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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0688; Product Identifier 2018–CE–026–AD; Amendment 39–19338; AD 2018–15–06]

RIN 2120–AA64

Airworthiness Directives; Honda Aircraft Company LLC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Honda Aircraft Company LLC Model HA–420 airplanes. This AD requires incorporating new and revised airworthiness limitations into the airplane's maintenance program. This AD was prompted by a report that several maintenance tasks were omitted from the airworthiness limitations section of the Honda Aircraft Company, Inc. Model HA–420 Airworthiness Limitation and Inspection Manual (ALIM). We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 13, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 13, 2018.

We must receive comments on this AD by September 21, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Honda Aircraft Company LLC, 6430 Ballinger Road, Greensboro, North Carolina 27410; telephone (336) 662–0246; internet: *http://www.hondajet.com.* You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0688.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0688; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Samuel Kovitch, Aerospace Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5570; fax: (404) 474–5605; email: *samuel.kovitch@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Honda Aircraft Company LLC has informed us that several required maintenance tasks driven by system safety assessment requirements were inadvertently omitted from or listed incorrectly in the airworthiness limitations section of the Honda Aircraft Company, Inc. Model HA–420 ALIM with a revision level prior to Revision C1 and dated earlier than May 1, 2018. Additional airworthiness limitations, additional maintenance tasks for various systems, and reduced compliance times for existing maintenance tasks are necessary to maintain all airplanes in a condition for safe operation.

In addition, we determined that some airplanes may have exceeded the new maintenance intervals once the ALIM was revised, including but not limited to:

1. *Latent failure mode of the Wing Anti-Ice Crossflow Valve (WAIXV):* This condition would prevent the opening of the WAIXV when commanded and could result in loss of control of the airplane if one bleed air source becomes unavailable while operating in icing conditions. An existing ice protection system check would identify this condition; however, the system check was not located in the airworthiness limitations section of the ALIM. The revised ALIM relocates the system check to the airworthiness limitations section and reduces the system check intervals from 600 hours time-in-service (TIS) to 300 hours TIS.

2. *Latent failures in the brake and emergency accumulators:* The hydraulic power system check for identifying and correcting potential latent failures in the brake and emergency accumulators contained incorrect procedures and was not located in the airworthiness limitations section of the ALIM. Honda corrected these procedures and superseded the current procedures (−801) with the new procedures (−802). The revised ALIM lists the correct procedures for the hydraulic power system check and relocates this check to the airworthiness limitations section.

These conditions, if not addressed, could result in failures in various airplane systems, including but not limited to the hydraulic and ice protection systems, which could result in loss of control of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Honda Aircraft Company HA–420 Airworthiness Limitation and Inspection Manual ''Airworthiness Limitations—Inspection/Check'' (Airworthiness Limitations section 05–60–00), dated May 1, 2018. The service information contains airworthiness limitations, additional maintenance tasks for various

systems, and reduced compliance times for existing maintenance tasks, including but not limited to the hydraulic and ice protection systems. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires revising the airworthiness limitations section of the maintenance program by replacing Airworthiness Limitations section 05–60–00 with an issue date earlier than May 1, 2018, with the revised Airworthiness Limitations section 05–60–00, dated May 1, 2018. Incorporating these airworthiness limitations makes them mandatory (reference 14 CFR 43.16 and 14 CFR 91.403(c)). For airplanes that have exceeded the new maintenance intervals, compliance with replacement times or inspection intervals is required before further flight once the limitations are incorporated. Operators have the compliance time period of the AD to plan for any immediate maintenance action required by the new limitations. This includes, but is not limited to the following:

- The 600-hour TIS ice protection system check, AMM Task Reference 30–10–01–700–801, previously located in the Scheduled Inspections section 05–20–00, has been relocated to the Airworthiness Limitations section 05–60–00, and reduced to a 300-hour TIS interval. Airplanes that have exceeded 300 hours TIS since the ice protection system check was last performed must have the ice protection system check within the compliance time specified in paragraph (f) of the AD. This AD allows a credit for airplanes that had the system check at the previous 600-hour TIS interval but have not exceeded 300 hours TIS since the last check and the WAIXV passed the functionality check contained in the procedure.
- The 600-hour TIS hydraulic power system check, AMM Task Reference 29–00–01–700–801, previously located in the Scheduled Inspections section 05–20–00, has been relocated to the Airworthiness Limitations section 05–60–00, and revised to AMM Task Reference 29–00–01–700–802. Airplanes that had the system check per the previous incorrect version of the maintenance task (29–00–01–700–801) at 600 hours TIS must have the inspection done before further flight after incorporating the airworthiness limitations.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because exceeding certain maintenance intervals and/or limitations could cause failures in various airplane systems, including but not limited to the hydraulic and ice protection systems, which could result in loss of control. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0688 and Product Identifier 2018–CE–026–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this final rule.

Costs of Compliance

We estimate that this AD affects 96 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Incorporate the revised Airworthiness Limitations section 05–60–00 into the ALIM.	1 work-hour × $85 per hour = $85	Not applicable	$85	$8,160

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on

the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2018–15–06 Honda Aircraft Company LLC: Amendment 39–19338; Docket No. FAA–2018–0688; Product Identifier 2018–CE–026–AD.

(a) Effective Date

This AD is effective August 13, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Honda Aircraft Company LLC Model HA–420 airplanes with a serial number in the range of 42000011 through 42000112, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 05, Time Limits.

(e) Unsafe Condition

This AD was prompted by a report that several required maintenance tasks were omitted from ''Airworthiness Limitations—Inspection/Check'' (Airworthiness Limitations section 05–60–00), of the Honda Aircraft Company HA–420 Airworthiness Limitation and Inspection Manual (ALIM), with a revision level prior to C1 and dated earlier than May 1, 2018. We are issuing this AD to prevent failures in various airplane systems, including but not limited to the hydraulic and ice protection systems, which could result in loss of control of the airplane.

(f) Compliance

Comply with the action of this AD within 30 days after August 13, 2018 (the effective date of this AD) or within 15 hours time-in-service (TIS) after August 13, 2018 (the effective date of this AD), whichever occurs first, unless already done. The airworthiness limitations section revision required in paragraph (g) of this AD contains new and reduced inspection intervals. Once you comply with paragraph (g) of this AD, if the hours TIS of your airplane exceed the threshold of any new limitation, you are required to comply with the replacement times or inspection intervals before further flight. This includes, but is not limited to, the following revised inspections:

(1) The 600-hour TIS interval ice protection system check, AMM Task Reference 30–10–01–700–801, previously located in the Scheduled Inspections section 05–20–00, has been relocated to the Airworthiness Limitations section 05–60–00, and reduced to a 300-hour TIS interval.

(2) The 600-hour TIS interval hydraulic power system check (AMM Task Reference 29–00–01–700–801), previously located in the Scheduled Inspections section 05–20–00, has been relocated to the Airworthiness Limitations section 05–60–00 and revised to AMM Task Reference 29–00–01–700–802.

(g) Airworthiness Limitations Revision

Revise the airworthiness limitations section of the maintenance program by replacing Airworthiness Limitations section 05–60–00 with an issue date earlier than May 1, 2018, with Airworthiness Limitations section 05–60–00, ''Airworthiness Limitation—Inspection/Check,'' dated May 1, 2018. Incorporating these airworthiness limitations makes them mandatory (reference 14 CFR 43.16 and 14 CFR 91.403(c)).

Note 1 to paragraph (g) of this AD: Airworthiness Limitations section 05–60–00 is contained in the Honda Aircraft Company, Inc. Model HA–420 ALIM.

(h) No Alternative Actions or Intervals

After revising the airworthiness limitations section as required by paragraph (g) of this AD, no alternative replacement times or inspection intervals may be approved unless the actions and/or intervals are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (k)(1) of this AD.

(i) Credit for Previous Actions

Actions accomplished before the effective date of this AD in accordance with the 600-hour TIS ice protection system check, AMM Task Reference 30–10–01–700–801 located in the Scheduled Inspections section 05–20–00, is considered acceptable for compliance with the 300-hour TIS interval ice protection system check, AMM Task Reference 30–10–01–700–801 located in the Airworthiness Limitations section 05–60–00, dated May 1, 2018, if:

(1) The wing anti-ice crossflow valve (WAIXV) passed the functionality check contained in the procedure; and

(2) The airplane has not exceeded 300 hours TIS since the ice protection check was last performed.

(j) Special Flight Permit

Special flight permits are prohibited.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(l) Related Information

For more information about this AD, contact Samuel Kovitch, Aerospace Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5570; fax: (404) 474–5605; email: *samuel.kovitch@faa.gov.*

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Honda Aircraft Company, Inc. Model HA–420 Airworthiness Limitation and Inspection Manual ''Airworthiness Limitations—Inspection/Check,'' (Airworthiness Limitations section (05–60–00)), dated May 1, 2018.

(ii) Reserved.

(3) For Honda Aircraft Company LLC service information identified in this AD, contact Honda Aircraft Company LLC, 6430 Ballinger Road, Greensboro, North Carolina 27410; telephone (336) 662–0246; internet: *http://www.hondajet.com.*

(4) You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(5) You may view the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on July 19, 2018.

Pat Mullen,

Aircraft Certification Service, Acting Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2018–15978 Filed 8–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0745]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), Wrightsville Beach, NC and Northeast Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedules that govern the S.R. 74 (Wrightsville Beach) Bridge across the Atlantic Intracoastal Waterway (AIWW), mile 283.1, at Wrightsville Beach, NC, and the Isabel S. Holmes Bridge across the Northeast Cape Fear River, mile 1.0, at Wilmington, NC. The deviation is necessary to accommodate the free movement of pedestrians and vehicles during the 2018 PPD IRONMAN North Carolina ''Beach2Battleship'' Triathlon. This deviation allow these bridges to remain in their closed-to-navigation position.

DATES: The deviation is effective from 6:30 a.m. to 3 p.m. on October 13, 2018.

ADDRESSES: The docket for this deviation, [USCG–2018–0745], is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Mickey Sanders, Bridge Administration Branch Fifth District, Coast Guard; telephone 757–398–6587, email *Mickey.D.Sanders2@uscg.mil.*

SUPPLMENTARY INFORMATION: The event director, PPD Ironman North Carolina, with approval from the North Carolina Department of Transportation, who owns and operates the S.R. 74 (Wrightsville Beach) and the Isabel S. Holmes Bridges has requested a temporary deviation from the current operating regulations to accommodate the free movement of pedestrians and vehicles during the 2018 PPD IRONMAN North Carolina ''Beach2Battleship'' Triathlon. The bridges are double bascule bridges and have vertical clearances in the closed position of 20 feet and 40 feet, respectively, above mean high water.

The current operating schedule is set out in 33 CFR 117.821(a)(4) and 33 CFR 117.829(a), respectively. Under this temporary deviation, the S.R. 74 (Wrightsville Beach) Bridge will be maintained in the closed-to-navigation position from 6:30 a.m. to 10 a.m. on October 13, 2018, and the Isabel S. Holmes Bridge will be maintained in the closed-to-navigation position from 7:30 a.m. to 3 p.m. on October 13, 2018. The Atlantic Intracoastal Waterway is used by a variety of vessels including, small commercial fishing vessels and recreational vessels. The Northeast Cape Fear River is used by a variety of vessels including, small commercial fishing vessels, recreational vessels, and tug and barge traffic. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

Vessels able to pass through these bridges in their closed positions may do so at anytime. These bridges will be able to open for emergencies and there are no immediate alternative routes for vessels unable to pass through the bridges in their closed positions. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedules for these bridges so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), these drawbridges must return to their regular operating schedules immediately at the end of the effective periods of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 2, 2018.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2018–16847 Filed 8–6–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0702]

Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Montlake Bridge across the Lake Washington Ship Canal, mile 5.2, at Seattle, WA. The deviation is necessary to accommodate vehicular traffic attending football games at Husky Stadium at the University of Washington. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective from 11:30 a.m. on September 8, 2018 through 11 p.m. on November 17, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0702 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: Washington Department of Transportation (bridge owner), has requested a temporary deviation from the operating schedule for the Montlake Bridge across the Lake Washington Ship Canal, at mile 5.2, at Seattle, WA. The deviation is necessary to manage heavy vehicular traffic expected for University of Washington football games. While all dates have been released, exact game times for five of the six events scheduled for Husky Stadium have not yet been determined by the National Collegiate Athletic Association. The times for TBA (Time to Be Announced) closures on September 22, 2018, September 29, 2018, October 20, 2018, November 3, 2018 and November 17, 2018 will be announced in the Local Notice to Mariners as they become available. The Montlake Bridge in the closed-to-navigation position provides 30 feet of vertical clearance throughout

the navigation channel, and 46 feet of vertical clearance throughout the center 60 feet of the bridge; vertical clearance references to the Mean Water Level of Lake Washington.

The normal operating schedule for the Montlake Bridge operates in accordance with 33 CFR 117.1051(e). The deviation period and span operation is described in the table below:

Time/date start	Time/date end	Action
11:30 a.m. to 2 p.m. Sep 8, 2018	5 p.m. to 7:30 p.m. Sep 8, 2018	span in the closed-to-navigation position.
TBA Sep 22, 2018	TBA Sep 22, 2018	span in the closed-to-navigation position.
TBA Sep 29, 2018	TBA Sep 29, 2018	span in the closed-to-navigation position.
TBA Oct 20, 2018	TBA Oct 20, 2018	span in the closed-to-navigation position.
TBA Nov 3, 2018	TBA Nov 3, 2018	span in the closed-to-navigation position.
TBA Nov 17, 2018	TBA Nov 17, 2018	span in the closed-to-navigation position.

Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft. Vessels able to pass through the bridge in the closed-to-navigation position may do so at anytime. The bridge will be able to open for emergency vessels in route to a call when an hour notice is given to the bridge operator. The Lake Washington Ship Canal has no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 31, 2018.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2018–16848 Filed 8–6–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0427]

RIN 1625–AA00

Safety Zone; USA Triathlon Age Group National Championships; Lake Erie, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of Lake Erie during the USA Triathlon Age Group National Championships. This safety zone is intended to restrict vessels from a portion of Lake Erie off of Edgewater Park during the USA Triathlon Age Group National Championships. This temporary safety zone is necessary to protect participants and spectators during the event from the hazards associated with a large scale swimming event. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo.

DATES: This rule is effective from 9:45 a.m. August 10, 2018 until 12:15 p.m. August 12, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0427 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Ryan Junod, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–0124, email *D09-SMB-MSUCLEVELAND-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On June 26, 2018 the Coast Guard published a Notice of Proposed Rulemaking (NPRM) titled USA Triathlon Age Group National Championships; Lake Erie, Cleveland, OH (83 FR 29721). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this swim event. During the comment period that ended July 26, 2018 we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because doing so would be impracticable and contrary to the public interest. Delaying the effective date would be contrary to the rule's objectives of ensuring safety of life on the navigable waters and protection of persons and vessels near the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Buffalo (COTP) has determined that a large-scale swim event on a navigable waterway will pose a significant risk to participants and the boating public. This rule is necessary to protect participants and spectators during the USA Triathlon Age Group National Championships.

IV. Discussion of Comments, Changes, and The Rule

As noted above, we received no comments on our NPRM published June 26, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 10:00 a.m. to 1:30 p.m. on August 10, 2018, from 5:00 a.m. to 5:30 p.m. on August 11, 2018, and from 5:00 a.m. to 12:00 p.m. on August 12, 2018. The safety zone will cover all navigable waters of Lake Erie, off of Edgewater Park, Cleveland OH, inside an area starting on shore at position 41°29′16″ N, 081°44′49″ W then Northwest to 41°29′34″ N, 081°45′02″ W then Northeast to 41°29′43″ N, 081°44′31″ W then Southeast back to shore at position 41°29′28″ N, 081°44′22″ (NAD 83). The duration of the zone is intended to enhance the safety of vessels and swimmers on these navigable waters before, during, and after the scheduled events over the course of the three days.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The Captain

of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the characteristics of the safety zone. The safety zone created by this rule will be relatively small and is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. In addition, the safety zone is located off a beach where there are normally swimmers. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 00 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a safety zone. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0427 to read as follows:

§ 165.T09–0427 Safety Zone; USA Triathlon Age Group National Championships; Lake Erie, Cleveland, OH.

(a) *Location.* The safety zone will encompass all waters of Lake Erie, off of Edgewater Park, Cleveland OH, inside an area starting on shore at position 41°29′16″ N, 081°44′49″ W then Northwest to 41°29′34″ N, 081°45′02″ W then Northeast to 41°29′43″ N, 081°44′31″ W, and Southeast back to shore at position 41°29′28″ N, 081°44′22″ (NAD 83).

(b) *Enforcement period.* This rule will be enforced from 9:45 a.m. until 1:45 p.m. on August 10, 2018, from 5:00 a.m. until 5:45 p.m. on August 11, 2018, and from 5:00 a.m. until 12:15 p.m. on August 12, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: August 2, 2018.

Joseph S. Dufresne,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2018–16844 Filed 8–6–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AP27

Schedule for Rating Disabilities: Skin; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a final rule amending its Schedule for Rating Disabilities regulations pertaining to the skin body system in the **Federal Register** on Friday, July 13, 2018. VA has since determined that certain language added to the final rule was unintended and could be construed to prevent appropriate disability compensation ratings from being assigned to veterans. Therefore, VA is issuing this technical correction to ensure that skin disabilities are rated correctly.

DATES: This correction is effective August 13, 2018.

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Chief, Regulations Staff (211D), Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On Friday, July 13, 2018, VA published in the **Federal Register** (83 FR 32592) a final rule amending its Schedule for Rating Disabilities regulations pertaining to the skin body system.

In § 4.118, under the General Rating Formula for the Skin for DCs 7806, 7809, 7813–7816, 7820–7822, AND 7824, the 30 percent criteria published in the final rule, contains a phrase ''Characteristic lesions involving *more than*'' without a corresponding explanation for the additional phrase ''more than.''

VA notes that the inclusion of the phrase ''more than'' in the final rule was clearly a technical error. This document corrects this technical error by removing the phrase ''more than'' from the 30 percent rating criteria under the General Rating Formula for the Skin. This error does not affect any benefits which were previously paid as the final rule for skin will not become effective until August 13, 2018.

In FR Doc. 18–14957, appearing on page 32598 in the **Federal Register** of July 13, 2018, correct the following:

§ 4.118 [Corrected]

■ 1. On page 32598, in the table, under the heading General Rating Formula For The Skin for DCs 7806, 7809, 7813–7816, 7820–7822, AND 7824, revise the 30 percent disability rating criteria to read as follows:

* * * * * * *

At least one of the following	30
Characteristic lesions involving 20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected; or Systemic therapy including, but not limited to, corticosteroids, phototherapy, retinoids, biologics, photochemotherapy, PUVA, or other immunosuppressive drugs required for a total duration of 6 weeks or more, but not constantly, over the past 12-month period.	

* * * * * * *

Approved: August 2, 2018.

Jeffrey M. Martin,

Impact Analyst, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2018–16859 Filed 8–6–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066–5717–02]

RIN 0648–XG391

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS is transferring 30 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the Harpoon category. With this transfer, the adjusted Harpoon category quota for the 2018 fishing season is 68.6 mt. The 2018 Harpoon category fishery is open until November 15, 2018, or until the Harpoon category quota is reached, whichever comes first. The action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to Atlantic tunas Harpoon category (commercial) permitted vessels.

DATES: Effective August 2, 2018, through November 15, 2018.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments, and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The current baseline quotas for the Harpoon and Reserve categories are 38.6 mt and 24.8 mt, respectively. See § 635.27(a). To date for 2018, NMFS has published two actions that have adjusted the available 2018 Reserve category quota, which currently is 108.5 mt (83 FR 9232, March 5, 2018, and 83 FR 17110, April 18, 2018). The 2018 Harpoon category fishery opened June 1 and is open through November 15, 2018, or until the Harpoon category quota is reached, whichever comes first.

Although NMFS has published a proposed rule (83 FR 31517, July 6, 2018) to increase the baseline U.S. bluefin tuna quota from 1,058.79 mt to 1,247.86 mt and subquotas for 2018 (including an expected increase in the Harpoon category quota from 38.6 mt to 46 mt, consistent with the annual bluefin tuna quota calculation process established in § 635.27(a)), NMFS does not anticipate that the final rule will be effective until September 2018.

Quota Transfer

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered the relevant determination criteria and their applicability to the Harpoon category fishery. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by Harpoon category fishermen and provided by BFT dealers continue to provide valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the Harpoon category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the Harpoon category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). As of August 1, 2018, the Harpoon category has landed 26.2 mt. Commercial-size BFT are currently readily available to vessels fishing under the Harpoon category quota. Without a quota transfer at this time, Harpoon category participants would have to stop BFT fishing activities with very short notice, while commercial-sized BFT remain available in the areas Harpoon category permitted vessels operate. Transferring 30 mt of BFT quota from the Reserve category would result in a total of 68.6 mt being available for the Harpoon category for the 2018 Harpoon category fishing season.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the Harpoon category) to harvest the additional amount of BFT before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered Harpoon category landings over the last several years. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS anticipates that the Harpoon category could harvest the transferred 30 mt prior to the end of the Harpoon category season, subject to weather conditions and BFT availability. NMFS may transfer unused Harpoon category quota to other quota categories, as appropriate. NMFS also anticipates that some underharvest of the 2017 adjusted U.S. BFT quota will be carried forward to 2018 and placed in the Reserve category, in accordance with the regulations. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds, consider the expected increases in available 2018 quota later in the year, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2018 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2018 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

This transfer would be consistent with the current quotas, which were established and analyzed in the 2015 BFT quota final rule (80 FR 52198, August 28, 2015), and with objectives of the 2006 Consolidated HMS FMP and amendments (§ 635.27(a)(8)(v) and (vi)). Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT

quota allocations (related to § 635.27(a)(8)(x)).

Based on the considerations above, NMFS is transferring 30 mt of the available 108.5 mt of Reserve category quota to the Harpoon category. Therefore, NMFS adjusts the Harpoon category quota to 68.6 mt for the 2018 Harpoon category fishing season (*i.e.,* through November 15, 2018, or until the Harpoon category quota is reached, whichever comes first), and adjusts the Reserve category quota to 78.5 mt.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Harpoon category vessel owners are required to report their own catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.). Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*i.e.,* quota and/or daily retention limit adjustment, or closure) is necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer for the remainder of 2018 is also contrary to the public interest as such a delay would likely result in closure of the Harpoon fishery when the baseline quota is met and the need to re-open the fishery, with attendant administrative costs and costs to the fishery. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.27(a)(9), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 2, 2018.

Margo B. Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–16853 Filed 8–2–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 152
Tuesday, August 7, 2018

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 15

[Docket No. FDA–2018–N–2610]

Future Format of the National Drug Code; Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing a public hearing and an opportunity for public comment on the future format of the National Drug Code (NDC). FDA is seeking input from a variety of stakeholders through comments and responses to FDA questions included in this notice and associated web content to be published ahead of the hearing. The questions are intended to allow FDA to obtain stakeholders' perspectives on the impact of any future changes made to the length and format of the NDC.

DATES: The public hearing will be held on November 5, 2018, from 8:30 a.m. to 5 p.m. The hearing may be extended or end early depending on the level of public participation. Persons seeking to attend or present at the public hearing must register by October 15, 2018. Electronic or written comments will be accepted after the public hearing until January 5, 2019.

ADDRESSES: The public hearing will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503 Section B and C), Silver Spring, MD 20993–0002. Entrance for the public hearing participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA-2018-N-2610 for ''Future Format of the National Drug Code; Public Hearing; Request for Comments.'' Received comments, those filed in a timely manner (see **DATES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Leyla Rahjou-Esfandiary, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2262, Silver Spring, MD 20993, 301–796–3185, *NDCPublicHearing@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The NDC is an FDA standard for uniquely identifying drugs in the United States. Currently, NDCs assigned by FDA contain 10 digits. As described in § 207.33(b) (21 CFR 207.33(b)), NDCs consist of three segments: the labeler code, the product code, and the package code. At some point in the next 10 to 15 years, NDC formatting will need to be updated to accommodate longer NDCs because new labelers are continually entering the U.S. market. In 2016, when FDA published the ''Requirements for Foreign and Domestic Establishment Registration and Listing for Human Drugs, Including Drugs That Are Regulated Under a Biologics License Application, and Animal Drugs, Final Rule'' FDA stated that when it runs out of 5-digit labeler codes, it will begin assigning 6-digit labeler codes. (81 FR 60170, August 31, 2016). As a result, FDA will add two new 11-digit NDC formats to accommodate the longer labeler codes. However, FDA acknowledged that some stakeholders expressed an interest in FDA moving to a single, standard format for NDCs and announced that it would initiate a public discussion of future formatting options (81 FR 60170 at 60187). Because of the widespread use and dependency on NDCs in prescribing, dispensing, reimbursement, safety, clinical management, supply chain management, and pharmaceutical manufacturing and labeling systems, the Agency is holding a public hearing and requesting comments from stakeholders on the impact of the transition to 6-digit labeler codes.

Section 510 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360) requires each registered drug establishment to provide FDA with a current list of all drugs manufactured, prepared, propagated, compounded, or processed by the establishment for commercial distribution. Drug products are identified and reported using the NDC.

The NDC for each listed drug in the United States is a unique 10-digit, 3-segment number. The 3 segments of NDC include the labeler code, product code, and package code. A labeler code is a unique 4-, 5-, or (in the future) 6-digit number assigned by FDA that identifies the manufacturer, repacker, relabeler, or private label distributor of the drug. The second segment, the product code, identifies a specific strength, dosage form, and formulation of a drug manufactured, repackaged, relabeled, or distributed by the labeler. The third segment, the package code, identifies package sizes and types. Different package codes only differentiate between different quantitative and qualitative attributes of the product packaging. Both the product and package codes are proposed by persons submitting drug listing information. FDA will assign a proposed NDC if it has not been used previously, is not currently in use, and has not been reserved for future assignment to a different product. The NDC for a given drug is currently in one of the following configurations (with each number representing the number of digits in that segment): 4–4–2, 5–3–2, or 5–4–1.

According to current regulations, labeler codes may consist of 4, 5, or 6 digits (§ 207.33(b)(1)). Currently, 5-digit labeler codes are being assigned by FDA. A 5-digit labeler code format provides FDA with 90,000 labeler codes that could be assigned to drug manufacturers and private label distributors ranging from 10,000 to 99,999. Based on current assignment rates, FDA anticipates that it will run out of 5-digit labeler codes in approximately 15 years. FDA will begin assigning 6-digit labeler codes at some point in the future due to exhaustion of 5-digit labeler codes. Moving up to 6-digit labeler codes will expand NDCs to 11 digits and, per regulation, allows for two additional NDC configurations: 6–3–2 and 6–4–1, for a total of five possible NDC configurations (including the three 10-digit NDC configurations).

The Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104–191) contains provisions calling for the administrative simplification ''of the national standards for electronic health care transactions and code sets, unique health identifiers, and security'' [1] and specifically references the NDC. In its implementation of these rules, in August 2000, the Department of Health and Human Services (HHS) published a final rule on standards for electronic transactions that established NDC numbers as the standard medical data code set for reporting drugs and biologics in all standard transactions under HIPAA (65 FR 50312). If a HIPAA-covered transaction includes a drug, the NDC is required to be a part of the medical code data set (see 45 CFR subpart J 162.1002(a)(3)). However, in the preamble to the HIPAA regulations, HHS stated that it was adopting a uniform 11-digit format to conform with customary practice used in computer systems (65 FR 50312 at 50329). The HIPAA standard 11-digit NDC format is standardized such that the labeler code is always 5 digits, the product code is always 4 digits, and the package code always 2 digits. To convert a 10-digit NDC to an 11-digit HIPAA standard NDC, a leading zero is added to the appropriate segment to create the 11-digit configuration as defined above.

When FDA moves to a 6-digit labeler code, although these new 11-digit native NDC [2] configurations will have the same number of digits as required by the HIPAA standards, they will not be in the same format.[3] Additionally, some of the systems that utilize HIPAA standard 11-digit NDCs [4] do not use hyphens to separate the segments which, as illustrated below, will result in some 11-digit native NDCs being indistinguishable from HIPAA standard 11-digit NDCs. Therefore, to ensure unhyphenated NDCs are distinguishable, FDA anticipates that the HIPAA standards, and other code sets that currently require 10-digit native NDCs to be converted to 11-digit NDCs, will likely be updated in some manner.

TABLE 1—NDC CONVERSION EXAMPLE

Native NDC format	Converted NDC format		
	10-digit hyphenated	11-digit converted (hyphenated)	11-digit converted (unhyphenated)
Native 10-digit (5–3–2)	10010–001–01	10010–0001–01	10010000101

[1] See *http://www.hhs.gov/ocr/privacy/hipaa/administrative/index.html* (last accessed July 3, 2017).

[2] NDCs in the format and with the digits assigned by FDA are referred to as *native NDCs.*

[3] An 11-digit native NDC will have an extra labeler code digit but will be short a digit in either the product code or package code.

[4] NDCs that contain additional digits necessary to comply with HIPAA standards are referred to as *Converted NDCs.*

TABLE 1—NDC CONVERSION EXAMPLE—Continued

Native NDC format	Converted NDC format		
	10-digit hyphenated	11-digit converted (hyphenated)	11-digit converted (unhyphenated)
Native 11-digit (6–3–2)		100100–001–01	10010000101

II. Purpose and Scope of the Hearing

The purpose of this public hearing is to obtain and discuss stakeholder feedback on the future format of NDCs. FDA is seeking information on the following topics:

1. The impact of transitioning from a 5-digit labeler code to a 6-digit labeler code, including the business, economic, information technology, and medical/clinical practice impacts, and its impact on the safety and security of drug products.

2. Issues associated with the current lack of NDC uniformity in the marketplace.

3. What should FDA consider as it explores any further changes or expansion to the format or length of the NDC?

4. How to best transition to a new format for the NDC.

To facilitate stakeholder feedback, some options for discussion and questions will be posted in the docket and on FDA's website at *https://www.fda.gov/Drugs/NewsEvents/ucm574488.htm* at least 30 days prior to the hearing. These options and questions are not meant to be exhaustive. We encourage interested stakeholders to address these and/or other issues related to the formatting of NDCs. FDA encourages stakeholders to provide the rationale and basis for their comments, including any available data and information, and any underlying assumptions. For example, to provide context associated with a stakeholders response, FDA also is interested in the following information within the submission or testimony.

1. How would you describe your business or area of focus (*e.g.,* payor, hospital, health care practitioner, benefit manager or administrator, pharmacy, manufacturer, repackager, wholesale distributor, third-party logistics provider, drug compendia, standard setting organization, government entity)?

2. How do you or your members use the NDC?

3. What challenges does your organization or your members face with the current NDC and how do you overcome these challenges?

4. What changes, if any, would you or your members need to make to your systems to accommodate the 6-digit labeler code or other larger NDC formats?

III. Registration

Registration and Requests for Oral Presentations

The FDA Conference Center at the White Oak location is a Federal facility with security procedures and limited seating. Attendance is free and early registration is recommended. Individuals who wish to attend must register on or before October 15, 2018, at *https://www.fda.gov/Drugs/NewsEvents/ucm574488.htm* and provide complete contact information, including name, title, affiliation, email, and phone number. Those without internet access may register by contacting Leyla Rahjou-Esfandiary at 301–796–3185. FDA may allow onsite registration if space is available. If registration reaches maximum capacity, FDA will post a notice closing registration at *https://www.fda.gov/Drugs/NewsEvents/ucm574488.htm.*

This hearing will include public comment sessions. Individuals who wish to present during a public comment session at the public hearing must register as noted at *https://www.fda.gov/Drugs/NewsEvents/ucm574488.htm* and identify the topics or questions (see section II) they wish to address in their presentation and the stakeholder group they best associate with, if any, to help FDA organize the presentations. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and request time for a joint presentation.

FDA will do its best to accommodate requests to present during the public comment session and will determine the amount of time allotted for each oral presentation and the approximate time that each oral presentation is scheduled to begin. FDA will notify registered presenters of their scheduled times and make available an agenda and background material at *https://www.fda.gov/Drugs/NewsEvents/ucm574488.htm* on or before October 22, 2018. Once FDA notifies registered presenters of their scheduled times, presenters should submit an electronic copy of their presentation to *NDCPublicHearing@fda.hhs.gov* on or before October 29, 2018.

If you need special accommodations because of a disability, please send an email to *NDCPublicHearing@fda.hhs.gov* at least 7 days before the hearing.

Streaming Webcast of the Public Hearing

A link to the live webcast of this public hearing will be available at *https://www.fda.gov/Drugs/NewsEvents/ucm574488.htm* on the day of public hearing. A video record of the public hearing will be available at *https://www.fda.gov/Drugs/NewsEvents/ucm574488.htm* following the hearing.

IV. Notice of Public Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, who will be accompanied by FDA senior management from the Office of the Commissioner and the relevant centers/offices.

Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation. At their discretion, the presiding officer(s) may permit questions to be submitted from the audience for response by FDA or other persons attending the hearing (§ 15.30(e)). Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (21 CFR part 10, subpart C). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b) (see *Transcripts*). To the extent that the

conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *https://www.regulation.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's website at *https://www.fda.gov.*

Dated: July 31, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–16807 Filed 8–6–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Chapter I

48 CFR Chapter 6

[Public Notice: 10489]

Reducing Regulation and Public Burden, and Controlling Cost

AGENCY: Department of State.

ACTION: Request for comments.

SUMMARY: As part of its continuing implementation of Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' issued by the President on January 30, 2017, the Department of State (the Department) is seeking comments and information from interested parties to assist the Department in identifying existing regulations, paperwork requirements and other regulatory obligations that can be modified or repealed, consistent with law, to achieve meaningful burden reduction while continuing to achieve the Department's statutory obligations.

DATES: Written comments and related material must be received on or before September 6, 2018.

ADDRESSES: You may submit comments by email to the following address: *RegsReform@state.gov.*

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney-Adviser, 202–647–2318; or Janet Freer, Director of the Office of Directives Management. Both can be reached at *RegsReform@state.gov.*

SUPPLEMENTARY INFORMATION: On January 30, 2017, President Trump issued Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs. Under that Executive Order, for every one new regulation issued, at least two prior regulations must be identified for elimination, and the cost of planned regulations must be prudently managed and controlled through a budgeting process. On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Reform Agenda. That Executive Order directs agencies to take specific steps to identify and alleviate unnecessary regulatory burdens placed on the American people. We are seeking comments on Department regulations, guidance documents, and collections of information that you believe should be removed or modified to alleviate unnecessary burdens. The Department is also requesting economic data to support any proposed changes.

The Regulatory Reform Task Force

Executive Order 13777 directs agencies to designate a Regulatory Reform Officer (RRO) and to establish a Regulatory Reform Task Force (RRTF). The Deputy Secretary of State is the RRO. Other RRTF members include senior officials in the Department's primary regulatory bureaus (Bureaus of Consular Affairs, Educational and Cultural Affairs, Political-Military Affairs, and Administration), as well as other Department officials with expertise in legal requirements, planning and budget.

One of the duties of the RRTF is to evaluate existing regulations and make recommendations to the Secretary regarding their repeal, replacement, or modification. Executive Order 13777 further directs that the RRTF attempt to identify regulations that:

- Eliminate jobs, or inhibit job creation;
- Are outdated, unnecessary, or ineffective;
- Impose costs that exceed benefits;
- Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- Are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility; or
- Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

Section 3(e) of the Executive Order calls on the RRTF to ''seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, nongovernmental organizations, and trade associations'' on regulations that meet some or all of the criteria above. The Department sought input in 2017 (*see* 82 FR 32493), and again solicits your comments.

Location of Department Regulations

Existing Department of State regulations can be found in the Code of Federal Regulations (CFR) in two places:

- 22 CFR Chapter I (parts 1 through 199), which contains rules governing Department operations); and
- 48 CFR Chapters VI (part 600), which contains the Department's Acquisition Rules.

In addition, guidance regarding Department grants can be found at 2 CFR chapter VI.

You may view the most up-to-date versions of these authorities in the electronic CFR, located at *www.ecfr.gov.*

Location of Department Guidance

Department guidance that relates to the missions of the rulemaking bureaus (identified above) can be found in a number of locations on the state.gov public website. The Department is interested in comments regarding any of the guidance located on its public site. For your convenience, the following sites cover specific missions:

- For Consular Affairs, including passports and visas, please visit *https://travel.state.gov.*
- For Educational and Cultural Affairs, including the Exchange Visitor Program, please visit *https://exchanges.state.gov/.*
- For Defense Trade issues, please visit: *https://www.pmddtc.state.gov/.*

You are invited to provide comment on any guidance published by the Department that you feel should be considered for modification or elimination, in accordance with E.O. 13777.

Location of the Department's Unified Agenda Submission

The Department's most current submission to the Unified Agenda of Regulatory and Deregulatory Actions is located at *https://www.reginfo.gov/public/do/eAgendaMain.* Select ''Department of State'' from the dropdown menu. The Agenda consists of regulatory and de-regulatory actions either in progress or contemplated by the Department. The rules are identified

by Regulatory Information Numbers (RINs), which for the Department all begin with ''1400–''. When commenting on a rule in the Agenda, please identify it by its RIN.

Location of Approved Collections of Information

You can find the Department's approved collections of information at *https://www.reginfo.gov/public/do/PRAMain.* Please choose ''Current Inventory'' and pick ''Department of State'' from the dropdown menu. All approved collections of information have a Control Number issued by the Office of Management and Budget (OMB). Department Control Numbers all begin with ''1405–''. When commenting on an information collection, please identify it by the OMB Control Number.

Public Comments

Please make your comments as specific as possible, and include any supporting data or other information, such as cost information, that you may have. Please note that all comments are publically available, so do not include any information in your comments that you would not want released to the public. We accept anonymous comments. The Department will not edit your comments to remove personal information; however, in our discretion, we might not post on regulations.gov any comments that contain personal information. If your submission cannot be made using *www.regulations.gov,* please submit using the email address listed in the **ADDRESSES** section, or contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

The Executive Orders are at the following sites:

- Executive Order 13771 is located at: *http://bit.ly/2kx0TlY*
- Executive Order 13777 is located at: *http://bit.ly/2lTZPIQ*

Although the Department will not respond to individual comments, we value your comments and will give careful consideration to them.

Janet M. Freer,

Director, Office of Directive Management, Department of State.

[FR Doc. 2018–16843 Filed 8–6–18; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0608]

RIN 1625–AA08

Special Local Regulation; Battle of the Bridges, Intracoastal Waterway, Venice, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary special local regulation for certain waters of the Intracoastal Waterway. This action is necessary to provide for the safety of life on these navigable waters in Venice, FL, during the Battle of the Bridges on September 15, 2018. This proposed rulemaking would prohibit persons and vessels from being in the race area unless authorized by the Captain of the Port St. Petersburg (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before August 22, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0608 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician First Class Michael Shackleford, U.S. Coast Guard; telephone 813–228–2191, email *Michael.D.Shackleford@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On November 7, 2017, the Sarasota Scullers Youth Rowing Program notified the Coast Guard that it will be conducting the Battle of the Bridges sculler race from 7 a.m. to 7:30 p.m. on September 15, 2018. The race will take place in portions of the Intracoastal Waterway in Venice, FL. The Captain of the Port St. Petersburg (COTP) has determined that potential hazards associated with the race to be a safety concern for anyone within area where the race is taking place.

The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 15 days instead of a standard 30 days for this notice of proposed rulemaking. The Coast Guard believes a shortened comment period is necessary and reasonable because the special local regulation is necessary to ensure the safety of vessels and the navigable waters within, or near the race area during the scheduled event. Any delay in making this final rule effective by allowing comments for more than 15 days would not be in the best interest of public safety.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233.

III. Discussion of Proposed Rule

The COTP proposes to establish a temporary special local regulation from 7 a.m. to 7:30 p.m. on September 15, 2018. The regulation would cover a race which would take place on approximately 3.5 miles of the Intracoastal Waterway starting near the Shamrock Park & Nature Center and ending near the Tamiami Trail Bridge in Venice, FL. The duration of the regulation is intended to ensure the safety of vessels and these navigable waters during the scheduled 7 a.m. to 7:30 p.m. race. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. Persons or vessels receiving permission to enter the regulated area must comply with the instructions of the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. This regulation would impact approximately 3.5 miles of the Intracoastal Waterway in Venice, FL for twelve and half hours on one day. The Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the regulation, and the rule would allow vessels to seek permission to enter the race area in emergency situations. Advance notice of the regulation will provide the local community with ample time to plan around the race event accordingly.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulation area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves special local regulation which temporarily limits access to the portions of the Intracoastal Waterway in Venice, FL to race participants only, except in emergency situations. Normally such actions are categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Add § 100.35T07–0195 to read as follows:

§ 100.35T07–0195 Special Local Regulation; Battle of the Bridges, Intracoastal Waterway; Venice, FL.

