No. 34-90019; File No. S7-12-20, https://www.sec.gov/rules/proposed/2020/34-90019.pdf.

[21] See "Gregory Babyak Letter" at 23 and 30.

[22] See § 240.3b-16(a).

(2) Brokerage Technology – only FINRA-regulated broker-dealers can offer non-ATS non-discretionary workflows to their customers. Non-ATS methods such as algorithms that make order handling decisions and communications networks that simply route orders ("Order Routing Communication Systems") to trading centers are further examples of brokerage technology that is operated by broker-dealers and directly overseen by FINRA and the SEC.

(3) Trading Centers / ATSs – CLOBs are the most heavily regulated entities because they conduct the more exchange-like activity of managing firm orders – holding them and then matching them. Exchange Act Rule 3b-16(a) and Regulation ATS clearly describe the characteristics of this top tranche of activity. Rule 3b-16(a) and (b) work together – "exemptions" described in Rule 3b-16(b) and "Systems" J through T described in the Regulation ATS adopting release were confirmations that those systems activities indeed failed the functional test described in Rule 3b-16(a) and were not exchange or ATS activity.

Rule 3b-16 and Regulation ATS, with Systems A through I clearly defined the regulatory perimeter of central limit order book activity beginning at "order entry" (Figure 2) - at the ATS' "ticket" or when the ATS acknowledged/received an order message via an API. The services of the ATS and any fair access requirements of the ATS were easy to describe and clearly implement.

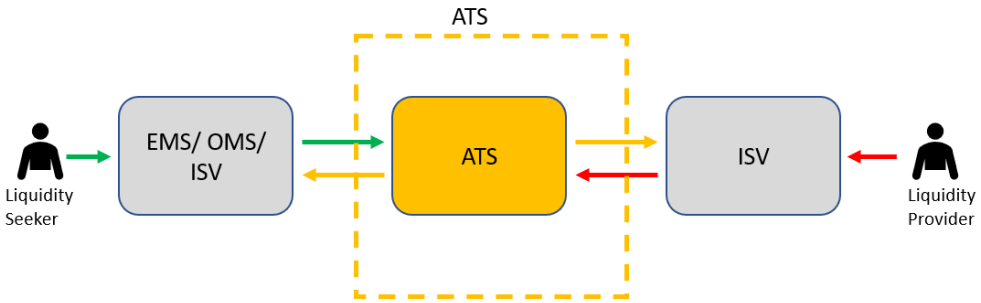

Figure 2. The regulatory boundary of an ATS, since 1998, has generally been acknowledged as beginning either at the ATS' "ticket" or when the ATS acknowledged/received a message via an API.

Regulation SCI Appropriately Applies to CLOBs. Regulation SCI was introduced in 2014. It applies to critical market utilities and infrastructure that represents a single source of failure where an outage could cause a market disruption. Appropriately, under that rubric, CLOBs (exchanges and ATSs) with significant volumes were subject to the requirements of Regulation SCI to ensure a trading center's market, was fair, orderly and stable. Regulation SCI only applies to equity ATSs. A similar regulation but not as prescriptive as Regulation SCI, Regulation ATS Rule 301(b)(6), the "Capacity, Integrity, and Security of Automated Systems", was only applied to ATSs that matched customer orders in a CLOB for corporate debt or municipal securities if they crossed a 20 percent or more average daily volume traded threshold. An ATS is a trading center,

a marketplace of firm orders. The resting orders are electronically accessible for automatic execution using established, non-discretionary methods. The liquidity represented in an ATSs is unique.

As a liquidity center, there is no natural redundancy to these automated execution systems. Central limit order book ATSs are liquidity centers aggregating disparate sources of liquidity and enabling trading based upon a relationship with the operator or central clearing counterparty even when the traders do not have a direct relationship with each other. Regulation SCI astutely notes that redundancy in operational systems, such as CLOBs, can only occur if the ATS creates its own safeguards and redundant and failover systems. As the events in the equity market leading up to the 2012 technology round tables and the 2019 failure of a Government Securities ATS that traded a large volume of government securities demonstrated, a failure at an ATS drains liquidity from the market and may disrupt the functioning of fair and orderly markets. Even if the failure does not disrupt the market, by its nature of holding participant's order firm until a formal release is issued ("UR-OUT" acknowledgment message), it can make the status of those orders in the automated execution system uncertain – directly harming the market participants and/or creating compliance issues.[23] This is what makes it appropriate for true ATSs (CLOBs), at least for government securities to be subject to Regulation SCI.

In Section IV, Bloomberg discusses that since CPSs do not hold firm orders, have no liquidity and are not single-source market utilities (e.g. DTCC, and the CTA and UTP Plans), making them subject to Regulation SCI is not appropriate for the resulting low-risk profile presented by their activities. In Section V, Bloomberg proposes that it is appropriate for all CPSs at the initiation of operations to comply with Regulation ATS Rule 301(b)(6) – "Capacity, Integrity and Security of Automated Systems" standards.

There are Serious Structural Flaws that Require a Re-Proposal

The Proposal is a Complete Reconceptualization of the Securities Market. This is the first opportunity for the public to react to such sweeping change(s).[24] The Proposal to amend the

[23] See "Regulation SCI" at 44.

[24] "Regulation NMS" [Release No. 34-51808; File No. S7-10-04] https://www.sec.gov/rules/final/34-51808.pdf and "Regulation of Exchanges and Alterative Trading Systems" ("Regulation ATS") [Release No. 34-40760; File No. S7-12-98] https://www.govinfo.gov/content/pkg/FR-1998-12-22/pdf/98-33299.pdf are on par with the sweeping changes to the securities market structure. The Regulation NMS process began with SEC market structure hearings in October and November 2002. A proposal was available on February 26, 2004 with an 87-day comment period. The SEC held another set of public hearings in April 2004 and issued a supplemental request for information with a 30-day comment period in May 2004. In December 2004, Regulation NMS was reproposed with a 30-day comment period with the final rule adopted in June 2004. Regulation ATS began with an extremely targeted concept release on May 23, 1997. On April 29, 1998 Regulation ATS was proposed with a 90-day comment period and adopted on December 22, 1998. Regulation SCI began with two technology roundtables in September 2012. A proposal was made available on March 25, 2013 and the comment period was extended to July 8. On December 5, 2014 the

definition of an exchange represents a complete reconceptualization of securities market structures that was not clearly articulated in the "Original Proposal and Concept Release."[25] The proposed changes are on the scale of Regulation SCI, Regulation ATS, and even Regulation NMS. For those major changes, the Commission undertook a methodical collaborative process that included public hearings and roundtables, concrete proposals with lengthy comment periods, re-proposals, and requests for additional information. There are multiple instances in the cost benefit analysis where the Commission states that they "lack the data", "request commenters provide insights or data", or ask for commenters to "describe the nature of any impacts on small entities and provide empirical data." Numerous such instances raise fundamental concerns about whether the Commission could have adequately assessed the impact of the Proposal and beg the question of why the Commission did not put out a call for additional information, as they have done in other similar rule making processes.

Complicating the process for evaluating the Commission's re-conceptualization of the securities markets is that the public is receiving it and being asked to comment upon it in piece-meal fashion. Since the Proposal was released for public comment, the Commission has subsequently proposed a number of additional and overlapping rules that may dramatically impact the cost-benefit analysis, the operation of the rules in the Proposal, and indeed the structure of the market itself. For example, the Commission has already issued a Proposal to further define "As a Part of a Regular Business" in the definition of Dealer and Government Securities Dealer.[26] As noted at the time the dealer rule proposal was issued, the proposed definitions rely in part on the framework being developed in ***this*** Proposal. The two proposals and issues dealt with therein are clearly interrelated, and the costs and benefits in this Proposal cannot be evaluated in isolation. But it is not clear how these two proposals are intended to work together. In addition to the proposed dealer rule, the Commission is contemplating significant additional changes to Regulation SCI [27] and considering recommending central clearing in the Government Securities

adopting release was issued. The "Original Proposal and Concept Release", which was materially different and narrower in scope than this Proposal, the comment period (due March 31, 2021) was 184 from posting (9/28/2020) and 90 days from the Federal Register (12/31/2020).

[25] The "Original Proposal and Concept Release" referred 13 times to "definition of exchange". Question 147 is illustrative that rather than proposing an articulated conceptualization, the Commission asks "Is the Commission's [current] approach under Exchange Act Rule 3b-16(a) appropriate for fixed income electronic trading platforms? If not, what elements of the definition of exchange under Rule 3b-16(a) do commenters believe that the Commission should consider changing and why?" and "For example, should or should not the element of 'orders' in Rule 3b-16(a) be included in the definition of exchange **with regard to fixed income** electronic trading platforms?" at 219.

[26] See Proposed Rule, (March 28, 2022). "Further Definition of 'As a Part of a Regular Business' in the Definition of Dealer and Government Securities Dealer", Release No. 34-94524; File No. S7-12-22, https://www.sec.gov/rules/proposed/2022/34-94524.pdf.

[27] See Chair Gensler. (2002, January 24). "Cybersecurity and Securities Laws" https://www.sec.gov/news/speech/gensler-cybersecurity-and-securities-laws-20220124.

Markets.[28] The Administrative Procedures Act requires an agency to provide the public with adequate notice of a proposed rule followed by a meaningful opportunity to comment on the rule's content. Given the manner in which the Commission has released these proposals (and will apparently continue to release future proposals), the public is being deprived of an opportunity to provide meaningful comment.

How Could the Simple Elimination of the Government Securities Exemption from Regulation ATS Receive More Consideration Than Amending the Definition of an Exchange? In stark contrast to the Proposal to amend the definition of an exchange, the Commission has studied extensively the relatively simple elimination of the government securities exemption from Regulation ATS. The Commission solicited information and public feedback for specific Commission proposals several times. In 2015, the Commission asked for comments on whether they should consider eliminating the exemption in the proposal to change the "Regulation of NMS Stock Alternative Trading Systems".[29] In 2018, when the Commission adopted the final rule, it said "Given the range of commenter views on these questions and our belief that it is appropriate to take an incremental approach by first applying the amended regime to NMS Stock ATSs before considering a further step…"[30] In 2020, the Commission through the "Original Proposal and Concept Release" proposed to eliminate the exemption and, based on extensive feedback, submitted to the public a re-proposal, this Proposal, in 2022. Through this process, the Commission has clearly demonstrated that the elimination of the government securities exemption from Regulation ATS is appropriate because "Legacy Government Securities ATSs now operate with complexity similar to that of markets that trade NMS stocks in terms of use of technology and speed of trading, the use of limit order books, order types, algorithms, connectivity, data feeds, and the active participation of principal trading firms ("PTFs")".[31] It is puzzling how something as far reaching as amending the definition of exchange is not presented in a concept release first.

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[28] See Office of Information and Regulatory Affairs, Office of Management and Budget. "Expanding Clearing of Government Securities", SEC RIN 3235-AN09, https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=7CE97CC2D49C9B6B70868F7B2752E582C86F1945A4A46F34426C18AF1ABE101E611318F64B67159C3A36E7556BD0FB872C8F.

[29] See Proposed Rule. Regulation of NMS Stock Alternative Trading Systems. [Release No. 34-76474; File No. S7-23-15], Nov. 18, 2015, https://www.sec.gov/rules/proposed/2015/34-76474.pdf, at 88.

