ANDREESSEN HOROWITZ

September 14, 2026

VIA ELECTRONIC SUBMISSION

Commissioner Hester M. Peirce
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0213

Re: Request for Information Regarding National Securities Exchanges and Alternative Trading Systems Trading Crypto Assets (Dec. 17, 2025); Proposal for a Regulatory Framework for the Regulation of Crypto Asset Trading Platforms

Dear Commissioner Peirce:

Andreessen Horowitz ("a16z") submits this letter to the Securities and Exchange Commission (the "Commission" or the "SEC") in response to the December 17, 2025 request for information ("RFI") regarding a proposed regulatory framework for the trading of crypto asset securities and non-securities.[1] Specifically, we submit that:

1. The regulation of crypto asset trading platforms ("CTPs") should be modeled on the regime for alternative trading systems ("ATSs"), but further modified or tailored to the crypto asset markets as they currently stand. Today's U.S. crypto asset markets are nascent, have the capacity for significant growth, and feature significant retail participation. CTP regulation should provide a framework in which those markets can deepen.

2. CTPs should be permitted to notice-register with the SEC and to trade non-security pairs (e.g., bitcoin for stablecoin) alongside security/non-security pairs. Permitting the trading of both security/non-security pairs alongside purely non-security pairs would prevent the fracturing and fragmentation of the crypto asset markets and would further the stated aims of the SEC's Project Crypto.

3. The public disclosure requirements of Form ATS-N should apply to a CTP's trading of crypto asset securities that are national market system ("NMS") stocks only once that trading crosses a volume threshold of the kind Regulation ATS already uses in Rules 301(b)(3) and 301(b)(5). Below the threshold, a CTP should provide the disclosures described in this letter to the Commission and to its subscribers on a confidential basis. Form ATS-N should not reach a CTP's trading of crypto assets that are not NMS stocks.

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[1] Comm'r Hester M. Peirce, Statement, And Then Some: Request for Information Regarding National Securities Exchanges and Alternative Trading Systems Trading Crypto Assets (Dec. 17, 2025), https://www.sec.gov/newsroom/speeches-statements/peirce-12172025-then-some-request-information-regarding-national-securities-exchanges-alternative-trading-systems.

4. The equivalent of Form ATS for CTPs should not be made public. Protecting subscriber trading and other information would encourage new trading patterns and strategies at this early stage, as it did for ATSs in 1998.

5. The new CTP regulatory framework should permit CTPs to have differentiated access, rights, and obligations for their subscribers, subject to appropriate disclosure to such subscribers regarding any differential features.

6. CTPs should be subject to similar recordkeeping requirements as ATSs and should be able to maintain required records through the blockchain, as long as they comply with certain specified conditions.

Our submissions in this letter are characterized by a single common theme — the Commission should build on the flexible, adaptable character of Regulation ATS to construct a similar regulatory regime for CTPs. We believe the Commission should set clear regulatory parameters for CTPs and permit CTP operators to innovate and experiment within them. We are confident that within this regulatory framework, over time, market participants will identify winners and losers, thus rewarding innovation, execution quality, and access.

In this submission, we have limited our responses to changes to Regulation ATS and the ATS regulatory structure. We have deliberately refrained from providing comment on the regulatory treatment of national securities exchanges. There are two reasons for this. First, ATSs are far more flexible than national securities exchanges in terms of the range of market participants who access them and the range of products available for trading. The Securities Exchange Act of 1934 (the "Exchange Act") limits participation on national securities exchanges to registered broker-dealers and persons associated with registered broker-dealers. By contrast, ATSs, depending upon their specific terms, can be open to all, including retail investors — and many ATSs are. National securities exchanges transact principally (though not only) in NMS securities. ATSs (and other broker-dealers) transact in a variety of publicly and privately offered securities and many broker-dealers that operate ATSs have also historically traded non-securities, such as foreign exchange.

Second, ATSs are intended to be platforms for innovation. As we discuss further below, the Commission specifically intended for ATSs to be sites for the development and application of innovative technology, and the ATS regime developed as a response to the growth in market communications and exchange technology. Tried and tested innovations originating with ATSs have, over time, also been rolled out to other platforms, including national securities exchanges. For these reasons (as well as for a number of others which we explore further in Section III), the ATS form is an ideal template for CTP regulation.

While this submission summarizes the principal features of our proposal, we welcome opportunities to meet with Commission staff to answer any questions and to discuss these matters in more detail.

I. Background on a16z

a16z is a venture capital firm that invests in seed, venture, and growth-stage technology companies, focused on AI, bio and healthcare, consumer, crypto, enterprise, fintech, games, infrastructure, and companies building toward American dynamism. As of 2026, a16z has more than $100 billion in assets under management across multiple funds, with more than $9.8 billion in committed capital for crypto funds.

In crypto, we primarily invest in companies using blockchain technology to develop protocols that people will be able to build upon to launch internet businesses. We submit this proposal based on our firsthand experience working with entrepreneurs in the crypto industry and witnessing the widespread negative impact of regulatory uncertainty in the crypto markets.

We have been amongst the earliest investors in major U.S. crypto exchanges, and we have observed these exchanges establish and maintain rigorous operational norms even in the face of regulatory inactivity and uncertainty. The RFI and any rulemaking undertaken by the Commission in furtherance of the RFI will, we believe, help place U.S. crypto exchanges on a firm regulatory footing.

II. Introduction

We propose that the Commission consider the regulatory regime for ATSs, as originally proposed and adopted in 1998, as a template for the development of a regime for crypto asset trading platforms in the United States. Regulation ATS was intended to accomplish the twin aims of "encourag[ing] market innovation while ensuring basic investor protections."[2] Those aims are as relevant for crypto asset markets today as they were for traditional securities in 1998.[3] Regulation ATS, as initially adopted, was intended to "allow new markets to start, without disproportionate burdens,"[4] and subjected them primarily to notice filing, quarterly reporting, and recording requirements.[5]

We therefore propose that the Commission take Regulation ATS, in the form adopted in 1998, as the basis for the development of a regulatory regime for CTPs. Importantly, we do not intend that the CTP regulatory regime should be segregated or isolated from the securities markets more generally. Rather, we note that when Regulation ATS was adopted, the Commission specifically noted that it was intended to "more effectively integrate the growing number of alternative trading systems into the national market system, accommodate the registration of proprietary alternative trading systems as exchanges, and provide an opportunity for registered exchanges to better compete with alternative trading systems." We see CTPs in the same way — i.e., as both a complement and a competitor to traditional securities markets. In short, we see the CTP regime as a regulatory regime for a specific type of ATS — one that trades

[2] Regulation of Exchanges and Alternative Trading Systems, 63 Fed. Reg. 70844 (Dec. 22, 1998), https://www.govinfo.gov/content/pkg/FR-1998-12-22/pdf/98-33299.pdf ("**ATS Adopting Release**").

