



**Submitted electronically via sec.gov**

May 27, 2022

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

**Re: 17 CFR Part 240 [Release No. 34-94524; File No. S7-12-22] RIN 3235-AN10 Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer**

Dear Ms. Countryman:

The Association for Digital Asset Markets (“ADAM”)<sup>1</sup> appreciates the opportunity to comment on the Securities and Exchange Commission (“SEC” or “Commission”) request on the SEC’s proposal to define the phrase “As a Part of a Regular Business” in the definitions of “dealer” and “government securities dealer” in Sections 3(a)(5) and 3(a)(44), respectively, of the Securities Exchange Act of 1934, as amended (“Exchange Act”).<sup>2</sup> As discussed below, while ADAM supports the SEC’s investor protection and public interest goals, we do not believe that the Proposal, as drafted, advances those goals, at least with respect to the nascent digital asset industry. In particular, the Proposal would capture a vast array of new technologies, and the persons who develop and advance those technologies, and has the real potential of chilling further development in the United States of digital asset technologies at a time when U.S. investors and the U.S. economy cannot afford to take a back seat to these innovations. While ADAM and its members generally agree that regulation in the digital asset space can advance investor protections, the public interest, and help maintain the United States’ position as a global leader in financial technology, the wrong approach can leave the United States at a long-term

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<sup>1</sup>ADAM is a broad-based industry group that includes a wide variety of market participants, including trading platforms, custodians, investors, asset managers, traders, liquidity providers, and brokers. Our members are firms that are active in digital asset markets or seek to participate in those markets. ADAM members include. Anchorage Digital, N.A.; BitGo; BitOoda; BlockFi; BTIG; CMT Digital; CoinFund; Cumberland; Crowe LLP; Digital Asset Council of Financial Professionals; Dunamis Trading; Eventus Systems; Fireblocks; FTX.com; FTX.us; Galaxy Digital; Genesis; Grayscale; GSR; HRT; Hxro Foundation; Jane Street Capital; Multicoins Capital; Oasis Pro Markets; Parataxis; Paxos; Robinhood Crypto; Sarson Funds; Solidus Capital; Solidus Labs; Symbiont; Symphony; WisdomTree; and XBTO. ADAM law firm partners include Anderson Kill; DLA Piper; DLx Law; Mayer Brown LLP; Morgan Lewis; and McGonigle, P.C.

<sup>2</sup> Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer, Securities Exchange Act Release No. 94524 (Mar. 28, 2022), 87 Fed. Reg. 23,054 (Apr. 18, 2022) (“Proposal”).

competitive disadvantage as it has in the past.<sup>3</sup> To this end, we encourage the SEC to specifically exclude digital assets from the Proposal's scope and instead work with its fellow regulators to develop a comprehensive approach to the regulation of digital assets.

## **About ADAM**

ADAM is a private, non-profit, membership-based association of firms operating in the digital asset markets and is a standards-setting body and self-governing association committed to promoting market integrity and best practices. ADAM works with leading financial firms, entrepreneurs, and regulators to develop industry best practices that facilitate fair and orderly digital asset markets. In this vein, ADAM's objectives are to (1) protect market participants from fraud and manipulation; (2) provide clear standards for efficient trading, custody, and the clearing and settlement of digital assets; (3) encourage professionalism and ethical conduct by market participants; and (4) increase transparency and provide information to the public and governments about digital asset markets. In furtherance of this, ADAM released a principles-based Code of Conduct ("Code")<sup>4</sup> in late 2019 that sets certain standards of professional conduct for ADAM members. In particular, the Code addresses the following areas:

- Compliance and Risk Management
- Market Ethics
- Conflicts of Interest
- Transparency and Fairness
- Market Integrity
- Custody
- Information Security and Business Continuity
- Anti-Money Laundering and Countering the Finance of Terrorism

Every ADAM member agrees to adhere to the Code of Conduct. The goal is to bring professional standards into the nascent but rapidly growing digital asset markets and to develop trust in those markets so that they can flourish.

Our members are at the cutting edge of innovation through the use of new technologies, such as blockchain. However, they recognize that proper regulation and conduct are essential to their businesses and to the development of a sustainable marketplace and public trust. They believe that a diverse financial ecosystem is a source of strength, and they aim to use their technology to find new ways of reaching consumers and work within the current financial system to improve efficiencies.

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<sup>3</sup> For example, 5G technology is often cited as an example where the United States was left behind other jurisdictions because of governmental inaction. *See, e.g.*, <https://www.cnbc.com/2022/02/17/us-well-behind-china-in-5g-race-ex-google-ceo-eric-schmidt-says.html>.

<sup>4</sup> The Code is available at <http://www.theadam.io/code/>.

ADAM and its members are committed to working with lawmakers and regulators to promote responsible innovation in the digital asset space in a manner that expands the availability of financial services. We welcome a clear regulatory picture because our members seek full compliance.

## **Comments Overview**

While ADAM believes that a measured regulatory framework can increase market integrity in the digital asset marketplace, we also believe that regulatory overreach can hinder a promising new technology that has far-reaching positive implications. Furthermore, we believe that regulation of the digital asset market and its participants raises novel issues that require careful deliberation to the specific factors at hand. In this regard, while ADAM appreciates and respects the SEC's authority to regulate dealers and securities government dealers, ADAM currently cannot support the Proposal in its current form as it would capture digital asset market participants without a meaningful assessment or discussion regarding those markets or participants. Given the lack of certainty regarding the regulatory status of digital assets and the very notable lack of discussion regarding digital assets in the Proposal, ADAM believes that:

1. The blanket application of the dealer and government securities dealer regulatory framework to digital assets would be premature and imprudent. In this sense, it is important to consider that not all digital assets are securities—and some digital assets that may be securities today, under independent private legal advice, may not be securities in the future—particularly if Congress and the regulators provide clarity surrounding the legal analysis of what is and is not a digital asset security. Still, due to the unique and malleable nature of digital assets, not all dealer and government securities dealer requirements will make sense for the trading of digital asset securities. As such, the proposal should expressly exclude digital asset securities until the White House Executive Order on digital assets concludes and Congress produces a legislative public policy framework providing clarity on which digital assets are securities and which are not.
2. The standards and criteria outlined in the Proposal are unworkable and will lead to an arbitrary application.
3. There are some legitimate questions as to whether the application of the Proposal to digital assets adheres to the requirements of the Administrative Procedure Act (“APA”).
4. If adopted as proposed without an exclusion for digital assets, the proposed revisions to the definitions of “dealer” and “government securities dealer” will hinder innovation, competition, and capital formation in an industry in which the United States cannot afford to cede ground to other countries.

