DEF
DeFi Education Fund

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August 13, 2025

VIA ELECTRONIC SUBMISSION

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

>   Re: **Recommendations Regarding a Safe Harbor for Applications from the
>   Broker Registration Requirements of the Securities Exchange Act of 1934**

Dear Commissioner Peirce:

Andreessen Horowitz ("a16z") and the DeFi Education Fund ("DEF") submit this letter to the Securities and Exchange Commission (the "SEC" or "Commission") to propose a safe harbor from the broker registration requirements of the Securities Exchange Act of 1934 (the "Exchange Act") for certain trading interfaces provided via a website or application that enable users to interact with blockchains and smart contract protocols ("Apps"), including those related to decentralized financial services and products ("DeFi Apps") as well as digital collectible (non-fungible token, or "NFT") marketplaces ("NFT Apps"). In particular, this proposal focuses on Apps that function as technical infrastructure that enable users to arrange transactions themselves. We welcome opportunities to meet with Commission staff to answer any questions and to discuss our proposal in more detail.

The purpose of this safe harbor proposal is to assist the Commission in creating clear rules for determining which Apps fall within the Commission's jurisdiction based on objective criteria and in a manner consistent with similar safe harbors proposed in recent federal market structure legislation.[1] This proposal addresses the call by the President's Working Group on Digital Assets to "provide relief for certain DeFi service providers from the broker-dealer …

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[1] The House of Representatives passed the Digital Asset Market Clarity Act of 2025 (the "CLARITY Act"), which would establish a market structure regulatory framework for digital assets. CLARITY Act, H.R. 3633, 119th Cong. (2025). The CLARITY Act refers to DeFi Apps as "Decentralized Finance Messaging Systems," *id.* § 103, and it exempts persons that "provid[e] a user-interface that enables a user to read and access data about a blockchain system" from the registration provisions of the Act. *Id.* § 309. The CLARITY Act also excludes from registration persons that engage in "developing, publishing, constituting, administering, maintaining, or otherwise distributing a decentralized finance messaging system, or operating or participating in a liquidity pool, for the purpose of executing a contract of sale of a digital commodity." *Id.* However, these registration exemptions would not apply to the anti-fraud and anti-manipulation authorities of the Commission. *Id.*

registration provisions of the Exchange Act"[2] and Chair Atkins's recent directive to Commission staff to "...update antiquated agency rules and regulations to unleash the potential of on-chain software systems in our securities markets."[3]

The guiding principle of the safe harbor is that **only** those Apps which **do not** engender the risks that the Exchange Act's broker-dealer regulatory regime was designed to address should be eligible; in such cases, registration as a broker under the Exchange Act is unwarranted and inappropriate. Conversely, Apps that **do** pose traditional risks that broker regulations were designed to address should not be able to avail themselves of this safe harbor.

This approach has three primary benefits: (1) it establishes limits with respect to the application of federal securities laws to Apps that fall within the scope of the safe harbor and safeguards them and their developers from becoming subject to retroactive application of federal securities laws; (2) it aligns with the Commission's historical practices with respect to broker registration safe harbors;[4] and (3) it is consistent with the historical lack of prohibition on persons engaging in private peer-to-peer securities transactions without the participation of a

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[2] Report, President's Working Group on Digital Asset Markets, Strengthening American Leadership in Digital Financial Technology (July 30, 2025), https://www.whitehouse.gov/crypto/.

[3] Statement, Securities and Exchange Commission, Paul S. Atkins, American Leadership in the Digital Finance Revolution (Jul. 31, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125. This safe harbor proposal can also serve as a complement to Chair Atkins's directive to Commission staff to consider a conditional exemptive relief framework or "innovation exemption" that would allow registrants and non-registrants to bring onchain products and services to market. A safe harbor is not the equivalent of an exemption for a technical regulatory requirement, but it would similarly help the Commission accomplish the overarching goal of helping entrepreneurs bring products to market.

[4] *See, e.g.*, Securities Exchange Act Release No. 22172 (June 27,1985), 50 FR 27940, 27941 (July 9,1985) ("Rule 3a4-1 Adopting Release") ("The broker-dealer registration and associated regulatory requirements … provide important safeguards to investors. Investors are assured that registered broker-dealers and their associated persons have the requisite professional training and that they must conduct their business according to regulatory standards. Registered broker-dealers are subject to a comprehensive regulatory scheme designed to ensure that customers are treated fairly, that they receive adequate disclosure and that the broker-dealer is financially capable of transacting business. Exemptions from registration have traditionally been narrowly drawn in order to promote both investor protection and the integrity of the brokerage community. At the same time, however, the Commission recognizes that there are situations where imposition of the registration requirement would be inappropriate."). Accordingly, the Commission adopted the Rule 3a4-1 safe harbor "to provide guidance concerning the applicability of the broker-dealer registration requirement," given that the "Commission believe[d] that a safe harbor rule [wa]s an appropriate and efficient way to provide guidance" in an area that the Staff "historically responded … by providing interpretive advice or issuing no-action letters." *Id*.

registered broker,[5] as well as Commissioner Peirce's recent dictum that "we [should not] require an intermediary to step in the middle of peer-to-peer transactions."[6]

We submit this proposal based on our firsthand experience working with entrepreneurs in the crypto industry and seeing the negative impact that regulatory uncertainty has had.

A16z is a venture capital firm that invests in seed, venture, and late-stage technology companies, focused on bio and healthcare, consumer, crypto, enterprise, fintech, and games. As of 2025, a16z has more than $74 billion in assets under management across multiple funds, with more than $7.6 billion in committed capital for crypto funds. In crypto, a16z primarily invests in companies using blockchain technology to develop protocols that people will be able to build upon to launch Internet businesses. A16z funds typically have a 10-year time horizon, as the firm takes a long-term view, and does not speculate in short-term crypto-asset price fluctuations.

DEF is a nonpartisan, nonprofit research and advocacy organization. Its mission is to advocate for sound policy for decentralized finance, educate lawmakers and regulators about the technical workings and benefits of DeFi, and represent the interests of users and developers in the DeFi space.

I.   Introduction

We strongly support the goals of the Commission's Crypto Task Force ("Task Force") to offer guidance on the application of federal securities laws to the crypto asset market and recommend pragmatic policies that promote innovation and protect investors. As the Task Force carries out its mandate, we urge it to provide clarity on the application of the federal securities laws to Apps, particularly DeFi Apps and NFT Apps, by creating a safe harbor from broker-dealer registration for Apps that meet certain criteria.[7] If effectively crafted, such a safe harbor

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[5] *See*, *e.g.*, Policy Statement of the Securities and Exchange Commission of the Structure of A Central Market System (Mar. 29, 1973) ("All transactions in system securities in which a registered broker-dealer (including an electronic communications system registered as a broker-dealer) or exchange member is involved, either as principal or agent, would have to be reported through the system and executed subject to its rules. Initially, so-called 'fourth' market transactions would not be subject to these requirements, in large part because of the practical problems of imposing obligations of the system on investors who deal with each other without the participation of a broker or dealer. Should the fourth market develop as a means to avoid the reporting and other obligations of trading within the system, the Commission will give prompt consideration to corrective measures, including recommending legislation if necessary, to bring such transactions within the scope of the system."). *See also* Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, *Hearings on S. 2519*, 93d Cong., 1st Sess. (Comm. Print (1973)) (testimony of James Needham, NYSE Chairman: "Senator, … the fourth market embodies the fundamental right of a citizen of this country to do business with whomever he wants without utilizing the services of some other person.").

[6] Hester M. Peirce, SEC Commissioner, Speech at the Science of Blockchain Conference: Peanut Butter & Watermelon: Financial Privacy in the Digital Age (Aug. 4, 2025), https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-blockchain-conference-080425.

[7] For purposes of this safe harbor proposal, we do not believe that it is necessary to address whether a given crypto asset or transaction in a crypto asset is a securities transaction. We have tailored the proposal in a manner that

would help fulfill the Commission's mandate of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, while also promoting responsible innovation in blockchain technology.