(a) *Regulated Area.* A regulated area is established to include a race area located on all waters of the Intracoastal Waterway south of a line made connecting the following points: 27°06′15″ N, 082°26′43″ W, to position 27°06′12″ N, 082°26′43″ W, and all waters of the Intracoastal Waterway north of a line made connecting the following points: 27°03′21″ N, 082°26′17″ W, to position 27°03′19″ N, 082°26′15″ W. All coordinates are North American Datum 1983.

(b) *Definitions.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP St. Petersburg in the enforcement of the regulated areas.

(c) *Regulations.*(1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the race area unless authorized by the Captain of the Port (COTP) St. Petersburg or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the race area may contact the COTP St. Petersburg by telephone at (727) 824–7506 or via VHF–FM radio Channel 16 to request authorization.

(3) If authorization to enter, transit through, anchor in, or remain within the race area is granted, all persons and vessels receiving such authorization shall comply with the instructions of the COTP or a designated representative.

(4) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

(d) Enforcement Period. This rule will be enforced from 7 a.m. until 7:30 p.m. on September 15, 2018.

Holly L. Najarian,

Captain, U.S. Coast Guard, Captain of the Port Saint Petersburg.

[FR Doc. 2018–16834 Filed 8–6–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2002–0001; FRL–9981–92-Region 8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Eureka Mills Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent to Delete the Eureka Mills Superfund Site (Site) located in Eureka, Utah, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Utah, through the Utah Department of Environmental Quality (UDEQ), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews (FYR), have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by September 6, 2018.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2002–0001 by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*
- *Email: saenz.armando@epa.gov.*
- *Mail:* Armando Saenz, Remedial Project Manager, U.S. EPA, Region 8, Mail Code 8EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–2002–0001. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket

materials are available either electronically in *http://www.regulations.gov* or in hard copy at: Eureka City Hall, 255 W Main Street, Eureka, UT 84628; Phone: (435–433–6915); Hours: M–Fri: 8:30 a.m.—5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Armando Saenz, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, EPR–SR, Denver, CO 80202, (303) 312–6559, email: *saenz.armando@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region 8 announces its intent to delete the Eureka Mills Superfund Site from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of CERCLA of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete this Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Eureka Mills Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures in not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State before developing this Notice of Intent to Delete.

(2) EPA has provided the State 30 working days for review of this notice prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate;

(4) The State of Utah, through the UDEQ, has concurred with deletion of the Site from the NPL.

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in the local Eureka Review Newsletter. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this document, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the Site information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Intended Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL.

Site Background and History

The 450-acre Eureka Mills Superfund Site (UT0002240158) encompasses much of Eureka. The town is situated in a southwest trending valley on the west side of the East Tintic Mountains in Juab County about 80 miles southwest of Salt Lake City, Utah. The town was founded in 1870 upon the discovery of a high-grade mineralized outcrop containing silver, lead, gold, copper and arsenic. The area was extensively mined until 1958. Because of extensive mining activities, numerous mine waste piles were formed and spread throughout the town (including residential areas).

Investigations of the impacts from historic mining activities in Eureka began in 2000. Based on the results of initial blood lead testing and soil sampling, EPA and the State initiated an extensive blood lead testing program for Eureka residents in the summer of 2000. In addition, EPA's Emergency Response Program initiated an extensive soil sampling program of residential properties and mine waste areas.

During the 2001 and 2002 construction seasons, EPA's Emergency Response Program conducted an emergency removal action on 69 properties. The action consisted of removing and replacing up to 18 inches of soil high in lead content on each property. The properties were selected based on soil lead levels greater than 3000 ppm and/or a child living in the home with a blood lead level greater than 10 μg/dL. The Site was proposed

for the NPL on June 14, 2001 (66 FR 32287) and finalized on September 5, 2002 (67 FR 56757).

Remedial Investigation and Feasibility Study (RI/FS)

The RI/FS began in 2000 and was completed in 2002. Samples confirmed that metals were present in mine waste piles, residential/non-residential soils and within the interiors of some residences/commercial buildings. Over 4,205 soil samples were collected from 505 residential/commercial properties. One hundred residential properties contained surface soil lead in concentrations greater than 3,000 ppm. An additional 350 residential properties showed surface soil lead concentrations at levels between 231 and 2,999 ppm. Samples were also collected from mine waste piles and areas with future development potential. Lead concentrations within the waste pile material ranged from 1,000 ppm to 47,806 ppm. Lead in areas with future development potential ranged from 325 ppm to 15,000 ppm.

The Baseline Human Health Risk Assessment (BHHRA) was completed in 2002 and evaluated the current/future risks to human health associated with elevated concentrations of metals in soils and mine waste within the Site. Lead was found to be the primary soil contaminant of concern (COC) and other soil COCs (antimony, arsenic, mercury, silver and thallium) were found to be co-located with lead.

Selected Remedy

An interim ROD (September 2002) for Operable Unit (OU) 00 addressed the public health actions to reduce the immediate exposure of residents (particularly, children under the age of 7 years) to lead from soil/dust in the environment prior to the implementation of the final remedy for the soils and mine wastes. Five OUs were designated for the Site:

00—Entire Site including the residential/commercial areas
01—May Day Shaft, Godiva Shaft and the Godiva Tunnel
02—Bullion Beck Mine/Mill and Gemini Mine Waste Piles
03—Central Eureka Mining Areas
04—Ecological Risk Assessment, Groundwater and Surface Water

With the completion of the BHHRA and RI/FS in 2002, EPA issued the final Site remedy for the soils and mine waste areas found to pose an imminent/substantial endangerment to public health in the September 2002 ROD for OUs 00–03. Lead was found to be the primary soil COC and other soil COCs (antimony, arsenic, mercury, silver and thallium) were co-located with lead. The health based clean-up levels specified in the ROD were 231 ppm lead in soils for residential use and 735 ppm lead in soils for recreational use.

The Remedial Action Objectives were:

- Prevent exposure of children to lead in surface soil within current residential properties, vacant properties interspersed among residential properties, and commercial properties at the Site where soil is determined to be the source of lead and the ingestion of soil is predicted to result in a greater than 5% chance that an individual child or a group of similarly exposed children will have a blood lead level greater than 10 μg/dL.
- Prevent exposure of adolescents/adults engaging in recreational activities to lead in surface soil within discrete mine waste piles and non-residential properties (areas currently used for recreation but could be proposed for future development) where ingestion of soil is predicted to result in a greater than 5% chance that an individual or a similarly exposed group will have a blood lead level greater than 11.1 μg/dL.
- The final remedy included the following components:
- Cleanup of 691 residential and commercial properties with lead in soil concentrations greater than the action level. The cleanup generally consisted of removal of 18 inches of soil, placement of a marker barrier at 18 inches to define contaminated soil below and construction of an 18-inch cap consisting of soil with a vegetative cover or rock materials;
- Capping of 13 mine waste piles near Eureka that posed a human health risk with an 18-inch cap of vegetated soil or rock;
- Construction of a disposal cell (open cell) for contaminated soils that may be excavated during future development activities;
- Implementation of institutional controls in the form of (1) proprietary controls in the form of easements or environmental covenants and; (2) local governmental ordinances to control excavation activities that could disturb contaminated materials; and,
- Conducting public health actions, including information programs, periodic blood lead testing of children, and a program for evaluating sources of indoor lead exposure.

The 2002 ROD for OUs 00–03 did not address the groundwater, surface water and ecological pathways because of the urgency to address actual exposures to lead contaminated soils evident in blood lead tests Eureka children. EPA conducted an RI for the surface water/groundwater from 2007 to 2009. Analysis of surface water samples collected during the RI met the Utah State Criteria for agricultural and recreational use. No groundwater impacts were found from historical mining that presented a concern for human health. In addition, samples from drinking water wells showed consistently high-quality water with no metals exceeding Maximum Contaminant Levels (MCLs). An ecological risk assessment (conducted from 2009 to 2010) concluded that, while there was a small risk to certain avian species, addressing the associated contamination would result in the destruction of valuable habitat for other avian species/wildlife not at risk. A No Action ROD for OU O4 was issued in September 2011 for the groundwater, surface water and ecological pathways.

In summary, the three RODs for the Site are as follows: (1) Early Interim Action ROD for Operable Unit 00 at the Eureka Mills Site (September 30, 2002); (2) ROD for Lead-Contaminated Soil, Operable Unit 00–03 at the Eureka Mills NPL Site (September 30, 2002); and (3) Eureka Mills OU 4 Groundwater, Surface Water and Ecological Risk ROD (September 21, 2011).

Response Actions

The remedial design (RD) was completed in May 2003 and the remedial action (RA) began in August 2003 and was completed in October 2010. Most of the RA activities were performed by EPA with the assistance from the United States Army Corps of Engineers (USACE) under an interagency agreement. The USACE oversaw all work performed by its contractors and provided monthly progress reports. The monthly progress reports documented the work completed, problems encountered and their resolution, upcoming work and invoices submitted for payment during the reporting period. Potentially responsible parties (mine owners/operators) performed portions of the RA and provided materials and resources for other RA tasks.

Because the duration of the RA extended over an eight-year period with multiple parties performing the RA work, pre-final/final inspections were conducted throughout the remedial action as specific portions of the Site were completed. Each PRP prepared a RA report after its work which was then reviewed by EPA and UDEQ and approved by EPA. EPA prepared annual RA reports documenting the work completed during the year which were reviewed and concurred on by UDEQ.

The OU 00 RA for residential cleanup began in August 2004, and was

completed in September 2010. EPA and UDEQ conducted inspections of the residential cleanup on a continual basis during each construction season from 2004 through 2010. Punch list items identified during the residential inspections were minor and immediately addressed. The remedial activities of the residential cleanup were summarized in each annual RA report.

The surface runoff control features were designed to conform to the Federal Emergency Management Agency's (FEMA) revised Flood Insurance Rate Map. The initial hydrologic studies for the mapping were jointly conducted by FEMA and EPA in 2003. Following the completion of the RA and the surveying of the constructed drainages, EPA (on behalf of Eureka) submitted a letter to FEMA requesting revisions to the 2004 Flood Insurance Rate Map. FEMA approved the revisions in a letter dated May 12, 2011.

Construction completion for the Site was achieved with the signing of the Preliminary Close Out Report (PCOR) and RA Report on September 21, 2011.

Operation and Maintenance

The O&M Plan and O&M Manual for the Site were approved on July 31, 2009 as attachments to the amended State Superfund Contract (SSC). The O&M Plan outlines the responsibilities of UDEQ and the City of Eureka for the O&M of the remedy at the Site including the implementation of ICs and operation of the open cell. The remedy was determined to be Operational and Functional on July 18, 2011 by EPA and the State of Utah assumed responsibility for O&M pursuant to the O&M Plan.

The O&M Manual defines the maintenance tasks—inspection schedule, operation of the open cell and any material specifications for erosion repairs, etc. The O&M Manual includes the ''as-built'' drawings of the Response Action Structures (RASs) and individual inspection sheets for each RAS. In addition, the O&M Manual includes the survey descriptions and drawings of the RASs attached to the environmental covenants filed on each affected parcel.

The final remedy requires ICs because contaminated materials remain at the Site above levels that allow for unlimited use and unrestricted exposure. The ICs at the Site include environmental covenants and a local excavation ordinance.

Environmental covenants (ECs) were filed for each land parcel wholly or partially within the footprint of each RAS. RASs include the capped mine waste piles, drainage control features (sedimentation ponds/constructed drainages) and access roads. Filed by the property owner (usually a PRP), the ECs limit the type of land uses on RASs. Uses that could compromise the integrity of the remedy are prohibited. The ECs prohibit any disturbance or alteration of the RASs without prior approval by EPA/UDEQ and require compliance with Eureka's excavation ordinance. Future property owners will have to comply with the requirements of the ECs given that the ECs run with the land.

In October 2010, Eureka adopted a local ordinance that governs excavation activities in areas that have been remediated but not developed. Undeveloped areas were not remediated at the time of the RA because of thick vegetation (and limited exposure to contaminated soils). The 00–03 ROD determined that the most appropriate time to remediate undeveloped areas would be during development. The ordinance requires property owners to obtain a permit for certain excavation activities defined as ''restricted activities.'' All contaminated materials displaced during excavation must either be disposed at the open cell or be capped with 18 inches of clean topsoil/road base material or capped with a structure or paved surface (minimum 2-inch hard cover surface). UDEQ provides technical/financial support to Eureka for the administration and enforcement of the ordinance through a funding agreement.

Five-Year Review

Statutory Five-Year Reviews (FYR) of the Site are required because hazardous substances remain on-Site above levels which allow for unlimited use and unrestricted exposure. The last FYR Report was signed on July 17, 2018 and found that, because the remedial actions at all OUs are protective, the remedy implemented at the Site is protective of human health and the environment. There were no issues/recommendations. The next five-year review is scheduled to be completed by July 2023.

Community Involvement

Since the implementation of the final Site remedy, there has not been any significant public/congressional interest. There have been no expressions of health/environmental concerns with the remedy.

Community involvement activities associated with the most recent FYR included a public notice published in the Eureka Review Newsletter on March 1, 2018 and stakeholder interviews to discuss the review and address concerns or issues with the Site. The interviews were conducted from March 1 through April 15, 2018 and included representatives from the Eureka City Council, Eureka City Officials and surrounding property owners.

None of the interviewees expressed any health or environmental concerns with the remedy and felt the remedy remains protective. The City of Eureka expressed concerns about issues that are not remedy-related such as problems with sewer/water lines, roads, drainage areas and historic head frames. Property owners either approved of the necessity of a cleanup for a healthy community or disapproved of the rock appearance extensively used for cover of mine waste areas. The interviewees approved of EPA's proposal and State concurrence to delete the Site from the NPL by the end of the federal fiscal year 2018.