In addition to these comments that are discussed in greater detail below, ADAM and its members are always available to provide information and insights to the SEC and its staff regarding the operation of the digital asset marketplace.

## **Overview of Digital Asset Platforms and Participants**

Digital asset platforms and participants involve a wide range of stakeholders, including miners and other nodes, that provide actual computing resources recording and verifying of a digital ledger, dApp developers that launch distributed applications, users ranging from hobbyists to institutional investors, and off-chain service providers that provide reporting and monitoring services and cross-chain communication. Digital asset platforms and digital asset participants benefit from a number of technical advancements stemming from transparent market information to unique transaction methods, which allow many new types of transactions to occur.

An exciting part of this new technology is “DeFi” or Decentralized Finance. This nascent industry aims to leverage blockchain and other digital asset technology to provide saving, lending, liquidity, and asset transfer services for digital asset users. The added transparency provided by on-chain transactions and open participation is attractive to many users, while new and existing financial intermediaries appreciate the opportunity DeFi provides for increased automation and associated efficiencies.

The participants and infrastructure for these projects vary widely, but may include:

- **“dApps” or “Smart Contracts.”** These are autonomous code that function like computer programs shared across the applicable distributed ledger; they can track, process, receive and send network transactions that may (but are not required to) relate to digital assets interoperable with the DeFi platform.
- **“DAOs” or Decentralized Autonomous Organizations.** A special kind of smart contract platform that allows users to control certain aspects of the administration of funds under management by the DAO. For example, in the context of a DeFi platform, a DAO may control features offered on the DeFi platform or the migration of the DeFi platform to a new set of contracts.
- **Governance Tokens.** Tokens issued by smart contracts that allow holders to vote on DAO administration. In addition to voting rights, these tokens may be resold for other digital assets or may have certain powers in respect of the DAO.
- **Stablecoins.** Tokens issued with the aim of maintaining a 1:1 exchange rate (or an approximation thereof) with another asset, such as USD. USDP and USDC are all examples of stablecoins.
- **Oracles.** Reporting services that link information from within or without a blockchain to dApps and smart contracts on the blockchain. Frequently, oracles will report the prices for digital assets, either curated internally or from centralized exchanges.
- **AMM or Automated Market Makers.** Algorithms within smart contracts to provide pricing for buying and selling digital assets managed by the DeFi platform. AMMs may rely on Oracles or may have internal pricing models that may be reactive to arbitrage.
- **“Wrapped” tokens or coins.** Wrapping refers to receiving one digital asset and reissuing it at a 1:1 basis as another “wrapped” form. The wrapped form is typically more compatible with user wallets and widely available smart contracts. For example, ETH, the native unit on the Ethereum blockchain, is expensive to transact in. wETH is issued by an ERC-20–type smart contract that trades 1:1 with actual ETH and can be traded more easily. wBTC is

“wrapped bitcoin” issued by a smart contract on the Ethereum Blockchain when a user sends native BTC to a particular contract on the bitcoin blockchain.

- **Guardians.** Guardians are monitoring programs, such as Oracles, that monitor transactions across different blockchains.
- **Staking.** Blockchains or certain DeFi projects may offer rewards or opportunities to pool resources to provide staking services. For example, a blockchain utilizing proof-of-stake validation lets users participate in verifying the blockchain by staking the native token, providing a reward if they propose and approve valid smart contracts. Users may pool their tokens for shared staking rewards.
- **Nodes.** Nodes typically refer to a computer resource involved in validating transactions or providing information, such as pricing information, to the blockchain (such as an Oracle). More generally, nodes also refer to an instance of operating software to interacting with a blockchain, whether as a validator, application or end user.
- **Project Administrators.** Several DeFi projects also provide limited administrative powers to certain trusted individuals, such as the ability to freeze all trading and liquidate assets under management. For some DeFi projects, there are no Project Administrators or the powers granted to those Project Administrators are significantly restricted.
- **Liquidity Providers.** Providers of digital assets for use by a smart contract. Typically, they are compensated via the fees charged by the smart contract or in governance tokens.

Using these and other tools, DeFi has created a variety of projects with immense potential. Many projects have innovative pricing models built around trade between like products and nodes that report off-chain exchange prices natively. Other solutions are being developed rapidly. Innovation in this area is proceeding rapidly and globally, with the precise contours of this technology impossible to determine at this time.

## Overview of Dealer Framework

Section 3(a)(5)(A) of the Exchange Act defines a “dealer” as “any person engaged in the business of buying and selling securities . . . for such person’s own account through a broker or otherwise.” Section 3(a)(5)(B) excludes from the definition of a dealer “a person that buys or sells securities . . . for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.” As we have come to understand, Exchange Act Section 3(a)(5)(B) has generally been the basis for distinguishing dealers from traders based largely on whether the person buying and selling securities is doing so as part of a regular business. As far as we can tell, this dealer-trader distinction has existed for at least 70 years<sup>5</sup> and has been repeatedly acknowledged by the SEC.<sup>6</sup> In 2002, for example, the SEC proposed rules to grant

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<sup>5</sup> See Louis Loss, *Securities Regulation 722* (1st ed. 1951) (discussing dealer-trader distinction).