As an initial matter, Apps—interfaces provided via a website or application that may be embedded in a wallet or separately available for download—are software tools that enable users to interact with blockchain networks and smart contract protocols, such as DeFi and NFT marketplace protocols.[8] This safe harbor proposal focuses on Apps that, as a result of their technical architecture, do not act on behalf of users, custody crypto assets, exercise discretion, actively solicit investors, provide investment recommendations, exercise control over user assets, or engage in other ordinary brokerage activities; rather, they serve as neutral software interfaces to permissionless and autonomous blockchain systems. In other words, Apps that do not provide trust-dependent **services** to **customers**, but instead merely serve as passive software **tools** that are made available to **users** in connection with such users' self-directed activities, should fall outside the scope of the broker-dealer registration regime of the Exchange Act.

However, App developers currently face significant uncertainty in making such determinations. While the decentralized and autonomous blockchain networks and smart contract protocols underlying Apps are clearly excluded from the broker-dealer and exchange registration regimes,[9] Apps are typically developed, published, constituted, administered and/or maintained by centralized actors that could, at least under certain circumstances, be considered "persons" subject to registration requirements. Indeed, recent Commission actions—including an enforcement action against Coinbase in relation to Coinbase Wallet,[10] and Wells Notices sent to

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assumes securities will be transacted through Apps but that registration of such Apps is unnecessary given that they do not engender the risks that broker regulations under the Exchange Act were designed to address. Further, we do not address the exclusion from broker, dealer, or exchange registration requirements of the underlying blockchain networks and smart contract protocols that Apps provide access to, as such exclusion is relatively straightforward when compared to Apps. As a16z previously discussed in its response to **Question #3** of the Task Force's Request for Information, where systems are simply autonomous software that are not subject to the control of a person or group of persons, they cannot act on behalf of users, custody crypto assets, exercise discretion, actively solicit investors, provide investment advice, or engage in other ordinary brokerage activities. In other words, where systems achieve control-based decentralization, they are incapable of engaging in the activities that engender the risks the Exchange Act's broker regulations were designed to address and are therefore clearly excluded from such requirements. *See* Miles Jennings et al., *SEC RFI: A Control-Based Decentralization Framework for Securities Laws,* a16z crypto (Mar. 13, 2025), https://a16zcrypto.com/posts/papers-journals-whitepapers/control-based-decentralization-framework-securities-laws/. (explaining why "Exempt Technologies do not give rise to the risks that the broker, dealer, and exchange registration regimes of federal securities laws are intended to address.").

[8] Understanding blockchain networks and smart contract protocols is also an important aspect of this safe harbor proposal. We incorporate a16z's March 13, 2025 Response to **Question #3** here on this topic.

[9] *See supra* note 6.

[10] *SEC v. Coinbase Inc.*, 726 F. Supp. 3d. 260 (S.D.N.Y. 2024).

Uniswap Labs[11] and OpenSea[12]—suggested that the Commission previously considered the App-related activities of these companies and many others to constitute engaging in unregistered brokerage activities. Yet, like most Apps, these companies' Apps, and many others, did not and do not act on behalf of customers, custody crypto assets, exercise discretion, actively solicit investors, provide investment recommendations, exercise control over user assets, or engage in other ordinary brokerage activities—they simply provide transparent, non-custodial software tools that enable users to interact with autonomous blockchain networks and smart contract protocols to engage in transactions on their own.[13] In such cases, registration is neither warranted nor appropriate. While we welcome the Commission's dismissal of its case against Coinbase and withdrawal of its Wells Notices against Uniswap and OpenSea, without clear guidance, many developers are still uncertain as to whether App-related activities could expose them to enforcement in the future.

This legal uncertainty has a chilling effect on innovation, particularly for U.S.-based teams building software tools that support user-directed, onchain activity. Worse still, requiring broker registration by parties affiliated with neutral and disintermediated software would not only mischaracterize the risks of such products, it would require the reintroduction of centralized intermediaries, grossly undermining the technological benefits that blockchains provide.[14] Specifically, the parties that currently develop, publish, constitute, administer, and/or maintain Apps are typically tasked with maintaining the UX/UI features of the interface and other technical programming functions—not any of the key functions that brokers and other intermediaries typically perform on behalf of their customers. Requiring these teams to register as brokers would force them to act as traditional intermediaries. Not only would this increase costs that would be passed on to individual users, but those users would then be exposed to the heightened degree of counterparty and third-party risks inherent to intermediated systems. The extension of the broker regime would, therefore, have the paradoxical effect of reintroducing costs and risks that blockchains can eliminate or mitigate through their technological features.[15]

For precisely these reasons, recent legislative efforts have recognized that a different regulatory approach is required—the CLARITY Act proposes an exemption from the registration

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[11] Uniswap Labs, *Wells Submission on Behalf of Uniswap Labs* (May 21, 2024), https://blog.uniswap.org/wells-notice-response.pdf.

[12] Devin Finzer, *Taking A Stand for a Better Internet* (Aug. 28, 2024), https://opensea.io/blog/articles/taking-a-stand-for-a-better-internet.

[13] *See* Miles Jennings et al., *SEC RFI: Safe harbor for certain airdrops & incentive-based rewards of network tokens,* a16z crypto (Mar. 13, 2025), https://a16zcrypto.com/posts/papers-journals-whitepapers/sec-rfi-safe-harbor-airdrops-network-tokens.

[14] Miles Jennings, *Why decentralization matters, and needs incentives*, a16z crypto (Feb. 3, 2025), https://a16zcrypto.com/posts/article/why-decentralization-matters-incentivizing-decentralization-incentives/.

[15] Moreover, extending the broker regime in this manner would be at odds with Chair Atkins's recent call to avoid "interpos[ing] intermediaries for the sake of forcing intermediation where the markets can function without them." Statement, Securities and Exchange Commission, Paul S. Atkins, American Leadership in the Digital Finance Revolution (Jul. 31, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125.

requirements of the act for "decentralized finance messaging systems" (i.e., Apps), where, through their functioning, such systems mitigate the risks the bill is otherwise trying to address.[16] This approach is consistent with prior Congressional findings that, in light of technological developments in "data processing and communications techniques," SEC regulation should assure that investors have the opportunity to transact "without the participation of a dealer."[17]

In line with the CLARITY Act, we strongly recommend that the Commission create a safe harbor for Apps that meet certain conditions. As mentioned above, not all Apps should be able to avail themselves of this safe harbor. On the contrary, **only** those Apps which **do not** engender the risks that Section 15(a) of the Exchange Act was designed to address should be eligible. Importantly, consistent with historic practices, the failure to meet the conditions specified herein and qualify for the safe harbor should not create a presumption that any given App is subject to federal securities laws. Rather, like other safe harbors the Commission has issued in the past, such App should be assessed under traditional approaches to the application of the federal securities laws.[18]

The remainder of this letter is divided into four parts: **First**, we discuss the benefits of blockchain networks and smart contract protocols and how they can mitigate risks. **Second**, we provide background on how Apps function. **Third**, we summarize the Exchange Act's broker registration requirement, the risks that the registration regime is intended to address, and the existing case law that considers the applicability of the broker registration requirements to Apps. **Fourth**, we describe our safe harbor proposal.

II.   Blockchain Technology Provides Substantial Benefits and Mitigates Risks

Blockchain technology has the potential to serve as the backbone of a new low-cost, interoperable, and globally accessible internet—an internet with an embedded financial system that enables new marketplaces and peer-to-peer transactions. Public blockchain networks not only function securely and according to rules that participants can independently verify, but they are also highly scalable and composable, allowing anyone in the world to build on, integrate with, or transact without seeking permission.

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[16] *See* CLARITY Act, at §§ 309, 409.

[17] Exchange Act § 11A(a)(1)(c)(v).