[3] ATS Adopting Release at 70847.

[4] *Id.*

[5] *Id.*

crypto asset securities and/or crypto asset non-securities. This proposed CTP regime is both an extension and the organic outgrowth of the ATS regime that the Commission put in place in 1998. We begin by outlining why we believe the ATS regulatory framework to be an appropriate basis for the development of a CTP regulatory regime.

To be clear, we see the CTP regulatory regime as a specific form of ATS regulation — a modification of Regulation ATS and its accompanying forms. Under our proposal, a traditional ATS that seeks to trade crypto asset securities and/or crypto asset non-securities would make the appropriate notice filings under the CTP regime to be regulated as a CTP and would thereafter provide quarterly and other filings, on a confidential basis, as a CTP for its crypto asset trading related activity only, rather than include that activity in a traditional ATS filing. An unregulated platform that currently only trades crypto asset non-securities and that wishes to expand to trading crypto asset securities or other securities alongside its crypto asset non-securities would:

1) register as a broker-dealer with the SEC on Form BD;
2) file a New Member Application with the Financial Industry Regulatory Authority ("FINRA") and, upon its approval, become a member of FINRA;
3) after registering with the SEC and becoming a FINRA member, file Form ATS with the crypto asset supplement described below to be regulated as a CTP; and
4) thereafter make quarterly and other filings, on a confidential basis, as a CTP.

In our view, and as we discuss further below, there is a thriving, well-ordered market for crypto asset non-securities in the United States, which, when involving centralized intermediaries facilitating securities trading, should be integrated with SEC-supervised securities markets. This would align with the vision for Project Crypto articulated by SEC Chair Atkins, who recently noted that:

> A broker-dealer with an alternative trading system should be able to offer trading in non-security crypto assets alongside crypto asset securities, traditional securities, and other services, like crypto asset staking and lending, without requiring fifty-plus state licenses or multiple federal licenses. Nothing in the federal securities laws prohibits SEC-registered trading venues from listing non-securities on their platforms today, and I have directed the Commission staff to develop further guidance and proposals ultimately to make this "super-app" vision a reality.[6]

[6] SEC Chairman Paul S. Atkins, Speech, American Leadership in the Digital Finance Revolution (July 31, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125.

Our proposal is directly aligned with Chair Atkins' view. Excluding peer-to-peer trading,[7] we envision centralized crypto asset markets that are consolidated, not fragmented and that seek to maximize liquidity and efficiency, while minimizing regulatory friction and maintaining investor protections. These nascent and evolving markets should be permitted to experiment with their product offerings, trading systems, and conditions of access, subject to appropriate disclosure requirements and the fundamental norms against unfair discrimination and fraudulent and manipulative acts and practices. Our proposals in this letter discuss these suggestions in greater detail.

III. The Regulation of CTPs Should Follow a Modified Version of the ATS Regime

Question 4 of the RFI asks:

> *"Should the Commission propose a new Form ATS that is tailored to the trading of crypto asset securities and trading pairs on a crypto ATS? If so, what information should that form require crypto ATSs to disclose? Should the Commission revise or repeal provisions of Regulation ATS, Form ATS, Form ATS-N, or other forms or rules?"*[8]

The Commission should propose a new version of Form ATS that is tailored to the trading of crypto asset securities and trading pairs on CTPs. The required disclosures should be similar (though not identical) to the information required to be disclosed on Form ATS. The Commission should apply the requirements of Form ATS, subject to certain exceptions and modifications as we discuss further below.

In support of this proposal, we first discuss certain features of the crypto asset market and then explain the features of Regulation ATS that make it a suitable framework for the regulation of CTPs.

A. *U.S. Crypto Markets are Nascent, Growing, Increasingly Liquid and Marked by Extensive Retail Participation*

U.S. crypto markets are characterized by growth and deepening integration with traditional finance.[9] Crypto asset liquidity and market capitalization have increased significantly

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[7] This submission is being filed concurrently with our proposed exchange safe harbor, and the two submissions are intended to complement one another. This submission addresses centralized crypto asset trading platforms that function as traditional financial intermediaries and seek to offer trading in crypto asset securities, as well as both non-security pairs and security/non-security pairs. The exchange safe harbor, by contrast, addresses decentralized exchange protocols and decentralized exchange applications that should not be required to register as CTPs or national securities exchanges because they neither function as exchanges nor present the risks that the Exchange Act's exchange-registration framework was designed to address.

[8] RFI, Q.4.

[9] V. Gerard Comizio, *Guarding Against the Coming Crypto Market Implosion* (Dec. 18, 2025), https://www.american.edu/wcl/news-events/news/guarding-against-the-coming-crypto-market-implosion.cfm (observing that "To date, regulation of crypto has consisted of a fragmented, overlapping, and at times inconsistent

in recent years,[10] and retail participation is substantial. As of April 2026, U.S. retail participation in crypto has rebounded, with surveys indicating that 12% of U.S. consumers are active in crypto.[11] Perhaps more significantly, the share of individuals with crypto accounts is roughly half that of traditional investments across a range of income distributions.[12]

Notwithstanding this growth, the U.S. crypto asset markets remain a small fraction of financial markets, with total crypto market capitalization often fluctuating around $4 trillion, compared to roughly $50 trillion for U.S. equities alone.[13] The market is therefore small in relative terms, but growing rapidly, attracting significant retail participation and deepening its interconnectedness with traditional finance. These trends are positive and worthy of an appropriately tailored regulatory action. For the reasons discussed below, Regulation ATS, as adopted in 1998, provides an appropriate model for the regulation.

B. *Regulation ATS Was Adopted to Promote Innovation and Participation While Minimizing Fragmentation*

In 1996, Congress provided the Commission with greater flexibility to regulate new trading systems by granting the SEC broad authority to exempt any person from any of the provisions of the Exchange Act and impose appropriate conditions on its operation.[14] This legislative development, combined with the proliferation of new trading systems, respectively provided the regulatory authority and the empirical basis for the Commission to adopt Regulation ATS in 1998. In adopting Regulation ATS, the Commission acted consistently with its historical view that a broad interpretation of the term "exchange" would place "evolving (alternative) trading systems within the 'strait jacket' of exchange regulation," thus stifling innovation.[15]

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system of more than 60 federal and state agencies, emerging after the invention of Bitcoin much like the Hindu folktale of blind men arguing about the shape of an elephant based on the part of the elephant they touched.")

[10] Max Wadington, *The Maturation of Digital Assets*, Fidelity Digital Assets (Oct. 9, 2020), https://www.fidelitydigitalassets.com/research-and-insights/maturation-digital-assets.