"The questions above relate to all fixed income securities, but the Commission is also interested in learning commenters' specific views about whether ATSs that effect transactions in fixed income securities that are government securities, as defined under the Exchange Act, should be subject to increased regulation, operational transparency requirements, or both."

[30] See Final Rule. Regulation of NMS Stock Alternative Trading Systems. [Release No. 34-76474; File No. S7-23-15], Jul. 18, 2018, https://www.sec.gov/rules/final/2018/34-83663.pdf, at 61.

[31] See Proposal at 62.

The Proposal's Ambiguity Should be Clarified. On the one hand, the Proposal notes throughout that the Commission is not proposing to amend Exchange Act Rule 3b-16(b), which excludes from the definition of "exchange" 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.[32] On the other hand, other portions of the Proposal indicate that these traditional broker-dealer activities and systems that were exempted from Rule 3b-16(b)(2) and Regulation ATS are indeed exchange activities by virtue of an entity using Communication Protocols or a Communication Protocol System. These contradictions are articulated while the Proposal also claims that the 3b-16 exemption will remain intact. The ambiguous modification to Rule 3b-16(a) – a definition that is foundational for the securities market – poses the risk of significant unintended consequences. In Section V, we will suggest ways of adjusting Rule 3b-16(b)(2) and Regulation ATS systems A-T in a manner that will maximize market benefit, provide clarity, and minimize the prospect of unintended consequences.

Consider the Tension within the Treatment of "Stream Axes". "A Communication Protocol System could also include 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…. Systems that stream axes take many forms. Some system providers provide connectivity and protocols for participants to electronically communicate and negotiate the terms of a trade. Other system providers offer participants more automated processes, whereby ***participants auto-execute*** against a streamed quote and agree upon the terms of a trade without negotiation. Typically, the system is programmed with permission options to allow participants to decide who can or cannot receive their axes. In such a case, the trading interest exchanged between the parties is ***typically firm and functions as orders***."[33] Exchange Act Rule 3b-16(b)(2) provides that a system is not considered an "exchange" if the system routes orders for execution against the bids and offers of a single dealer. "Steam axes" appear to fall squarely within this exception.

Exchange Definition Now Covers Virtually all Activity Creating an Excessively Broad Regulatory Perimeter. When amending the definition of exchange in Rule 3-b16(a) in 1998, the Commission provided what is generally referred to as the "two-part test" – starting with an initial "litmus test" to determine whether certain activities were "exchange-like."[34] The Proposal eliminates "multiple", introduces a new view on "established, non-discretionary"[35] and a

[32] See Proposal, footnote 72 at 26.

[33] See Proposal at 19.

[34] See Proposal at 13-14.

[35] The prevailing understanding of "non-discretionary" was highlighted in the FIMSAC's October 5, 2020 "Regarding Defining "Electronic Trading" for Regulatory Purposes" ("FIMSAC Recommendation") at 2, FN 2

vastly expanded view of "trading interest." The effect is that virtually every communication and potentially trading-related workflow will be regulated as an ATS (Figure 3).

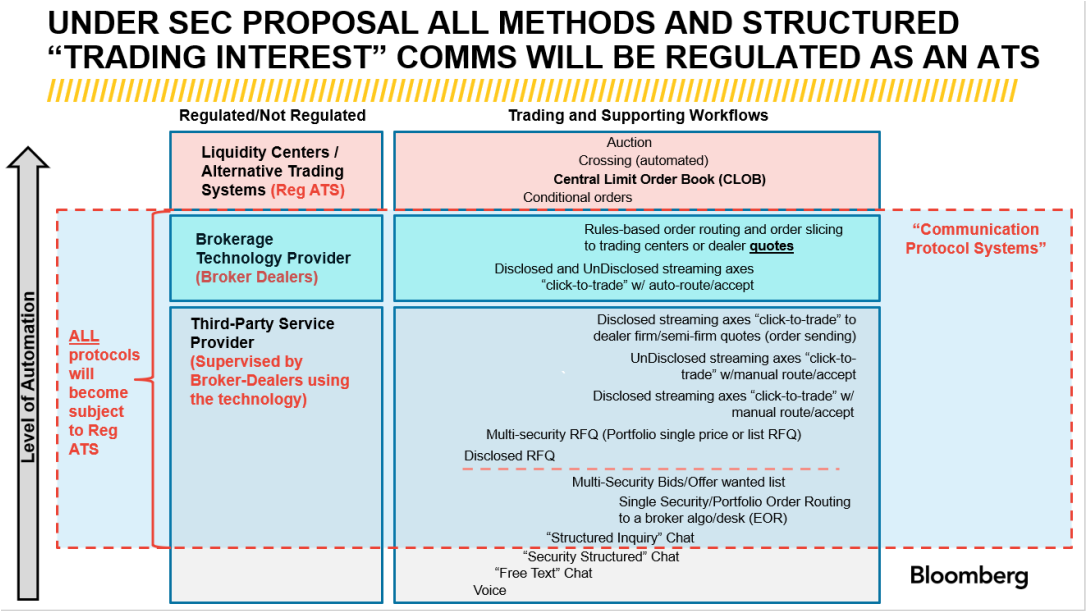

Figure 3. Reflecting a general lack of regulatory proportion, virtually all communications of structured trading interest will be regarded as an ATS.

To define the regulatory perimeter, the Proposal mentions that one commenter tried to assist the Commission by suggesting "a litmus test" for determining whether a fixed-income trading platform for corporate bonds and municipal securities meets the criteria that warrant registration as an exchange or ATS.[36] The Commission could have refined the commenter's suggestion or created a series of clear tests to establish clear guidelines for market participants

https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-recommendation-definition-of-electronic-trading.pdf.

"The nature of the RFQ protocol allows for only the requestor to interact with bids or offers sent in response to a request. As such, this functionality (one-to-many) does not constitute bringing together orders for securities of multiple buyers and sellers (many-to-many) as required under §240.3b-16(a)(1). In addition, the RFQ requestor may have the ability to transact against any quote provided in response to his or her request for quote**. This trading discretion puts the protocol outside the requirement that the platform use "established, non-discretionary methods under which such orders interact with each other" as required under §240.3b-16(a)(2)"** (emphasis added).

The proposal changes the accepted interpretation noting: "The term "non-discretionary" should not be misconstrued to mean that a system does not meet the definition of exchange if it permits buyers or sellers using the system to exercise discretion with regard to the use of the system." See Proposal at 40.

[36] See Proposal at 42, FN 116.

(including the commenter) in determining whether activities under a new Proposal would be "exchange" activity. Instead, the Commission rejected the commenter's idea by simply noting it was not inclusive enough. The problem still remains - neither the Concept Release nor the Proposal have provided enough guidance on rationales that could be used to clearly delineate activities and draw lines.

Bloomberg agrees with the commenter that the Commission needs to set clear guidelines and concrete terms that could be put into a "test" or series of tests to define a clear regulatory perimeter. Practically, how can an organization, association, or group of persons have clarity to structure activities based on the following: "Protocols that a system offers may take many forms and ***could include… These examples are not exhaustive***, ***and the determination of whether the system meets Rule 3b-16(a)(2) would depend on the particular facts and circumstances of each system. Nevertheless, as proposed, the Commission would take an expansive view of what would constitute "communication protocols" under this prong of Rule 3b-16(a)***"[37] (emphasis added)?

This Commission has made clear at the highest levels that it expects the market to take an extremely conservative approach to regulatory requirements and to leave no doubt about compliance by staying far away from the regulatory line.[38] This is difficult to do when a clear line is not being articulated.

Today, we have a clear two-part test that defines the activities of an exchange and an ATS. This Proposal lacks such a clear line. As a rules-based agency, the SEC should provide meaningful definitions to provide clear guideposts so that as technology evolves, innovators, staff, and examiners are all aligned in identifying when activities have clearly crossed regulatory thresholds.

The Commission should not abdicate its responsibility to create clear rules, informed by clear "tests". It should not allow policy to be set by relying on a long list of exemptions from Staff FAQs or enforcement – neither of which are subject to notice and public comment.

The Proposal Does Not Clearly Identify a Problem and Lacks a Regulatory Justification. This underlying tension within the release and its complete lack of proportionality in applying regulatory obligations that are commensurate with the amount of risk that the activity represents stems from the most fundamental shortcoming of this Proposal – namely, that it does not define the problem(s) that the Commission is seeking to solve. The Proposal simply and repeatedly states that "including Communication Protocol Systems within the definition of

[37] See Proposal at 41-42.

[38] "So, if you're asking a lawyer, accountant, or adviser if something is over the line, maybe it's time to step back from the line. Remember that going right up the edge of a rule or searching for some ambiguity in the text of a footnote may not be consistent with the law or its purpose." See SEC Chair Gary Gensler, Prepared Remarks at the Securities Enforcement Forum (November 4, 2021) https://www.sec.gov/news/speech/gensler-securities-enforcement-forum-20211104 and Prepared Remarks at 2021 FINRA Annual Conference (May 20, 2021) https://www.sec.gov/news/speech/gensler-finra-conference.

'exchange' would appropriately regulate a marketplace 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"[39] The "benefits" of extending the exchange regulatory framework to historically non-exchange activities are not articulated and are not self-evident.

It has long been a matter of administrative law that an agency must clearly articulate and demonstrate the regulatory justification for a proposal. The United States Court of Appeals for the District of Columbia Circuit put it succinctly that "[A] regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist."[40]

A clear understanding of the problem to be solved is needed in order to evaluate whether the Proposal, by amending the definition of exchange, achieves its goals and that the benefits of the regulation outweigh the burdens on competition and the costs associated with compliance. The Commission should reconsider the parts of the Proposal amending the definition of an exchange and suggest a framework for the regulation of CPSs as a concept release rather than a rule proposal.

Key Terms are Not Defined. The Proposal either drastically expands the scope of regulation to all communication methods (Figure 3) or gives the impression it does because key terms, such as Communication Protocols and how they create a "system", are not defined. The Proposal articulates concepts only through sets of (non-exhaustive) examples and warns that "the Commission would take an expansive view".[41]

Expanding the Definition of Exchange Could have Significant Extraterritorial Cross-Border Implications that May Fracture Liquidity Away from US Markets

Non-US Trading Venues Offering Services to US Customers Required to Register. If a non-US venue (e.g. a UK Multilateral Trading Facility ("MTF") or EU MTF) offers services to US customers, under the expanded definition of exchange, the non-US venue may fall within the definition of exchange and may be required to register as an exchange or ATS if services are offered to US persons.

Example: Trade Messaging Service (TMS) – TMS A provides a service that offers the use of protocols and non-firm trading interest to bring together buyers and sellers of securities. TMS A is located in the UK and is registered with the UK Financial Conduct Authority (FCA) as a MTF. TMS A has both UK and US customers. Under the Proposal, TMS A may need to register

[39] See Proposal at 9.

[40] See Home Box Office, Inc. v. FCC, 567 F.2d 9, 36 (D.C. Cir. 1977), internal quotation marks omitted, quoting City of Chicago v. FPC, 458 F.2d 731, 742 (D.C. Cir. 1971)).

[41] See Proposal at 42.

in the US as either an exchange or ATS (by virtue of the services offered to US customers). It is impractical for TMS A to be regulated by the UK FCA and the SEC and FINRA at the same time.[42] This may impact the growth of electronic trading and significantly reduce the transparency of non-US assets' prices to US investors. If operators of non-US CPS services withdraw, the Proposal may also impede US investors ability to efficiently access quality liquidity, raising their overall cost of execution.