[18] *See, e.g.*, Rule 3a4-1 Adopting Release at 27941 ("Compliance with the conditions to the safe harbor … is not the exclusive means [to act] without registration as broker-dealers. Accordingly, … no presumption shall arise that a person … has violated section 15(a) in connection with [the activities] if the conditions of the Rule are not met. The Commission recognizes that there may be other facts and circumstances that justify a conclusion that registration as a broker-dealer is not required even though all the conditions of the Rule have not been satisfied."); 17 CFR § 240.10b-18 providing issuers with a safe harbor from liability for manipulation under Section 9(a)(2) of the Exchange Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder as long as the issuer's share repurchases satisfy the specified price, time, volume and manner of execution conditions. For Rule 10b-18's safe harbor, there is no presumption the anti-manipulation provisions of Sections 9(a)(2) or 10(b) of the Exchange Act were violated if the safe harbor conditions were not met.

DeFi is one of the most promising use cases for blockchain technology. DeFi protocols are smart contract protocols that enable nearly instantaneous peer-to-peer transactions that are auditable and verifiable in real time, making possible a wide array of products and services in which users retain full custody of their assets. To date, the power of this technology has been trapped in a circular "crypto-for-crypto" economy—not because the tools were not useful, but because bridging into traditional finance was nearly impossible.[19] Now, with improved legal clarity and institutional adoption, DeFi is poised to unlock a broader set of financial services with greater reach and fewer barriers than legacy systems. As a result, DeFi has the potential to revolutionize legacy financial systems.[20]

Digital collectibles, commonly referred to as NFTs, are another major use case of blockchain technology, enabling digital property rights (e.g., provable ownership and transfer rights) of unique digital objects—such as art, media, in-game items, and domain names—on open, permissionless blockchain networks. NFT protocols are smart contract protocols that enable users to list, buy, sell, or otherwise use NFTs through systems that are self-executing and non-custodial, replacing closed platforms with onchain, rules-based property exchanges. Like DeFi protocols, they offer user-directed control, reduce counterparty risk, and eliminate the need for discretionary human intermediation.

Blockchain networks and smart contract protocols offer these significant benefits to market participants while mitigating many of the intermediary-related risks that federal securities laws were designed to address.[21] Unlike traditional financial systems and marketplaces, which rely on centralized actors to custody assets, intermediate transactions, and execute discretionary decisions, DeFi protocols and NFT protocols are open-source, non-custodial, and self-executing. In these systems, no person can arbitrarily freeze funds, alter rules without consensus, or extract value through opaque fee structures. Transactions settle based on code, not discretion, and pricing is determined through algorithmic mechanisms like automated market makers or by users directly, not through behind-the-scenes negotiations or traditional order routing by intermediaries. In addition, users retain control over their assets.

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[19] Chris Dixon, *Stablecoins: Payments without intermediaries*, a16z crypto (Apr. 9, 2024), https://a16zcrypto.com/posts/article/stablecoins-payments-without-intermediaries/.

[20] In addition, through decentralized exchanges ("DEXs"), DeFi protocols can function as the connective tissue for the broader blockchain ecosystem, enabling users to seamlessly swap tokens across applications and blockchains. This interoperability will be especially critical in the coming years as stablecoin regulation catalyzes a proliferation of new dollar-pegged assets, each embedded in different networks or use cases. DeFi provides the infrastructure needed to make these assets functionally interchangeable at low cost and with minimal friction.

[21] *See also* Solana Policy Institute, Project Open: Public blockchain infrastructure for on-chain equities issuance and trading (June 17, 2025), https://www.sec.gov/files/project-open-chain-equities-infrastructure-061725.pdf (noting that validators do not "effect or intermediate transactions" nor "act as counterparties," reinforcing the functional separation between permissionless blockchain infrastructure and brokerage activity.)

By removing intermediaries, DeFi protocols and NFT protocols eliminate the very conditions and risks that gave rise to many of the securities laws that govern brokers and other intermediated systems in the first place, including custodial risk, conflicts of interest, information asymmetry, and abusive intermediation. In this way, these systems can achieve the goals of investor protection and market integrity more effectively than any regulatory scheme that relies on human oversight. Indeed, by reducing the need for trusted third parties, these applications not only expand access to creative development and economic participation—they can also reduce systemic risks associated with fraud, misappropriation, and gatekeeping in traditional content and commerce platforms.[22]

III.   Background on Apps

As mentioned above, the Apps that would be eligible under this safe harbor proposal are those that merely function as software tools that users of blockchain technology employ to interact with blockchains and smart contract protocols—Apps that function as technical infrastructure for users to arrange transactions. These Apps typically do not act on behalf of users, custody crypto assets, exercise discretion, actively solicit investors, provide investment recommendations, exercise control over user assets, or engage in ordinary brokerage activities. Rather, these Apps serve a single function: helping users draft and initiate transactions. In doing so, they make the user-experience of interacting with blockchains and smart contract protocols more convenient, especially for those who do not have the technical skills to interact with protocols directly.

Specifically, Apps function by passively providing onchain data and information to users; users provide directions and inputs to the App using their self-hosted wallet;[23] the self-hosted wallet then autonomously generates messages using a data object from the App; and the user then submits the message to a smart contract protocol and underlying blockchain via the user's self-hosted wallet and a remote procedure call node on the blockchain network. When the message is sent by the user's wallet, the smart contracts autonomously enforce the transaction in accordance with their code and post the transaction to the relevant blockchain, updating its state. While using the App, the user always retains agency and control over whether to execute a transaction.

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[22] We note our strong agreement with Commissioner Peirce's recent assertion that "Disintermediating technologies can perform functions that regulations now perform, such as mitigating the risk that an entity holding a customer's assets will steal or mismanage them, ensuring that certain conditions are met, or increasing the transparency and accessibility of services for the public." Hester M. Peirce, SEC Commissioner, Speech at the Science of Blockchain Conference: Peanut Butter & Watermelon: Financial Privacy in the Digital Age (Aug. 4, 2025), https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-blockchain-conference-080425.

[23] In many cases, self-hosted wallets have their own embedded Apps that enable users to interact with blockchains and smart contract protocols.

Importantly, Apps are typically not required for users to interact with protocols such as DeFi protocols and NFT protocols—Apps usually do not serve as permissioned gatekeepers with special privileges to enable access to a given protocol. Rather, the underlying protocols are typically permissionless—anyone with an internet connection can interact with them directly, without gatekeeping. In fact, such protocols are often accessible through multiple Apps, including native integrations built directly into self-hosted wallets that are developed, maintained, and administered completely independently of such protocols. This openness not only democratizes access, but also fosters greater market integrity as anyone can verify execution logic, assess historical behavior, and build new applications on top of existing systems. In this way, DeFi protocols and NFT protocols function more like public financial infrastructure than proprietary platforms.

In addition to the provision of information and communication tools for use in connection with user-initiated transactions, certain Apps, particularly within DeFi, make additional tools available to users, such as optimization and routing software ("routers") and specialized algorithms and agents ("solvers"):

- Routers typically function offchain and are often integrated with a DeFi App's backend. When used by DeFi Apps that provide access to decentralized exchange ("DEX") protocols, routers identify the most efficient paths for token swaps or other transactions. Routers achieve this by automatically and autonomously analyzing onchain data—such as liquidity pool reserves, token prices, and gas costs—across a DEX's smart contracts to compute the optimal trade route that minimizes slippage or fees.

- Solvers extend the functionality of optimization software, particularly in advanced DEX protocols like DEX aggregators (e.g., 1inch) or intent-based systems (e.g., CoW Swap). Unlike routers, solvers process and fulfill user requests ("intents") to find optimal transaction outcomes, such as by finding the best price across multiple DEXs, or by matching orders offchain to reduce gas costs.

Critically, optimization software like routers and solvers does not necessarily introduce discretion into the execution of a trade. Rather, they typically automatically and autonomously identify potential execution routes based on a number of transaction parameters (e.g., pool addresses, amounts) based on the logic contained in software's code. Apps then display these routes to users based on objective and transparent criteria, which users review, select, and execute. The user executes the transaction by communicating such parameters to a DEX's smart contracts by authorizing and signing the transaction utilizing the wallet software functionality. By automating and standardizing these processes, optimization software makes possible efficient, transparent transactions, without enabling any third party to exercise control of user funds or a given transaction, and without altering the underlying protocol's decentralized logic.

In our proposed safe harbor below, we set forth conditions that distinguish between user-directed optimization tools and systems that introduce discretionary control or broker-like behavior.

