

MEMO# 34120

April 21, 2022

ICI Files Comment Letter to SEC on Government Securities ATS and "Exchange" Definition Proposal

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TO: ICI Members

Equity Markets Advisory Committee

ETF (Exchange-Traded Funds) Committee

ETF Advisory Committee

Fixed-Income Advisory Committee SUBJECTS: Trading and Markets RE: ICI Files Comment Letter to SEC on Government Securities ATS and "Exchange" Definition Proposal

ICI has filed the attached comment letter with the SEC on its Government Securities ATS and "Exchange" Definition rule proposal. The letter addresses proposed amendments to Rule 3b-16, which would, among other things, deem a "communication protocol system" to be within the definition of an "exchange" and therefore be subject to alternative trading system (ATS) and broker-dealer regulations.

The letter expresses concern that the proposal would capture (i) order and execution management systems (OEMSs) used by investment advisers and other buy-side market participants; and (ii) ETF primary market systems used by ETF sponsors and their Authorized Participants (APs) for ETF creations and redemptions. Therefore, the letter requests that the Commission clarify that neither type of system meets the amended rule based on several characteristics and attributes, as summarized below. The letter also explains that regulating these systems as an ATS and broker-dealer would increase compliance burdens and costs for users and inhibit further innovation. The letter argues that doing so would not advance the Commission's goal of improving the competitive balance between trading venues, but instead impose duplicative regulatory requirements without a corresponding regulatory benefit.

With respect to OEMSs, the letter states that it does not believe that the Commission intended to capture OEMS systems within the ATS regulatory framework, and therefore requests that the Commission clarify this and specify that the following OEMS attributes do not meet the amended definition:

- Facilitating communication of trading interest by serving as a conduit to connected

trading venues, i.e., providing a communications link and conveying trading instructions to those venues via an OEMS;

- Importing and displaying data fields or information from connected trading venues, e.g., those that facilitate submitting requests-for-quotes (RFQs) or receipt of indications of interest (IOIs), based on the methods, rules, or protocols set forth by those venues;
- Applying "communication protocols" for trading that are established by a connected trading venue;
- Organizing, presenting, or otherwise displaying trading interest (whether firm or non-firm) that is available at a connected trading venue, but is not available at or through the OEMS itself; and
- Facilitating internal cross trading among funds or other clients managed under an investment adviser, in a manner consistent with SEC Rule 17a-7 under the Investment Company Act of 1940, Commission exemptive relief, or SEC staff no-action relief.

With respect to ETF primary market systems, the letter identifies several attributes that would preclude defining them as an exchange:

- The scope of ETFs involved in the creation or redemption process is confined to those offered by the ETF sponsor;
- Only registered broker-dealers that have an established agreement with an ETF sponsor's ETF to act as an AP can submit creation or redemption requests to the ETF; and
- The system or portal does not directly facilitate secondary market activity in the ETF (i.e., trading of the actual ETF shares among individual investors), nor does it provide access for individual investors that are not registered broker-dealers.

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