Determination That the Site Meets the Criteria for Deletion

This Site meets all the completion requirements as specified in the OSWER Directive 9320.2–22, Close Out Procedures for National Priorities List Sites. All remedial activities at the Site are consistent with agency policy and guidance. The only remaining CERCLA activities to be performed at the Site are O&M and five-year reviews. No further Superfund responses are needed to protect human health and the environment at the Site.

The NCP (40 CFR 300.425(e)) states that a site may be deleted from the NPL when no further response action is appropriate. EPA, in consultation with the State of Utah, has determined that all required response actions have been implemented and no further response action is appropriate.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 30, 2018.

Douglas H. Benevento,

Regional Administrator, Region 8.

[FR Doc. 2018–16772 Filed 8–6–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 59, 61, and 62

[Docket ID FEMA–2018–0026]

RIN 1660–AA95

National Flood Insurance Program (NFIP): Conforming Changes To Reflect the Biggert-Waters Flood Insurance Reform Act of 2012 (BW–12) and the Homeowners Flood Insurance Affordability Act of 2014 (HFIAA), and Additional Clarifications for Plain Language; Correction

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On July 16, 2018, FEMA published a proposed rule which would revise the National Flood Insurance Program's regulations to codify certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014 that FEMA has already implemented and to clarify certain existing NFIP rules relating to NFIP operations and the Standard Flood Insurance Policy. In the preamble to the proposed rule, an incorrect web address appeared. This correction fixes that address.

DATES: This correction is effective August 7, 2018. The closing of the comment period for the proposed rule published July 16, 2018, at 83 FR 39256, remains September 14, 2018.

ADDRESSES: For information on submitting comments, see the July 16, 2018, proposed rule at 83 FR 39256.

SUPPLEMENTARY INFORMATION: In proposed rule document 2018–13292 appearing on pages 32956 through 33015 in the issue of Monday, July 16, 2018, make the following correction:

1. On page 32957, in the third column, in the first full paragraph, correct the web address ''*www.nfipservice.com*'' to read ''*https://www.nfipdirect.fema.gov*''.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–16718 Filed 8–6–18; 8:45 am]

BILLING CODE 9111–52–P

Notices

Federal Register

Vol. 83, No. 152

Tuesday, August 7, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 2, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 6, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Foreign Quarantine Notices.

OMB Control Number: 0579–0049.

Summary of Collection: Under the Plant Protection Act (PPA) (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of plants and plant products to prevent the introduction of plant pests into the United States. Regulations governing the importation of fruits, vegetables, plants for planting, logs, lumber, unprocessed wood products, cotton, corn, rice, sugar cane, and coffee are contained in 7 CFR part 319 and part 352. Implementing the laws through regulations is necessary to prevent injurious plant and insect pests from entering the United States and creating serious physical and economic consequences for U.S. agriculture.

The regulations and subsequent requirements are enforced by the Animal and Plant Health Inspection Service (APHIS) and require the collection of information verifying oversight and inspection of the growing, handling, packing, transporting, and importing of fruits, vegetables, plants for planting, logs, lumber, unprocessed wood products, cotton, corn, rice, sugar cane, and coffee into the United States. The information is collected from businesses, individuals, and foreign government officials, via forms, labels, certifications, and other formats. On a quarterly basis, APHIS will submit a report to the Office of Management and Budget that documents the burden imposed by import requirements for commodities covered by this information collection (fruits, vegetables, plants for planting, logs, lumber, unprocessed wood products, cotton, corn, rice, sugar cane, and coffee) that have been finalized within that quarterly period.

Need and Use of the Information: APHIS will collect information such as operational workplans; cooperative service agreements; trust funds; production or processing site/facility registrations; foreign site certification of inspection and/or treatment; applications for permits; appeals of denial or revocation of permits; requests for additional mailing labels; compliance agreements; phytosanitary certificates; labeling; importer documents; agreements for post entry quarantine State screening notices; 30-day article notifications; requests for emergency transshipment or diversion; notices of arrival; emergency action notifications; and monitoring/recordkeeping from responsible entities. In addition, APHIS will collect required information from national plant protection organizations as part of the commodity import approval process. If this information is not collected, APHIS' ability to safeguard the United States from injurious plant and insect pests from entering the country would be severely compromised.

Description of Respondents: Businesses, Individuals and Households, National and State Governments.

Number of Respondents: 22,353.

Frequency of Responses: Reporting, Recordkeeping, Third-Party Disclosure: On occasion.

Total Burden Hours: 550,363.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–16864 Filed 8–6–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 2, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4)

ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 6, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: U.S. National Arboretum Use of the Grounds and Facilities as well as Commercial Photography and Cinematography.

OMB Control Number: 0518–0024.

Summary of Collection: The mission of the U.S. National Arboretum (USNA) is to conduct research, provide education, and conserve and display trees, shrubs, flowers, and other plans to enhance the environment. The USNA is a 446-acre public facility. The grounds of the USNA are available to the general public for purposes of education and passive recreation. The USNA has many spectacular feature and garden displays which are very popular to visitors and photographers. Section 890(b) of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–107 (''FAIR ACT'') provided statutory authorities regarding the USNA. These authorities include the ability to charge fees for temporary use by individuals or groups of USNA facilities and grounds for any purpose consistent with the mission of USNA. Also, the authority was provided to charge fees for the use of the USNA for commercial photography and cinematography.

Need and Use of the Information: USNA officials will collect the information using applications in the form of questionnaires. The collected information is used by USNA management to determine if a requestor's needs can be met and the request is consistent with the mission and goals of the USNA uses of the information. If the basic information is not collected, USNA officials will not be able to determine if a requestor's needs are met.

Description of Respondents: Business or other for profit; Not-for-profit institutions; Individuals or households; State, Local or Tribal Government.

Number of Respondents: 302.

Frequency of Responses: Reporting: On occasion.

Total burden Hours: 151.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–16849 Filed 8–6–18; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability (NOFA) for the Conservation Reserve Program (CRP) Forest Inventory Analysis Pilot

AGENCY: Commodity Credit Corporation and Farm Service Agency, U.S. Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Farm Service Agency (FSA), on behalf of Commodity Credit Corporation (CCC), is republishing this announcement to extend the application deadline for the availability of competitive grants to conduct a forest inventory analysis, forest management, and economic outcomes modelling, for certain currently enrolled Conservation Reserve Program (CRP) land. The analysis is focused on lands enrolled in CRP for at least 8 years and located in areas with a substantial concentration of acres enrolled under the following conservation practices devoted to multiple bottomland hardwood tree species: General tree planting, hardwood tree planting, vegetative cover on previously established tree stands, riparian buffers, bottomland timber establishments, and farmable and aquaculture wetlands. Qualified applicants must be non-profit organizations dedicated to conservation, forestry, and wildlife habitats that have experience in conducting accurate forest inventory analysis through the use of advanced, cost-effective technology, as determined by FSA.

DATES: *Application Deadline:* August 25, 2018.

ADDRESSES: Applications must be submitted in the following method: *Grants Portal:* Go to *www.grants.gov.* Follow the online instructions for submitting grants.

FOR FURTHER INFORMATION CONTACT: Richard Iovanna, telephone (202) 720–5291.

SUPPLEMENTARY INFORMATION:

Background

When the NOFA was initially published on July 19, 2018, (83 FR 34098–34100), the application deadline was August 15, 2018. FSA is republishing the NOFA to extend the application deadline to August 25, 2018. No other changes have been made to the announcement.

Section 743 of the Consolidated Appropriations Act, 2018 (Pub. L. 115–141) requires that the USDA enter into grant agreements for forest inventory analysis, and forest management, and economic outcomes modelling of certain CRP land. Under this authority, the CCC will make available not more than $1 million in grants to non-profit organizations. The CRP Forest Inventory Analysis Pilot will be administered under the general supervision of FSA on behalf of CCC, in accordance with the provisions of 2 CFR part 200.

Description

The CRP Forest Inventory Analysis Pilot is focused on lands enrolled in CRP for at least 8 years and located in areas with a substantial concentration of acres enrolled under certain conservation practices devoted to multiple bottomland hardwood tree species, including conservation practices for general tree planting, hardwood tree planting, vegetative cover on previously established tree stands, riparian buffers, bottomland timber establishments, and farmable and aquaculture wetlands. Qualified applicants must be non-profit organizations dedicated to conservation, forestry, and wildlife habitats that have experience in conducting accurate forest inventory analysis through the use of advanced, cost-effective technology.

Comprehensive data analysis using advanced, cost-effective technology on land enrolled in CRP with certain bottomland hardwood practices is important for several reasons. Such data will provide the FSA CRP program manager with the information needed to more effectively manage enrollment. For example, the inventory may find that

mortality of a selected species of tree is high in certain situations. As a result, the CRP program manager may adjust what tree species can be enrolled in CRP on a regional and site-specific basis. Economic modeling will provide information on the expected net returns to CRP enrollees, as well as an evaluation of taxpayer costs. In short, there is a need for data collection and analysis of bottomland hardwood conservation practices and economics.

For more than 30 years under CRP, landowners have voluntarily enrolled tens of millions of farmland acres to conserve and improve soil, protect water quality, and provide wildlife habitat by establishing long-term cover, primarily grasses and trees. Landowners voluntarily enroll their lands for periods of between 10 and 15 years.

CRP cost share funding is provided to landowners who install the prescribed conservation practices. These practices can be costly and require ample investment by the landowner and technical assistance provider to ensure that the practices are appropriate and properly installed. The adequacy of the conservation plan is paramount to achieving CRP enrollment goals, especially for bottomland hardwoods.

Bottomland hardwoods are streamside forest trees—such as cottonwood, sycamore, oak, maple, ash, cypress, and tupelo—that typically grow on lands prone to flooding. Over the past 8 years, 46 States have enrolled land into CRP that is devoted to bottomland hardwood trees. Cumulative CRP bottomland hardwood tree enrollment, over the past 8 years, is just over 799,000 acres, with over 550,000 acres (69 percent) located in the States shown in Table 1.

TABLE 1—TREE ENROLLMENT IN CRP BY STATE OVER THE PAST 8 YEARS; USDA MAY 31, 2018

State	Total CRP tree acres	Cumulative acres	Acres of total percent	Region
Mississippi	204,870	204,870	26	Southern Forest.
Arkansas	79,341	284,211	36	Southern Forest.
Louisiana	75,087	359,298	45	Southern Forest.
Alabama	58,035	417,333	52	Southeast Forest.
Illinois	47,824	465,156	58	Midwest Forest.
Georgia	35,212	500,369	63	Southeast Forest.
North Carolina	26,942	527,310	66	Southeast Forest.
Minnesota	24,346	551,674	69	Northern Forest.

The CRP Forest Inventory Analysis Pilot is intended to provide information and analysis needed to better inform CRP decision making associated with the following bottomland hardwood conservation and stand maintenance practices:

1. CP03—Tree Planting;
2. CP03A—Hardwood Tree Planting;
3. CP11—Vegetative Cover—Trees Already Established; [1]
4. CP22—Riparian Buffer;
5. CP31—Bottomland Timber Establishment; and
6. CP40—Farmable Wetland Program—Aquaculture Wetland.

The inventory, analysis, and modeling must estimate, at a minimum, stand composition, stand density, basal area, and tree height using remotely sensed data (rather than data collected by visiting a site). The data will be used to generate statistically robust estimates of commercial value, economic returns, carbon sequestration, and wildlife and water quality impacts for each of the practices in at least one of the regions and states enumerated in Table 1. These estimates will identify species appropriate for bottomland CRP practices or sites, as well as forest management practices needed to maintain cover during the contract period. An accurate assessment of the model output will be conducted using ground plots.

Definitions

The 2018 Consolidated Appropriations Act uses the term ''non-profit organizations.'' Consistent with OMB Circular A–122, the term ''non-profit organization'' means any corporation, trust, association, cooperative, or other organization that:

1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
2. Is not organized primarily for profit; and
3. Uses its net proceeds to maintain, improve, or expand its operations.

The term ''non-profit organization'' excludes:

1. Colleges and universities, unless a 501(c)(3) has been established;
2. Hospitals;
3. State, local, and federally-recognized Indian tribal governments; and
4. Those non-profit organizations that are excluded from coverage under paragraph 5 of Office of Management and Budget (OMB) Circular A–122.

The term ''economic outcomes modelling'' as used in this NOFA, must include multiple dimensions, including, but not limited to, baseline return estimates to CRP participants (taking into account, among other items, commercial value), and returns under alternative scenarios that reflect management recommendations.

Eligibility and Application Process

Non-profit organizations dedicated to conservation, forestry, and wildlife habitats, that have experience in conducting forest inventory analysis through the use of remote sensing data and technology are eligible to apply. Applicants must submit an application by August 25, 2018, through *www.grants.gov.* To find the CRP Forest Inventory Analysis Pilot in *www.grants.gov,* search on funding opportunity number USDA–FSA–CRPFIA–2018. Applications must include, but are not limited to, an executive summary, work plan, and budget information using Application for Federal Assistance (SF–424) form. (See *www.grants.gov* for more details about the specific application requirements.)

Non-profit organizations may submit a combined cross-organization proposal to include work that will be coordinated across more than one organization, especially if a joint proposal creates synergies or increased efficiencies. The application may include one or more forest regions.

The result of a successful application will be a one-time grant agreement. Successful applicants will be required to sign the grant agreement with FSA, which will include reporting and recordkeeping requirements. It is possible that not all of the $1 million

[1] The purpose of the CP11 practice is to maintain a stand of trees in a timber planting previously established on cropland as practice CP–3 or CP–3A to enhance environmental benefits. This CP11 practice was available only through a re-offer of expiring or expired CRP acres.

authorized by Congress for this pilot will be expended. All applications are subject to the approval of FSA, and FSA reserves the right to reject any and all applications.