This issue could be solved by the SEC, in a re-proposal, clarifying that operators that offer non-US ATS/CPS services (like MTFs in the UK/EU or ATSs in Canada, Japan, etc.) would not be in scope if the operator is already overseen by a national regulator (e.g. FCA, ESMA, a Canada provincial or territorial securities regulator, FSA of Japan) or clarify how Exchange Act Rule 15a-6 would apply.

Foreign Branches of US Trading Venues Required to Register. Because ATSs are broker-dealers, an operator of a CPS (or other system) captured by the proposed rule that has support from non-U.S. personnel may be viewed as having foreign associated persons and a foreign office. Non-U.S. personnel engaged in functions on behalf of the operator who are not solely and exclusively clerical or ministerial, will have to register as an associated person of the operator. Such personnel may be required to take proficiency exams which are not required for their daily activities outside the United States but solely arise because they are associated with a broker-dealer subject to the new proposal. Certain associated persons who are not required to take proficiency exams may still be subject to Section 17(f)(2) and Rule 17f-2 of the Exchange Act and will have to be fingerprinted which may not be permitted under foreign employment law. Foreign associated persons will be subject to the operator's written supervisory procedures which will include, among other requirements, disclosure of outside business activities, review of outside brokerage accounts and restrictions on their trading and review of electronic communication and social media accounts. Finally, the location of the associated persons will be subject to FINRA's regulatory requirements associated with the activity of the location including supervision and routine exams. The operator will have to determine whether the location should be considered as an office of supervisory jurisdiction (OSJ), non-OSJ, or a non-branch office.

Example: TMS B is a Communication Protocol System that is required to register under the new rule as either an exchange or ATS. TMS B has personnel in both the US and foreign jurisdictions. Personnel of TMS B provide trading support and engage in sales activities for customers in the US and in foreign jurisdictions. Non-US personnel of TMS B may need to register with FINRA as associated persons. Locations in which the non-US personnel work may need to register as foreign branch offices. The direct costs of registration, additional supervisory staff and expanded examinations from this scenario are not reflected in the cost benefit analysis.

[42] Note that the situation also occurs with EU MTFs being subject to European Securities and Markets Authority (ESMA) rules, their local National Competent Authority as well as the SEC and FINRA.

This is a burden caused by the Proposal. None of these costs are acknowledged or estimated in the cost benefit analysis. TMS B operators may withdraw services or triage access to a US CPSs. Non-US based sources of liquidity may decline, thereby driving up costs of execution for US investors.

Changing the Definition of an Exchange may Confuse the Public and/or Trigger Foreign Regulators to Reevaluate their Regulatory Treatment for ATSs. Market participants have been operating under the current definition of exchange since 1998. The Proposal's amendments, instead of protecting investors and clarifying the market structure and the operators, could have the opposite effect where the change in the definition of the exchange confuses investors that ATSs, specifically broker-dealer Dark Pools, ***are perceived as*** exchanges.

The broad perspective of what constitutes exchange activity from the amended definition of exchange could cast a different light on ATSs altogether, globally. Generally, non-US regulators view ATSs as a brokerage service offered by a local affiliate. The amended definition could result in a reevaluation of that perspective by non-US regulators. The local broker could be viewed as either providing direct electronic access to a US exchange or granting a local the ability to directly connect to a US exchange with a "pass-through" linkage - where the local-broker's customer can enjoy electronic trading capabilities that are equivalent to the trading privileges of a subscriber to the US exchange. As impractical as it is for non-US trading venues to be regulated both in the US and their local jurisdiction, it is also extremely problematic for a US ATS/CPS to be regulated as an exchange in a non-US jurisdiction.

Example: TMS C operates a trading venue that is required to register as either an exchange or ATS under the new rule. TMS C offers services to non-US customers. Because the service is provided to non-US customers, foreign regulators, under the amended definition of exchange, may not make the distinction between ATS and exchange and view TMS C services to be an exchange operating in the foreign market. Absent an equivalence regime or some other exemption in the non-US jurisdiction, TMS C may need to register as an exchange in the foreign market (in addition to registration in the US). Like the result in our prior example with TMS B, the outcome could be to restrict or triage access to ATS and CPS services impacting both the growth of electronic trading and liquidity.

IV. Responses to the Proposed Regulation of Communication Protocol Systems ("CPSs")

Bloomberg agrees "thematically" with the Proposal that there are certain Third-Party Service Provider ("Fintech") Activities that Should be More Directly Overseen

Bloomberg believes that the customers using some Fintech solutions (Figure 1) could benefit from more direct supervision and the market could benefit from a more proportional framework than what is proposed. Bloomberg believes that the Commission should have given

greater consideration to the much simpler option of "7. Exclude communication protocol systems from the definition of 'exchange' but require them to register as broker-dealers" in the Commission's "Reasonable Alternatives".[43] Bloomberg embraces this recommendation, mandating that a CPS operator must be a broker-dealer in the considerations for an alternative approach to regulate Communication Protocol Systems.

CPS is not Defined and the Basic Premise that CPS Activity is "Exchange-Like" is Flawed.

The lack of guidelines for trading interest and lack of definition for Communication Protocol Systems contributes to the unnecessarily broad regulatory perimeter (Figure 2). The Proposal notes that "The Commission estimates the total number of Communication Protocol Systems to be 22".[44] This leads to the conclusion that the cost-benefit analysis was conceived with a greater sense of bright lines and clarity than we have been able to discern and we would respectfully request that it be shared for notice and public comment.

Exchanges are Not CPSs. The Commission has failed to show how CPSs are carrying out "functions commonly performed by a stock exchange."[45] The Proposal struggles with technology that has features of an exchange but does not satisfy the functional two-part test that defines an exchange.

Exchanges do not engage in electronic negotiation. Even the NYSE floor brokers do not engage in this electronic interaction. CPSs are not functionally equivalent to the functions or the activities of a national securities exchange. Only ATSs (CLOBs) are the functional equivalent to the activities of a national securities exchange.

Exchanges also do not send, to begin the RFQ/trading interest process, "request messages" (messages that seek to solicit actionable quotes in securities from a liquidity provider(s) for the expressed intent and purpose of trying to agree to the terms of a trade in a defined period of time) to trading venues. Exchanges rely solely on the use of "firm" orders to indicate interest and agree to the terms of the trade. They are facilities that receive order messages, hold firm orders and execute to bind participants to the terms of a trade. To suggest otherwise would imply that the securities exchanges are encroaching on or offering traditional brokerage activity. Regulation ATS was to bring broker-dealer activity into scope of exchange activity because their electronic (central

[43] See Proposal at 502.

[44] See Proposal at 327-328.

[45] See Proposal at 9.
Also see, "Proposed Regulation of Exchanges and Alternative Trading Systems" Release No. 34-39884; File No. S7-12-98, https://www.sec.gov/rules/proposed/34-39884.pdf at 14. "… a broader interpretation of exchange is needed to cover markets that ***engage in activities functionally equivalent to markets currently registered as national securities exchanges***." (emphasis added).

limit) order books were carrying-out "functions commonly performed by a stock exchange." This is why the answer to Question 3 is "Yes, the definition of an exchange should include only orders."

CPSs are Not ATSs. An ATS is a trading center, a marketplace of firm orders. The resting orders are electronically accessible for automatic execution using established, non-discretionary methods. Equating the functional equivalency of ATS and CPS protocols, the Proposal misses a critical point in the description of the RFQ protocol: "For example, participants receiving an RFQ message can choose to interact with the initiator by responding within a time period designated by the system provider with a priced quote. These methods can serve the same function as auctions where the respondents compete to offer the best price. The initiator can then select among the quote responses that it wishes to interact with through the system by either accepting one of multiple responses or rejecting all responses within a period of time set by the system provider. ***The match of the request and response results in an agreement to the terms of the trade between a buyer and a seller, which then proceeds to post-trade processing***"[46] (emphasis added).

This is not accurate. RFQ is not like an auction commonly conducted at a national securities exchange because the RFQ system does not bind, match or execute. At no point is the system handling a firm order, like an exchange. The last step in an RFQ, that the Proposal is missing in its description is - when the initiator selects their counterparty, an order is then routed to the liquidity provider. The liquidity provider then executes, binding both parties to the terms of the trade, and sends back through the system a notice of execution. The liquidity provider has the option to not execute. For numerous reasons, a CPS is clearly not carrying out "functions commonly performed by a stock exchange." Moreover, this is also a critical difference between CPSs and ATSs – there is no consideration of the operator's credit worthiness in a CPS because the CPS does not stand in the middle – RFQ is a direct relationship between the responder and initiator.

The key differentiator between ATSs, Order Routing Communications Network and CPSs is that ATSs are trading centers and therefore have unique liquidity. The Proposal notes that the only activity an ATS may perform that is CPS-like are conditional orders. Conditional orders are communication protocols, but they are not a stand-alone "system", like a CPS. Conditional order protocols are an order entry service into the ATS.

CPSs Simply do not have the Same Risk Profile as an ATS and Should not be Regulated as an ATS.

ATSs are Liquidity Centers. As a liquidity center, there is no natural redundancy to these automated execution systems. Central limit order book ATSs are liquidity centers aggregating disparate sources of liquidity and enabling participants to trade with each other because they have a relationship with the operator even when they may not have a direct

[46] See Proposal at 18.

relationship with each other. Regulation SCI notes that the operational redundancy can only occur if the ATS creates its own safeguards and redundant and failover systems. An event at an ATS drains this source of liquidity from the market and may disrupt the functioning of an otherwise fair and orderly market. As noted earlier, the 2019 failure of a significant Government Securities ATS that traded a large volume of government securities demonstrated this. And, if the event does not disrupt the market, by virtue of holding participant's order firm until a formal release is issued ("UR-OUT" acknowledgment message), the event may make the status of those orders in the automated execution systems uncertain, harming market participants and/or creating compliance issues.[47] This is what makes it appropriate for at least Government Security ATSs - and possibly all fixed income ATSs with significant volumes - to be subject to Regulation SCI.

Historically, the Commission has supported proportional or risk-based regulatory obligations. This sense of regulation proportional to the level of activity is clear in Section 5 of the Exchange Act. Section 5 enables the Commission to exempt a system from registration as an exchange on the basis of effecting limited volumes. In the 1998 Regulation ATS adopting release, the Commission recognized that electronic systems that simply routed orders to trading centers conducted a far less risky activity than ATSs that executed/matched trades – binding participants to the terms of the trade – and exempted Order Routing Systems (e.g. Order Routing Communications Systems) from Regulation ATS. In July 2020, SEC Staff provided new guidance for Footnote 74 to the July 30, 2013 Exchange Act Release No. 34-70073 – reiterating that it is appropriate to have different types (categorizations) of broker-dealers – such as broker-dealers that offer non-brokerage (technology-only) activities - and that it is appropriate to require different levels of capital, reporting and supervision depending upon the risk of the activity that is being undertaken.[48] Amending the definition of an exchange to regulate CPS activities does not reflect the kind of careful weighing of risks and rewards that characterized prior Commission actions on Regulation ATS.