[11] Will Canny, *U.S. crypto adoption is rebounding, bitcoin still dominates, Deutsche Bank says*, CoinDesk (Apr. 20, 2026), https://www.coindesk.com/markets/2026/04/20/u-s-crypto-adoption-is-rebounding-bitcoin-still-dominates-deutsche-bank-says. By one estimate, retail traders on Coinbase generated approximately $59 billion in trading volume during the fourth quarter of 2025. While institutional investors dominated total activity with roughly $237 billion in trading volume, retail users still accounted for about 20 percent of Coinbase's overall trading share. *See* Ethan Collins, *Coinbase Retail Traders Hold 20% Market Share Despite Crypto Market Drop*, Hokanews (Mar. 7, 2026), hokanews.com/2026/03/coinbase-retail-traders-hold-20-market.html.

[12] *See* Chris Wheat & George Eckerd, *Crypto investor waves since 2017: What retail investor behavior reveals about digital asset adoption*, JPMorganChase (Aug. 27, 2025), https://www.jpmorganchase.com/institute/all-topics/financial-health-wealth-creation/crypto-investor-waves-since-2017-what-retail-investor-behavior-reveals-about-digital-asset-adoption.

[13] *See Digital Assets Push Into the Mainstream as Global Adoption Surges*, Morgan Stanley Institute (Feb. 27, 2026), https://www.morganstanley.com/insights/articles/digital-assets-push-into-the-mainstream-as-global-adoption-surges.

[14] Section 36 of the Exchange Act, 15 U.S.C. 78mm, was enacted as part of the National Securities Markets Improvement Act of 1996, Pub. L. 104–290.

[15] ATS Adopting Release, 63 Fed. Reg. at 70899.

When the Commission adopted Regulation ATS, it did so with a dual mandate. The Commission stated that it was "adopting a regulatory framework for alternative trading systems … to strengthen the public markets for securities, while encouraging innovative new markets."[16] The catalyst was technological change — technology had blurred the traditional distinctions between exchanges and broker-dealers, and ATSs were being used as "functional equivalents of exchanges"[17] — yet the existing regulatory structure did not accommodate them. Rather than forcing these systems into an ill-fitting exchange registration regime, the SEC fashioned a tiered, flexible alternative.

The final rules were designed to let ATSs choose whether to register as a national securities exchange or instead register as a broker-dealer and comply with additional, tailored requirements under Regulation ATS, depending on their activities and trading volume. The SEC described this overall approach as one that "should encourage market innovation while ensuring basic investor protections,"[18] and emphasized that it was "flexible enough to accommodate the business objectives of, and the benefits provided by, alternative trading systems."[19] To allow "new markets to start, without disproportionate burdens,"[20] ATSs were generally subjected to a limited set of requirements — notice and quarterly reports, recordkeeping including an audit trail, and naming restrictions. This calibration was deliberate. Imposing the full weight of exchange regulation on nascent systems would have deterred the innovation the Commission sought to encourage.

Regulatory clarity introduced through Regulation ATS promoted innovation. The SEC explained that reliance on *ad hoc* no-action treatment for novel systems was no longer workable given the "proliferation of new trading systems,"[21] and that codifying the framework would allow "technological improvements and enhanced services" to become available more rapidly. Consistent with this philosophy, the SEC emphasized that Regulation ATS was designed to "encourage innovation"[22] and provide the flexibility required to accommodate ATS business objectives and market benefits.

As adopted in 1998, Regulation ATS embodied several distinct benefits that are immediately relevant to crypto asset trading programs.

- First, Regulation ATS offered regulatory choice and autonomy while preserving investor protection. This was done by permitting ATSs to choose to register as exchanges or broker-dealers, both long-standing SEC-regulated categories with substantial in-built subscriber and customer protections. (As a practical matter, nearly every ATS has operated as a broker-dealer; the few that registered as exchanges, such as IEX, did so only after establishing themselves as ATSs, which underlines the relative burden of

[16] *Id.* at 70845.

[17] *Id.* at 70847.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 70901.

[22] *Id.* at 70910.

exchange regulation. For the purposes of this letter, we have assumed that regulated CTPs would similarly opt to be regulated as broker-dealers.)

- Second, by providing for notice filings of Form ATS, the Commission ensured that it would not act as a bottleneck to the creation and operation of new ATSs and trading systems.

- Third, by mandating confidential filings of Form ATS, Regulation ATS gave ATSs and trading systems the confidence to report information comprehensively and accurately, while innovating and providing differentiated offerings to subscribers.

- Fourth, Form ATS provides for a limited set of disclosures that can be relatively easily expanded upon or modified to accommodate new asset classes.

- Fifth, broker-dealers that operate as ATSs have historically traded non-security assets such as foreign exchange alongside securities, providing a template for the trading of multiple asset classes on the same platform. This is in contrast to securities exchanges which have historically traded only securities.

- Sixth, by their structure, ATSs have been open to participation by retail investors, or have been able to provide for retail participation through their rules, in contrast to exchanges, where Section 6(c)(1) of the Exchange Act requires that exchange members be broker-dealers or associated persons of broker-dealers.

- Seventh, the Commission provided such benefits and opportunities to ATSs without compromising investor protections — for example, ATSs continue to be subject to fair access requirements, recordkeeping and reporting requirements, capacity, integrity and security standards, and to periodic examinations by the SEC and FINRA.

The advantages of these features of Regulation ATS are immediately obvious in the context of crypto asset markets. Any regulatory framework for crypto asset trading platforms should recognize and appropriately support retail participation in crypto asset markets. Any regulatory framework for crypto asset trading platforms should provide for the trading of securities against non-securities, or one security for another, or even for one non-security for another. Any regulatory framework for crypto asset trading platforms should ensure that platforms have the freedom to innovate, to provide differentiated offerings, and are not subjected to disproportionate burdens. At the same time, a regulatory framework for CTPs must have protections to ensure market integrity, guard against discrimination, and to maintain and make available to the regulator clear, consistent, and rigorous records.

These regulatory objectives could all be achieved by a CTP regulatory regime that strongly resembles Regulation ATS, subject to certain modifications discussed in the following section. Although we propose building on Regulation ATS, the application of Form ATS-N to CTPs requires a volume threshold, which we also discuss below.

C. *A Proposal for the Regulation of Crypto Asset Trading*

Our regulatory proposal for CTPs would build on Regulation ATS in the following ways:

- A CTP is an ATS, operated by a registered broker-dealer, that files a crypto asset supplement to Form ATS and is subject to the modifications to Regulation ATS described below.