<sup>6</sup> See, e.g., OTC Derivatives Dealers, Exchange Act Release No. 40,594 (Oct. 23, 1998), 63 Fed. Reg. 59,362, 59,370 n.61 (Nov. 3, 1998) (listing dealer indicia in context of over-the-counter (“OTC”) derivatives dealers); Further Definitions of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant,” Exchange Act Release No. 66,868 (Apr. 27, 2012), 77 Fed. Reg. 30,596, 30,607 (May 23, 2012) (discussing dealer-trader distinction in context of security-based swaps).

banks exceptions to and exemptions from the definitions of “broker” and “dealer,”<sup>7</sup> where it listed indicia that would bring someone within the meaning of dealer, such as (i) underwriting, (ii) formal and de facto market making and liquidity provision, (iii) acting in a principal capacity directly with customers and providing initial and continuing services to those customers, (iv) holding themselves out as willing to buy and sell securities at a regular place of business, and (v) having a regular turnover of inventory (or participating in the distribution of new issues). In contrast, the SEC stated that traders (i) have less regular volume; (ii) do not handle other people’s money or securities; (iii) do not make a market in securities; and (iv) do not furnish dealer-type services, such as providing investment advice, extending credit, or lending securities.<sup>8</sup> The SEC upheld the use of the dealer-trader distinction in connection with the definition of “security-based swap dealer.”<sup>9</sup>

## Overview of Proposal

Proposed Rules 3a5-4 and 3a44-2 would identify certain activities that would constitute a “regular business” for the ultimate purpose of requiring registration as a dealer or government securities dealer. The proposed rules outline a framework that would define three qualitative standards that would bring a person within the meaning of a dealer or government securities dealer. Proposed Rule 3a44-2, however, would include a quantitative standard that would establish a bright-line volume-based test that would bring a person within the definition of a “government securities dealer” even if such person does not meet the qualitative standards.

Qualitative Standards: Under the Proposal, a person that meets one or more of the following qualitative standards would be deemed a dealer:

1. Routinely making roughly comparable purchases and sales of the same or substantially similar securities in a day (“Standard One”);
2. Routinely expressing trading interests that are at or near the best available prices on both sides of the market and are communicated and represented in a way that makes them accessible to other market participants (“Standard Two”); or
3. Earning revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interests (“Standard Three”).

Quantitative Standard: Under Proposed Rule 3a44-2, a person would be deemed a government securities dealer if in each of four out of the last six calendar months that person engaged in buying and selling more than \$25 billion of trading volume in government securities. A person would be a dealer even if they did not satisfy any of the qualitative standards mentioned above.

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<sup>7</sup> See Definition of Terms in and Specific Exemption for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 46,745 (Oct. 30, 2002), 67 Fed. Reg. 67,496, 67,498–500 (Nov. 5, 2002) (the “2002 Proposal”).

<sup>8</sup> *Id.*, 67 Fed. Reg. at 67498–500.

<sup>9</sup> See Further Definition of “Swap Dealer,” *supra* note 6.

Exclusions: The Proposed Rules provide two exclusions. The first exclusion is for an investment company registered under the Investment Company Act of 1940. The second is for a person that has or controls total assets of less than \$50 million.

“Own Account”: The Proposal would define a person’s “own account” as any account that is:

1. held in the name of a person
2. held in the name of a person over whom that person exercises control or with whom that person is under common control, subject to the following exclusions:
  - a. An account in the name of a registered broker, dealer, or government securities dealer, or a registered investment company;
  - b. An account held in the name of a client of a registered investment adviser unless the adviser controls the client as a result of the adviser’s right to vote or direct the vote of voting securities of the client, the adviser’s right to sell or direct the sale of voting securities of the client, or the adviser’s capital contributions to or rights to amounts upon dissolution of the client; or
  - c. With respect to any person, an account in the name of another person that is under common control with that person solely because both persons are clients of a registered investment adviser unless those accounts constitute a parallel account structure.
3. Held for the benefit of those persons identified above.

“Control” would have the same meaning as in Rule 13h-1(a)(3) of the Exchange Act, which defines the term to mean:

the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of securities, by contract, or otherwise. For purposes of this section only, any person that directly or indirectly has the right to vote or direct the vote of 25% or more of a class of voting securities of an entity or has the power to sell or direct the sale of 25% or more of a class of voting securities of such entity, or in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that entity.

Under this definition, persons will have to aggregate trading activities and assets to determine whether, collectively and individually, a firm or the entities under a firm’s control come within the meaning of a dealer or government securities dealer. The Proposal would define a “*parallel account structure*” to mean a structure in which one or more private funds (each, a “parallel fund”), accounts, or other pools of assets (each, a “parallel managed account”) managed by the same investment adviser pursue substantially the same investment objective and strategy and invest side by side in substantially the same positions as another parallel fund or parallel managed account.

### **Application of Dealer Regulatory Framework to Digital Assets Is Premature**

We believe that it is entirely premature for the SEC to regulate digital assets through a vague reference to the statutory definition of a “security” and “government security.”<sup>10</sup> This approach is especially premature given that (1) there are still significant uncertainties – exacerbated by the SEC’s shifting views – regarding the extent to which digital assets fall within the purview of federal securities laws, (2) the appropriate regulatory treatment of digital assets is still under active consideration by the legislative and executive branches, and (3) due to digital assets’ unique nature, not all dealer requirements make sense for the trading of digital asset securities. As such, the Proposal should expressly exclude digital assets until the White House Executive Order review concludes and Congress produces a legislative public policy framework providing clarity on which digital assets are securities and which are not.

As the SEC is well aware, it and its staff have been very active in issuing guidance and bringing enforcement actions related to digital assets that the SEC views as securities. On its website, it provides a running tally of the various enforcement actions it brought related to digital assets and initial coin offerings,<sup>11</sup> with over 100 actions brought as of the date of this letter according to some industry analysis.<sup>12</sup> While the SEC has brought a great deal of actions, the volume of these actions should not be construed as reflecting a conclusive view regarding the SEC’s authority and jurisdiction over digital assets.

For example, in a widely publicized 2018 speech before the *Yahoo Finance All Markets Summit: Crypto*, William Hinman, then Director of the SEC’s Division of Corporation Finance, outlined his views regarding the securities analysis undertaken when assessing whether a digital asset is construed as a security.<sup>13</sup> In that speech, Director Hinman focused on the manner in which a digital asset is sold, and analyzed those efforts under the investment contract test outlined in *SEC v. W.J. Howey Co.* and its progeny.<sup>14</sup> Director Hinman then stated that:

when I look at Bitcoin today, I do not see a central third party whose efforts are a key determining factor in the enterprise. The network on which Bitcoin functions is operational and appears to have been decentralized for some time, perhaps from inception. Applying the disclosure regime of the federal securities laws to the offer and resale of Bitcoin would seem to add little value.[9] And putting aside the fundraising that accompanied the creation of Ether, based on my understanding of the present state of Ether, the Ethereum network and its decentralized structure, current offers and sales of Ether are not securities transactions. And, as with Bitcoin, applying the disclosure regime of the federal securities laws to current transactions in Ether would seem to add little value.