In adopting both Regulation ATS and Regulation SCI, the Commission was very careful to make sure that the burdens that were being imposed was commensurate to the risk of the activity and its potential impact on orderly markets. For example, in raising the Capacity, Integrity and Systems standards in Regulation ATS 301(b)(6) to Regulation SCI, the Commission established the volume thresholds so that the burden would apply to ATSs with significant volume. "The Commission has carefully considered the views of commenters in crafting Regulation SCI to meet its goals to strengthen the technology infrastructure of the securities markets and improve its resilience when technology falls short. Many of these modifications are intended to further focus the scope of the requirements from the Proposal and to lessen the costs and burdens on SCI entities,

[47] See "Regulation SCI" at 44.

[48] See "Broker-Dealer Reports", Release No. 34-70073; File No. S7-23-11, https://www.sec.gov/rules/final/2013/34-70073.pdf.

while still allowing the Commission to achieve its goals."[49] Regulation ATS recognized that "Order Routing Systems" should not be subject to Regulation ATS because they did not perform the much riskier activity of holding firm orders and matching them.

Order Routing Communications Systems are a form of CPS. CPSs and Order Routing Communications Systems do not have unique, natural, or resting liquidity available for automatic execution. They connect to trading centers and dealers where that liquidity rests. If a CPS has an event, the liquidity does not disappear, like it does if an ATS (which is a liquidity center) has an event.[50] Investors just have to change how they access liquidity.

Both FINRA and the SEC regulations require operational redundancy. There is plenty of voice, electronic and other types of communications redundancy that is built into the securities market ecosystem. Existing SEC regulations require asset managers through Rule 206(4)-7 ("Advisors Act Compliance Rule") and FINRA requires broker-dealers to have redundant connectivity for their systems and to their customers in place in order to minimize operational risks. The Commission recently noted that "An adviser's fiduciary obligation to its clients includes the obligation to take steps to protect client interests from being placed at risk because of the adviser's inability to provide advisory services. These include steps to minimize operational and other risks that could lead to significant business disruptions or a loss or misuse of client information"[51] According to the Coalition Greenwich North American Fixed Income Investor Study 2021[52], almost 75% of US-Based IG Investors had more than one system of what will be known as a "Communication Protocol System". According to The Trading intentions Survey 2022, published by The DESK, 91% of buy side firms use more than two interfaces of what the Proposal refers to as a "Communication Protocol System."[53]

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[49] See "Regulation SCI" at 21.

[50] Bloomberg noted in the "Gregory Babyak Letter" to the "Original Proposal and Concept Release" that for investors to better understand where they can locate the liquidity they need, "market share attribution should be from the liquidity seeker's perspective" and it is the "[e]xecuting brokers-dealers that either "own" an order or are "suppliers" of liquidity should be credited….Trades associated with electronification methods, such as disclosed-RFQ, should be credited to the broker-dealer that "owned" the order or provided the liquidity, and was a party to the trade." See "Gregory Babyak letter" at 15.

[51] See proposed rule "Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies", File No. S7–04–22, March 9, 2022, https://www.govinfo.gov/content/pkg/FR-2022-03-09/pdf/2022-03145.pdf at 13526 FN 12 referencing FN 10 Compliance Programs of Investment Companies and Investment Advisers, Investment Advisers Act Release No. 2204 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)], n.22 (''Compliance Program Release'') (noting this fiduciary obligation in the context of business continuity plans).

[52] See ("Coalition Greenwich 2021 Survey") Coalition Greenwich, "North American Fixed Income Investor Study 2021".

[53] See (The DESK Survey") The DESK, "The Trading Intentions Survey 2022, New platforms and late bloomers are all seeing greater interest", April 7, 2022, https://www.fi-desk.com/research-trading-intentions-survey-2022/?utm_source=rss&utm_medium=rss&utm_campaign=research-trading-intentions-survey-2022

Multiple layers of communication redundancy exist. In addition to having multiple forms of communication redundancy for business operations, from a practical perspective, while at the beginning of a CPS process a liquidity seeker may be managing many conversations each point of contact is typically disclosed. At the end of the CPS process, an order is sent. This is a bilateral process and the users of a CPSs know with whom they are dealing. If a CPS has an event, alternative modes of communication such as voice (phone), chat and email are natural redundancies that can be relied on to contact the liquidity provider. This is very different than an ATS.

The Commission did not subject Order Routing (Communications) Systems to Regulation SCI in 2014. There is no reason for all other types of CPSs to be subject to Regulation SCI. One of the vague areas of the Proposal is the treatment of Order Routing Communication Systems. As we noted earlier, although this Proposal calls them "stream axe", the Order Routing Communication System described is the same system referred to as an Order Routing System in Regulation ATS[54]. It is critical that the market understand the Commission's views because Order Routing Communication Systems are prevalent in fixed income. The last action finalizing the terms of trade from an RFQ negotiation is the same function of an Order Routing Communication System - the liquidity seeker routing an order to the liquidity provider (the trading venue)[55] to execute, and send back a notice of execution to formally agree to the final terms of the trade.

Regulation ATS recognized that not all electronic communication systems operated CLOBs and matched trades. Reflecting the proportionality of the regulation, the Commission excluded all "trading systems that merely route orders to an exchange or broker-dealer for execution"[56] from being treated with the same regulatory scrutiny (standards) as an ATS, and later Regulation SCI. In both Regulations ATS and SCI, the Commission did not treat Order Routing Communication Systems as ATS or SCI ATS. The Commission correctly viewed that Order Routing Communication Systems were fundamentally different than ATSs – representing a completely different risk profile. The Commission exempted Order Routing Communication Systems from Regulation ATS and they were not subject to Regulation SCI. The Commission recognized in 1998 that Order Routing Communication Systems (like CPSs) only connect to sources of unique natural liquidity (trading centers) – the Order Routing Communication System is not a trading facility; it does not have liquidity itself.

Without explanation, the Commission starkly departs from its historic stance and designates Order Routing Communication Systems as a form of CPS subject to Regulation ATS. If the Order Routing Communication System has significant activity routing orders to government

[54] See "Regulation ATS" FN 73 at 70853.

[55] See Proposal at 591.

[56] See "Regulation ATS", "1. Order Routing Systems" and FN 73 at 70853.

securities trading venues (ATSs, dealers, OTC market makers), it becomes subject to Regulation SCI, again for the first time and again without explanation as to why the Commission's historic stance has been rejected. Bloomberg continues to agree with the Commission's assessments in 1998 and 2014 that Order Routing Communication Systems and what are now labeled as Government Security CPSs should not be regulated as ATSs and should not be subject to Regulation SCI.

"Makes Available" Extends the CPS ATS Regulatory Perimeter to "Bulletin Boards" Compromising the Benefits from the Interoperability of "Best of Breed" EMS, OMS, and ISVs

In defining "passive" bulletin boards displaying trading interest as being outside the scope of an ATS, the Proposal uses the specific examples of workflows from an "interactive" bulletin board displaying trading interest that allows (or "makes available" through) the launch of a ticket or other means of communicating trading interest to be ATS activity. [57]

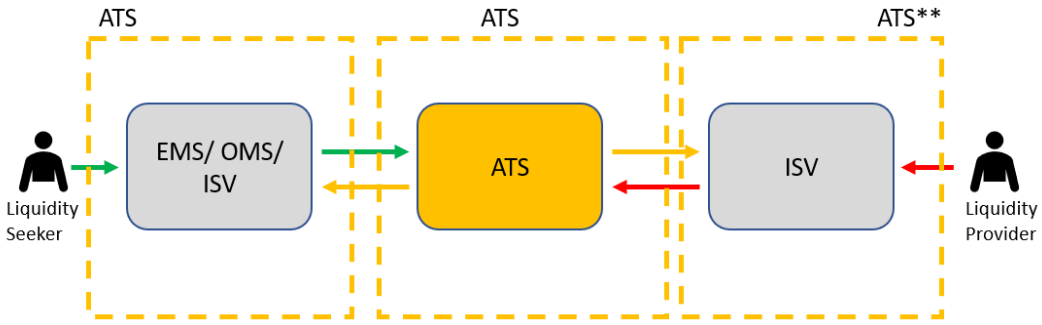

Figure 4. "Makes Available" essentially require every part of the technology chain to become an ATS.

EMS, OMS, ISVs must become an ATS?

EMS, OMS and ISVs all have "interactive" bulletin board workflows. Equity Order Routing (EOR) is a classic example. Historically, EOR or any unsolicited order routed to a broker was not considered a regulated activity (Figure 1). The Commission excluded order routing systems in the 1998 Regulation ATS adopting release and the activity also failed the ***two-part test*** ("multiple buyers and sellers").[58] This is another example of conflict within the Proposal. Rule 3b-

[57] See Proposal at 42-44.

[58] See "Regulation ATS" at 70854-55, III(D)(2)(j))

16(a) presents a functional two-part test for assessing what constitutes "exchange" activity. With the elimination of "multiple", EMS, OMS, and ISV activities are brought into scope because they no longer fail the two-part test. Section (b) explicitly excludes order routing from the definition of an "exchange" but the Proposal's new Section (a) language declares these systems CPSs, requiring them to become ATSs.

In addition to the changes in Section (a), under this Proposal, EOR to a broker's execution algorithm also comes into scope because (1) EOR "tickets" on an Order Management System (OMS), Execution Management System (EMS) or Independent Software Vendor (ISV) are initiated (typically) from an integrated monitor displaying trading interest (ticker and price). The Financial Information eXchange ("FIX") messaging protocol message is clearly using a structured communication protocol - the message contains all of the components (identifier, direction, quantity, and price) meant to convey trading interest.

The Proposal is quite clear: "Using the term 'makes available' will help ensure that the investor protection and fair and orderly markets provisions of the exchange regulatory framework apply to all the activities that consist of the system that meets the criteria of Rule 3b-16(a), ***notwithstanding whether those activities are performed by a party other than the organization that is providing the market place.***"[59] (emphasis added). "The Commission has further recognized how a system may consist of various functionalities, mechanisms, or protocols that operate collectively to bring together the orders for securities of multiple buyers and sellers using non-discretionary methods under the criteria of Rule 3b-16(a), and how, in some circumstances, these various functionalities, mechanisms, or protocols may be offered or performed by another business unit of the registered broker-dealer or government securities broker or government securities dealer that operates the ATS ("broker-dealer operator") ***or by a separate entity***"[60] (emphasis added).

Interoperability has Provided the Investors with the Flexibility to Select their "Best of Breed". Since Regulation ATS was adopted in 1998, FIX messaging protocol and cloud services have dramatically democratized the integration of investment and execution technology and related services into a firm's investment and execution process.

"The Commission does not believe that these routing systems meet the two-part test in paragraph (a) of Rule 3b-16 because they do not bring together orders of ***multiple*** buyers and sellers" (emphasis added).

[59] See Proposal at 38-39.
FN 109 (at 39) verifies the accuracy of the Figure 4 perspective: "Depending on the activities of the persons involved with the market place, a group of persons, who may each perform a part of the 3b-16 system, ***can together provide***, constitute, or maintain a market place or facilities for bringing together purchasers and sellers of securities ***and together*** meet the definition of exchange. In such a case, ***the group of persons*** would have the regulatory responsibility for the exchange" (emphasis added).

[60] See Proposal at 38.