Ultimately, Apps can take many different forms that may give rise to many different types of risks. They can be developed and operated in a manner that introduces many trust dependencies, and the attendant risks thereto, thereby resembling traditional brokers. But they can also be designed and operated in a manner that eliminates such risks and trust-dependencies far better than any intermediary-focused regulatory regime could ever hope to achieve. Given these potential variations, it is important that the Commission sets clear parameters when addressing them.

IV. Overview of the Broker-Dealer Registration Requirements

The Exchange Act defines "brokers" to include, "any person engaged in the business of effecting transactions in securities for the account of others"[24] and generally makes it unlawful for any broker to use the mails or any other means of interstate commerce to "effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless the broker is registered with the Commission.[25] Accordingly, a person engaged in the business of effecting transactions in securities for the account of others is a broker required to register under Section 15(a) of the Exchange Act unless an exception or exemption is available. A "dealer" is defined as "any person engaged in the business of buying and selling securities…for such person's own account."[26] For purposes of the proposed safe harbor, we specifically focus on the "broker" definition because of its relevance to the proposed activity.[27]

Congress passed the Exchange Act in the midst of the Great Depression during a time in which significant criticism had been leveled against securities intermediaries, including brokers, and concern existed over potential abuses in secondary markets.[28] Since then, regulations for

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[24] 15 U.S.C. § 78c(a)(4).

[25] 15 U.S.C. § 78*o*(a).

[26] 15 U.S.C. § 78c(a)(5)(A).

[27] Dealer activity includes buying and selling securities for the dealer's own account in "riskless principal transactions," as well as when buying securities from customers and taking them into its own inventory or selling securities to customers from its own inventory. *See* Proposed Rule: Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, SEC Release No. 34-46745 (Oct. 30, 2002). Covered Apps would not engage in principal trading activities, nor would they have "customers," as such term is historically understood. *See Nat'l Ass'n of Priv. Fund Managers v. SEC*, No. 4:24-cv-00250, 2024 U.S. Dist. LEXIS 211895, *12-13 (N.D. Tex. Nov. 21, 2024) ("Congress defined the term 'dealer' against a pre-existing historical backdrop … indicative of an understanding that dealers have customers.").

[28] *See Coinbase, Inc. v. SEC*, No. 23-3202, 2025 WL 78330 (3d Cir. Jan. 13, 2025) (Bibas, J., concurring); *see also* Elisabeth A. Keller, Introductory Comment: A Historical Introduction to the Securities Act of 1933 and the Securities Exchange Act of 1934, 49 Ohio St. L. Rev. 339 (1988).

brokers have evolved and now encompass fraud and manipulation,[29] financial soundness,[30] recordkeeping,[31] conflicts of interest,[32] professional conduct standards, and others. Importantly, these regulations make sense when considering the risks that may arise from the types of intermediary activities that brokers perform, which typically include: (1) actively soliciting investors; (2) receiving transaction-based compensation; (3) handling securities or funds of others in connection with securities transactions; (4) processing documents related to the sale of securities; (5) participating in the order-taking or order-routing process; (6) selling, or previously selling, securities of other issuers; (7) acting as an employee of the issuer; (8) being involved in negotiations between the issuer and the investor; and/or (9) making valuations as to the merits of an investment or giving advice.[33] Underlying these activities is an understanding that a securities intermediary is engaged in affirmative efforts on behalf of customers, and exposes customers to potential risks in that role.

The question of whether a person is a broker within the meaning of Section 3(a)(4) of the Exchange Act turns on the facts and circumstances. Courts and the SEC have generally required that in order to find that a person "effects transactions in securities," such person must regularly participate in securities transactions at key points in the chain of distribution.[34] These critical points in the chain of distribution often include a range of activities, including those listed above, and typically include **opening customer accounts**, **taking custody of assets**, **exercising discretion**, **actively soliciting investors**, **providing investment recommendations**, **executing transactions**, and **exercising control**.

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[29] *See, e.g.*, 15 U.S.C § 78i(a), 15 U.S.C § 78j(b), 15 U.S.C § 78o(c)(1) & (c)(2).

[30] *See, e.g.*, 17 CFR § 240.15c3-1 (Net Capital Rule), 17 CFR § 240.15c3-3 (Customer Protection Rule).

[31] *See* 17 CFR 240.17a-4.

[32] *See* Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 86031, 84 FR 33318, 33319 (June 5, 2019), https://www.sec.gov/files/rules/final/2019/34-86031.pdf.

[33] *SEC v. Coinbase Inc.*, 726 F. Supp. 3d 260, 305 (S.D.N.Y. Mar. 27, 2024) (citing *SEC v. GEL Direct Tr.*, No. 22-cv-9803, 2023 WL 3166421, at *2 (S.D.N.Y. Apr. 28, 2023) The Commission has also considered other factors including: (1) assisting in structuring transactions; (2) engaging in "pre-screening" potential investors to determine their eligibility to purchase securities; (3) engaging in "pre-selling" the issuance of securities to gauge the level of interest of potential investors; (4) conducting or assisting with the sale of securities; (5) locating issuers of securities on behalf of investors; (6) disseminating quotes for securities or other pricing information; (7) sending private placement memoranda, subscription documents, and due diligence materials to potential investors; (8) advising on portfolio allocations to accommodate an investment; and (9) providing potential investors with confidential information identifying other investors and their capital commitments.

[34] *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1336 (M.D. Fla. 2011) ("The evidence must demonstrate involvement at key points in the chain of distribution, such as participating in the negotiation, analyzing the issuer's financial needs, discussing the details of the transaction, and recommending an investment.") (internal quotation marks omitted)). A determination of whether a person acts as a broker is based on the totality of the circumstances. *SEC v. RMR Asset Mgmt. Co.*, No. 18 Civ. 1895, 2020 WL 4747750, at *2 (S.D. Cal. Aug. 17, 2020), *aff'd sub nom. SEC v. Murphy*, 50 F.4th 832 (9th Cir. 2022).

Transaction-based compensation is often referred to by the Commission as the hallmark of broker activity.[35] The Commission's policy rationale is known as the "salesmen's stake" conflict of interest—where a salesman benefits financially from transaction-based compensation, the salesman has an incentive to sell aggressively and indiscriminately, regardless of whether the security is suitable or fair.[36] However, a conflict of interest is only likely to arise where a person is **actively soliciting** or **providing investment recommendations** (like recommendations on particular purchases or sales), or **exercising discretion** with respect to best execution. Without a specific solicitation or recommendation, or an exercise of discretion, the conflict of interest is no different than that of any counterparty or service provider in any sort of business arrangement, which does not trigger broker registration obligations under the Exchange Act.[37] That is, "using this factor to bootstrap non-broker activity into the broker definition is contrary to the law because it reduces the broker definition to a question of form of compensation and disregards the nature of the actual business activity of the firm."[38]

While the exclusion of autonomous blockchain networks and smart contract protocols from broker registration requirements is relatively straightforward, the exclusion of Apps,

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[35] Allison Herren Lee, Commissioner, SEC, *Regulating in the Dark: What We Don't Know About Finders Can Hurt Us*, at Fn. 9 (Oct. 7, 2020), https://www.sec.gov/news/public-statement/lee-proposed-finders-exemption-2020-10-07#_ftn9.

[36] 1st Global, SEC No-Action Letter, 2001 WL 499080 (May 7, 2001) ("Persons who receive transaction-based compensation generally have to register as broker-dealers under the Exchange Act because, among other reasons, registration helps to ensure that persons with a 'salesman's stake' in a securities transaction operate in a manner consistent with customer protection standards governing broker-dealers and their associated persons, such as sales practice rules.").