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<sup>10</sup> Proposal, 87 Fed. Reg. at 23,057 n.36. Indeed, this is the only reference to digital assets in the Proposal.

<sup>11</sup> <https://www.sec.gov/spotlight/cybersecurity-enforcement-actions>.

<sup>12</sup> <https://www.cornerstone.com/wp-content/uploads/2022/01/SEC-Cryptocurrency-Enforcement-2021-Update.pdf>.

<sup>13</sup> <https://www.sec.gov/news/speech/speech-hinman-061418> (“Hinman Speech”).

<sup>14</sup> *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). See also *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F.2d 230 (2d Cir. 1985).



Thus, the industry operated under the assumption that Bitcoin and Ether were not securities. However, as recently as February 2022, staff from the SEC’s Division of Enforcement have, according to reports, disavowed the Hinman Speech as “personal opinion,” reportedly stating during oral argument in *SEC v. LBRY, Inc.*<sup>15</sup> that the SEC has not asserted that Bitcoin and Ethereum are not securities.<sup>16</sup> These reports, if accurate, further the main defense in another case that the SEC is currently litigating.<sup>17</sup> In that case, the court denied the SEC’s motion to strike defendant’s affirmative defense that it violated the securities laws (i.e., the SEC had failed to provide fair notice that defendant’s conduct was in violation of law and thus in violation of due process.)<sup>18</sup> That case has the potential to significantly curtail the SEC’s enforcement approach to digital assets if the court agrees that the SEC did not provide market participants with fair notice regarding its views of digital assets. Given that the SEC staff now appears to be distancing the SEC from the Hinman Speech, it is clear that market participants are left further in the dark regarding the SEC’s jurisdiction over digital assets.

The Southern District of New York recently dismissed a case against a global crypto exchange and, in the process, questioned timelines to file complaints in court and the jurisdiction of various digital asset providers.<sup>19</sup> In the case, the U.S. District Judge wrote that the investors suing the exchange for losses and failure to disclose risk, in fact, sued too late, having waited more than one year after their purchases. In addition, the judge wrote, “Plaintiffs must allege more than stating that plaintiffs bought tokens while located in the US and that title passed in whole or in part over servers located” in the United States. This implied that domestic securities laws did not apply because the exchange was not a domestic exchange, even if it used Amazon computer servers and Ethereum blockchain computers in the United States.<sup>20</sup>

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<sup>15</sup> In March 2021, the SEC commenced an action against LBRY for allegedly offering unregistered securities to raise a total of \$6.2 million starting in 2016. See *SEC v. LBRY, Inc.*, Civil Action No. 1:21-cv-00260 (D.N.H. filed Mar. 29, 2021). The SEC’s press release regarding this case is available at [https://www.sec.gov/litigation/litreleases/2021/lr25060.htm?utm\\_medium=email&utm\\_source=govdelivery](https://www.sec.gov/litigation/litreleases/2021/lr25060.htm?utm_medium=email&utm_source=govdelivery). According to the SEC’s complaint, from at least July 2016 to February 2021, LBRY, which offers a video-sharing application, sold digital asset securities called “LBRY Credits” to numerous investors, including investors based in the United States.

<sup>16</sup> <https://mobile.twitter.com/LBRYcom/status/1496586670954713090>.

<sup>17</sup> *SEC v. Ripple Labs, Inc.*, No. 1:20-cv-10832 (S.D.N.Y. Dec. 22, 2020).

<sup>18</sup> *SEC v. Ripple Labs, Inc.*, No. 1:20-cv-10832, Dkt. No. 440 (S.D.N.Y. Mar. 11, 2022).

<sup>19</sup> *Anderson et al. v Binance et al.*, 1:20-cv-2803 (ALC) (S.D.N.Y. Mar. 31, 2022)

<sup>20</sup> Jonathan Stempel, *Crypto exchange Binance wins dismissal of U.S. lawsuit over digital token sales*, Reuters (Mar. 31, 2022), <https://www.reuters.com/legal/litigation/crypto-exchange-binance-wins-dismissal-us-lawsuit-over-digital-token-sales-2022-03-31/>.

Meanwhile, other courts have been beginning to question the SEC’s authority to bring cases to tribunal and the inherent right to trial by jury.<sup>21</sup>

The uncertainty regarding the SEC’s authority over digital assets, including the SEC staff’s apparent shift regarding the status of Bitcoin and Ethereum, is further complicated by the fact that the status of digital assets is still being actively considered by other branches of government. For instance, in November 2021, the President’s Working Group on Financial Markets (“PWG”), along with the Federal Deposit Insurance Corporation (“FDIC”) and the Office of the Comptroller of the Currency (“OCC”), released a report on the risks and legislative recommendations for stablecoins, a form of digital assets that are designed to maintain a stable value relative to a national currency or other reference assets.<sup>22</sup> Although there were press reports leading up to the publishing of the PWG Report indicating that the SEC won concessions that would have made it the top regulator for stablecoins,<sup>23</sup> the PWG Report stated otherwise. Instead, the report recommended, among other things, that stablecoin issuers be insured depository institutions, effectively recommending that they be subject to banking regulation as opposed to securities regulation. And rather than provide the SEC any additional comfort regarding its authority over digital assets, the PWG Report acknowledged that the SEC and other regulators could have a role in addressing prudential risks associated with stablecoins. If anything, the PWG Report reflects that the status and proper regulatory framework for digital assets is still under active consideration. In addition, the Commodity Futures Trading Commission (“CFTC”) also has jurisdiction in this space. CFTC Chair Rostin Benham stated as such on May 16 when he said, “Within the sphere of digital assets, naturally there are some commodities and some securities....[Bitcoin] is a commodity, Ether as well, is a commodity....There may be in fact hundreds of thousands of securities coins, but there are plenty of commodity coins.”<sup>24</sup> Similarly, SEC Commissioner Peirce and CFTC Commissioner Pham recently wrote that digital asset regulation offers the SEC and CFTC a new opportunity to work together.<sup>25</sup>