OMSs, EMSs and ISVs provide integrated Graphical User Interfaces (GUI or "front ends") that bring "trading interest" to the investment decision-making process and execution process. Trading interest is integrated into pre-trade analytics so liquidity and implementation cost analysis can be applied to select between two potential assets. Trade execution analytics help traders seek best execution. Integrated solutions that these technology companies create allow for a smooth workflow that can go from using trading interest to aid in the investment decision to trading interest analytics for broker and trading strategy selection to systems for negotiating and agreeing to the terms of the trade. The cloud may introduce AI concepts into the process, regardless of an investor's size. Integration and interoperability brought straight-through-processing integration starting at order origination, reduces operational risks, optimizes the investment selection process, and enables firms to manage trade costs simply by providing integrated workflows. Integration and interoperability enable investors to leverage disparate systems and choose their "best of breed" to achieve investment goals.

That comes to a screeching halt when software solutions, particularly those carrying pricing/market data, that interoperate with an ATS, run the risk of being characterized as an ATS. Taking an "expansive view of what would constitute 'communication protocols' under Rule 3b-16(a)"[61] will undermine electronic trading and the benefits of market surveillance and digitized audit trails.

Regulation should Start at Order Entry Not at the Workflows that Lead up to it.

The Proposal should remove the risk of a service or bulletin board being characterized as an ATS (Figure 4) if it "makes available" the ability to communicate trading interest or send an order to a trading venue. The current exemptions in Regulation ATS and Exchange Act Rule 3b-16(b) recognize that an order is regulated when it arrives at the regulated entity such as a broker, dealer, trading center, etc. This Proposal sets the regulatory perimeter, in certain circumstances, at the inception of the workflow when trading interest is communicated to a regulated entity. The Proposal should set the perimeter at "order entry", not from analytical workflows that may – or may not – get liquidity seekers to a place where they can enter orders. The focus should not be on the bulletin board and whether it is passive or interactive. Interactive bulletin boards, even with displayed, attributed trading interest are not bringing together buyers and sellers. Buyers and sellers are brought together when a CPS establishes contact between the buyer and the seller. That occurs when the request message is sent by the CPS to the liquidity provider to begin negotiation. In an Order Routing Communication System, buyers and sellers are brought together when the order actually arrives at the trading venue and the trading venue brings together the buyer and seller together for the purpose of agreeing to the terms of a trade.

The Commission should be regulating the activity of the CPS and ATS. There is no need to regulate the "pipes" or the workflows that convey trading interest or orders to an already

[61] See Proposal at 42.

regulated CPS or ATS. The CPS perimeter should begin at "Order Entry." Order entry could be a GUI "ticket" managed by the CPS. Or, if the order entry is managed by a third-party such as an OMS, EMS or ISV and that third-party system uses an API to send a message to a CPS for the CPS to then send to a liquidity provider to bring together the buyer and seller to start a negotiation, then the regulatory perimeter should begin at the point where that API-message is received by CPS (Figure 2). The Proposal should not be discouraging the interoperability of systems. Interoperability of systems democratizes best of breed rather than limiting it to the big players that can afford to develop their own proprietary systems. Interoperability empowers investor choice and produces real benefits by increasing transparency and liquidity.

The CFTC and ESMA have clearly defined boundaries for trading venues that are similarly defined. They also acknowledge that there are intermediaries that carry electronic requests for liquidity to trading venues – and the intermediaries are not regulated as venues. This Proposal either does not make these distinctions (it should) or it is not clear that such boundaries exist. In either case, a re-proposal for additional public comment is warranted.

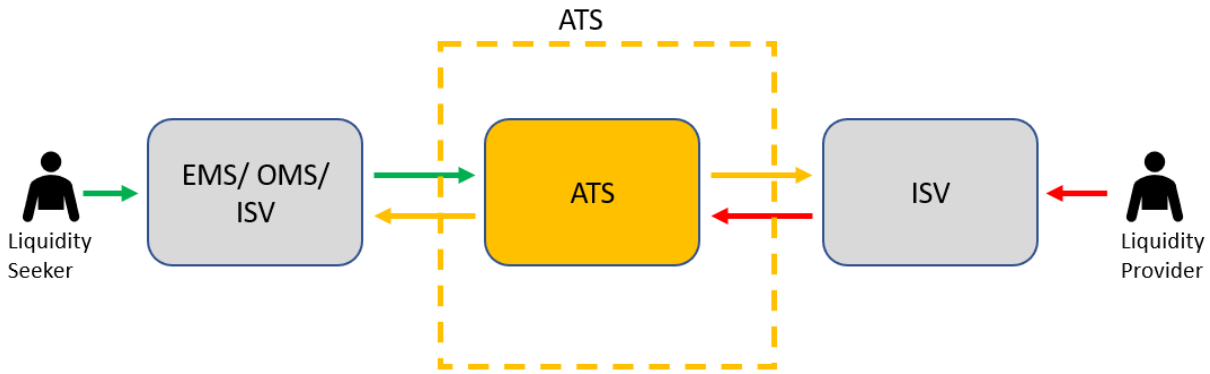

Figure 2. (repeated for clarity) After being delivered a request from a liquidity seeker, the ATS uses proprietary communication protocols to contact a liquidity provider - bringing the requesting party (liquidity seeker) together with the liquidity provider and agree to the terms of the trade.

Bloomberg does Not believe that the Proposal Intended to Consider the Communication of Trade Ideas or Pre-Trade Color to be a Regulated Activity.

The Proposal explains that "if an entity makes available a chat feature, which requires certain information to be included in a chat message (e.g., price, quantity) and sets parameters and structure designed for participants to communicate about buying or selling securities, the system

would *have established communication protocols*"[62] (emphasis added). The Proposal then makes a jump, inferring that the mere presence of communication protocols forms a system. "While Communication Protocol Systems may not match counterparties' trading interest, buyers and sellers using these ***can be*** brought together to interact, either on a bilateral or multilateral basis, and agree upon the terms of the trade." [63] (emphasis added).

The standard for when structured chat becomes a regulated activity (e.g. a system) should not be "*can be brought together*" but rather "*intent to agree to the terms of a trade*." Structured Chats that may contain the components of "trading interest" are used for many non-trading related purposes. A chat that contains structural linkages to a security's description (security structure) makes it unambiguous which security is being discussed. This clarity reduces operational risk. A chat with a security structure containing a quantity by definition would constitute trading interest and define the chat functionality as a communication protocol. However, this structure is often used, without intent to trade especially if the size of the position is included so that the chat may be used to mark positions. Chats with security structure linkages foster workflows to analytics for investment strategy discussions – such as trade ideas and portfolio construction. Workflows to fixed income evaluated prices and quantitative analytics enable owners of securities to determine if a security is "rich" or "cheap". Structured chats that may contain trading interest enable asset owners to share analytics and communicate with a sales trader, "I am long 50 million of bond XYZ. It seems rich on the curve. What can I swap into to pick up yield?"

The Proposal's view of structured chat deviates from earlier in the Proposal where "intent" appeared to be the standard. "The Commission believes that a system that offers the use of a message that identifies the security and either the quantity, direction, or price would provide sufficient information to bring together buyers and sellers of securities because it ***allows a market participant to communicate its intent to trade*** and a reasonable person receiving the information to decide whether to trade or engage in further communications with the sender."[64] (emphasis added)

The Proposal provides a non-exhaustive list of protocols that a system may offer.[65] Bloomberg submits that the use of communication protocols is not enough of a threshold to define

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[62] See Proposal at 41.

[63] See Proposal at 41.

[64] See Proposal at 33-34.

[65] "While Communication Protocol Systems may not match counterparties' trading interest, buyers and sellers using these can be brought together to interact, either on a bilateral or multilateral basis, and agree upon the terms of the trade. Protocols that a system offers may take many forms and could include: setting minimum criteria for what messages must contain; setting time periods under which buyers and sellers must respond to messages; restricting the number of persons a message can be sent to; limiting the types of securities about which buyers and sellers can communicate; setting minimums on the size of the trading interest to be negotiated; or organizing the presentation of trading interest, whether firm or non-firm, to participants. These examples are not exhaustive, and the determination of whether the system meets Rule 3b-16(a)(2) would depend on the particular facts and circumstances of each

a regulated activity. Defining "system" in a "Communication Protocol System" is critical to create a clear threshold that eliminates simple conversations with communication protocol components from being regulated. Bloomberg believes that there are some key thresholds that a re-proposal may consider.

(1) The System has to **"prompt and guide"** buyers and sellers (plural) to communicate and negotiate. The existence of a system with "trading interest alone" cannot satisfy the standard: there has to be one buyer/seller to many sellers/buyers or it is just another form of bilateral communication.

(2) The System has to provide functionality that unambiguously could only be used by an initiator communicating trading interest because the "**intent"** of the interaction was to negotiate and try to agree to the terms of a trade. A deliberate workflow, organization of response data or an indication that terms have been finalized are examples of functionality that demonstrate that the design or the "intent" of the "system" was for parties to negotiate and to try to agree to the terms of a trade. A simple structured chat communication does not meet this threshold. To differentiate pre-trade communications in swaps from regulated Swap Execution Facility activity, the CFTC recognized that difference in a request for quote ***system*** and structured chat is a button or formal functionality that indicates "done" – that an execution has occurred.[66]

(3) The System has to make the terms of the trade known to all the parties in the System - the operator, the initiator (liquidity seeker) and the responder (liquidity provider). In order to demonstrate that each party involved in effecting a trade, each party needs to know the terms of the trade when negotiations are completed or "done". This standard is similar to one that the Commission outlined in the Section 28(e) safe harbor to determine if a broker-dealer was involved in effecting a trade in order to be eligible for Commission Sharing.[67]

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system. Nevertheless, as proposed, the Commission would take an expansive view of what would constitute "communication protocols" under this prong of Rule 3b-16(a)." See Proposal at 41-42.

[66] See CFTC vs. Symphony Communications Services, LLC ("CFTC vs. Symphony Communications ") CFTC Docket No. 21-35, September 29, 2021 https://www.cftc.gov/media/6506/enfsymphonyorder092921/download.

[67] See "Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934" ("Commission Sharing Agreements"), July 24, 2006, "The four functions", https://www.sec.gov/rules/interp/2006/34-54165.pdf at 57.

"At the same time, we believe that the statutory term "effecting" requires that, in order for the money manager to use the safe harbor, a broker-dealer that is **"effecting" the trade must perform at least one of four minimum functions** and take steps to see that the other functions have been reasonably allocated to one or another of the broker-dealers in the arrangement in a manner that is fully consistent with their obligations under SRO and Commission rules. The four functions are: (1) taking financial responsibility for all customer trades until the clearing broker-dealer has received payment (or securities), i.e., one of the broker-dealers in the arrangement must be at risk for the customer's failure to pay; **(2) making and/or maintaining records relating to customer trades required by Commission and SRO rules, including blotters and memoranda of orders;** (3) monitoring and responding to customer comments concerning the trading process; and (4) generally monitoring trades and settlements." (emphasis added).

Regulating Chat in the manner expressed in the Proposal reduces transparency and liquidity because it becomes harder to discuss trade ideas and investment securities choices within the context of portfolio strategy and investment goals. This diminishes – rather than enhances – investor benefit.

Some Additional Clarification is Needed on the Thresholds Calculations for Agency Securities

Agency Securities trading volume includes Agency Debentures, Agency Collateralized Mortgage Obligations, and Agency Pass-Through Mortgage-Backed Securities.[68] While daily data for agency-based structured products to calculate fair access and Regulation SCI thresholds is widely and freely available via FINRA[69], there is no source for daily Agency Debenture trading activity. Should the industry calculate market shares solely based on the Agency-Backed Structured Trading Activity Report?