Application Selection Criteria

FSA will evaluate applications using the evaluation criteria specified in this NOFA and on *www.grants.gov* to select the application(s) that best support the goals of CRP Forest Inventory Analysis Pilot. A proposal must include the following information; this information will be used by FSA in the awarding of grants:

1. Amount of funding requested;
2. Amount of funding from other parties (with sufficient documentation) that provide additional leverage, if any; for example, specifying the regions, states, practices and plots where the proposal goes beyond minimal requirements (such as by considering CP–36, long-leaf pine);
3. Sampling approach to be used;
4. Remotely sensed data to be used, including its sources and its spatial, temporal, and spectral resolution;
5. Number and relevance of metrics to be estimated and the modeling approach to be used to estimate the metrics;
6. The accuracy assessment, including sampling approach and location of ground plots following the U.S. Forest Service's Common Stand Examination protocols or those in the peer-reviewed literature; and
7. Work plan and timeline for completion by September 30, 2020.

Process for Evaluation and Application and Awards of Grants

After applicants submit applications, FSA, on behalf of CCC, will screen each application to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements specified in this NOFA. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so. FSA will appoint an inter-agency review panel to evaluate the applications. During the evaluation period, FSA may contact an applicant to seek clarification and modification of the proposal. The resulting CRP Forest Inventory Analysis Pilot grant agreements will be between the non-profit organization(s) and FSA.

Any non-profit organization that receives a grant must commit to fully expend the awarded federal funds by September 30, 2020, with an opportunity for extension upon approval by FSA.

Responsibilities of the Participants

Successful applicants will be required to sign an agreement with FSA and provide detailed budget and schedule information. The agreement will require periodic achievement reports. The agreement will require the grantee to commit to do all of the following:

1. Perform inventory, analysis, modelling and validating, including conducting site visits and plot sampling, on the CRP enrolled acreage; and
2. Provide an accounting for the money received by the grantee.

During the term of the grant, the grantee will be required to obtain prior approval for any changes to the scope, objectives, or funding allocation of the approved agreement. Failure to obtain prior approval of such changes may be considered a violation, and in such case the grantee may be required to return all grant funds, including any funds already expended, as determined appropriate by FSA. Grantees will be required to monitor funds and report on expenditures. The grantee must certify that the CCC funds will not be used to:

1. Duplicate existing inventories, analysis, or economic modelling efforts; however, grant funds may be used to expand the prior inventories, analysis, or economic modelling efforts;
2. Pay costs of preparing a CRP Forest Inventory Analysis Pilot grant application;
3. Pay costs of the project incurred prior to the date of grant approval;
4. Fund political activities or lobbying efforts;
5. Pay any judgment or debt owed to the United States;
6. Pay for the repair of privately owned vehicles;
7. Pay for unrelated salaries, overhead, and expenses; or
8. Pay for unrelated research.

Failure of the grantee to execute a grant agreement in a timely fashion, as determined by FSA, will be construed to be a withdrawal from the CRP Forest Inventory Analysis Pilot. In this event, FSA will demand a refund of the grant funds as deemed appropriate by FSA.

Distribution of Grant Funds and Reimbursement of Unused Funds

FSA expects to transfer CCC funds to the selected non-profit organization applicants before September 30, 2018.

Environmental Review

The environmental impacts of this NOFA have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500 through 1508), and the FSA regulations for compliance with NEPA (7 CFR part 799).

The purpose of the grants for the CRP Forest Inventory Analysis Pilot is to provide the CRP Program Manager with information to inform decision-making about the effectiveness of certain conservation practices on CRP land for bottomland hardwoods and are passive in nature and will not involve ground disturbance or tree removals or disturbance. The discretionary aspects of the CRP Forest Inventory Analysis Pilot include, but are not limited to, eligibility, how many grants to award, and how to evaluate submissions. As such, the Categorical Exclusions in 7 CFR 799.31 apply, specifically 7 CFR 799.31(b)(6)(vii) and (viii) (these two categorical exclusions include site characterization, environmental testing, and monitoring where no significant alteration of existing ambient conditions would occur; and, stand analysis for forest management planning, respectively). No ''Extraordinary circumstances'' (7 CFR 799.33) exist; as such, FSA has determined that this NOFA does not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, beyond this Environmental Review in this NOFA, FSA will not prepare any additional environmental documentation for this action.

Paperwork Reduction Act Requirements

The CRP Forest Inventory Analysis Pilot is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as amended, as specified in subsection 1601(c)(2)(B) of the Agricultural Act of 2014 (the 2014 Farm Bill, 16 U.S.C. 3846(b)), which provides that CRP, as a Title II program, be promulgated and administered without regard to the Paperwork Reduction Act.

Catalog of Federal Domestic Assistance

The title and number of the Federal assistance in the Catalog of Federal Domestic Assistance to which this NOFA applies is 10.122, the Conservation Reserve Program (CRP) Forest Inventory Analysis Pilot.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2018–16852 Filed 8–6–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection: Comment Request—Summer Food Site Locations for State Agencies

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new information collection for the voluntary collection of summer meal site information from State agencies.

DATES: Written comments must be received on or before October 9, 2018.

ADDRESSES: Comments may be sent to: Community Meals Branch, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1200, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Andrea Farmer at 703–305–6294 or via email to *Andrea.Farmer@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Andrea Farmer at 703–305–2590.

SUPPLEMENTARY INFORMATION:

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Summer Food Site Locations for State Agencies.

Form Number: FNS–905.

OMB Number: 0584–XXXX.

Expiration Date: XX/XX/20xx.

Type of Request: This is a new data collection.

Abstract:

This data collection was originally part of OMB control number 0584–0474 National Hunger Clearinghouse Database Forms and now has been transferred to Child Nutrition in order to improve efficiency under form number FNS–905 and a new OMB control number (0584–XXXX) Summer Food Site Locations for State Agencies.

The Form FNS–905: Summer Food Site Locations for State Agencies is the instrument used to voluntarily collect information from State agencies about approved summer meal sites for the Summer Food Service Program and the Seamless Summer Option of the National School Lunch Program. The form collects site name, location, and operating details, such as dates and times of the day that the sites are in operation, that provide summer meals to children 18 years and younger in low income communities during the summer. The Form FNS–905 may only be completed by State agencies as Summer Sites must be approved by the State agencies before being made public.

The Form FNS–905 is part of requirements found in statute in Section 26 of the National School Lunch Act (NLSA), which mandates that the Food and Nutrition Service (FNS) enter into a contract with a nongovernmental organization to develop and maintain a national information clearinghouse of grassroots organizations working on hunger, food, nutrition, and other agricultural issues, including food recovery, food assistance and self-help activities to aid individuals to become self-reliant, and other activities that empower low-income individuals.

The Form FNS–543, originally developed to satisfy this statutory requirement, collects information and resources to help build the capacity of emergency food providers to address the immediate needs of struggling families and individuals while promoting self-reliance and access to healthy food. The Form FNS–543a was submitted as an addendum to Form FNS–543. The Form FNS–543 collects information directly from organizations providing other types of assistance; however, the information collected through Form FNS–543a was collected and submitted by the State agencies. Because of this, FNS decided to develop a new form to replace Form FNS–543a. Form FNS–905 was developed for this purpose and may only be submitted by State agencies. The Form FNS–905 collects information about approved summer meal sites. The information from both of these forms populates the National Hunger Clearinghouse, which is a resource for the public to find information about the food safety net.

FNS will also provide this information for individuals to find meals for children when school is out, and for groups that assist these low income individuals or communities to find meals for children in the summer. The information provides an innovative way to connect families to meals during the summer months, and assists communities in the development, coordination, and evaluation of strategic initiatives, partnership, and outreach activities.

Affected Public: State, Local and Tribal Government: Respondent groups identified include State agencies administering the Summer Food Service Program.

Estimated Number of Respondents: The total estimated number of respondents is 53. This includes: the 50 State agencies administering the Summer Food Service Program as well as the District of Columbia, Virgin Islands and Puerto Rico.

Estimated Number of Responses per Respondent: Form FNS–905 is voluntary and State agencies are asked to complete the form at least once annually. However, State agencies may submit revisions weekly throughout the summer (approximately 17 weeks). On average, State agencies tend to submit 8 revisions in the course of a year.

Estimated Total Annual Responses: 424.

Estimated Time per Response: The estimated time of response is approximately 7.5 minutes (0.125 hours) for each response.

Estimated Total Annual Burden on Respondents: 53 hours. See the table below for estimated total annual burden for the state agencies.

Respondent	Estimated number respondent	Responses annually per respondent	Total annual responses (col. bxc)	Estimated avg. number of hours per response	Estimated total hours (col. dxe)
Reporting Burden					
State agencies	53	8	424	0.125	53
Total Reporting Burden	53		424		53

Dated: July 30, 2018.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2018–16816 Filed 8–6–18; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Ontonagon National Wild and Scenic River, Ottawa National Forest; Gogebic, Houghton, Iron, and Ontonagon Counties, Michigan

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, transmitted the final boundary of the Ontonagon National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting the Ottawa National Forest, E6248 US 2; Ironwood, MI; 49938; (906)-932–1330.

SUPPLEMENTARY INFORMATION: The Ontonagon Wild and Scenic River boundary is available for review at the following offices: USDA Forest Service, Lands, Yates Building, 14th and Independence Avenues SW, Washington, DC 20024; Eastern Region, 626 East Wisconsin Ave., Milwaukee, WI, 53202; and, Ottawa National Forest, E6248 US 2, Ironwood, MI, 49938.

The Michigan Scenic Rivers Act of 1991, Public Law 102–249, March 3, 1992, designated the Ontonagon River, Michigan, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. The USDA Forest Service transmitted the final boundary to Congress on March 2, 2017. As specified by law, the boundary became effective ninety days after Congress received the transmittal.

Dated: July 19, 2018.

Glenn P. Casamassa,

Associate Deputy Chief, National Forest System.

[FR Doc. 2018–16815 Filed 8–6–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding

in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Opportunity to Request a Review: Not later than the last day of August 2018,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period of review
Antidumping Duty Proceedings	
GERMANY: Seamless Line and Pressure Pipe A–428–820	8/1/17–7/31/18
GERMANY: Sodium Nitrite A–428–841	8/1/17–7/31/18
INDIA: Finished Carbon Steel Flanges A–533–871	2/8/17–7/31/18
ITALY: Finished Carbon Steel Flanges A–475–835	2/8/17–7/31/18
JAPAN: Brass Sheet & Strip A–588–704	8/1/17–7/31/18
JAPAN: Tin Mill Products A–588–854	8/1/17–7/31/18
MALAYSIA: Polyethylene Retail Carrier Bags A–557–813	8/1/17–7/31/18
MEXICO: Light-Walled Rectangular Pipe and Tube A–201–836	8/1/17–7/31/18
REPUBLIC OF KOREA: Dioctyl Terephthalate (Dotp) A–580–889	2/3/17–7/31/18
REPUBLIC OF KOREA: Large Power Transformers A–580–867	8/1/17–7/31/18
REPUBLIC OF KOREA: Light-Walled Rectangular Pipe and Tube A–580–859	8/1/17–7/31/18
ROMANIA: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe A–428–805 (Under 4½ Inches)	8/1/17–7/31/18
SOCIALIST REPUBLIC OF VIETMAN: Frozen Fish Fillets A–552–801	8/1/17–7/31/18
THAILAND: Polyethylene Retail Carrier Bags A–549–821	8/1/17–7/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Floor-Standing, Metal-Top Ironing Tables and Parts Thereof A–570–888	8/1/17–7/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Hydrofluorocarbon Blends A–570–028	8/1/17–7/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Laminated Woven Sacks A–570–916	8/1/17–7/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Light-Walled Rectangular Pipe and Tube A–570–914	8/1/17–7/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Passenger Vehicle and Light Truck Tires A–570–016	8/1/17–7/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Petroleum Wax Candles A–570–504	8/1/17–7/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Polyethylene Retail Carrier Bags A–570–886	8/1/17–7/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Sodium Nitrite A–570–925	8/1/17–7/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Steel Nail A–570–909	8/1/17–7/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Sulfanilic Acid A–570–815	8/1/17–7/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Tetrahydrofurfuryl Alcohol A–570–887	8/1/17–7/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Tow-Behind Lawn Groomers and Parts Thereof A–570–939	8/1/17–7/31/18
UKRAINE: Silicomanganese A–823–805	8/1/17–7/31/18
Countervailing Duty Proceedings	
INDIA: Finished Carbon Steel Flanges C–533–872	11/29/16–12/31/17
REPUBLIC OF KOREA: Stainless Steel Sheet and Strip in Coils C–580–835	1/1/17–12/31/17
THE PEOPLE'S REPUBLIC OF CHINA: Laminated Woven Sacks C–570–917	1/1/17–12/31/17
THE PEOPLE'S REPUBLIC OF CHINA: Light-Walled Rectangular Pipe and Tube C–570–915	1/1/17–12/31/17
THE PEOPLE'S REPUBLIC OF CHINA: Passenger Vehicle and Light Truck Tires C–570–017	1/1/17–12/31/17
THE PEOPLE'S REPUBLIC OF CHINA: Sodium Nitrite C–570–926	1/1/17–12/31/17
Suspension Agreements	
None	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[2]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[3] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[4] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *http://access.trade.gov.*[5] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of August 2018. If Commerce does not receive, by the last day of August 2018, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 1, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–16850 Filed 8–6–18; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See also* the Enforcement and Compliance website at *http://trade.gov/enforcement/.*

[3] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[4] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[5] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Draft Programmatic Environmental Assessments for Field Operations at Thirteen National Marine Sanctuaries and Two Marine National Monuments

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) has prepared four draft programmatic environmental assessments for the proposed continuation of field operations for each region of sites managed by the Office of National Marine Sanctuaries. The field operations support resource protection, research and education objectives as mandated by the National Marine Sanctuaries Act and as described in site-specific management plans. In each PEA, NOAA analyzes the potential effects on the human environment of two alternatives to implement field operations in the subject region. NOAA is soliciting public comment on the four regional draft programmatic environmental assessments.