- Like ATSs, CTPs should be able to register with the SEC on a notice basis and, just as broker-dealers that operate ATSs can trade non-securities, CTPs should be able to trade both crypto asset securities and crypto asset non-securities. In addition, in order to ensure efficient markets, CTPs should be able to trade pairs of non-securities, i.e., non-securities for each other, for example, stablecoin for bitcoin, or bitcoin for ether. As we discuss below, this suggestion that CTPs should be able to engage in trading pairs in which neither leg is a security is consistent with the historical practices of broker-dealers, including those that operate ATSs.

- Where a CTP trades one or more crypto asset securities that are NMS stocks, the public disclosure requirements of Form ATS-N should attach to that trading only once the CTP's volume in those NMS stocks crosses a threshold of the kind Regulation ATS already uses in Rule 301(b)(3) and 301(b)(5). Below that threshold, the CTP should make the disclosures discussed in Section V to the Commission and to its subscribers on a confidential basis. Form ATS-N should not reach a CTP's trading of crypto assets that are not NMS stocks.

- To the extent a CTP has a material conflict of interest or to the extent a CTP provides differentiated access and rights to subscribers or classes of subscribers, CTPs should be required to disclose such conflicts or differentiated treatment through subscriber disclosures.

We examine each of these points further below.

IV. CTPs Should Be Permitted to Trade Both Security/Non-Security Pairs and Purely Non-Security Pairs

The RFI states that "The latest set of questions pertains primarily to ATSs that trade crypto asset securities or trade securities against crypto assets that are not securities." We agree that it is vital that CTPs be permitted to trade securities against crypto assets that are not securities. For the avoidance of doubt, our proposal also ensures CTPs can trade crypto asset non-securities for other crypto asset non-securities.

Broker-dealers, including those that operate ATSs, have long dealt in non-security assets, and both the SEC and FINRA have occasionally stepped in to regulate such trading.[23] When they

[23] *See, e.g., In the Matter of David Lee*, SEC Administrative Proceeding, Exchange Act Rel. No. 59107 (Dec. 16, 2008), where the SEC brought and settled an administrative proceeding against a derivatives trader for his trading in

deal in such non-security assets, broker-dealers have not hived off or separated such non-securities business from their securities business as such (with the exception of crypto asset businesses which broker-dealers had typically run out of unregistered affiliates as a result of the previously prevalent climate of regulatory uncertainty).

A. *Permitting CTPs to Trade Both Security/Non-Security Pairs and Purely Non-Security Pairs Would Achieve Major Policy Objectives*

Permitting CTPs to trade both security/non-security and purely non-security pairs would serve a number of significant policy objectives, including preventing the fragmentation of crypto markets.

The Commission staff has already noted that the existing equity markets are increasingly fragmented.[24] Market fragmentation can come with significant costs for market participants, including reduced transparency, reduced execution quality, poorer price discovery, increased costs of liquidity, higher order handling costs, and a disproportionate and adverse impact on smaller stocks.[25] Prohibiting CTPs from trading non-security pairs would miss a chance to consolidate and prevent the fragmentation of crypto asset markets (both securities and non-securities). Parties should have the ability to switch from holding crypto asset securities to non-securities (including stablecoins) with minimal friction, and without having to migrate from one trading venue to another. In other words, a retail or institutional customer should be able to move from holding an NMS security or other equity security to holding stablecoins to holding bitcoin and back again to equities without having to switch trading venues at every step. Granting investors this ability would significantly reduce trading costs, improve execution quality, aid price discovery and improve overall trade transparency and efficiency. These benefits may be especially important to retail investors who may prefer a broker relationship where the broker has a comprehensive view of the customer's investments.

Permitting CTPs to trade non-security pairs in addition to security pairs and security/non-security pairs would also advance the Commission's and CFTC's shared vision for Project Crypto.[26] Chair Atkins has stated that ATSs should be able to offer trading in

natural gas options. FINRA has also been active in this regard. *See also* FINRA Regulatory Notice 09-06 (Jan. 21, 2009) (Notice 09-06), which proposed a rule establishing leverage limits for retail foreign exchange. The SEC also acted in the retail foreign exchange space by adopting temporary Rule 15b12-1 that permitted registered broker-dealers to engage in retail foreign exchange transactions with non-eligible contract participants. *See* Retail Foreign Exchange Transactions, 78 Fed. Reg. 42439 (July 16, 2013), https://www.sec.gov/rules-regulations/2016/05/retail-foreign-exchange-transactions.

[24] Staff of the Division of Trading and Markets, U.S. Securities and Exchange Commission, *Equity Market Structure Literature Review, Part I: Market Fragmentation* (Oct. 7, 2013), https://www.sec.gov/marketstructure/research/fragmentation-lit-review-100713.pdf.

[25] *Id.* at 6.

[26] *See* CFTC Chairman Michael S. Selig, Remarks, The Next Phase of Project Crypto: Unleashing Innovation for the New Frontier of Finance (Jan. 29, 2026), https://www.cftc.gov/PressRoom/SpeechesTestimony/opaselig1 (noting that "Fragmented oversight imposes real economic costs—raising barriers to entry, reducing competition, increasing compliance expenses, and encouraging regulatory arbitrage rather than productive investment. Recognizing this, I intend for the CFTC to work closely with the SEC to identify opportunities to better align regulatory requirements across markets. The objective is not to blur statutory boundaries, but to reduce unnecessary duplication that does not

non-security crypto assets alongside crypto asset securities, traditional securities, and other services without requiring multiple registrations. Similarly, CFTC Chair Selig has said that "Within the bounds of the law and where appropriate, market participants should be able to offer multiple products through a single platform without navigating an inefficient patchwork of registrations and overlapping regulatory regimes."[27] A new regulatory framework for CTPs offers a unique opportunity to translate the two agencies' shared vision of Project Crypto into reality.

Two points about authority follow. First, the Commission's authority over a CTP's trading of crypto assets that are not securities runs through the CTP's status as a registered broker-dealer, not through Regulation ATS itself. Regulation ATS operates through Rule 3a1-1, which exempts from the definition of "exchange" in Section 3(a)(1) of the Exchange Act an organization that complies with Regulation ATS, and it reaches trading in securities.[28] The Commission's authority to require records of non-security activity rests on Section 17(a), which reaches a broker-dealer's business as a whole, a point the Staff recognized in the May 2025 Frequently Asked Questions discussed in Section VII.[29] To the extent the Commission requires Form ATS disclosure of, or fair access to, non-security pairs, it should do so as a condition of the broker-dealer's operation of the CTP, relying on its authority under Sections 15 and 36 of the Exchange Act.[30] Second, to the extent Congress has vested, or vests, the CFTC with authority over spot trading in digital commodities, a CTP's trading of non-security pairs will be subject to that authority as well. The Commission should therefore develop the CTP framework jointly with the CFTC, so that a CTP registered with the Commission can trade non-security pairs without duplicative registration, whether through the substituted compliance Chair Selig has described or through a joint exemptive order. A framework that permits non-security pairs on SEC-registered venues without resolving this question would reintroduce the fragmentation it is meant to prevent.