[37] For example, the Commission has previously issued "No Action Letters" finding activities that are similar to the functionalities that self-hosted wallets provide to be outside the bounds of broker regulations when certain conditions are satisfied. Specifically, the SEC Staff issued no-action relief agreeing that "Finders," "Internet Portals," and "Online Bulletin Board" platforms fall outside of the broker regime even though they facilitated offers and sales of securities. One of the key conditions to these no-action positions is the presence of transaction-based compensation, the existence of which generally gives rise to potential conflicts of interest because the platforms are all operated and controlled by their creators. Self-hosted wallets, however, do not have a salesman stake in user transactions. Self-hosted wallets do not engage in sales tactics nor do they influence transactions in a manner that disadvantages its users in favor of its own interests. Transaction-based compensation on trades initiated through self-hosted wallets do not give rise to conflicts of interest traditionally associated with brokerage activities, and therefore, passive information front-end interfaces and self-hosted wallet functionalities should not be considered broker activity.

[38] Commissioner Hester M. Peirce, *Statement Regarding Neovest, Inc.* (June 29, 2021), https://www.sec.gov/newsroom/speeches-statements/peirce-statement-neovest-062921. *See also SEC v. Coinbase Inc.*, 726 F. Supp. 3d. 260, 306 ("the SEC's allegations do not implicate many of the factors courts use in identifying a 'broker.' Notably, the SEC does not allege that the Wallet application negotiates terms for the transaction, makes investment recommendations, arranges financing, holds customer funds, processes trade documentation, or conducts independent asset valuations. Rather, the Complaint alleges that Coinbase: **charged a 1% commission for Wallet's brokerage services**; actively solicits investors (on its website, blog, and social media) to use Wallet; compares prices across different third-party trading platforms; and 'routes customer orders' in crypto-asset securities to those platforms. Upon closer examination, these allegations, **alone or in combination, are insufficient to establish 'brokerage activities.'**") (emphasis added, internal citations omitted).

including DeFi Apps and NFT Apps, is more complicated.[39] Because they are typically offchain software and products, someone—usually centralized businesses—must operate and control them. As a result, even if Apps are non-custodial, it is plausible that they could engage in activities and provide services that implicate the risks the broker registration regime is intended to address, including **opening accounts**, **exercising discretion**, **actively soliciting investors**, and **providing investment recommendations**, while collecting transaction-based compensation, even if, from a technical perspective, Apps do not "effect" or "intermediate" transactions. Where they introduce intermediary-based risks that are ordinarily addressed by the broker registration regime (such as those arising from conflicts of interest), some form of targeted regulation may be appropriate.[40] On the other hand, where they are merely passive information services that facilitate peer-to-peer transactions, they are unlikely to introduce intermediary-based risks, even if they collect transaction-based compensation.

The courts have had just one opportunity to apply these traditional brokerage activity principles to Apps.[41] In *SEC v. Coinbase*, the court assessed whether Coinbase Wallet, a DeFi App, was being operated as an unregistered broker in violation of federal securities laws. Coinbase Wallet is a self-custodial wallet that users can download and use on a wide array of personal computing devices, including Apple iPhones via the App Store. The primary purpose of Coinbase Wallet is to enable users to custody and control their digital assets. In addition, Coinbase Wallet includes a swap feature that allows users to trade thousands of digital assets onchain. To perform a swap, the user opens the feature in Coinbase Wallet, selects the blockchain they wish to trade on, and inputs the assets that they would like to swap. The App then utilizes a smart contract protocol created by ZeroEx, Inc. (the "0x Protocol") to check pricing on more than 100 DEXs. The 0x Protocol utilizes a solver to determine the optimal execution path (taking into account the best price, gas fees, etc.).[42] The proposed trade is then presented to the user, and the user can elect to proceed with the transaction in accordance with the terms presented. If the user approves the transaction, Coinbase Wallet sends a message to the 0x Protocol, which executes via smart contracts.

In an order and opinion, Judge Failla suggested that certain Apps should not fall within the Exchange Act's broker registration requirements. Specifically, Judge Failla considered and rejected the application of the broker regime to Coinbase's self-hosted wallet software

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[39] *See* Jennings, *supra* note 6.

[40] As businesses that service self-hosted wallets cannot access and do not control users' private keys, traditional conflicts associated with account openings do not exist in the context of self-hosted wallets. To qualify for this safe harbor, as described below, to the extent a self-hosted wallet collects a fee, the fee cannot be contingent upon custodying crypto assets. Therefore, the creation of new wallet addresses should not be considered—in and of itself—broker activity.

[41] *Coinbase Inc.*, 726 F. Supp. 3d. 260, n. 20.

[42] Though the protocol makes use of offchain computational resources relating to the solver, an open source version of the solver is available and can be run by anyone. This enables verification that all routing proposals proposed by the protocol are calculated in accordance with the source available solver algorithm.

interface.[43] She reasoned that the Commission did not allege that Coinbase had engaged in many of the traditional broker activities listed above—it did not negotiate terms for transactions, make investment recommendations, arrange financing, hold customer funds, process trade documentation, or conduct independent asset valuations; she noted that Coinbase never had control over a user's crypto assets or transactions; she disagreed with the Commission's characterization that the wallet provided routing activities; and she held that receiving a commission did not, on its own, turn Coinbase into a broker. While Judge Failla's finding regarding commissions departs from the SEC's historical emphasis on transaction-based compensation, it was reasonable given that there was no accompanying solicitation or other broker-related activity that might give rise to conflicts of interest.[44]

While Judge Failla's ruling is helpful in establishing limits to the potential reach of broker registration requirements, it is only a single analysis applied to a single set of facts and circumstances. As such, significant uncertainty remains. Blockchain technology is novel, new use cases are developing, and both Apps and protocols can be designed and operated in any number of ways. As the broker assessment depends upon numerous subjective factors, it is critically important that the Commission provides clarity to protect investors and foster innovation. This can be accomplished through the adoption of a narrowly tailored safe harbor for Apps, including DeFi Apps and NFT Apps, from the broker registration requirements of the Exchange Act. Such safe harbor should be consistent with existing case law and historical precedent,[45] including Judge Failla's opinion. It should clarify that where Apps do not pose the types of risks that broker registration is intended to address, federal securities laws do not apply.

V.   Safe Harbor Proposal

To ensure that the broker registration requirements of the Exchange Act are appropriately tailored to the functional realities of decentralized systems, we propose a safe harbor for a limited category of Apps: those that do not give rise to the risks that broker regulations were designed to address. As with a16z's prior safe harbor proposals for airdrops[46] and collectible

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[43] *Coinbase Inc.*, 726 F. Supp. 3d at 260, 307.

[44] *See id.* as 305-07. While not highlighted in Judge Failla's opinion, in weighing the broker factors, the Commission may also consider the character of the fee that a business charges, e.g., whether the fee is subscription-based, flat, variable depending on the size, value, or occurrence of the transactions, or a different arrangement. As we explained above, a conflict of interest does not arise where Apps do not actively solicit or provide investment recommendations or exercise discretion with respect to best execution, but we further note that the potential for conflict is even further mitigated if the App charges fees that are not highly dependent on the particular characteristics of a transaction.

[45] *See supra* note 34.

[46] *See* Jennings, *supra* note 12.

tokens,[47] this safe harbor is narrow in scope and builds on the principle that where certain forms of control are eliminated, the application of federal securities laws should be limited.

A four-part approach can be used to assess whether an exclusion would be appropriate for a given App. The safe harbor should require that where an App enables users to transact in securities, the App: (1) does not take custody of user assets; (2) does not exercise discretion with respect to user-initiated transactions; (3) does not actively solicit investments or provide investment recommendations; and (4) only integrates with blockchain networks and smart contract protocols that have eliminated control-related trust dependencies, including unilateral operational control, through objective features such as autonomy, non-custodial design, and permissionless access.[48]

These conditions are grounded in the understanding that most Apps are fundamentally non-custodial, passive software tools that allow users to interact directly with public, decentralized network and protocol infrastructure.[49] If an App satisfies these conditions, then it does not perform functions traditionally associated with brokers, and thus does not expose users to the trust dependencies and consequent risks that the federal securities laws are intended to mitigate, even if it facilitates transactions in securities.[50] Rather, such an App empowers users to act with agency and execute transactions according to predefined rules in an automatic, transparent, and deterministic manner. If an App satisfies these criteria, a rebuttable presumption should exist that it is not engaged in broker-dealer activity and consequently not subject to broker registration under the Exchange Act.[51]

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[47] Miles Jennings et al., *SEC RFI: Recommendations Regarding a Safe Harbor and Crowdfunding Regime for Collectible Tokens (NFTs)*, a16z crypto (Mar. 27, 2025), https://api.a16zcrypto.com/wp-content/uploads/2025/03/a16z-Safe-Harbor-Proposal-Collectible-Tokens-NFTs.pdf.