Concerns on Competition and Innovation

Bloomberg is concerned that the surge in initial Form ATS-N submitted to the Commission and the increase in material change requests that the Staff is required to review could become a bottleneck and a source of extreme delays for operators. Thus, Bloomberg is naturally concerned about Question 73, where the Proposal asks for comment on the Commission re-proposing to amend Rule 304(a)(1)(ii)(A)(1), which currently provides that the Commission may extend the initial Form ATS-N review period for an additional 90 calendar days if the Form ATS-N is unusually lengthy or raises novel or complex issues that require additional time for review, to provide that the Commission may extend the review period if it finds that an extension is appropriate. Bloomberg is also concerned with Staff ability to extend reviews of material changes under the existing rules.

While Bloomberg agrees that there are certain situations, such as the complexity of the system, where the Commission may require more time with a filing, we are concerned that extension requests could become the norm rather than the exception. Thus, we believe that the Commission needs to build in checks – that if Staff requires more time, then they must articulate a reason at least two weeks prior to the scheduled end of the review period. Moreover, there needs to be a process so operators can appeal to the Commission the legitimacy of the proffered reason for the delay. Bloomberg is concerned that while the Paperwork Reduction Act cost benefit analysis focused on the burden to market participants becoming brokers and filing the appropriate

[68] See Proposal at 364-365.

[69] See Structured Trading Activity Report https://www.finra.org/finra-data/browse-catalog/structured-product-activity-reports-and-tables.

forms for Staff approval, it did not comment on whether the Agency is appropriately resourced for the effort envisioned in the Proposal.

A lesson learned from 34 NMS ATSs initial Form ATS-Ns was that it took significant industry and Staff resources for those disclosures to gain initial approvals. The proposed changes to Form ATS-N embedded in the Proposal will trigger an extensive update process for those 34 NMS ATSs already registered and in operation. The way the Proposal is structured, these changes do not introduce new questions (to restrict review to certain sections) but rather cause old approved disclosure-language to be reconsidered[70] adding a considerable amount of strain to Commission resources. The Proposal also estimates that there will be 8 CPSs that will have to file Form ATS-N for the first time[71] as well as 24 new Government Security ATSs.[72] There will be 14 CPSs[73] that will have to file Form ATS for the first time. This is a significant lift for the entities and for the Staff. A re-proposal should provide some insight into how long the process actually took for the Staff, on average, for the current 34 NMS ATSs. Transparency on the average total days from submission to approval and the average number of resubmissions would provide insight into what would be expected if the Proposal is adopted substantially in its current form.

Currently, there are 93 possible submissions for material change requests. Under the Proposal, there will be an additional 44. The Proposal places a great deal of stress on increasing competition among incumbent electronic trading systems but that only happens if the Commission does not become a bottleneck thwarting those competitive dynamics. A re-proposal should provide transparency as to the time an ATS has to wait for Staff approval until they are able to implement material changes (updates, new innovations, changes for competitive advantages) to their systems.

V. Considerations for an Alternative Approach to Regulation of Communication Protocol Systems ("CPSs")

Bloomberg agrees in principle with the Proposal that there could be benefits from more direct oversight and operational disclosures of certain Fintech fixed income solutions (Figure 5). Those benefits could be realized by advancing a more targeted approach – A "Regulation of Communication Protocol Systems" – that more fully delineates and defines a CPS and then imposes new proportionate disclosure and resilience obligations upon those systems. This approach has many benefits without the risk, harm, and disruption that amending the foundational definition of an "exchange", that Bloomberg discusses earlier, could have on the securities market structure.

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[70] See Proposal at 333.

[71] See Proposal at 329.

[72] See Proposal at 325.

[73] See Proposal at 328.

The presentation of Trading and Supporting Workflows by level of automation (Figure 5) illustrates that there are gradations of activity, risk and other nuances in the OTC fixed income market. Within Communication Protocol Systems, there are RFQ CPSs and Order Routing Communication Systems. These clusters of related activities show that there are natural thresholds that can be helpful in establishing proportional regulatory perimeters. This perspective, in part, informs the basis for Bloomberg's alternative framework.

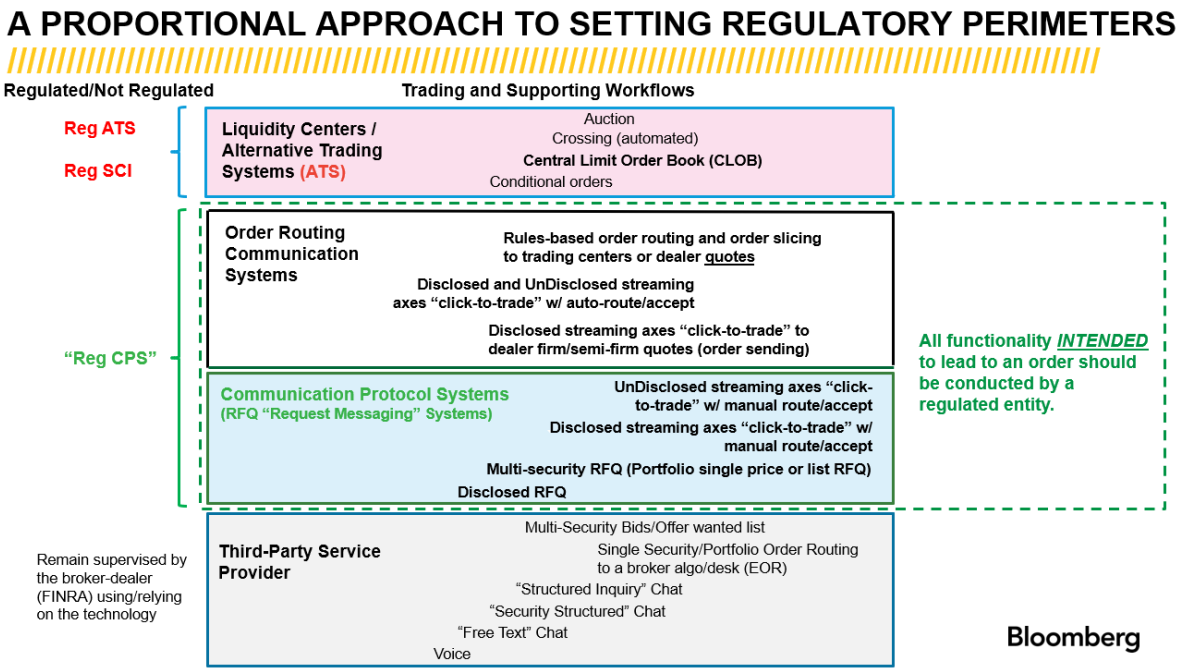

Figure 5. There are thresholds that distinguish clusters of trading and workflow related activities

Bloomberg is cognizant that considerations for an alternative framework described herein do not explore all the issues. Bloomberg is submitting an alternative approach because it will benefit from greater market discussion. The framework builds upon the concepts in the Proposal's "Reasonable Alternatives, "4. Apply Rule 301(b)(6) of Regulation ATS to Government Securities ATSs" and "7. Exclude Communication Protocol Systems from the Definition of 'Exchange' but Require Them to Register as Broker-Dealers"[74] The Proposal presents these alternatives and aptly labels them "reasonable" but gives little explanation why they were not considered.

[74] See Proposal, "4. Apply Rule 301(b)(6) of Regulation ATS to Government Securities ATSs" at 506-508 , and "7. Exclude Communication Protocol Systems from the Definition of "Exchange" but Require Them to Register as Broker-Dealers" at 512-514.

Bloomberg believes that with some alterations, these alternatives in a targeted "Regulation of Communication Protocol Systems" could become the backbone of an alternative that the SEC should consider, modify and re-propose to the market for wider comment.

Bloomberg believes that a "Regulation of Communication Protocol Systems" framework should be rooted in the general principle that:

> **Non-voice systems that facilitate the interaction with multiple counterparties where the intent of the system workflow is the negotiation of the terms of an order and/or the transmission of an order between participants of the system should be conducted by a regulated entity.**

Bloomberg believes that this principle addresses three problems that the Commission alludes to in the Proposal but does not fully articulate:

(1) Fragmented audit trails complicate regulatory surveillance in the fixed income market.

(2) There is a gap in order handling information disclosures with systems that route non-NMS equity orders to trading venues.

(3) Certain fixed income workflows that leverage communication protocols with the specific intent to negotiate and agree to the terms of a trade are now sufficiently evolved that it is appropriate to subject these systems to a minimum set of capacity, integrity and security technology standards, such as some of the standards expressed in Regulation ATS Rule 301(b)(6).

These problems provide a regulatory justification for a "Regulation of Communication Protocol Systems" rulemaking.

Regulatory Justification

Fragmented Audit Trails Complicate Regulatory Surveillance. The Commission observed that NMS equity market electronic audit trails are fragmented, and this lack of data placed regulators, charged with surveilling the markets, at a disadvantage.[75] The Consolidated Audit Trail

[75] "In their capacity as SROs, the Financial Industry Regulatory Authority ("FINRA") and some of the exchanges currently maintain their own separate audit trail systems for certain segments of this trading activity, which vary in scope, required data elements and format. In performing their market oversight responsibilities, SRO and Commission staffs today must rely heavily on data from these various SRO audit trails…. there are shortcomings in the completeness, accuracy, accessibility, and timeliness of these existing audit trail systems." See "Consolidated Audit Trail" ("CAT"), Release No. 34-67457; File No. S7-11-10, https://www.sec.gov/rules/final/2012/34-67457.pdf at 4.

("CAT") was adopted,[76] in part, on the premise that the communications records stored under SEC Rule 17a-4 in isolation simply do not provide a complete perspective. SROs cannot tie the different electronic audit trails together for a complete picture.

Similar fragmentation exists in fixed income CPSs, like RFQ. The ***only*** source of a completely aligned audit trail of CPS activity exists with the operator of the RFQ system making it appropriate for the Commission to bring those systems under a targeted regulatory framework by requiring the operators to register as a broker-dealer. Lessons learned from the application and implementation of CAT to the equity and options market shows that regulating a CPS to gain access to a consolidated RFQ audit trail of communication is a simpler, less costly and faster implementation than trying to move the entire fixed income complex into a CAT reporting regime.

A Gap in Order Handling Information Disclosures. The Proposal also observes that "stream axe" (also referred as "click-to-trade") systems are designed to accommodate "sending orders" directly to multiple dealers or brokers operating in a principal capacity. The response to these directed orders may be a notice of execution, a reject, or a counter-price. Some of these Order Routing Communication Systems provide basic order handling functions, such as auto-route/accept, where the operator operating on instructions from the initiator, will auto-send an order based on the liquidity provider's response, on the initiator's behalf, if the counter-price meets certain parameters. Some systems will capture the view of the aggregated streams to demonstrate best execution. These systems are handling orders and should be required to register as a broker-dealer.

The Commission should consider implementing targeted disclosures for oversight of fixed income order routing activity because of the lessons learned from order routing in the evolution of the equity markets. Order routing is highly relevant in the fixed income markets. The final step of an RFQ is routing an order to a liquidity provider to execute and confirm agreement to the terms of a trade. Moreover, the Proposal also observes that "stream axes" - the routing orders to specific dealer's quotes - comes in many forms and in some cases, "click-to-trade" order routing communication systems offer complex, automated, non-discretionary methods to complete the terms of a trade.