These themes were similarly echoed in President Biden’s March 9, 2022 Executive Order outlining his administration’s policy objectives with respect to digital asset regulation.<sup>26</sup> The Executive Order highlights the absence of uniform oversight and standards applicable to the industry, stating that such absence may result in inadequate protections for sensitive financial

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<sup>21</sup> *Jarkesy v. SEC*, No. 20-61007 (5th Cir. May 18, 2022), <https://www.ca5.uscourts.gov/opinions/pub/20/20-61007-CV0.pdf>

<sup>22</sup> [https://home.treasury.gov/system/files/136/StableCoinReport\\_Nov1\\_508.pdf](https://home.treasury.gov/system/files/136/StableCoinReport_Nov1_508.pdf) (the “PWG Report”).

<sup>23</sup> <https://www.bloomberg.com/news/articles/2021-10-25/sec-gets-path-to-rein-in-stablecoins-as-u-s-weighs-new-rules>.

<sup>24</sup> Bitcoin, Ethereum are commodities, says CFTC Chair Rostin Behnam CNBC (May 16, 2022) <https://www.cnbc.com/video/2022/05/16/bitcoin-ethereum-are-commodities-says-cftc-chair-rostin-behnam.html>

<sup>25</sup> Making progress on decentralized regulation – It’s time to talk about crypto together, The Hill (May 26, 2022) <https://thehill.com/blogs/congress-blog/3503277-making-progress-on-decentralized-regulation-its-time-to-talk-about-crypto-together/>

<sup>26</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/> (“Executive Order”).

data, custodial and other arrangements relating to customer assets and funds, or disclosures of risks associated with investments in digital assets. In addition, the Executive Order outlines the six policy objectives<sup>27</sup> for the United States with respect to digital assets and notably does not single out any individual regulatory agency as having primary or significant authority over digital assets. Rather, it encourages coordination among the various agencies in achieving the objectives of the Executive Order, with the SEC listed as one of many agencies that could play a role.

Concurrently, the legislative branch is actively considering the appropriate regulatory treatment of digital assets both from an oversight and legislative standpoint. An example of recent oversight questioning was the bipartisan letter from the House of Representatives questioning the role of the Division of Enforcement and Division of Examination authorities to obtain information related to cryptocurrency and blockchain firms, with the Representatives questioning if those authorities are better suited to the SEC's divisions charged with seeking public commentary as part of the rulemaking process.<sup>28</sup> On the legislative side, recent efforts include but are not limited to (i) the Infrastructure Investment and Jobs Act (H.R. 3684); (ii) Digital Asset Market Structure and Investor Protection Act (H.R. 4741); (iii) the Token Taxonomy Act (H.R. 2144), (iv) the Bipartisan Digital Commodity Exchange Act,<sup>29</sup>(v) a foreshadowed bipartisan bill from Senators on the Senate Committee on Banking, Housing, and Urban Affairs and the Senate Committee on Agriculture, Nutrition, and Forestry,<sup>30</sup> and (vi) a number of bills relating to the treatment of stablecoins.

In this vein we note that the SEC has previously been chastised by the courts for overreaching in its attempt to regulate entities that were not within its jurisdiction. In 1986, for example, the SEC lost a case in the United States Court of Appeals District of Columbia Circuit over its attempts to bring certain banks within its regulatory framework.<sup>31</sup> In that case, the court notably stated that the SEC's rule overreached its Congressional mandate, writing:

whatever its beneficial purpose or the regulatory need for some, such authority still represents an attempt by one federal agency to reallocate, on its own initiative, the regulatory responsibilities Congress has purposefully divided among several different agencies. It is tantamount to one of the regulatory players

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<sup>27</sup> These policy objectives include (1) customer, investor and business protections; (2) financial stability and systemic risk mitigation; (3) illicit finance mitigation and national security risks; (4) ensuring continued leadership in the global financial system and economic competitiveness by the United States; (5) financial inclusion; and (6) responsible development and use of digital assets.

<sup>28</sup> Letter to SEC Chair Gary Gensler (Mar. 16, 2022), <https://emmer.house.gov/cache/files/0/c/0c7fc863-7916-4b19-bc44-52bef772287e/9B0B9D1CA9B3C215DDC762DF5B0F6864.3.16.22.emmer.sec.letter.pdf>.

<sup>29</sup> Thompson Releases Crypto Regulatory Blueprint (Nov. 16, 2021), <https://republicans-agriculture.house.gov/news/documentsingle.aspx?DocumentID=7123>.

<sup>30</sup> Sam Sutton & Katy O'Donnell, *Gillibrand, Lummis plan new regulatory framework for crypto*, Politico (Mar. 24, 2022), <https://www.politico.com/news/2022/03/24/gillibrand-lummis-cryptocurrency-regulation-00020291>.

<sup>31</sup> *Am. Bankers Ass'n v. SEC*, 804 F.2d 739 (D.C. Cir. 1986).

unilaterally changing the rules of the game. The SEC by itself cannot extend its jurisdiction over institutions expressly entrusted to the oversight of the Comptroller, the Board of Governors, the FDIC, and others.<sup>32</sup>

We believe that the SEC should be mindful of regulatory overreach given the active consideration being given by the legislative and executive branches to the appropriate regulation of digital assets.

For the reasons outlined above, we believe that it is premature of the SEC to include digital assets within the scope of the Proposal until such time as there is a better understanding regarding the appropriate regulatory approach for such assets.

### **Proposal Adherence to the Administrative Procedure Act and Other Legal Requirements**

ADAM and its members believe that the Proposal, as drafted, raises concerns under the APA<sup>33</sup> and other requirements applicable to agency rulemaking.