[48] This condition must be balanced with the risks that removing operational control may create. As we discuss in part four of section five below, projects that eliminate operational control too early may place investors at risk by way of security or other vulnerabilities. For this reason, Apps often do not eliminate control at conception. As such, taking too rigid of an approach to implementing this condition could impede innovation or subject investors to harm. Therefore, Apps should still be able to qualify for the safe harbor if they integrate with protocols that have not yet eliminated control so long as: (a) the protocol is pursuing decentralization in good faith; and (b) transaction volumes or the total value of assets deposited in the protocol are below a specified threshold. The Commission may also consider offering greater leniency if Apps are not engaged in for-profit activity. Such considerations would enable the Commission to simultaneously support investor protection and innovation.

[49] Many of these criteria have also been proposed in other submissions. *See, e.g.,* Brandon H. Ferrick, Non-Custodial Trading Interfaces Should Not be Considered "Brokers" or "Exchanges" under Federal Securities Laws (May 20, 2025), https://www.sec.gov/files/ctf-written-input-brandon-h-ferrick-douro-labs-llc-052025.pdf.

[50] *See* Jennings*, supra* note 6.

[51] Given the numerous ways that Apps can be structured and operated, the safe harbor should merely create a rebuttable presumption that where the criteria are met, an App is unlikely to be categorized as a broker. However, where the Commission finds that an App, despite meeting the criteria specified herein, subjects users to intermediary risks that broker registration would resolve, the Commission should maintain a path to overcome the proposed safe harbor. For instance, application of broker regulations could be appropriate with respect to Apps that process documents related to the sale of securities, Apps that sell, or have previously sold, securities of other issuers, Apps that act as an employer of an issuer, or Apps that involve themselves in negotiations between issuers and investors.

Importantly, Apps that do not meet the conditions specified below should not be presumed to be brokers under the Exchange Act. Rather, such Apps should be evaluated under the traditional facts-and-circumstances analysis applicable to broker registration, including whether the App engages in active solicitation, exercises discretion, takes custody, or otherwise participates in securities transactions at key points in the chain of distribution.

In the sections that follow, we describe in detail the conditions an App must meet to qualify for this safe harbor.

1. The App is Non-Custodial

To qualify for the safe harbor, an App must not "handle securities or funds of others in connection with securities transactions."[52] This means that Apps must be non-custodial—users must maintain total independent control of their assets at all times. Control must remain with the user via their private keys and be exclusive and uninterrupted.[53] The App must not have any unilateral ability to access, freeze, reallocate, or otherwise interfere with user assets.[54]

Indicators of non-custodial design include that: (1) all transaction authorization and signing occur via a user's self-hosted wallet; (2) the App has no access to or control over the user's private key or transaction submission; (3) the App autonomously generates messages (or provides information to the user's self-hosted wallet for purposes of autonomously generating such messages) for the user to submit to the underlying protocol and network; and (4) the ultimate decision on the terms of the transaction and whether to transmit such messages and initiate the transaction remains with the user. Consistent with the foregoing, the CLARITY Act provides that an App only qualifies as a "decentralized finance messaging system" where that system does not provide any person other than the user with control over either the user's funds or the execution of the user's transaction.[55]

This principle also aligns with Judge Failla's reasoning in *SEC v. Coinbase* and recognizes that custody is one of the clearest and most administrable indicators of broker status. Absence of custody mitigates many core regulatory concerns over misappropriation, execution

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[52] SEC, Broker-Dealers, What is a broker-dealer?, https://www.sec.gov/resources-small-businesses/capital-raising-building-blocks/broker-dealers (last updated Sept. 19, 2024).

[53] Decentralization Research Center, *Designing Policy for a Flourishing Blockchain Industry* (Apr. 2025), https://thedrcenter.org/wp-content/uploads/2025/04/DRC-Flourishing-v2.pdf.

[54] The ability of a protocol or App to temporarily pause contract execution for purposes of addressing a security breach or vulnerability should not, on its own, be deemed custody for purposes of this safe harbor. However, any such pause must be time-limited and accompanied by a mechanism to transition into a "withdraw-only" mode within a reasonable and pre-specified period. This ensures that users retain ultimate control over their assets and that emergency powers cannot be exploited to indefinitely restrict user access or simulate custodial control.

[55] CLARITY Act, at § 103.

risk, and investor protection failures, and also negates the need to apply the SEC's net capital requirements for broker-dealers.

2. The App Does Not Exercise Discretion

To be eligible for the safe harbor, all transaction routing, order configuration, and execution parameters must be derived from objective logic and remain under the user's control—Apps must not exercise discretion over the execution of user transactions, including by making subjective recommendations with respect to transaction execution.

Where an App satisfies such criteria, it does not participate in "order-taking" or "order-routing processes," as commonly understood with respect to traditional brokerage activities. Here the Commission should clarify that order-taking and order-routing does not include: (1) providing access or links to third-party services, such as DEX protocols; or (2) providing price comparisons, including highlighting which execution route provides the best price for the user's transaction, so long as such comparisons do not provide subjective recommendations or advice related thereto.[56]

As Judge Failla noted in the Commission's action against Coinbase, Coinbase had no control over a user's crypto assets or transactions that were undertaken via its wallet; Coinbase Wallet "simply provide[s] the technical infrastructure for users to arrange transactions on DEXs in the market." Judge Failla further rejected the Commission's argument that the fact that Coinbase has relationships with DEX protocols, and provides its users with connections to them, amounted to broker activity.[57] When Apps function as described above, enabling users to self-execute transactions based on users' own judgments as to which transactions to enter and on what terms, the Commission should not consider them to constitute order-taking or order-routing processes, even if the App maintains relationships with the developers of such infrastructure.[58]

The safe harbor should also enable Apps to use optimization software (e.g., routers or solvers) to assist users in assembling efficient transaction paths. Suggesting optimal execution paths based on objective and transparent criteria—such as the lowest-cost or highest-liquidity route—does not convert a technical output into investment discretion, negotiation, or a recommendation that may implicate conflicts of interest risk. So long as the App does not exercise control over execution, but instead displays routes transparently based on objective and

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[56] This would also include the App using objective criteria to determine to which third-party services to establish links and request pricing information.

[57] *Coinbase Inc.*, 726 F. Supp. 3d at 307 ("Facilitation or bringing together parties to transact, however, is not enough to warrant broker registration under Section 15(a).").

[58] Where an App does not exercise discretion or make subjective recommendations, the risk of conflicts of interest associated with the App's activities relative to a given user are negated, even if the App enables users to engage in transactions on a protocol or network associated or affiliated with the App.

transparent criteria, and permits user override or rejection, then the App should not be considered to "effect" transactions or to act with discretion within the meaning of the Exchange Act.

Criteria for evaluating the use of optimization software within the bounds of the safe harbor might include:

A. **User Control**: Users must retain the final authority to approve or reject transaction parameters. No trade may execute without the user's wallet signature.

B. **Verifiability**: Any router or solver must be (1) source-available (so users and regulators can verify its logic without necessarily redistributing it); (2) verifiably executed in a trust-minimized environment (such as execution in a trusted execution environment, use of a verifiable compute layer like a zero-knowledge proof, or use of cryptographic attestations); or (3) subject to regular independent audits that verify neutrality, objectivity, and the absence of conflicts of interest, confirming compliance with user-oriented optimization criteria (e.g., best price, slippage tolerance, or gas efficiency), and the absence of discretionary routing.

C. **Objective Optimization Parameters**: The router or solver must operate automatically and autonomously based on fixed, pre-disclosed, and objective parameters. To further minimize the risk of intermediation, routing logic should not use proprietary or black-box heuristics that cannot be independently audited or explained to users. Where proprietary routing logic is used, its developers must publish disclosures describing the key optimization criteria embedded in the algorithm. Ultimately, displaying a single or multiple execution route(s) according to objective, pre-defined optimization criteria—such as lowest cost or highest liquidity—should not by itself constitute discretion or a recommendation, so long as the user retains the ability to review, approve, or reject the transaction.