B. *CTP Trading of Non-Security Pairs Will Require Relatively Modest Amendments to Form ATS and Form ATS-R*

Permitting CTPs to trade non-security pairs should require no major amendments to the existing Form ATS or the quarterly Form ATS-R. The following modifications to Form ATS should be sufficient to account for the trading of non-security pairs on a CTP:

- A new item 4.c to the existing Form ATS to require CTPs to report a list of the types of non-security crypto assets the CTP trades (e.g., stablecoins, memecoins, non-fungible

improve market integrity. As part of this harmonization effort, we will examine whether substituted compliance can achieve equivalent or better regulatory outcomes at lower costs for market participants.").

[27] *Id.*

[28] 17 CFR § 240.3a1-1(a)(2); 17 CFR § 242.300(a).

[29] 15 U.S.C. 78q(a). See infra Section VII.

[30] 15 U.S.C. 78o, 78mm.

tokens, digital commodities, and other categories identified by the SEC in its recent guidance on crypto assets).[31]

- A new item 4.d to the existing Form ATS to require CTPs to report a list of the non-security crypto assets the CTP trades.
- A new item 8.g to the existing Form ATS to require CTPs to describe any differences in the procedures governing execution, reporting, clearance, and settlement of transactions in securities and non-securities effected through the CTP.
- A new item 10.a to the existing Form ATS to ask the CTP to confirm whether any entity, other than the CTP itself, will hold or safeguard subscriber crypto asset non-securities (including stablecoins) on a regular basis. In the event of an affirmative answer to this item, the CTP could be asked to attach, as new Exhibit J, the name of such holding or safeguarding entity and a brief description of the controls that will be implemented to ensure the safety of such crypto asset non-securities.

We address in Section V the application of Form ATS-N to CTPs that trade crypto asset securities that are NMS stocks.

Question 7 of the RFI asks:[32]

> *"An ATS must file quarterly reports about its securities trading activity on Form ATS-R, which is confidential. In light of open-source data and public blockchains, should the Commission repeal the requirement to file Form ATS-R for crypto ATSs? Should the Commission propose amendments to Form ATS-R specifically for crypto asset securities or trading pairs?"*

As with Form ATS, we believe only minor amendments would be required to Form ATS-R in order to permit CTPs to trade both security/non-security pairs and purely non-security pairs. Specifically, we would propose the addition of:

- A new item 3A, requiring an exhibit listing all non-security crypto assets (including stablecoins) that were traded on the CTP at any time during the period covered by the report.
- A new item 4A, requiring an exhibit listing the total unit and dollar volume of transactions in each of the non-security crypto assets listed in item 3A. (With respect to the dollar volume of any such non-security crypto assets, filers must explain the methodology adopted for valuing such assets and show that such methodology is consistent with the accounting practices followed by the CTP.)
- A new item 8, requiring an exhibit listing each venue to which orders have been routed for execution or fulfillment, to the extent any orders have been fulfilled at a venue other than the CTP itself, and whether any payment for order flow or other compensation is paid to, or received from such venue.

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[31] *See* Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, 91 Fed. Reg. 13714 (Mar. 23, 2026), https://www.govinfo.gov/content/pkg/FR-2026-03-23/pdf/2026-05635.pdf.

[32] RFI, Q. 7.

Forms ATS and ATS-R could each therefore be modified in relatively minor ways to add disclosures relevant to the trading of crypto asset non-securities on CTPs. As discussed below, certain disclosures and filing requirements under Form ATS-N (relating to the trading of NMS securities) will, however, require more substantial modifications.

V. Form ATS-N Should Apply to a CTP's Trading of NMS Stocks Only Above a Volume Threshold, and CTP Disclosures Below the Threshold Should be Provided on a Confidential Basis

In July 2018, the Commission adopted significant amendments to Regulation ATS and Form ATS, which increased the regulatory burden on ATSs that trade stocks listed on a national securities exchange.[33] Pursuant to those amendments, ATSs that trade one or more NMS securities are required to file detailed public disclosures on new Form ATS-N. These disclosures were designed to allow market participants to assess potential conflicts of interest and risks of information leakage arising from the ATS-related activities of the ATS's broker-dealer operator and its affiliates. Form ATS-N is made publicly available on the Commission's website via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.

Question 11 of the RFI asks:[34]

> *"ATSs that trade crypto asset securities that are NMS stocks would be subject to Rule 304 of Regulation ATS, which requires an NMS Stock ATS to file public disclosures on Form ATS-N. Should the Commission propose amending or repealing Rule 304 or Form ATS-N or provide guidance regarding the applicability of the disclosure requirements on Form ATS-N to an ATS that trades NMS stock crypto asset securities or trading pairs?"*

The Commission should amend Rule 304, or provide guidance, along two lines. First, it should confirm that Form ATS-N does not reach a CTP's trading of crypto assets that are not NMS stocks. We understand this to be the case today for an NMS Stock ATS that also trades other securities, which reports that activity on Form ATS. Second, it should apply the public disclosure requirements of Form ATS-N to a CTP's trading of NMS stock crypto asset securities only once that trading crosses a volume threshold. Below the threshold, the CTP should provide the disclosures described below to the Commission and to its subscribers on a confidential basis.

A. *Form ATS-N Should Apply to a CTP's NMS Stock Trading Only Above a Volume Threshold*

In 2018, when the Commission adopted the amendments to Regulation ATS and Form ATS-N, it cited four concerns:

[33] Regulation of NMS Stock Alternative Trading Systems, 83 Fed. Reg. 38768 (Aug. 7, 2018) ("**ATS-N Adopting Release**"), https://www.govinfo.gov/content/pkg/FR-2018-08-07/pdf/2018-15896.pdf.

[34] RFI, Q.11.