As the SEC is well aware, the APA applies to all executive branch and independent agencies and prescribes procedures for agency rulemakings and adjudications. In addition, it outlines standards for judicial review of final agency actions. Section 553 of the APA outlines notice-and-comment rulemaking procedures and is intended to provide the public with a meaningful opportunity to comment on proposed rules. Although a 30-day comment period is typically regarded as the minimum requirement, the legislative history of the APA indicates that longer periods are warranted for matters “of great importance, or those where the public submission of facts will be either useful to the agency or a protection to the public, [and] should naturally be accorded more elaborate public procedures.”<sup>34</sup> To this end, the Obama Administration recognized the importance of having meaningful public comment on proposed rulemakings and generally instituted 60-day comment periods.<sup>35</sup> Even longer comment periods are needed where rulemakings are complex or where an agency is engaged in multiple rulemakings at or near the same time.<sup>36</sup> Current SEC leadership has recently recognized this, reopening several high-profile

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<sup>32</sup> *Id.*

<sup>33</sup> 5 U.S.C. §§ 551–559.

<sup>34</sup> Administrative Procedure Act: Legislative History, S. Doc. No. 248, at 259 (1946).

<sup>35</sup> Executive Order 13563, Improving Regulation and Regulatory Review (Jan. 18, 2011), 76 Fed. Reg. 3821 (Jan. 21, 2011); *see also* Executive Order 12866, Regulatory Planning and Review (Sept. 30, 1993), 58 Fed. Reg. 51735 (Oct. 4, 1993) (“each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days”); Memorandum for the Heads of Executive Departments and Agencies, Modernizing Regulatory Review (Jan. 20, 2021), 86 Fed. Reg. 7223 (Jan. 26, 2021) (“This memorandum reaffirms the basic principles set forth in [Executive Order 12866] and in Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), which took important steps towards modernizing the regulatory review process. When carried out properly, that process can help to advance regulatory policies that improve the lives of the American people.”).

<sup>36</sup> *See, e.g.*, Commissioner Hester M. Peirce Public Statement: Rat Farms and Rule Comments – Statement on Comment Period Lengths (Dec. 10, 2021), <https://www.sec.gov/news/statement/peirce-rat-farms-and-rule-comments-121021>.

rulemaking comment periods after comment periods had already closed.<sup>37</sup> Given that this rulemaking is complex and as the SEC has multiple rulemakings occurring in parallel, ADAM believes that the substantive changes to the definitions of “dealer” and “government securities dealer” require at least a 90-day comment period from publication in the Federal Register. Simply, without this additional time, ADAM and other commenters are unable to fully provide the information and input that the Proposal itself recognizes are necessary for the SEC to properly understand the impact of its action and to tailor the rule accordingly.

In addition to the inadequate notice-and-comment period, ADAM believes that there are other important respects in which the Proposal departs from the legal requirements governing agency rulemaking. Under the APA, an agency must “make its views known to the public in a concrete and focused form so as to make criticism or formulation of alternatives possible”<sup>38</sup> and “describe the range of alternatives being considered with reasonable specificity.”<sup>39</sup> Here, across more than 200 pages, the SEC makes only one mention of digital assets, in a footnote. In the context of this rulemaking, it would be unreasonable and unlawful for the SEC to issue a final rule that *did* apply to digital assets. Because the SEC has failed to give “fair notice” regarding scope within which digital assets are within Proposal, it would violate the APA to extend the final rule to such assets.<sup>40</sup>

The SEC’s failure to address digital assets in the text of the Proposal creates other deficiencies in the rule, particularly in the SEC’s economic analysis, unless digital assets are plainly excluded. The Exchange Act requires the SEC to determine whether a rulemaking will “promote efficiency, competition, and capital formation.”<sup>41</sup> The Exchange Act additionally prohibits any rulemaking that “would impose a burden on competition not necessary or appropriate in furtherance of the purposes” of the statute.<sup>42</sup> Unless the SEC “apprise[s] itself—and hence the public and the Congress—of the economic consequences of a proposed regulation,” the “promulgation of the rule [is] arbitrary and capricious and not in accordance with law.”<sup>43</sup> Here, the SEC’s economic analysis fails even to mention digital assets—let alone assess the impact of the Proposal on this important and growing sector. Given the absence of any analysis to digital assets, it would be unreasonable for the SEC to apply the rule to digital assets. In fact, given the uncertainty the Proposal has created, it would be unreasonable to adopt a final rule without making clear that the rule would *not* apply to digital assets. If the SEC fails to issue that

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<sup>37</sup> SEC Extends Comment Period for Proposed Rules on Climate-Related Disclosures, Reopens Comment Period for Proposed Rules Regarding Private Fund Advisers and Regulations ATS (May 9, 2022), <https://www.sec.gov/news/press-release/2022-82>.

<sup>38</sup> *HBO, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977).

<sup>39</sup> *Portland Cement Ass’n v. EPA*, 665 F.3d 177, 192 (D.C. Cir. 2011).

<sup>40</sup> *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007).

<sup>41</sup> 15 U.S.C. § 78c(f).

<sup>42</sup> *Id.* § 78w(a)(2).

<sup>43</sup> *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148 (D.C. Cir. 2011).

clarification, the Proposal would have serious negative repercussions in the digital assets market—economic impacts that the SEC has failed to consider.

The SEC’s failure to address these economic effects in the Proposal constrains the SEC’s ability to address them later in this rulemaking. Under the notice-and-comment requirements of the APA, an agency cannot develop a rule using secret data, which means that “the most critical factual material that is used to support the agency’s position” must be “made public in the proceeding and exposed to refutation.”<sup>44</sup> Consequently, if the SEC decides to address digital assets in a final rule, and it relies on new data to support its analysis of the economic effects, then the SEC must reopen the comment period.

The SEC’s analysis fails to account for other critical issues concerning the Proposal.<sup>45</sup> The economic analysis associated with dealer and government securities registration is based on traditional broker-dealer business without addressing the cost of registering a digital asset—only dealer or government securities dealer. Indeed, notwithstanding that the SEC established a framework by which digital asset—only broker-dealers can register with the SEC,<sup>46</sup> we are not aware of any broker-dealers that have successfully registered under that framework. Perhaps because of this, there has been no analysis to date on the costs of interfacing with the Financial Industry Regulatory Authority, Inc. (“FINRA”) and the SEC on these types of registrations. In addition, the Proposal does not address (1) the impact on the digital asset industry and affected parties; (2) the high number of digital asset platforms and participants that could potentially be captured; (3) DeFi, Spot markets, and digital-asset market making; or (4) the impact on developers of the code, deployers, or interface providers affected.