D. **No Outcome-Based Compensation**: The App, and any associated router or solver must not receive transaction-based compensation contingent on a specific route, venue, or counterparty selection. Compensation must be based on other objective determinants, such as per-transaction fees or percentage-based fees based on the size of the transaction and applied consistently regardless of routing outcome.[59]

These measures not only protect users, but also enforce transparency norms that are already embraced by much of the DeFi ecosystem. By adopting such measures, the safe harbor would permit Apps to make available tools for assisting in optimizing user-directed transactions, so

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[59] *See supra* note 41.

long as the Apps, together with the optimization tools, neither choose between alternatives on the user's behalf nor prioritize certain execution paths based on subjective criteria. The App's role should be analogous to a calculator's—not a broker's.

3. The App Does Not Actively Solicit or Provide Investment Recommendations

To qualify for the safe harbor, Apps should be prohibited from engaging in active solicitation or providing investment recommendations, as traditionally understood under broker registration precedent.[60] This would include prohibitions on advertising specific investment opportunities, identifying and targeting specific investors, promoting specific assets, engaging in personalized outreach or inducement, or recommending trades to particular users.

To be eligible, Apps must not contact users directly to promote transactions in specific crypto assets, nor should they present individualized communications that encourage investment in any asset. Similarly, Apps must avoid presenting specific assets as "featured," "recommended," or otherwise superior based on subjective criteria. These activities create the sort of trust dependencies and informational asymmetries that the broker regime is designed to mitigate. Instead, eligible Apps should be limited to neutral, passive displays of publicly available onchain information—such as price, liquidity, or volume—without suggesting that one asset is more desirable than another. Generic descriptions of platform functionality (e.g., "swap tokens easily" or "find the best rates") should be permissible, provided they are not tailored to specific users or designed to induce the purchase of specific assets or selection of certain transaction routes.

This approach is consistent with the court's findings in *SEC v. Coinbase*.[61] There, the Commission alleged that promotional blog posts like "Coinbase Wallet brings the expansive world of DEX trading to your fingertips" constituted solicitation.[62] However, the court did not find that such generic platform descriptions amounted to solicitation under the Exchange Act, and no portion of the ruling suggested that merely describing App functionality would expose a developer to broker liability. While not directly related, at least one other case focused on DeFi Apps reached a similar conclusion.[63]

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[60] Historically, the Commission's view of what constitutes solicitation broadly captured general advertising efforts even if not directed toward any individual investor. *See, e.g.*, Adopting Release, Registration Requirements for Foreign Broker-Dealers, SEC (July 18, 1989). However, for the purposes of this safe harbor and App activities, distinguishing between active and passive solicitation efforts meaningfully delineates between activities traditionally seen as effecting a securities transaction versus those that do not have the same investor protection concerns.

[61] *Coinbase Inc.*, 726 F. Supp. 3d at 304-307 (dismissing the SEC's claim that Coinbase acted as an unregistered broker through its Wallet service).

[62] Complaint, *SEC v. Coinbase Inc.*, No. 1:23-cv-04738, ECF No. 1, at ¶ 82 (S.D.N.Y. June 6, 2023).

[63] *Risley v. Universal Navigation Inc. et al*, No. 23-cv-1340 (2d Cir. Feb. 26, 2025) (Summary Order) ("Plaintiffs hang their hats on two tweets from Adams suggesting that the Protocol was "secure" and "for many people" to serve as the basis for their solicitation argument…From this, Plaintiffs reason, Defendants solicited buyers to purchase the

Judge Failla's ruling also accords with how courts and the Commission have generally viewed solicitation efforts, i.e., identifying, screening, and contacting potential investors, making telephone calls, sending mail, placing advertisements, conducting investment seminars, and other similar activities.[64] Accordingly, in order to qualify for the safe harbor, an App should do no more than passively display information such as listings, offers, and transfer history, without otherwise soliciting investments or providing trading advice.

Finally, Apps should not provide valuations, investment ratings, or financial projections regarding any asset. This includes refraining from using "featured tokens," ranking mechanisms based on opaque metrics, or AI-based recommendation tools that suggest specific purchases or sales. However, displaying sortable market data or allowing users to filter based on objective inputs—such as liquidity or volatility—should not amount to an investment recommendation. The Commission should clarify that simply helping users discover pricing on DEXs does not amount to providing investment recommendations.[65]

In sum, the safe harbor should recognize that providing neutral access to information and functionality, without targeted promotions or recommendations, does not constitute solicitation or investment recommendation—and that such activity does not give rise to the core risks that the broker regime was designed to address.

4. The App Integrates with Decentralized Smart Contract Protocols

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Tokens for their own financial gain. The conduct, however, is too attenuated to state a claim. After all, no plaintiff would sue the New York Stock Exchange or NASDAQ for tweeting that its exchange was a safe place to trade after that plaintiff had lost money due to an issuer's fraudulent schemes.").

[64] SEC Proposes Conditional Exemption for Finders Assisting Small Businesses with Capital Raising (Oct. 7, 2020), https://www.sec.gov/newsroom/press-releases/2020-248. *See, e.g., SEC v. Century Inv. Transfer Corp., et al.*, No. 71-cv-3384, 1971 WL 297, at *5 (S.D.N.Y. Oct. 5, 1971) (Century "engaged in the brokerage business by soliciting customers through ads in the Wall Street Journal, and engaging in sales activities designed to bring about mergers between private corporations and publicly held shells controlled by" a co-defendant); *SEC v. Hansen*, 1984 U.S. Dist. LEXIS 17835, at *26 (S.D.N.Y. Apr. 6, 1984) (defendant engaged in unregistered broker activity when he "sold or attempted to sell interest in the five [securities] by use of the mails, the telephone, advertisements in publications distributed nationally and by other intestate means of communication"); *SEC v. National Executive Planners, Ltd., et al.*, 503 F. Supp. 1066, 1072-73 (M.D.N.C. 1980) (defendant engaged in unregistered broker activity by using the mails and telephone to "solicit[] clients actively" in the offer and sale of securities); *SEC v. Earthly Mineral Solutions, Inc.*, No. 2:07-cv-1057, 2011 WL 1103349, at *2 (D. Nev. Mar. 23, 2011) (defendant engaged in unregistered broker activity when, among other things, he "conducted general solicitations through newspaper advertisements"); *SEC v. Deyon*, 977 F. Supp. 510, 518 (D. Maine 1997) (defendants engaged in unregistered broker activity when they "solicited investors by phone and in person," "distributed documents and…prepared and distributed sales circulars").

[65] *See Rhee v. SHVMS, LLC*, No. 21-cv-4283, 2023 WL 3319532, at *8 (S.D.N.Y. May 8, 2023) ("[M]erely providing information … do[es] not implicate the objectives of investor protection under the Exchange Act and do[es] not constitute effecting a securities transaction.").

Apps provide access to a wide range of smart contract protocols, including DeFi protocols and NFT protocols, which have varying risk profiles depending on their characteristics. For instance, where such protocols are unilaterally controlled by a person, they may introduce risks commonly associated with intermediaries—the very risks broker regulations are intended to mitigate. Conversely, where Apps provide access to protocols where control has been eliminated, the risks that the broker registration regime is intended to address are unlikely to arise from the protocol. To address this potential risk differential, the safe harbor could require that Apps only integrate with protocols where no party retains operational control that would allow them to intermediate transactions, restrict execution access, or derive priority-based advantages.[66] However, as we discuss further below, the Commission should provide allowances to ensure that this requirement does not prevent *all* Apps integrating with protocols that have not yet eliminated control from availing themselves of this safe harbor. Doing so could impede innovation and subject investors to harm by incentivizing protocols to eliminate operational control too early, while security or other critical vulnerabilities still exist. As such, the Commission should clarify that Apps that do integrate with protocols that have not yet eliminated control may still benefit from this safe harbor *as long as* (1) the protocol is pursuing decentralization in good faith,[67] and (2) transaction volumes or the total value of assets deposited in the protocol falls under a specified threshold.