1. Little information was available to market participants about NMS ATSs, and that the lack of, or differential access to, information about operations of NMS ATSs prevented market participants from assessing NMS ATSs as potential trading venues;
2. NMS ATSs today play a significant role in equity market structure, and their role has changed since Regulation ATS was adopted in 1998;
3. NMS ATSs have become more operationally complex, and that the potential for conflicts of interest has risen as a result of that complexity; and
4. Given the complexities of NMS ATS operations, the lack of information about the ATS's order types, priority rules, segmentation procedures, use of market data, and fees, for example, may inhibit market participants' ability to adequately understand how their orders in NMS stocks would interact, match, and execute in an NMS ATS.[35]

Each of these concerns is a function of scale. The first, second, and fourth turn on the role NMS Stock ATSs had come to play in equity market structure by 2018; the third turns on the operational complexity that accompanied that role. A CTP whose trading in a given NMS stock is a small fraction of consolidated volume in that stock presents none of these concerns at a level that public disclosure is needed to address. It presents them at the level at which the Commission permitted every ATS to file confidentially in 1998. Regulation ATS already draws lines of this kind: Rule 301(b)(3) imposes order display and execution access obligations on an ATS that displays subscriber orders, and Rule 301(b)(5) imposes fair access obligations on any ATS, only once the ATS accounts for five percent or more of average daily volume in a security during at least four of the preceding six months.[36] We propose that the public disclosure requirements of Rule 304 attach to a CTP's NMS stock trading on the same basis. Below the threshold, the CTP would provide the disclosures described in the following paragraphs to the Commission and to its subscribers confidentially. Above it, the CTP would file Form ATS-N for its NMS stock trading like any other NMS Stock ATS.

This approach also avoids a defect in applying Form ATS-N to CTPs as the form is currently designed. Form ATS-N describes an ATS's operations for NMS stocks only. Where a CTP trades NMS stocks against stablecoins or other crypto assets and uses different order handling or execution procedures for its other pairs, a filing that describes only the NMS stock procedures would give an incomplete and potentially misleading picture of how the venue operates. Whatever threshold the Commission selects, a CTP that files Form ATS-N should be permitted to describe its operations for all of its trading pairs in the filing, with the portions relating to crypto assets that are not NMS stocks treated as confidential in the same manner as Form ATS.

The Commission could implement the threshold through the CTP rules alone or through a general amendment to Rule 304 that applies the same threshold to every NMS Stock ATS. The two vehicles differ in one respect. A CTP-specific threshold would leave a CTP below the threshold filing confidentially while a traditional NMS Stock ATS of the same size files publicly, and a traditional ATS could obtain the CTP treatment by adding a crypto asset pair. A general

[35] ATS-N Adopting Release, 83 Fed. Reg. at 38776.

[36] 17 CFR §§ 242.301(b)(3)(i)(B), 242.301(b)(5)(i).

amendment would remove that difference: venues of any kind below the threshold would file confidentially, venues of any kind above it would file publicly, and no venue could change its disclosure obligations by adding or removing a trading pair. The concerns that supported Form ATS-N in 2018 were concerns about significant venues, and a general threshold would preserve public disclosure for exactly those venues. Either vehicle would achieve the result we propose for CTPs.

We agree with the Commission's concerns in the context of potential conflicts of interest at CTPs and a lack of information about CTP operations — these are likely to be significant considerations for market participants. However, we do not agree that the remedy for such potential conflicts and lack of information is, for a CTP below the threshold, detailed public disclosure. Instead, and for the reasons discussed below, we recommend that the Commission require CTPs to disclose to all subscribers (and particularly to retail subscribers):

1) any material conflicts of interest arising out of the operations of the CTP; and
2) information about the CTP's order types, priority rules, segmentation procedures, use of market data, fees, and such other matters as the Commission may determine to be relevant to market participants.

Below the threshold, these disclosures should be made to subscribers and to the Commission on a confidential basis, for the reasons discussed in the next section. So that the disclosures inform the choice of venue rather than merely follow it, a CTP should also be required to provide them to any prospective subscriber on request before the subscriber first accesses the system.

B. *Below the Threshold, Any CTP Disclosures Should be Provided on a Confidential Basis*

Question 5 of the RFI asks:[37]

> *"Today, Form ATS is filed on a non-public basis and is not subject to Commission approval. Should that approach be followed for crypto ATSs? Or should disclosures about trading in crypto asset securities be made public or be subject to a Commission review, approval, and effectiveness process? How can the Commission lower the costs of starting and running a crypto ATS in a manner that is consistent with investor protection and market integrity?"*

We strongly agree that CTPs should be permitted to file their equivalent of Form ATS on a non-public, notice basis, without being subjected to Commission review, approval or effectiveness. When Form ATS was adopted in 1998, the adopting release noted that "Information required on Form ATS may be proprietary and disclosure of such information could place alternative trading systems in a disadvantageous competitive position."[38] The Commission also noted that it sought to "encourage candid and complete filings in order to make informed

[37] RFI, Q. 5.

[38] ATS Adopting Release, 63 Fed. Reg. at 70864.

decisions and track market changes," and that "preserving confidentiality provides respondents with the necessary comfort to make full and complete filings."[39]

Today, nearly 30 years after Regulation ATS was adopted, trading data is more valuable than ever, firms closely guard proprietary trading strategies that competitors seek to reverse-engineer, and minute differences in trading, routing, and execution procedures can result in significant differences in outcomes. Public non-confidential disclosure of trading information could therefore place CTPs at a competitive disadvantage. The reasons for advocating confidential disclosures exist in 2026, only more so.

Question 6 of the RFI[40] asks:

> *"Are there specific crypto ATS public disclosures that would protect investors or enhance capital formation? For example, should the Commission propose amendments to Form ATS to require disclosures about conflicts of interest related to operators of a crypto ATS? Does private ordering already address platform disclosure?"*

As a general matter, we think that the disclosures required by Form ATS are sufficient for CTPs, with the relatively modest additions regarding non-security crypto assets proposed above in Section IV. With that said, we recognize that concerns have been voiced regarding the transparency and operation of crypto asset exchanges,[41] and that the disclosure by CTPs of material conflicts of interest should be required, particularly to retail subscribers of CTPs.

To be clear, however, we do not endorse the wholesale application of all the disclosures under Form ATS-N to CTPs below the threshold, irrespective of whether these disclosures are provided confidentially. We would instead propose that the ATS have a general obligation to disclose any material conflicts of interest and any differentiated access, rights, or obligations amongst subscribers. In practical terms, we would expect these disclosures to cover matters similar to Items 1 (Broker-Dealer Operator Trading Activities on the ATS), 2 (Affiliates Trading Activities on the ATS), 4 (Arrangements with Trading Centers), and 6 (Activities of Service Providers) of Part II of Form ATS-N; and Items 2 (Eligibility for ATS Services), 3 (Exclusion from ATS Services), 5 (Means of Entry), 11 (Order Trading Services, Facilities and Rules), 12 (Liquidity Providers), 14 (Counter-Party Selection), 15 (Display), 16 (Routing), 19 (Fees), 24 (Order Display and Execution Access), and 25 (Fair Access) of Part III of Form ATS-N. In other words, below the threshold, much of the disclosures to be provided under Form ATS-N would still continue to be provided, albeit only to subscribers and the Commission, privately.

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[39] *Id.*

[40] RFI, Q.6.