The Commission had similar concerns over how brokers were handling their customer's NMS stock and OTC equity orders and in two separate rulemakings in 2018 significantly increased disclosures. The "Regulation of NMS Stock Alternative Trading Systems"[77] created Form ATS-N and the "Disclosure of Order Handling Information" in NMS equities Rule

[76] "To address this problem and improve the ability of the SROs and the Commission to oversee the securities markets, on May 26, 2010, the Commission proposed Rule 613." See "CAT" at 6.

[77] See "Regulation of NMS Stock ATSs".

606(b)[78] that mandated customer specific metrics/reports to demonstrate order routing efficiency as well as disclosures on where orders were being routing. Although these rulemakings are too granular for the fixed income markets as they currently stand, components of those disclosure regimes are pertinent to users of fixed income order routing communication systems. A disclosure regime may foster increased competition among those systems.

The Commission may also consider adapting Form ATS-N to create a general Form CPS disclosure document for all CPSs. Form CPS would be provided to the Commission, and to a customer upon request. A Form CPS could include disclosure concepts from Form ATS-N such as, Part II, item 4 (Arrangements with Trading Venues) and Item 7 (Protection of Confidential Trading Information), and Part III, Item 8 (Use of Non-Firm Trading Interest; Communication Protocols and Negotiation Functionality). Order Routing Communication Systems would have additional disclosures, such as Part III Item 16 (Routing). A "Regulation of Communication Protocol Systems" rule could close a disclosure gap in order routing systems since they were exempted from Regulation ATS in 1998. The Commission could also implement appropriate quantitative disclosure metrics similar to Rule 606(b).

CPSs Hmsg4ave Evolved Making it Appropriate to Subject them to a Minimum Set of Capacity, Integrity and Security Technology Standards.

Figure 5 illustrates that as the level of automation increases, the amount of non-discretionary activity also increases. The Proposal recognizes that CPSs can become complex systems. While some CPSs are subjected to a Regulation SCI, a disproportionate standard for the activities they conduct, other CPSs have no minimum technical compliance standards at all. Bloomberg believes that all CPS systems should be subject to some capacity, integrity and security technical standards and discusses a proportional approach later in the layout of the alternative framework.

Regulatory Framework

Bloomberg believes that defining a "Communication Protocol System" and an "Order Routing Communication System" is needed to achieve, what Bloomberg infers is one of the Proposal's unstated goals: to regulate Request For Quote (RFQ), and order handling and order routing in non-NMS equity security workflows. This can be achieved without reconceptualizing the entire securities market structure through an extremely disruptive change to the definition of exchange.

[78] See "Disclosure of Order Handling Information", Release No. 34-84528; File No. S7-14-16 https://www.sec.gov/rules/final/2018/34-84528.pdf.

Definitions

What is a Communication Protocol and Trading Interest? A communication protocol is a structured message that includes trading interest.

Trading interest in a Communication Protocol System is the security identifier, with a direction and either the quantity or price.

What is a Communication Protocol System? A Communication Protocol System (CPS) has the following characteristics:

- The entity that operates a CPS must be a broker-dealer.
- Uses communication protocols.
- Connects liquidity seekers (initiators) with liquidity providers (responders) through a **deliberate workflow** that may conclude with a **directed order** from the initiator to the responder that describes the terms of the trade for the responder to execute and bind the parties together; CPSs do not execute or bind participants to the terms of a trade. Although it is not necessary for the parties to agree to terms, for a CPS to be a "system", there must be ***clear intent*** from the initiation of a **deliberate workflow** that the purpose of the interaction is to negotiate and try to come to an agreement.
- A **Deliberate Workflow** includes:
    - System components, such as prompting and guiding buyers and sellers (plural) to communicate and/or negotiate, and functionality that demonstrates **clear intent** that the purpose and design of the workflow is to negotiate and try to agree to the terms of a trade.
    - Organization of data to choose and send a concluding order containing identifier, quantity, direction and price to a trading venue to agree to the terms of the trade.
    - An indication (button or other formal functionality) that indicates the trade is "done", or an execution has occurred – that the terms have been finalized and – that an execution has occurred[79] and that all the participants, the operator, liquidity seeker and liquidity provider are all aware of the final terms of the trade.

[79] See "CFTC vs. Symphony Communications" at 2 and 4.

To differentiate pre-trade communications in swaps from regulated Swap Execution Facility activity, the CFTC distinguished a request for quote ***system*** from structured chat via a button or formal functionality that indicates "done" – designating that an execution has occurred.[80] This standard is similar to one that the Commission outlined in the Section 28(e) safe harbor to determine if a broker-dealer was involved in effecting a trade to be eligible for Commission Sharing.[81]

- A **Directed Order** is an order that a liquidity seeker specifically instructs a broker, acting as agent, to route to a liquidity provider for execution. For purposes of clarity, directed orders to liquidity providers does not include routing orders to brokers acting as agent (e.g., sales trader, algorithms, SORs, etc.) and does not include the subsequent actions that a broker, acting as agent, may take on an order directed to them such as directing an order to trading venues even if the order is directed by the agent to their internal dark pool.

What is an Order Routing Communication System? An Order Communication System has the following characteristics:

- The entity that operates an Order Routing Communication System must be a broker-dealer.
- Is a form of Communication Protocol System.
- Is any electronic system that enables users to enter orders into a system that routes those orders to a trading venue(s) for execution.
- The user's expectation is that liquidity (any bid or offer indication) at trading venue is a firm or "mostly firm" indication of a willingness to buy or sell a security, as either principal or agent.
- An Order Routing Communication System may include automated order handling functionality such as auto-accept.

Adding Proportionality to the "Regulation of Communication Protocol Systems" Framework

The Proposal seeks to regulate CPSs under a framework meant for exchanges and ATSs. Bloomberg's prior comments explain that exchanges are not CPSs, and CPSs are not ATSs. The

[80] See "CFTC vs. Symphony Communications" at 2 and 4.

[81] See "Commission Sharing Agreements", "The four functions", described in FN 64.

presentation of Trading and Supporting Workflows by level of automation from a bottom-up prospective (Figure 5) illustrates that there are gradations of activity, risk and other nuances in the OTC fixed income market. Related activities form clusters - natural thresholds that can be helpful in establishing proportional regulatory perimeters that are more proportionate than simply regulating every trading and communication workflow at the level of a CLOB.

Bloomberg sees four clusters of trading and supporting workflows and they are generally defined by the level of automation and amount of non-discretionary activity.

Cluster 1: Voice, Chat and Order Routing to an Agent - The first cluster, typically provided by a third-party service provider, or "Fintech" provider, is digitized bilateral communications – voice, chat, structured chat, and (equity) order routing of non-solicited orders to an agent broker's desk or execution algorithm. Free-text and structured chats do communicate trading interest especially for investment strategy and ideas but are not designed with functionality to be considered "systems." Chat users could initiate simultaneous multiple structured chats. If these are independent bilateral conversations, similar to placing multiple phone calls, they should be considered bilateral communication and outside any regulation.

A clear threshold can be created for when multiple chats should be regarded as a defacto Communication Protocol "System." A system would include the following design components that: (1) indicate that a deliberate workflow that was clearly intended for multiple buyers (or sellers); (2) specific functionality was designed so that the initiator and several responders could negotiate and try to agree to the terms of a trade, (3) functionality organizes the data from the multiple buyers (or sellers) to (4) assist in choosing a counterparty and confirm the final details of a trade to all of the participants (the operator, liquidity seeker and liquidity provider).

Within the third-party service provider cluster is single security or portfolio routing to a broker (acting as agent) algorithm or desk. This activity should not be regarded as a system either. Routing to a broker algorithm or desk is appointing an agent to agree to the terms of the trade(s) as per the order instructions on behalf of the sender. Routing equity order instructions is not an Order Routing Communication System activity (Cluster 3) because the sender's intent is not to garner immediate or specific episodic liquidity but to pass the order off to an agent to seek best execution.

Cluster 2: RFQ Systems. The second cluster of activity are the RFQ-protocol related platforms which are clearly organized as CPSs. At the top of the CPS cluster of methods is the interaction with trading venue "stream axes." Liquidity providers (e.g. dealers) curate these streams of prices, typically in liquid securities, for specific or "defined groups" of liquidity seekers. The Proposal notes that the indications may be non-firm or firm but the method to interact with the prices is bilateral - characterized by the liquidity seeker sending a specific order at the streaming price. Also known as "click-to-trade", if the liquidity seeker has to take a discretionary

step to complete the terms of the trade, such as manually clicking on a button, that falls into the realm of a CPS.[82]

Cluster 3: Order Routing Communication Systems. The third cluster of activity are the Order Routing Communication System. Regulation ATS in 1998 referred to these systems as Order Routing Systems. These systems routed or delivered orders to the trading centers and if there was still liquidity on the central limit order book when the order arrived at the destination (trading center), then a notice of execution was sent back, confirming the terms of the trade.

In the fixed income context, in a similar manner, if a liquidity provider (e.g. dealer) regards their "stream axe" price as firm or "mostly" firm and their response to an order from a liquidity seeker is either a notice of execution or reject (decline to trade/execute), this protocol, known as "click-to-trade", and the associated functionality is in regulatory terms an Order Routing Communication System.

Some "stream axes" are streamed as non-firm and a "click-to-trade" message from the liquidity seeker to the liquidity provider is a firm-up "request." If the liquidity seeker has to manually accept the liquidity provider's response, then this activity is a CPS (Cluster 2). However, if an operator provides functionality that "auto-routes/accepts" the response under certain conditions, then the operator is offering an automated, established, non-discretionary (order handling) method making the experience similar to routing to a firm quote with a notice of execution or reject – and the CPS should be regarded as operating an Order Routing Communication System (Cluster 3). Single security or portfolio routing to a broker algorithm or desk (Cluster 1) is not an Order Routing Communication System activity. It is different because with single security or portfolio routing to a broker algorithm or a desk, the intent is not to garner immediate or specific episodic liquidity, like an Order Routing Communication System. Rather response from the route of an order in a single security or portfolio of securities to a broker algorithm or a desk is an acknowledgement from the broker that they, as agent, are accepting the responsibility to seek the best execution possible on that order.

Cluster 4: Trading Centers and ATSs. The fourth cluster of activity are the CLOBs – the exchanges and the ATSs as described currently in the two-part test of Rule 3b-16(a), and do not meet the exemptions in Rule 3b-16(b) and Regulation ATS.

Proportional Obligations

Bloomberg does not agree that some of the activities in Cluster 1 and all of the activities in Clusters 2 and 3 need to be regulated with the same stringency as a trading center or ATS CLOB

[82] This differentiation conforms to the generally accepted prevailing understand of "non-discretionary" that was highlighted in the "FIMSAC Recommendation" (at 2, FN 2) discussing that RFQ was not a ATS activity under §240.3b-16(a)(2).

(Cluster 4). Bloomberg believes that each of the four clusters should have increasing compliance obligations in three key areas - (1) technology compliance standards, (2) disclosures and (3) fair access - that are proportionate to the risk that the activity being performed represents (Table 1). For example, Liquidity Center/ATSs activities (Cluster 4) are more automated and complex than routing equity order instructions (Cluster 1) to a broker-dealer execution algorithm or trading desk.