For example, the analysis finds that it would take 2.75 hours to file a Form BD for a broker to register with FINRA. In reality, this is a process that would take teams of people multiple months to complete. Additionally, the proposal estimates a first-year compliance cost of \$600,000 and \$265,000 each year after. These figures may be reasonable for a low-volume dealer in a traditional industry, but for the digital asset industry, the numbers are fundamentally flawed. In the digital asset space, firms are unable to hire a qualified Chief Compliance Officer for \$250,000, and compliance departments must acquire surveillance systems for trade monitoring and systems for Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) compliance. The compliance costs only increase for larger firms facilitating more trading, which would necessitate additional compliance officer and other related costs.

In addition to a flawed economic analysis, the Proposal lacks a substantive foundation on which it would reasonably capture digital assets and digital asset participants, and it diverges without explanation from a more measured approach advocated by multiple members of the SEC.

Moreover, there are serious limitations in how the technology that underpins a digital asset platform can be transferred and effectively used in a formal dealer or government securities dealers environment, meaning that the SEC, if it applied the Proposal to digital assets, would effectively seek to regulate something before its exists and is understood by regulators. Indeed,

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<sup>44</sup> *Chamber of Com. v. SEC*, 443 F.3d 890, 900 (D.C. Cir. 2006).

<sup>45</sup> *See Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

<sup>46</sup> <https://www.sec.gov/rules/policy/2020/34-90788.pdf>.

this conundrum of sorts appears to capture the essence of Commissioner Hester Peirce’s “catch-22” that she outlined in February 2020 where:

Would-be networks cannot get their tokens out into people’s hands because their tokens are potentially subject to the securities laws. However, would-be networks cannot mature into a functional or decentralized network that is not dependent upon a single person or group to carry out the essential managerial or entrepreneurial efforts unless the tokens are distributed to and freely transferable among potential users, developers, and participants of the network. The securities laws cannot be ignored, but neither can we as securities regulators ignore the conundrum our laws create.<sup>47</sup>

Rather than proceed as is, the SEC should consider postponing the implementation of rules applicable to digital asset platforms until such time as it can consider defining what the current dealer and government securities dealer would look like for digital assets. To this end, we recommend that the SEC give adequate consideration to such things as (i) the practical difficulties in actually registering a digital asset dealer or government securities dealers with the SEC and FINRA; (ii) the need for digital asset regulatory expertise and reconciliation of dated rules and frameworks; (iii) the limitations of the current dealer and government securities dealer framework for digital assets, and in particular, that the framework is biased toward traditional securities offerings and does not make room for clearance and settlement on the blockchain; and (iv) the various technologies at play as discussed in the section above describing digital platforms and participants.

### **Proposal Will Hinder Innovation, Competition, and Capital Formation**

As the SEC is well aware, in addition to protecting investors, part of the SEC’s mission is to ensure that its actions are in the public interest and promote capital formation. On this latter point, one of the reasons that the United States has some of the deepest, most liquid, and most innovative financial markets in the world is because it embraces technology and forward thinking. Unfortunately, we believe that the Proposal as drafted would leave the United States behind during the current global revolution in financial services. More specifically, the Proposal’s discussion regarding what it means to “routinely” buy and sell securities or enter trading interests will create a chilling effect that would result in developers avoiding any U.S. touchpoint. This will result in these technologies and innovations finding their homes in jurisdictions that promote and do not hinder development and forward thinking, such as the UK, which is making Cabinet-level speeches indicating a desire to “lead the way” in digital assets and the UK “is open for crypto business.”<sup>48</sup> To this end, we encourage the SEC to work within the framework contemplated in the Executive Order to further promote the use and development of digital assets within the United States.

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<sup>47</sup> <https://www.sec.gov/news/speech/peirce-remarks-blockress-2020-02-06>.

<sup>48</sup> Keynote Speech by John Glen, Economic Secretary to the Treasury, at the Innovate Finance Global Summit (Apr. 4, 2022), <https://www.gov.uk/government/speeches/keynote-speech-by-john-glen-economic-secretary-to-the-treasury-at-the-innovate-finance-global-summit>.

## Proposal Deficiencies

In addition to the policy and administrative issues outlined above, we also believe that the Proposal suffers from a number of other deficiencies that will make it difficult to apply in a manner that is not arbitrary.

### Qualitative Standards

The qualitative standards that the Commission proposes are vague and will lead regulators to apply them in an inconsistent manner. In discussing Standard One and Standards Two, the SEC would seek to bring market participants who “routinely” engage in certain activities within the meaning of a dealer and government securities dealer. The SEC then explains that “routinely” means “more frequently than occasionally, but not necessarily continuously.”<sup>49</sup> This standard is extremely vague and will lead to inconsistent application across market participants. While the SEC notes that this standard was derived from rules from the adopting release defining terms associated with security-based swap-dealing activities,<sup>50</sup> the SEC fails to note that the Swap Dealer Release actually notes this standard as developed because of the unique nature of certain types of securities-based swaps.<sup>51</sup> In addition, unlike in this Proposal, the SEC actually provided examples of routine conduct in the Swap Dealer Release which at least gave market participants the semblance of a road map.<sup>52</sup> We also believe that the SEC’s reference to “roughly comparable” and “substantially similar” in Standard One are similarly problematic. We are concerned that the SEC does not fully appreciate the distinction between various types of digital assets and is not able to meaningfully assess whether those assets are “substantially similar” or whether trading in those assets is “roughly comparable.” In this regard, we note that the one example provided by the SEC regarding trading in two different automakers illustrates the points— the SEC is still relying on concepts from traditional equity securities trading and, through a passing reference to digital assets in a footnote, appears to believe that those traditional concepts can apply in the digital asset space.

Finally, Standard Three is also problematic because it does not account for staking and how some blockchains use the proof-of-stake consensus mechanism to validate transactions. It is unclear whether the SEC will consider the digital assets earned by acting as a validator to be the type of revenue it is contemplating under Standard Three. This ambiguity further reinforces our concern that this will result in a chilling effect and drive this activity offshore.

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<sup>49</sup> 87 Fed. Reg. 23,054, 23,068 (Apr. 18, 2022).