[41] Paul Tierno, *What Happened at FTX and What Does It Mean for Crypto?*, Congressional Research Service (Nov. 29, 2022), https://www.congress.gov/crs_external_products/IN/PDF/IN12047/IN12047.3.pdf (noting that "Regardless of jurisdiction, the events at FTX are relevant because they shine a light on practices by U.S.- based exchanges that may be of interest to Congress. The first is whether these firms, which face fewer regulations than traditional securities exchanges and operate as both exchanges and broker-dealers, face a conflict of interest. Moreover, unlike traditional brokers, which must segregate customer funds, crypto exchanges may have comingled funds, which could make it difficult for customers to recover funds if the exchange were hacked or went bankrupt.").

The disclosure of conflicts of interest, the disclosure of any differentiated access, rights, or obligations for subscribers, as well as the disclosures under Reg ATS should constitute a disclosure floor that every CTP should be required to meet. Beyond that floor, however, disclosures should be left to private ordering. Subscribers and other market participants should be free to choose to deal (or not deal) with CTPs based on the quantum and quality of their disclosure (or lack thereof). Equally, subscribers and other market participants should be free to choose CTPs based on considerations other than disclosure and transparency, such as, for example, on the basis of execution quality, costs and fees, liquidity, or security.

VI. CTPs Should be Permitted to have Differentiated Access, Rights, and Obligations for Subscribers, Subject to Rigorous (But Confidential) Disclosures

Question 12 of the RFI asks:

> *"An NMS Stock ATS must comply with certain order display and execution access obligations under Rules 301(b)(3) and (b)(4) of Regulation ATS if the ATS displays subscriber orders in an NMS stock to any person (other than an employee of the ATS) and meets certain volume requirements. Should these rules be changed or repealed in light of crypto market developments or other developments?"*

Rule 301(b)(3), (4), and (5) of Regulation ATS govern certain order display and access obligations for an ATS. Rule 301(b)(3) of Regulation ATS[42] requires that with respect to an NMS stock, an ATS that (1) displays subscriber orders for such NMS stock to anyone outside its own employees; and (2) had an average daily trading volume of 5 percent or more of the aggregate average daily share volume for such NMS stock for at least four of the six preceding months, must provide its best bid and offer to a national securities exchange.[43] That ATS must also grant any broker-dealer that accesses the relevant exchange or association the ability to execute against those displayed orders — on terms equivalent to those available on the exchange itself — at the best displayed price, up to the displayed size.[44]

Rule 301(b)(4) of Regulation ATS[45] states that an ATS may not charge broker-dealers fees that are inconsistent with the equivalent access requirements described in Rule 301(b)(3). If the relevant exchange or association establishes fee-related access standards, the ATS must also ensure its fees to members comply with those standards and are properly disclosed.

Rule 301(b)(5) of Regulation ATS requires an ATS to provide "fair access" to its trading system if it accounts for 5% or more of average daily volume (during at least four of the

[42] 17 CFR § 242.301(b)(3).

[43] 17 CFR § 242.301(b)(3)(i).

[44] 17 CFR § 242.301(b)(3)(iii).

[45] 17 CFR § 242.301(b)(4).

preceding six months) in an NMS security, a non-NMS security, a municipal security or a corporate debt security.[46] When the fair access threshold is met, the ATS must:

- Establish written access standards;
- Apply those standards fairly and without discrimination;
- Keep records of all access grants, denials, and limitations (including reasons); and
- Report access information on Form ATS-R.[47]

We see no reason why the requirements under Rules 301(b)(3) and (4) should not apply to CTPs, to the extent applicable — i.e., to the extent the CTP trades an NMS security and qualifies under Rule 301(b)(3). We would also favor extending the fair access requirement under Rule 301(b)(5) to CTP's trading of crypto asset non-securities, as a condition of the broker-dealer's operation of the CTP (see Section IV). We note, however, that fair access is not the same as equal access and while every ATS is required to treat subscribers fairly and according to written, objective standards, no ATS is required to ensure equal access for all subscribers.

Put briefly, we respectfully submit that CTPs (similar to ATSs) should have the ability to reasonably differentiate between subscribers as long as such differentiation does not descend into discrimination. CTPs should, for example, be able to establish tiered access for subscribers based on different levels of fees. CTPs should be able to differentiate amongst subscribers based on liquidity provision considerations. CTPs should be able to grant or deny access to subscribers based on objective standards, administered fairly, for example, on the basis of financial resources or disciplinary history.[48] In each case, CTPs should be required to disclose such differential access, rights, or obligations to each subscriber in clear and comprehensive terms at the time when the subscriber first seeks to access the system. We believe this approach is entirely consistent with Regulation ATS as adopted, and with the practice of ATSs today.

VII. CTPs Should be Subject to Similar Recordkeeping Requirements as ATSs

Question 8 of the RFI asks:

> *"How can blockchain-based records help provide insight to the Commission about crypto asset securities transactions? What, if any, types of records should platforms that trade crypto asset securities be required to make and preserve? Are there any records required to be preserved by Rule 302 of Regulation ATS that would not be feasible or practicable to maintain for a crypto ATS?"*

As adopted, "Regulation ATS requires alternative trading systems to make and keep the records necessary to create a meaningful audit trail."[49] In practice, ATSs are required to maintain daily summaries of trading and time-sequenced records of order information, including the date

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[46] 17 CFR § 242.301(b)(5)(i).

[47] 17 CFR § 242.301(b)(5)(ii)(A)–(D).

[48] ATS Adopting Release, 63 Fed. Reg. at 70873.

[49] *Id.* at 70877.

and time the order was received, the date, time, and price at which the order was executed, and the identity of the parties to the transaction. ATSs must also maintain:

- a record of subscribers and any affiliations between subscribers and the ATS;[50]
- records of all notices provided to subscribers, including notices addressing hours of operation, system malfunctions, changes to system procedures, and instructions pertaining to access to the ATS;[51]
- documents made (if any) in the course of complying with the systems capacity, integrity, and security standards in Rule 301(b)(6); and
- if the ATS is subject to the fair access requirements under Rule 301(b)(5), a record of its access standards.

CTPs should be required to maintain records that are substantially similar to ATSs. Further, we would extend these ATS recordkeeping obligations to cover orders and transaction information on CTPs that relate to non-securities. We note that in a series of "Frequently Asked Questions" initially issued in May 2025 (the "**May FAQs**"), the Commission Staff clarified that "…a broker-dealer that conducts a non-security crypto asset business could make and keep the same records for its non-security crypto activities as it does for its securities activities."[52] We would advocate a similar approach to CTPs, so that CTPs are required to keep substantially similar records with respect to orders and transactions in crypto asset non-securities as they do for securities, with modifications as necessary for such non-security assets.

