

DUNSMOOR

LAW, P.C.

April 18, 2022

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE Washington, D.C. 20549-1090
rule-comments@sec.gov
VIA EMAIL

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

Dear Ms. Countryman:

Dunsmoor Law, P.C. has been in the trenches of decentralized finance (“DeFi”) and other blockchain-based assets since late 2016. We foresaw in the Initial Coin Offering (“ICO”) craze illegality and fraud, and we issued many warnings to those who inquired about a “*Howey Letter*.”¹ We have kept our clients, associates, and advisees out of regulatory trouble amidst constantly evolving technology and law, promoted education in the industry, and acted as gatekeepers to U.S. capital markets for years. Evidently, we believe in regulations to make capital markets safer. We also recognize when a proposed regulation would do catastrophic harm to an industry with as much potential as decentralized finance without protecting markets in any significant capacity. I, the founder and principal of this firm, implore the U.S. Securities and Exchange Commission (“SEC”) not to implement the Proposed Amendments to the Exchange Act, as amended,² especially those relating to Communication Protocol Systems (“CPSs”). My colleagues and connected associations have done a fantastic job explaining the law as it relates to CPSs and the proposed amendments. I supplement their work by exploring what will likely happen to the DeFi industry and the people who benefit from it if these CPS amendments pass.

DeFi is a rapidly evolving industry worth an estimated \$120 billion United States Dollars, according to CoinGecko.³ Despite this impressive growth, there are major differences between DeFi and the ICO craze that warrant different regulatory treatments. Where participants in ICOs risked losing their investments to rug pull scams, in which the purveyor falsely claims to have invented a new technology or has a new venture as a means of stealing funds, DeFi customers’ main risk is hacking. These technology-related hacks *should* be discouraged with regulation, but securities regulation can provide little protection in this domain. Furthermore, instances of actors using cryptocurrency for illicit behavior in this field are few, particularly because firms and their clients are already complying with so many traditional finance rules. The proposed amendments do not address any of DeFi’s problems; they only handicap the industry. Regulations such as

¹ *SEC v. Howey Co.*, 328 US 293 (1946),

² Securities Exchange Act of 1934.

³ Top 100 DeFi Coins by Market Capitalization, <https://www.coingecko.com/en/categories/decentralized-finance-defi>, visited April 17, 2022.

these would severely limit the breadth and agility of DeFi companies and drive America's best innovators out of the country.

My experience as an attorney, entrepreneur, and investor has shown me that the blockchain industry is one of few modern fields with such tremendous potential for so many kinds of people in and out of finance. The possibilities are endless—from NFTs as concert and movie tickets to fast, secure payments to banking the unbanked. Industries are rarely erected as quickly and successfully as this one; the SEC should be wary of stunting the growth of this once-in-a-generation field. The proposed amendments do not tame capital markets or protect their participants. They only crush innovation.

There are ample avenues for regulating cryptocurrency exchanges to both promote safer markets and incentivize growth. The SEC could collaborate with the U.S. Treasury to monitor fiat on- and off-ramps or clarify existing rules on digital assets to resolve conflicts with other regulatory agencies. These and other changes would encourage entrepreneurs to bring their ideas to market to stimulate economic growth and provide much-needed services. Instead, the proposed amendments will force crypto businesses out of the United States in search of friendlier jurisdictions and better opportunities for decentralization. This is not speculation; my clients have repeatedly told me that regulations like these would drive them—and the jobs, profits, and tax revenues that their businesses create—away from the U.S. Collaboration in government agencies is not the status quo but it can be if it learns from the blockchain industry.

We are a mere twelve years out from the genesis block of Bitcoin, and this industry has already made massive contributions in jobs and market capitalization and created far more wealth than it has ruined. I urge the SEC to protect and promote this industry and the broader American economy by **not including the CPS language** in the amendments to the Exchange Act.

I am available at 716-371-1936 [REDACTED] at the SEC's convenience to discuss in detail the implications of such a dangerous provision. Thank you for your time and consideration.

Sincerely,



Jonathan C. Dunsmoor, Esq.
FOR THE "IRM AND IT" CLIENTS