<sup>50</sup> Proposal at 23,066 n.132, citing to Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant,” Exchange Act Release No. 66,868 (Apr. 27, 2012), 77 Fed. Reg. 30,596, 30,609 (May 23, 2012) (“Swap Dealer Release”).

<sup>51</sup> *Id.* at 30,609 n.192.

<sup>52</sup> *Id.*



## Quantitative Standard

We do not believe that the volume-based threshold that the Commission articulates under proposed rule 3a44-2 is appropriate as a standalone measure for determining whether a person is a government securities dealer. In this regard, we note that the SEC has previously rejected a volume-based test when assessing the status of municipal securities dealers, stating that “it would appear that the nature of a bank’s activities, rather than the volume of transactions or similar criteria, are of greater relevance in determining when a bank is a municipal securities dealer.”<sup>53</sup> In addition, we note that the SEC itself cited to a congressional intent for consistency between how the concepts of “dealer” is used in the context of traditional dealers, municipal securities dealers, and government securities dealers.<sup>54</sup> We do not believe that a volume-based threshold for any type of dealer is consistent with congressional intent.

## “Own Account”

We believe that the definition of “own account,” and its definition of “control,” are appropriate. We do not believe that Congress intended for activities to be aggregated across separate entities when assessing dealer activities, especially where separate entities are subject to different regulatory schemes. At a minimum, the SEC has recognized this separation in the context of foreign broker-dealers where it has articulated an entity approach to registration. More specifically, when the SEC adopted Rule 15a-6, it stated:

[T]he Commission uses an entity approach with respect to registered broker-dealers. Under this approach, if a foreign broker-dealer physically operates a branch in the United States, and thus becomes subject to U.S. registration requirements, the registration requirements and the regulatory system governing U.S. broker-dealers would apply to the entire foreign broker-dealer entity. If the foreign broker-dealer establishes an affiliate in the United States, however, only the affiliate must be registered as a broker-dealer, the foreign broker-dealer parent would not be required to register.<sup>55</sup>

We believe that the SEC should maintain its use of an entity approach to registration and focus on the activities of individual persons rather than use a confusing and far-reaching aggregation concept.

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<sup>53</sup> Adoption of Rule 15ba2-1, Related Form MSD, Rule 15ba2-2 and Temporary Rule 15ba2-3(T) Relating to the Registration of Municipal Securities Dealers Under Section 15b(A) of the Securities Exchange Act of 1934; Adoption of Temporary Rule 15a-1(T) Relating to the Registration of Municipal Securities Brokers and Dealers Under Section 15 of the Act; and Delegation of Authority to the Staff of the Commission, Exchange Act Release No. 11,742 (Oct. 15, 1975).

<sup>54</sup> Proposal, n.42, citing to H.R. Rep. No. 258, 99th Cong., 1st Sess. 24 (1985). S. Rep. No. 426, 99th Cong., 2d Sess. 19 (1986) (“[t]he legislative history relating to the enactment of the Government Securities Act of 1986 provides that the term government securities dealer ‘would utilize key concepts from the current definitions of . . . ‘dealer’ and ‘municipal securities dealer.’”).

<sup>55</sup> Registration Requirements for Foreign Broker-Dealers, Exchange Act Release No. 27,017 (July 11, 1989), 54 Fed. Reg. 30,013, 30,017 (July 18, 1989).

## Lack of Consideration of Less-Expansive Means

Finally, we note that the Commission failed to meaningfully consider alternative means of achieving the policy objective that it is seeking in the Proposal. As an initial matter, we note that the Commission does not articulate investor protection concerns in the Proposal, mostly because the persons that the Commission seeks to capture do not have customers that need the protections typically associated with having to register as a dealer. Rather, the Commission appears to reference a need for market data, transaction data, and risk-reducing measures as the basis for requiring firms that have no customers to register as dealers. These rationales ring somewhat hollow given that the SEC can achieve these objectives through existing rules and modifications thereto.

For instance, the consolidated audit trail (“CAT”) system adopted under Rule 613 of Regulation NMS will capture a significant amount of trading activity in the markets by which the Commission can engage in regulatory investigations.<sup>56</sup> In addition, Rule 13h-1 already captures a significant amount of market information, and is especially useful after periods of market volatility.<sup>57</sup> We also note that with respect to government securities there will be significantly enhanced reporting to FINRA’s trade-reporting and compliance engine.<sup>58</sup> Finally, with respect to risk-reducing measures, the SEC adopted Rule 15c3-5 – the market access rule – with the goal of reducing “the risks faced by broker-dealers, as well as the markets and the financial system as a whole, as a result of various market-access arrangements, by requiring effective financial and regulatory risk-management controls reasonably designed to limit financial exposure and ensure compliance with applicable regulatory requirements to be implemented on a market-wide basis.”<sup>59</sup>

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<sup>56</sup> <https://www.finra.org/rules-guidance/key-topics/consolidated-audit-trail-cat>.

<sup>57</sup> <https://www.sec.gov/files/Risk%20Alert%20-%20Large%20Trader%2013h.pdf>.

<sup>58</sup> See Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB, 86 Fed. Reg. 59,716 (Oct. 28, 2021); see also Supporting Statement for the Treasury Securities and Agency Debt and Mortgage-Backed Securities Reporting Requirements (FR 2956; OMB No. 7100-NEW), <https://www.federalreserve.gov/reportforms/formsreview/FR%202956%20OMB%20SS.pdf>; FINRA, Federal Reserve Depository Institution Reporting to TRACE (Feb. 15, 2022), <https://www.finra.org/filing-reporting/trace/federal-reserve-depository-institution-reporting>.

<sup>59</sup> Securities Exchange Act Release No. 63,241 (Nov. 3, 2010), 75 Fed. Reg. 69,791 (Nov. 15, 2010).

ADAM appreciates the SEC's consideration of the comments above. ADAM and its members stand ready to answer any questions you may have, and we look forward to continued collaboration with the SEC.

Respectfully,

A handwritten signature in black ink that reads "Michelle Bond". The signature is written in a cursive, flowing style.

Michelle Bond  
Chief Executive Officer  
Association for Digital Asset Markets (ADAM)