A second question around recordkeeping relates to the manner in which records are kept. Specifically, as Question 8 of the RFI notes, blockchain-based records can provide data and insights as to transactions. In the May FAQs, the Staff took the view that a transfer agent could utilize distributed ledger technology as its official Master Securityholder File.[53] We propose that a CTP should also be able to rely on blockchain-based records, provided it complies with all other applicable requirements under the federal securities laws, including the recordkeeping, reporting, examination, and other requirements of Sections 17(a)(1) and 17(b) of the Exchange Act. If these requirements are met, consistent with the Staff's view in the May FAQ, the CTP should not be required to maintain a duplicate or "digital twin" of its records exclusively offchain.

We suggest that a CTP should be permitted to rely on blockchain-based records if the CTP can undertake the following five steps:

[50] *Id.*

[51] 17 CFR 242.303(a)(1)(ii).

[52] Div. of Trading & Mkts., SEC, *Frequently Asked Questions Relating to Crypto Asset Activities and Distributed Ledger Technology*, A.9 (May 15, 2025), https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology (updated Feb. 19, 2026).

[53] May FAQs, A. 11.

1. Confirm whether the CTP seeks to rely on the WORM standard[54] or the audit trail standard,[55] identify the specific types of records for which the CTP relies on the blockchain, and explain why the blockchain should be considered to be an "electronic recordkeeping system" under Exchange Act Rule 17a-4;
2. Periodically provide to subscribers written disclosures regarding its reliance on the blockchain as a recordkeeping medium and the risks of such recordkeeping;
3. If the CTP employs or makes use of a public, permissionless blockchain for its recordkeeping**,** it must examine and describe the processes by which its internal recordkeeping systems draw on or from the public blockchain;
4. Establish and maintain procedures by which the CTP seeks to identify and report irregularities or anomalies arising from, or security breaches of, the blockchain used as a recordkeeping medium; and
5. Where the CTP seeks to rely on a public, permissionless blockchain for recordkeeping, the CTP should confirm in writing that it has independent access to the records without the need of any intervention of any third party.[56] Where the CTP relies on a private, permissioned blockchain for recordkeeping and the blockchain is subject to the control of some entity other than the broker-dealer, such controlling entity must confirm in writing that:

    a. it knows that the records are the property of the CTP;
    b. the CTP is subject to SEC recordkeeping rules;
    c. the CTP has independent access to the records maintained by the controlling entity; and
    d. the controlling entity undertakes to reasonably facilitate the examination, access, download, or transfer of the records by the Commission or its staff.[57]

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[54] In 1997, the Commission amended Rule 17a-4 to allow broker-dealers to store records electronically. The amended rule did not specify what type of media the records needed to be stored on, only that it "preserve the records exclusively in a non-rewriteable, non-erasable format" (also known as a "write once, read many" ("**WORM**") format). *See* Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934*,* 62 Fed. Reg. 6469 (Feb. 12, 1997), https://www.govinfo.gov/content/pkg/FR-1997-02-12/pdf/97-3426.pdf; Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934*,* 58 Fed. Reg. 38092 (July 15, 1993) (proposing Rule 17a-4(f)), https://archives.federalregister.gov/issue_slice/1993/7/15/38089-38095.pdf#page=4.

[55] The Commission adopted amendments in 2022 that effectively retained the WORM standard as an option for firms but also added an audit-trail alternative to the WORM requirement. The audit-trail alternative requires that a broker-dealer use an electronic recordkeeping system that maintains and preserves electronic records in a manner that permits the recreation of an original record if it is modified or deleted. *See* Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants, 87 Fed. Reg. 66412 (Nov. 3, 2022), https://www.govinfo.gov/content/pkg/FR-2022-11-03/pdf/2022-22670.pdf. Under the amendments to Rule 17a-4, therefore, a broker-dealer that elects to use an electronic recordkeeping system will need to ensure that such electronic recordkeeping system meets either the audit-trail requirement or the WORM requirement.

[56] These principles are substantially similar to those discussed by the Commission in its 2022 amendments to Rule 17a-4. *See* 87 Fed. Reg. at 66413-14.

[57] *Id.* at 66414.

VIII. Concluding Observations

Over the last ten years or so, crypto exchanges in the United States have weathered a prolonged period of regulatory uncertainty to emerge as well-ordered, growing markets. Much of this has been done through private ordering.[58] Today, however, the rapid growth of the crypto industry and its increasing interconnectedness with traditional finance and securities markets point to the limits of private ordering and the need for measured regulation by the Commission. As the Commission steps forward to regulate CTPs, we hope it will continue to allow substantial space for private ordering and private arrangements.

The Commission's ATS regime, which is now nearly 30 years old, is generally understood to have been a success. The substantial liquidity that has now moved to ATSs underscores this conclusion. We suggest that the ATS regime was a success because of its limited character, its confidentiality, and its ease of compliance (particularly compared to the regime for national securities exchanges). If the success of Regulation ATS is to be repeated for CTPs, CTP regulation must be similarly easy to implement and comply with. CTPs should have the ability to report information in confidence, until the scale of their NMS stock trading warrants public disclosure, and with confidence. CTPs should have the ability to take on a range of subscribers without being forced to treat unlike subscribers alike. And CTPs should be able to leverage the full power of the blockchain, both in terms of the range of assets they trade, as well as the uses to which they put the technology (such as for recordkeeping).

Our submissions in this letter seek to strike a balance between the Commission's powers to regulate trading venues with the proven power of private ordering in crypto asset trading. Striking that balance correctly is more than just critical for effective regulation — it secures American leadership in digital finance.[59]

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[58] *See* Comm'r Hester M. Peirce, Speech, *Lawless in Austin* (Oct. 8, 2021), https://www.sec.gov/newsroom/speeches-statements/peirce-2021-10-08 (noting that "The crypto frontier, like the Wild West, appears pretty wild at first glance: home to lots of codeslingers and speculators and some hucksters too, this new West also has its inter- and intra-protocol fights, friendships forged through shared difficulties and successes, colorful personalities, passions, dreams, hardships, spectacular failures, and remarkable victories. But as in the West of the past, there is order and discipline in all of that rough and tumble. Because crypto is built on code, the code itself serves as a governor of conduct. But crypto is built on people too, and these people hold each other accountable not only through unbridled public discourse, but through using or not using a protocol…Decentralized communities collectively figure out how to deal with unanticipated problems. These cooperative and competitive disciplining mechanisms have helped to clean up the crypto frontier though there is more work to be done. The persistence of both self-regulation and calls by the crypto community for clarity from government regulators suggest that lawlessness is not the prevailing culture of the crypto frontier.").

[59] Atkins, *supra* note 6.

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We greatly appreciate the opportunity to provide responses to the RFI. We welcome further engagement with the Commission on these and any other matters the Commission may wish to discuss.

Respectfully,

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