DATES: Comments on these draft programmatic environmental assessments will be considered if received by September 21, 2018.

ADDRESSES: You may submit comments on these documents, identified by NOAA–NOS–2018–XXXX, by any of the following methods:

—*Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NOS-2018-XXXX,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

—*Mail:* Helene Scalliet, Office of National Marine Sanctuaries, 1305 East West Highway, R/ORM6, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or

otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Helene Scalliet, Policy and Planning Division, Office of National Marine Sanctuaries at 240–533–0648 or via email at *helene.scalliet@noaa.gov.* Copies of the draft programmatic environmental assessments can be downloaded or viewed on the internet at *www.regulations.gov* (search for docket #NOAA–NOS–2018–XXXX). Copies can also be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

I. Background

NOAA's Office of National Marine Sanctuaries (ONMS) serves as the trustee for a network of underwater parks encompassing more than 600,000 square miles of marine and Great Lakes waters. The network includes a system of 13 national marine sanctuaries and Papahānaumokuākea and Rose Atoll marine national monuments. The National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*) is the statute governing the National Marine Sanctuary System. The NMSA authorizes the Secretary of Commerce to designate as national marine sanctuaries areas of the marine environment or Great Lakes with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational or aesthetic qualities. The primary objective of the NMSA is to protect sanctuary resources, which span diverse geographic and administrative boundaries. Accordingly, ONMS subscribes to a broad and comprehensive management approach to meet the NMSA's primary objective of resource protection. Comprehensive sanctuary and monument management, described in detail in each site's management plan, serves as a framework for addressing long-term protection of a wide range of living and non-living marine resources, while allowing multiple uses of the site to the extent that they are compatible with the primary goal of resource protection. These plans are site-specific documents used by all national marine sanctuaries and the monuments for which ONMS has management responsibilities. The NMSA requires that ONMS develop and periodically review the management plans for each national marine sanctuary (Sec. 304(a)(2)(A) and (e)). Since revision of a management plan often constitutes a Federal action, ONMS typically analyzes changes to the management plan under NEPA. In many cases, this analysis does not analyze in-depth consequences of routine field operations, such as vessel operations and ongoing research programs. The draft PEAs announced through this notice are designed to analyze these routine field operations not previously adequately analyzed under the National Environmental Policy Act during the management plan review process.

Within the context of the ONMS management plans, field operations are an important component of implementing many of the actions necessary to support resource protection, research and education activities. The management plans also contain information relevant to these draft regional programmatic environmental assessments (PEAs) such as background about each sanctuary environment and its resources.

II. NOAA's Proposed Action

NOAA has prepared four draft PEAs for the proposed continuation of field operations described in management plans for each site managed by the Office of National Marine Sanctuaries. There is a draft PEA for each of the following regions: West Coast, Pacific Islands, Northeast/Great Lakes, and Southeast/Gulf of Mexico. The purpose of the underlying field operations analyzed in the draft PEAs is to support resource protection, research and education objectives as mandated by the National Marine Sanctuaries Act and as described in site-specific management plans. Field operations in ONMS-managed sites fall under 10 categories: vessel operations; vessel maintenance; aircraft operations; non-motorized craft operations; SCUBA or snorkel operations; onshore field work; deployment of autonomous underwater vehicles (AUVs)/remotely operated vehicles (ROVs)/gliders/drifters; deployment of remote sensing equipment; deployment of equipment on the seafloor; and other sampling activities. The four regional draft PEAs describe in detail the field operations taking place at each site in the next five years as well as their environmental impacts on the physical, biological, socioeconomic, maritime heritage and cultural environment.

In these documents, NOAA analyzes the potential effects of two alternatives to implement the proposed action. NOAA also intends to use these four draft PEAs as the basis for compliance under the Marine Mammal Protection Act, Endangered Species Act, Magnuson-Stevens Act, National Historic Preservation Act, and Coastal Zone Management Act. NOAA intends to finalize any necessary compliance requirements for these statutes prior to finalizing this action.

Authority: 16 U.S.C. 1431 *et seq.*

Thomas Culliton,

Acting Director, Office of National Marine Sanctuaries.

[FR Doc. 2018–16812 Filed 8–6–18; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG386

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Ecosystem Workgroup (EWG) will hold a meeting via webinar, which is open to the public.

DATES: The webinar meeting will be held on Tuesday, August 21, 2018, from 1:30 p.m. to 3:30 p.m. (Pacific Daylight Time) or until business for the day has been completed.

ADDRESSES: The meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join by visiting this link *http://www.gotomeeting.com/online/webinar/join-webinar,* (2) enter the Webinar ID: 241–675–131, and (3) enter your name and email address (required). After logging in to the webinar, please (1) dial this TOLL number +1 (415) 655–0052 (not a toll-free number), (2) enter the attendee phone audio access code 563–806–284, and (3) then enter your audio phone pin (shown after joining the webinar). NOTE: We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and system requirements: PC-based attendees are required to use Windows® 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps*).

You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 411 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The EWG is holding this webinar to help other Council advisory bodies and the public prepare comments on two topics the Council will take up at its September 7–12, 2018 meeting. First, the Council will be deciding on future activities as part of the Climate and Communities Initiative pursuant to its Fishery Ecosystem Plan (FEP). Second, the Council will be scoping the first 5-year review of the FEP. The Council may consider initiating revisions to FEP and forming any new ad hoc committees necessary to revise the Plan. To help advisory bodies and the public make comments on these topics the EWG prepared two sets of discussion questions, available on the Council's website (*https://www.pcouncil.org/*):

- Webinar Discussion Questions
- Webinar Agenda

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820–2411, at least 10 business days prior to the meeting date.

Dated: August 1, 2018.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–16809 Filed 8–6–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of the Final Environmental Impact Statement for the Northern Integrated Supply Project, Larimer and Weld Counties, Colorado

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice; extension of public comment deadline.

SUMMARY: The comment period for the Availability of the Final Environmental Impact Statement for the Northern Integrated Supply Project, Larimer and Weld Counties, Colorado published in the **Federal Register** on Friday, July 20, 2018, and required comments be postmarked on or before September 4, 2018. The Corps is extending the deadline for submitting public comments to October 4, 2018.

FOR FURTHER INFORMATION CONTACT: John Urbanic, NISP EIS Project Manager, telephone 303–979–4120, fax at 303–979–0602, or email at *nisp.eis@usace.army.mil.*

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–16861 Filed 8–6–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Withdrawal of the Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the City of Abilene, TX, Cedar Ridge Reservoir Water Supply Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Fort Worth District, Regulatory Division is notifying interested parties that it has withdrawn the Notice of Intent (NOI) to develop an EIS for the proposed Cedar Ridge Reservoir. The original NOI to Prepare an EIS was published in the **Federal Register** on Friday, April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Questions regarding the withdrawal of this NOI should be addressed to Mr. Frederick Land, Regulatory Division (CESWF–DE–R), Fort Worth District, U.S. Army Corps of Engineers, P.O. Box 17300, Fort Worth, TX 76102–0300; (817) 886–1729; *CedarRidge@usace.army.mil.*

SUPPLEMENTARY INFORMATION: On March 20, 2018, the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) issued an OMB/CEQ Memorandum for Heads of Federal Departments and Agencies titled ''One Federal Decision Framework for the Environmental Review and Authorization Process for Major Infrastructure Projects under Executive Order [E.O.] 13807.'' Additionally, twelve federal agencies, including Department of the Army, signed a Memorandum of Understanding (MOU) as an appendix to the OMB/CEQ Memorandum. The MOU is titled ''Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807'' and was effective on April 10, 2018. E.O. 13807 sets a goal for agencies of reducing the time for completing environmental reviews and authorization decisions to an agency average of not more than two years from publication of a NOI to prepare an EIS. The MOU set forth activities to be accomplished before the issuance of an NOI, including project prescoping, the development of a permitting timetable, and the development of project Purpose and Need. Because the Cedar Ridge Reservoir planning had not reached these milestones prior to publication of the NOI, the NOI is being withdrawn until such time that these milestones are complete.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–16862 Filed 8–6–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DoN) announces the availability of the inventions listed below, assigned to the United States Government, as represented by the Secretary of the Navy, for domestic and foreign licensing by the Department of the Navy.

ADDRESSES: Requests for copies of the patents cited should be directed to Naval Surface Warfare Center, Crane Div., Code OOL, Bldg. 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div., Code OOL, Bldg. 2, 300 Highway 361, Crane, IN 47522–5001, email *Christopher.Monsey@navy.mil,* 812–854–2777.

SUPPLEMENTARY INFORMATION: The following patents are available for licensing: Patent No. 10,012,457 (Navy Case No. 200367): TAKE-DOWN COMPACT PRECISION RIFLE//Patent No. 10,036,800 (Navy Case No. 103387): SYSTEMS AND METHODS FOR USING COHERENT NOISE FILTERING//and Patent No. 10,037,498 (Navy Case No. 100130): PROJECT MANAGEMENT SYSTEM AND METHOD.

Authority: 35 U.S.C. 207, 37 CFR part 404

Dated: August 2, 2018.

Emilee Kujat Baldini,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2018–16875 Filed 8–6–18; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2804–035]

Goose River Hydro, Inc.; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2804–035.

c. *Date filed:* February 2, 2018.

d. *Applicant:* Goose River Hydro, Inc.

e. *Name of Project:* Goose River Hydroelectric Project.

f. *Location:* On the Goose River, in Waldo County, Maine. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Nicholas Cabral, Goose River Hydro, Inc., 41 Sedgewood Drive, Kennebunk, ME 04043; (207) 604–4394; email—*gooseriverhydro@gmail.com.*

i. *FERC Contact:* Julia Kolberg at (202) 502–8261; or email at *julia.kolberg@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2804–035.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The project consists of the following existing facilities:

Swan Lake Dam

(1) A 14-foot-high, 250-foot-long rock masonry gravity dam impounding Swan Lake with a surface area of approximately 1,364 acres at an elevation of 201 feet above sea level; (2) a concrete inlet structure; (3) three 3.5-foot-high, 4-foot-wide manually operated butterfly gates that regulate flow through the inlet structure; (4) two culverts the convey flow under Route 141; and (5) appurtenant facilities.

Mason's Dam

(1) A 15-foot-high, 86-foot-long rock masonry dam impounding a reservoir with a storage capacity of approximately 1,621 acre-feet at an elevation of 188 feet above sea level; (2) a concrete inlet structure; (3) a manually operated butterfly gate regulating flow from the inlet structure to the penstock; (4) a 3-foot-diameter, 350-foot-long steel penstock; (5) a 266-square-foot concrete powerhouse containing two Kaplan turbines and generating units with a licensed capacity of 75 kW; (6) a 300-foot-long, 12-kilovolt (kV) transmission line and (7) appurtenant facilities.

Kelley Dam

(1) A 15-foot-high, 135-foot-long masonry gravity dam impounding a reservoir with a storage capacity of approximately 200 acre-feet at an elevation of approximately 159 feet above sea level; and (2) three 3-foot-high, 4-foot-wide manually operated butterfly gates.

Mill Dam

(1) A 6-foot-tall, 70-foot-wide masonry dam impounding a reservoir with a storage capacity of approximately 7 acre-feet at an elevation of approximately 128 feet above sea level; (2) a concrete inlet structure; (3) a trash sluice with wooden stop logs; (4) a powerhouse containing a Francis-type turbine and generator unit with a licensed capacity of 94 kW; and (5) an approximately 100-foot-long, 12-kV transmission line. The penstock used to deliver water to the powerhouse has been removed due to deterioration and subsequent leakage; thus, the powerhouse is not operating.

CMP Dam

(1) A 21-foot-high, 231-foot-long buttress dam impounding a reservoir with a storage capacity of approximately 72 acre-feet at an elevation of approximately 109 feet above sea level; (2) a manually operated low-level water release lift gate; (3) a manually operated lift gate regulating flow to the penstock; (4) a 5-foot-diameter, 1,200-foot-long steel penstock; (5) a 300-square-foot concrete and timber powerhouse with a Kaplan-type turbine and generator unit with a licensed capacity of 200 kW; and (6) an approximately 500-foot-long, 12-kV transmission line. The penstock used to deliver water to the powerhouse is currently out of service due to damage, deterioration, and subsequent leakage; thus, the powerhouse is not operating.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title PROTEST or MOTION TO INTERVENE; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: July 30, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–16828 Filed 8–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–125–000.
Applicants: RE Rosamond One LLC, RE Rosamond Two LLC, CS HoldCo 1 LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of RE Rosamond One LLC, et. al.
Filed Date: 7/26/18.
Accession Number: 20180726–5215.
Comments Due: 5 p.m. ET 8/16/18.

Docket Numbers: EC18–126–000.
Applicants: Minco Wind III, LLC, Minco IV & V Interconnection, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Minco Wind III, LLC, et. al.
Filed Date: 7/26/18.
Accession Number: 20180726–5220.
Comments Due: 5 p.m. ET 8/16/18.

Docket Numbers: EC18–127–000.
Applicants: RE McKenzie 1 LLC, RE McKenzie 2 LLC, RE McKenzie 3 LLC, RE McKenzie 4 LLC, RE McKenzie 5 LLC, RE McKenzie 6 LLC, CS HoldCo 1 LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of McKenzie 1 LLC, et. al.
Filed Date: 7/26/18.
Accession Number: 20180726–5223.
Comments Due: 5 p.m. ET 8/16/18.

