

Statement

Statement on Supplemental Information and Reopening of Comment Period for Amendments to Exchange Act Rule 3b-16 Regarding the Definition of “Exchange”



Commissioner Caroline A. Crenshaw

April 14, 2023

Thank you, Chair Gensler. In January of last year, the Commission voted to propose amendments to Rule 3b-16 that would update the definition of “exchange.”^[1] The updated definition would include systems that offer the use of non-firm trading interest and what we termed “communication protocols” to bring together buyers and sellers of securities. While these systems perform the same or similar functions as an exchange or ATS, they are currently not subject to the exchange regulatory framework. If adopted, the amendments should help ensure that there is a level playing field among entities performing similar functions, and provide important investor protections.^[2]

Under the Proposal, entities that bring together buyers and sellers of securities and meet the other criteria of the revised definition would be required to register as exchanges or comply with the conditions to an exemption to registration, such as Regulation ATS.^[3] This would be true regardless of whether securities in question are crypto asset securities or traditional securities. The existing definition of “exchange” does not have an exception or carve-out for entities that trade crypto asset securities, and the updated definition would not include one, either. This is consistent with the principle I emphasized when we proposed the amendments: that there should be a level playing field for entities performing similar functions.

In response to the Proposal, the SEC received many comments regarding the application of the amendments to trading systems for crypto asset securities and trading systems that use distributed ledger or blockchain technology, including systems commenters characterize as “DeFi.”^[4] This release would provide supplemental information and economic analysis regarding the potential effects of the proposed amendments on these entities. The release also requests further information and public comment on this and other issues discussed by commenters, including the use of the term “communication protocols,” the proposed compliance dates, and certain alternatives.

The Commission preliminarily believes that some amount of crypto asset securities trade on entities that do not meet the current definition of exchange under Rule 3b-16, but that would meet the updated criteria in the Proposal.^[5] Specifically, the reopening release estimates that there are between fifteen and twenty such entities, and the costs and benefits described therein are in relation to those entities.^[6] However, there is significant trading activity in crypto asset securities that may be occurring in non-compliance with the federal securities laws, and certain other trading systems for crypto assets likely already meet the definition of an exchange. For those entities, the proposed amendments would not change any existing obligation to register

as a national securities exchange or comply with the conditions to an exemption to such registration, such as Regulation ATS.

Thank you to all the staff who worked on this release, including in the Division of Trading and Markets, the Division of Economic and Risk Analysis, the Office of the General Counsel, and those in other divisions and offices who lent their expertise, including staff in the Division of Enforcement and the Division of Corporate Finance. I hope commenters find this release to be a helpful supplement to the original proposal, and I look forward to reviewing the comments.

[1] [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](#), Release No. 34-94062 (January 26, 2023) (the "Proposal").

[2] [See](#) Commissioner Caroline A. Crenshaw, [Statement on Amendments to Exchange Act Rule 3b-16, Regulation ATS, and Regulation SCI](#) (January 26, 2023).

[3] Proposal at 1.

[4] Comment letters received in response to the Proposing Release are available at <https://www.sec.gov/comments/s7-02-22/s70222.htm>.

[5] Supplemental Information and Reopening of Comment Period for Amendments to Exchange Act Rule 3b-16 Regarding the Definition of "Exchange", Release No. 34-XXXXX (April 14, 2023) at 13.

[6] *Id.* at 69-70.