Technology Standards Should Begin at the Inception of all CPS Operations. The application of thresholds for Regulation SCI and Rule 301(b)(6) of Regulation ATS in the Proposal is an attempt to add some proportionality but is rather arbitrary. It is appropriate for ATSs with significant volumes to be subject to Regulation SCI. As Bloomberg explained in detail in the comments, ATSs are liquidity centers and the SEC demonstrated that an outage at an ATS with significant volume can disrupt the market. ATSs are liquidity aggregators and outages disburse that liquidity. Only an ATS can create redundancy for itself. Because of the uniqueness of each ATS' liquidity, the market cannot count on other ATSs for redundancy – in fact the Commission has demonstrated that liquidity does not failover to other ATSs.[83]

CPSs do not have the same risk profile as an ATS for a multitude of reasons including that an event at a CPS does not create a liquidity vacuum because liquidity resides at the trading venue and other CPSs and communication methods are still available to access it. FINRA and SEC regulations on both the buyside and sell side require redundancy for critical business operation systems, such as communications, and in two separate surveys, there clearly is significant CPS redundancy. As noted in prior comments – a survey from the Coalition Greenwich North American Fixed Income Investor Study 2021[84] showed that almost 75% of US-Based IG Investors had more than one system of what will be known as a "Communication Protocol System and in The Trading Intentions Survey 2022, published by The DESK[85], 91% of buy side firms use more than two interfaces.

While stressing the importance of "systems capacity, integrity and security" at brokers, dealers, investment advisors and in automated systems, the Proposal only applies technology standards, such as Rule 301(b)(6) of Regulation ATS, in an ad hoc manner. While Government Securities ATSs are subject to either Regulation SCI or Regulation ATS Rule 301(b)(6), only CPSs in municipal security and corporate bonds exceeding a 20% volume threshold are subject to Regulation ATS Rule 301(b)(6).

[83] See "Regulation SCI" at 604.

[84] See ("Coalition Greenwich 2021 Survey").

[85] See ("The DESK Survey").

Table 1. An Alternative Framework May Consider these Compliance Obligations

Type of System	System Drives Technology Standards (Reg SCI or Reg ATS 301(b)(6) Capacity, Integrity and Security of Automated Systems)	System Drives the Forms of Disclosure
NMS Equities ATS Government Securities ATS (Trading and Supporting Workflows - Cluster 4)	No Changes: Existing Thresholds: Reg SCI or Reg ATS 301(b)(6) All ATSs that do not meet the Reg SCI thresholds: Reg ATS 301(b)(6)(ii)(A-F); The threshold in 301(b)(6)(i) would apply for 301(b)(6)(ii)(G)	Form ATS-N (public) Form ATS-R (confidential)
All other securities ATS (Trading and Supporting Workflows - Cluster 4)	All ATSs: Reg ATS 301(b)(6)(ii)(A-F); A threshold in 301(b)(6)(i) would apply for 301(b)(6)(ii)(G)	Form ATS-N (public) Form ATS (confidential) Form ATS-R (confidential)
Order Routing Communication Systems (CPS) (Trading and Supporting Workflows - Cluster 3)	All Order Routing Communication System CPSs: Reg ATS 301(b)(6)(ii)(A-F)	Form CPS* (on demand for customers) Form ATS (confidential) Form ATS-R (confidential)
Communication Protocol System (CPS) (Trading and Supporting Workflows - Cluster 2)	All CPSs: Reg ATS 301(b)(6)(ii)(A-F)	Form CPS (on demand for customers) Form ATS (confidential)
Fintech (Trading and Supporting Workflows - Cluster 1)	n/a	n/a

Bloomberg submits that all systems that handle customer's/user's workflows that are intended to lead to an order should be held to a minimum standard. Regulation ATS Rule 301(b)(6) is that standard – it was created to instill a culture of security and systems integrity in the software development life cycle. Technology governance has long been a Commission and FINRA

examination priority. To instill a culture of compliance, security and integrity in the system and software development lifecycle, the Commission should apply Regulation ATS Rule 301(b)(6)(ii)(A-F) to all RFQ CPSs (Cluster 2), Order Routing Communication System CPSs (Cluster 3) and Covered ATSs (Cluster 4) regardless of the asset class from the inception of their operations (Table 1). As explained, CPSs should not be subject to Regulation SCI. CPSs with a market share above a certain threshold should be subject to the notification provisions in Regulation ATS Rule 301(b)(6)(ii)(G).

Disclosures to Promote Competitive Dynamics. In two separate acts in 2018, the Commission recognized the importance of order handling disclosures in the NMS equity markets.[86] The Commission observed in the Regulation "Disclosure of Order Handling Information" for NMS equities that order handling disclosures and execution quality metrics enable brokers offering electronic execution services to compete for execution services by offering better execution quality.[87] The same reasoning for the disclosures in the equity market apply to fixed income RFQ and Order Routing Communication System CPSs. Regulation ATS-N provided disclosures that enabled "asset managers to better evaluate the routing decisions of their brokers, including whether their brokers routed their orders to a venue that best fits their trading interests."[88] NMS Rule 606(b) provided "specific disclosures related to the routing and execution of the customer's NMS stock orders submitted on a not held basis."[89] A lesson learned from the evolution of the equity markets particularly in order handling, which is what CPSs do, is that investors are better protected when there is public disclosure about the operations and potential conflicts of interest in platforms. The Bloomberg framework (Section VI) offers a Form CPS for CPSs that provides basic disclosure information on the relationships between the operator and trading venues and how the negotiation process is managed. Order Routing Communication Systems have additional disclosures (Form CPS* indicates more disclosures, similar to the ones on Form ATS-N, that are appropriate for order handling) concerning some of the non-discretionary activities that they may offer. Similar to the "Disclosure of Order Handling Information", the Form CPS would be available to CPS participants (subscribers and sponsored users) upon request.

Summary

The considerations for an alternative framework to regulate Communication Protocol Systems (Figure 5 and Table 1) include:

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[86] The 2018 amendments to Regulation ATS Rule 304(b)(2)[86] provided the public Reg ATS-N (See "Regulation NMS Stock ATSs') disclosures and Regulation NMS Rule 606(b) (See "Disclosure of Order Handling Information") that provided "Disclosure of Order Handling Information" in NMS equities.

[87] See "Disclosure of Order Handling Information" at 131.

[88] See "Regulation NMS Stock ATSs" at 42.

[89] See "Disclosure of Order Handling Information" at 1.

(1) **Limited Regulatory Perimeter*:*** The Bloomberg framework defines the regulatory perimeter of a CPS and ATS as beginning at order entry. If a CPS or ATS has a "ticket" GUI, then the perimeter would begin at the function when the user is inputting request or order details. If "order entry" is with a third-party (e.g., OMS, EMS, or ISV) using an API to send structured request/order details, then the perimeter begins at the function where the CPS receives the instruction to begin the negotiation process or order routing instruction.

This perimeter preserves the benefits of interoperability of systems by narrowing the scope of "makes available." Technology companies should be allowed to provide services to a CPS/ATS without itself being required to become a CPS/ATS. As explained earlier, among the most significant advantages of narrowing and clearly defining the perimeter is the preservation of healthy OMS, EMS, ISV competition and investor ability to select "best of breed". The SEC should be encouraging technology that integrates and fosters the interoperability of systems for pre-trade transparency and market color that can feed into investment selection analytics, risk management, broker/execution implementation strategy selection for best execution, and straight-through-processing. Interoperability of systems enables redundancy, makes financial market infrastructure more resilient and democratizes access to the best of breeds.

(2) **Broker-Supervised Third-Party Service Provider** activities - simple equity order routing to a broker's execution algorithm or sales-trading desk and structured IB Chat, which facilitate trade ideas and pre-trade color communication that could lead to an investment decision, would remain supervised by the broker-dealer using/relying on the technology.

(3) **Subject all CPSs to Some Level of System Integrity Standards:** Bloomberg believes that that all CPSs, Order Routing Communication Systems, and ATS that are below the Regulation SCI threshold should be subject to Regulation ATS Rule 301(b)(6) - Capacity, Integrity, and Security of Automated Systems - from the initiation of their operations. Capacity, Integrity, and Security standards represent best practices and should be a part of the development of automated systems from the ground up – to create a culture of compliance as well as a core element of systems design for cyber security, cyber hygiene and protection of client data for any CPS and ATSs offering electronic trading services. Bloomberg believes that Regulation ATS Rule 301(b)(6)(ii)(G), which requires "Promptly notify the Commission staff of material systems outages and significant systems changes" should only be applied to CPSs, Order Routing Communication Systems and ATSs that cross a market share threshold indicating that they have significant volume. As Bloomberg has explained, events at ATSs can disrupt the market so an ATS trigger should be lower than the threshold for CPSs.

(4) **Greater Disclosure for Communication Protocol Systems (See Section VI):** Systems providing discretionary trade requests messaging to dealers (e.g., RFQ) would be identified as a distinct electronic trading category, "Communication Protocol Systems", also with enhanced disclosure obligations (a Form CPS) along the lines of Form ATS-N.

(5) **Specialized Disclosures for Order Routing Communication Systems (See Section VI):** Systems engaged in routing orders to a trading venue (trading centers or routing customer orders to dealer's firm quotes, e.g. stream axe) would be regulated as a distinct form of a CPS, an Order Routing Communication System. An Order Routing Communication System would have enhanced disclosure obligations, including disclosures concerning routing, arrangements with trading venues that could pose potential conflicts of interest, and error handling and liability, (a Form CPS) adapted from Form ATS-N. An Order Routing Communication Systems would also remain subject to the Market Access Rule, 15c3-5.

(6) **No Changes to the Regulation of Liquidity Centers/ATSs:** Marketplaces, trading centers and broker trading facilities that are matching and binding trades using established, non-discretionary methods (algorithms) would be regulated as ATSs; Equities and Treasury ATSs with high volume would be subject to Regulation SCI. This is in line with the SEC's current Proposal.

VI. Considerations for an Alternative Framework for CPS Disclosures

A subset of the disclosures in Form ATS-N are appropriate of CPSs and Order Routing Communication Systems. Some do not match disclosures that are needed for central limit order books and matching. Some considerations for a Form CPS (from Form ATS-N) include:

Part I: Identifying Information - all of the items

Part II: Activities of the Broker-Dealer Operator and its Affiliates:

Item 1- Broker-Dealer Operator Trading Activities in the ATS, 2- Affiliates Trading Activities in the ATS, 3- Interaction of Trading Interest with Broker-Dealer Operator (affiliates are all appropriate descriptive information for CPSs that offer ***undisclosed*** RFQ), 4- Arrangements with Trading Venues, and 7- Protection of Confidential Trading Information.

* Item 5- Other Products and Services is appropriate for Order Routing Communication Systems.

Part III: Manner of Operations

Items 1- Types of ATS Subscribers, 2- Eligibility for ATS Services, 3- Exclusion from ATS Services, 5- Means of Entry, 9- Use of Non-Firm Trading Interest;

Communication Protocols and Negotiation Functionality, 9- Monitoring and Surveillance, 11- Interaction with Related Markets 13- Segmentation; Notice, 15- Display and Visibility of Trading Interest, and 24-Fair Access.

* Items 16- Routing and 22- Market Data are appropriate for Order Routing Communication Systems.

Part IV: Contact Information - all of the items

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We appreciate the opportunity to provide our comments on the Proposal and Concept Release and would be pleased to discuss any questions that the Commission may have with respect to this letter.

Very truly yours,

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