As a16z discussed in its response to **Questions #3** of the Task Force's Request for Information, a control-based decentralization framework can be utilized to ameliorate the trust dependencies that arise from traditional financial intermediaries—in other words, it can be used to mitigate the intermediary-related risks that the broker registration regime is intended to address. In particular, where protocols can eliminate **operational control** by any person or group

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[66] This approach is consistent with the CLARITY Act. The Act provides safe harbors from the bill's intermediary registration requirements for Apps that qualify as "decentralized finance messaging systems," which requires that such systems only integrate with "decentralized finance trading protocols." CLARITY Act, at § 103. While imposing a requirement on Apps relating to the underlying protocols they enable access to would potentially treat Apps and protocols as integrated even where they are unaffiliated, we believe the CLARITY Act's approach is correct for several reasons. Because Apps serve as the public-facing gateway to protocol infrastructure, they are best positioned to control which systems they facilitate access to. Permitting them to integrate with protocols that retain discretionary control, lack neutrality, or are custodial—without consequence—would incentivize riskier designs, distort competition, and shift regulatory burdens to unreachable protocol operators. In particular, absent regulatory requirements applied to Apps with respect to the protocols they provide access to, there would be no regulatory mechanisms available to U.S. regulators to safeguard U.S. persons from non-compliant or even illicit protocols (many of which are developed outside the United States and are not built with the intent of enabling transactions in the United States). This would render enforcement impractical, expose U.S. persons to harm, and encourage a race to the bottom. Further, such an approach would create structural incentives for Apps to route users to opaque, non-compliant venues to gain pricing or execution advantages. Conditioning safe harbor eligibility on integration with trust-minimized protocols ensures Apps do not act as unregistered brokers by proxy, aligns with SEC safe harbor precedent that ties eligibility to venue characteristics, and preserves the investor protections that the broker regime was designed to uphold.

[67] Similar to the proposal in Token Safe Harbor Proposal 2.0. *See* Statement, Securities & Exchange Commission, Hester M. Peirce, Token Safe Harbor Proposal 2.0 (Apr. 13, 2021), https://www.sec.gov/newsroom/speeches-statements/peirce-statement-token-safe-harbor-proposal-20.

of persons under common control, they can eliminate the kind of control that is at the root of the risks that the federal securities laws were designed to mitigate. This can be achieved where a protocol meets the following criteria:[68]

- **Autonomous**. A protocol is *autonomous* where it operates, executes, and enforces transactions and other activities without human intervention, functioning solely through transparent, predetermined rules embedded in source code, and no person or group under common control has unilateral authority or the ability to alter the functionality, operation, or rules of the system. If a system is not yet autonomous, a user can be exposed to risks stemming from the manual performance of operations, the potential for unilateral changes to the system's functioning such that transactions are executed in unforeseen ways, and the risks of potential mistakes in calculation or data storage.

- **Permissionless**. A protocol is *permissionless* where no person or group under common control has unilateral authority or the ability to restrict or prohibit access to or operation of the system for any use.[69] If a system is not permissionless, a controlling party could gate user access or throttle transactions, enabling them to favor specific Apps or extract economic rents from routing. This introduces broker-like risks, such as discretionary execution control, pay-to-play access, and order-flow intermediation, which federal securities laws are designed to prevent.

- **Credibly neutral**. A protocol is *credibly neutral* where the system's source code does not empower anyone with private permissions, hard-coded privileges, or similar rights over others that would enable them to discriminate against particular users or use-cases. If a system is not credibly neutral, its operators could manipulate transaction ordering, impose selective fees, or advantage affiliated Apps—thus turning the protocol into a venue for discriminatory routing or solicitation. This creates informational asymmetries and conflicts of interest akin to those addressed by broker registration requirements, especially in fragmented or opaque execution environments.

- **Non-custodial**. A protocol is *non-custodial* where the system's source code enables participants to maintain total, uninterrupted, and independent control of crypto assets owned by them, with all asset management and transaction initiation governed solely by the user's private keys. The protocol must not provide any party with the unilateral ability—whether through administrative keys, upgrade mechanisms, or hard-coded privileges—to access, freeze, reallocate, or otherwise interfere with user-controlled

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[68] *See* Jennings, *supra* note 6.

[69] Exceptions should be made for permissions that are required by law, such as sanctioned address screening/blocking. Any such gating must be based on objective and disclosed criteria, and be required for applicable compliance and safeguarding reasons.

assets.[70] If a protocol is custodial, it introduces the core trust dependencies that the broker registration regime is designed to address—namely, the potential for misappropriation, access denial, or execution without user consent.

We do not propose these conditions as rigid statutory thresholds. Rather, they should serve as objective proxies to assess whether a protocol meaningfully eliminates the types of control risks that broker regulation is designed to address. Importantly, there may be circumstances in which a protocol eliminates control without fulfilling each of the criteria; the purpose of the criteria is to provide a list of objective points based on which the Commission and private sector participants can make a determination as to the broker status of an entity.[71] Nonetheless, these criteria offer administrable, policy-aligned benchmarks for distinguishing disintermediated protocols from those that introduce traditional financial risks. The criteria: (1) are objective and easily verifiable, as market participants and regulators can verify any objective dimension of control in a system's source code; and (2) ensure that protocols do not depend on intermediaries, which provides protection for market participants and guards against regulatory capture and value extraction.

The requirements of this condition must also be balanced against other risks that may arise from the elimination of operational control. In particular, if projects eliminate operational control too early, investors may be placed at risk through security or other undiscovered vulnerabilities. Because of this, protocols do not typically start out having eliminated control, meaning that taking too strict of an approach to implementing the conditions set forth above could forestall innovation or subject investors to harm—a protocol developer would not be able to utilize an App to enable users to use the protocol or may jeopardize the security of the protocol by rushing to eliminate eliminate operational control. Instead, allowances should be made for Apps to still qualify for the safe harbor where they integrate with protocols that have not yet eliminated control if: (1) the protocol is pursuing decentralization in good faith;[72] and (2) transaction volumes or the total value of assets deposited in the protocol falls under a specified threshold. The Commission could also consider providing greater leniency where Apps are not engaged in for-profit activity.[73] Collectively, these would enable the Commission to optimize for both investor protection and innovation.

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[70] *See supra* note 51 (noting that this prohibition would not necessarily prohibit the ability of a protocol or App to temporarily pause contract executions for purposes of addressing a security breach or vulnerability, subject to certain conditions).

[71] The CLARITY Act similarly relies on a principle of "control," but identifies specific criteria that establish whether or not a blockchain system is controlled. *See* CLARITY Act, at § 205.

[72] *See supra* note 64.

[73] *See* Miles Jennings, Brian Quintenz, *Regulate Web3 Apps, Not Protocols Part II: Framework for Regulating Web3 Apps*, a16z crypto (Jan. 11, 2023), https://a16zcrypto.com/posts/article/regulate-web3-apps-not-protocols-part-ii-framework-for-regulating-web3-apps/.

VI.   Conclusion

Given the foregoing, the Commission should adopt a safe harbor establishing that Apps which do not custody user funds, exercise discretion, actively solicit investments, or provide investment recommendations—and which integrate with decentralized protocols—do not "effect transactions in securities for the account of others" and therefore do not trigger broker registration. Such Apps function as non-custodial, passive software tools that simply enable users to interact directly with decentralized protocols. Imposing broker registration on such Apps would extend the Exchange Act far beyond its intended scope and introduce compliance burdens that do not serve investor protection goals. Worse, doing so would chill innovation in a domain that has the potential to deliver greater transparency, efficiency, and fairness than legacy, intermediated systems. A safe harbor would provide much-needed regulatory clarity, preserve the Commission's authority to oversee high-risk activities, and ensure that developers can build in the United States without fear of the misapplication of legal categories inappropriate for modern software infrastructure.

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We greatly appreciate the opportunity to provide comments on these important matters, and we welcome engagement with the Commission on these issues.

On behalf of a16z,

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