Docket Numbers: EC18–128–000.
Applicants: Llano Estacado Wind, LLC, Mitsubishi Heavy Industries America, Inc.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Llano Estacado Wind, LLC, et. al.
Filed Date: 7/26/18.
Accession Number: 20180726–5227.
Comments Due: 5 p.m. ET 8/16/18.

Docket Numbers: EC18–129–000.
Applicants: Noble Great Plains Windpark, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Noble Great Plains Windpark, LLC.
Filed Date: 7/26/18.
Accession Number: 20180726–5229.
Comments Due: 5 p.m. ET 8/16/18.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG18–112–000.
Applicants: Enel Green Power North America, Inc.
Description: Self-Certification of EG or FC of Enel Green Power Hilltopper Wind LLC, a subsidiary of Enel Green Power North America, Inc.
Filed Date: 7/27/18.
Accession Number: 20180727–5130.
Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: EG18–113–000.
Applicants: Enel Green Power North America, Inc.
Description: Self-Certification of EG Enel Green Power Rattlesnake Creek Wind Project, LLC a subsidiary of Enel Green Power North America, Inc.
Filed Date: 7/27/18.
Accession Number: 20180727–5131.
Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: EG18–114–000.
Applicants: Enel Green Power North America, Inc.
Description: Self-Certification of EG of Enel Green Power Diamond Vista Wind Project, LLC, a subsidiary of Enel Green Power North America, Inc.
Filed Date: 7/27/18.
Accession Number: 20180727–5132.
Comments Due: 5 p.m. ET 8/17/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1636–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2018–07–27_Deficiency response to Align PRA and Attachment Y Process to be effective 7/16/2018.
Filed Date: 7/27/18.
Accession Number: 20180727–5141.
Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2070–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–07–26_Address Change Clean- Up Filing to be effective 7/27/2018.
Filed Date: 7/26/18.
Accession Number: 20180726–5188.
Comments Due: 5 p.m. ET 8/16/18.

Docket Numbers: ER18–2071–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: Tariff Cancellation: Niagara Mohawk cancellation re: interconnection agreement Village of Ilion to be effective 9/26/2018.
Filed Date: 7/27/18.
Accession Number: 20180727–5002.
Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2072–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1875R3 Kansas Electric Power Cooperative, Inc. NITSA and NOA to be effective 7/31/2018.
Filed Date: 7/27/18.
Accession Number: 20180727–5027.
Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2073–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–07–27_SA 3134 Entergy Texas-Liberty County Solar Project GIA (J483) to be effective 7/13/2018.
Filed Date: 7/27/18.
Accession Number: 20180727–5036.
Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2074–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Pedernales Electric Cooperative TSA Amend & Restated to be effective 6/1/2018.
Filed Date: 7/27/18.
Accession Number: 20180727–5038.
Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2075–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2018–07–27_SA 3135 Entergy

Louisiana, LLC-Entergy Louisiana, LLC GIA (J484) to be effective 7/13/2018.

Filed Date: 7/27/18.

Accession Number: 20180727–5042.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2076–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–07–27_SA 3136 Entergy Texas, Inc.-Entergy Texas, Inc GIA (J472) to be effective 7/13/2018.

Filed Date: 7/27/18.

Accession Number: 20180727–5043.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2077–000.

Applicants: Rock River I, LLC.

Description: § 205(d) Rate Filing: Notice of Change in Status and Change in Category Seller Status to be effective 7/28/2018.

Filed Date: 7/27/18.

Accession Number: 20180727–5044.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2078–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: ISO–NE and NEPOOL; Revisions to the Rationing Limit to be effective 9/25/2018.

Filed Date: 7/27/18.

Accession Number: 20180727–5101.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2079–000.

Applicants: Entergy Arkansas, Inc.

Description: Tariff Cancellation: EAI–ESI Reimbursement Agreement to be effective 8/1/2018.

Filed Date: 7/27/18.

Accession Number: 20180727–5111.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2080–000.

Applicants: Entergy Louisiana, LLC.

Description: Tariff Cancellation: ELL–ESI Reimbursement Agreement to be effective 8/1/2018.

Filed Date: 7/27/18.

Accession Number: 20180727–5114.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2081–000.

Applicants: Entergy Mississippi, Inc.

Description: Tariff Cancellation: EMI–ESI Reimbursement Agreement to be effective 8/1/2018.

Filed Date: 7/27/18.

Accession Number: 20180727–5121.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2082–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC–NC BioGas, LLC ASOA (SA–496) to be effective 9/26/2018.

Filed Date: 7/27/18.

Accession Number: 20180727–5122.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2083–000.

Applicants: Entergy New Orleans, Inc.

Description: Tariff Cancellation: ENO–ESI Reimbursement Agreement to be effective 8/1/2018.

Filed Date: 7/27/18.

Accession Number: 20180727–5123.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2084–000.

Applicants: Entergy Texas, Inc.

Description: Tariff Cancellation: ETI–ESI Reimbursement Agreement to be effective 8/1/2018.

Filed Date: 7/27/18.

Accession Number: 20180727–5125.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2085–000.

Applicants: Cambria CoGen Company.

Description: Baseline eTariff Filing: Cambria CoGen Reactive Supply Service Tariff Filing to be effective 9/1/2018.

Filed Date: 7/27/18.

Accession Number: 20180727–5154.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2086–000.

Applicants: 64KT 8me LLC.

Description: § 205(d) Rate Filing: Certificate of Concurrence to Co-Tenancy and Shared Facilities Agreement to be effective 7/28/2018.

Filed Date: 7/27/18.

Accession Number: 20180727–5155.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2087–000.

Applicants: ITC Midwest LLC.

Description: § 205(d) Rate Filing: Filing of CIAC Agreement to be effective 7/30/2018.

Filed Date: 7/27/18.

Accession Number: 20180727–5156.

Comments Due: 5 p.m. ET 8/17/18.

Docket Numbers: ER18–2088–000.

Applicants: 64KT 8me LLC.

Description: § 205(d) Rate Filing: Certificate of Concurrence to LGIA Co-Tenancy Agreement to be effective 7/28/2018.

Filed Date: 7/27/18.

Accession Number: 20180727–5157.

Comments Due: 5 p.m. ET 8/17/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–16817 Filed 8–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–47–003]

NextEra Desert Center Blythe, LLC v. California Independent System Operator Corporation: Notice of Filing

Take notice that on July 31, 2018, NextEra Desert Center Blythe, LLC on behalf of itself, Southern California Edison Company, and California Independent System Operator Corporation submitted an offer of settlement intended to resolve all issues in the above-captioned proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 21, 2018.

Dated: July 31, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–16822 Filed 8–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–530–000]

Notice of Request Under Blanket Authorization; Florida Gas Transmission, LLC

Take notice that on July 19, 2018, Florida Gas Transmission, LLC (FGT), 1300 Main St., Houston, Texas 77002, filed in Docket No. CP18–530–000 a prior notice request pursuant to sections 157.205, 157.208, 157.210 and 157.211 of the Commission's regulations under the Natural Gas Act (NGA), requesting authorization to construct/modify, own, maintain and operate, certain natural gas mainline facilities and appurtenances in Santa Rosa County, Florida, and modify an existing delivery point, in Escambia County, Alabama for its South Alabama Project. FGT's South Alabama Project would provide up to 60,000 million British thermal units per day of firm transportation service to two shippers, all as more fully set forth in the application which is on file with the Commission and open to public inspection. FGT estimates the cost of the proposed project to be approximately $7,000,000. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main St., Houston, Texas 77002, or call (713) 989–2605, or fax (713) 989–1205, or via eMail to *Blair.Lichtenwalter@energytransfer.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: July 27, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–16827 Filed 8–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2066–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Minco Wind IV, LLC

This is a supplemental notice in the above-referenced proceeding of Minco Wind IV, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 16, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–16819 Filed 8–6–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2067–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Minco Wind V, LLC

This is a supplemental notice in the above-referenced proceeding of Minco Wind V, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 16, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–16818 Filed 8–6–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2018–0210; FRL–9981–54]

Problem Formulations for the Risk Evaluations To Be Conducted for the First Ten Chemical Substances Under the Toxic Substances Control Act, and Application of Systematic Review in TSCA Risk Evaluations; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of June 11, 2018, opening a comment period on problem formulations for the risk evaluations to be conducted for the first ten chemical substances listed in Table 1, along with a document entitled *Application of Systematic Review in TSCA Risk Evaluations.* This document extends the close of the comment period on the problem formulations for an additional 21 days, from July 26, 2018 to August 16, 2018. This comment period is being extended in response to requests received by the Agency. The Agency is also taking comments on the document entitled *Application of Systematic Review in TSCA Risk Evaluations* in conjunction with this comment period and not through a separate comment period. The systematic review document includes a structured process of identifying, evaluating and integrating evidence for both the hazard and exposure assessments developed during the TSCA risk evaluation process. This document may be revised periodically. EPA welcomes public input on the document.

DATES: Comments, identified by docket identification (ID) numbers identified in Table 1, must be received on or before August 16, 2018.

ADDRESSES: Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of June 11, 2018 (83 FR 26998) (FRL–9978–40).

FOR FURTHER INFORMATION CONTACT:

For technical information on the Problem Formulation documents contact: Christina Motilall, Risk Assessment Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1287; email address: *motilall.christina@epa.gov.*

For technical information on Application of Systematic Review in TSCA Risk Evaluations contact: Iris Camacho, Risk Assessment Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1229; email address: *TSCA-systematicreview@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave. Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period for certain chemicals established in the **Federal Register** document of June 11, 2018 (83 FR 26998) (FRL-9978–40). In that document, a public comment period opened on EPA's problem formulation documents for the first 10 chemical substances undergoing risk evaluation under the Toxic Substances Control Act (TSCA) in Table 1 and the document entitled *Application of Systematic Review in TSCA Risk Evaluations.* EPA is hereby further extending the comment period for the problem formulation, and the document entitled *Application of Systematic Review in TSCA Risk Evaluations,* which was set to end on July 26, 2018, to August 16, 2018.

Although the comment periods will end on August 16, 2018, EPA will try to consider any additional comments received after this date. However, given the need to peer review the draft risk evaluations, the peer reviewers may not receive public comments submitted late. There will be an additional comment period following the publication of each of the draft risk evaluations.

TABLE 1—CHEMICALS WITH EXTENDED COMMENT PERIODS

Chemical name	Docket ID No.	Agency contact
Asbestos	EPA–HQ–OPPT–2016–0736	Robert Courtnage, *courtnage.robert@epa.gov,* 202–566–1081.
1-Bromopropane	EPA–HQ–OPPT–2016–0741	Ana Corado, *corado.ana@epa.gov,* 202–564–0140.
1,4-Dioxane	EPA–HQ–OPPT–2016–0723	Cindy Wheeler, *wheeler.cindy@epa.gov,* 202–566–0484.
Carbon Tetrachloride	EPA–HQ–OPPT–2016–0733	Stephanie Jarmul, *jarmul.stephanie@epa.gov,* 202–564–6130.
Cyclic Aliphatic Bromide Cluster (HBCD)	EPA–HQ–OPPT–2016–0735	Sue Slotnick, *slotnick.sue@epa.gov,* 202–566–1973.
Methylene Chloride	EPA–HQ–OPPT–2016–0742	Ana Corado, *corado.ana@epa.gov,* 202–564–0140.
N-Methylpyrrolidone (NMP)	EPA–HQ–OPPT–2016–0743	Ana Corado, *corado.ana@epa.gov,* 202–564–0140.
Pigment Violet 29 (Anthra[2,1,9-def:6,5,10-d′e′f′] diisoquinoline-1,3,8,10(2H,9H)-tetrone).	EPA–HQ–OPPT–2016–0725	Hannah Braun, *braun.hannah@epa.gov,* 202–564–5614.
Tetrachloroethylene (also known as perchloroethylene).	EPA–HQ–OPPT–2016–0732	Tyler Lloyd, *lloyd.tyler@epa.gov,* 202–564–4016.
Trichloroethylene (TCE)	EPA–HQ–OPPT–2016–0737	Toni Krasnic, *krasnic.toni@epa.gov,* 202–564–0984.

To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of June 11, 2018. If you have questions on individual chemicals, consult the person listed in Table 1.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 25, 2018.

Jeffery T. Morris,

Director, Office of Pollution Prevention and Toxics, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2018–16879 Filed 8–6–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Item From Sunshine Act Meeting

August 1, 2018.

The following item has been deleted from the list of items scheduled for consideration at the Thursday, August 2, 2018, Open Meeting and previously listed in the Commission's Notice of July 26, 2018.

7	OFFICE OF MANAGING DIRECTOR	*Title:* Office of Managing Director Personnel Action #75. *Summary:* The Commission will consider a personnel action.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2018–16896 Filed 8–3–18; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request (OMB No. 3064–0151)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection, as required by the Paperwork Reduction Act of 1995 (OMB No. 3064–0151).

DATES: Comments must be submitted on or before October 9, 2018.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency website: https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Jennifer Jones (202–898–6768), Counsel, MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, Counsel, 202–898–6768, *jennjones@fdic.gov,* MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. *Title:* Notice Regarding Assessment Credits.

OMB Number: 3064–0151.

Form Number: None.

Affected Public: FDIC-Insured Institutions.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response	Frequency of response	Total annual estimated burden (hours)
Notice Regarding Assessment Credits.	Reporting	Required to Obtain or Retain Benefits.	2	1	2	On occasion	4
Total Hourly Burden							4

General Description of Collection

Section 7(e)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1817(e)(3)) (FDI Act), as amended by the Federal Deposit Insurance Reform Act of 2005, requires that the FDIC provide by regulation an initial, one-time assessment credit to each ''eligible'' insured depository institution (or its successor) based on the assessment base of the institution as of December 31, 1996, as compared to the combined aggregate assessment base of all eligible institutions as of that date, taking into account such other factors as the FDIC Board of Directors determines to be appropriate. The one-time credits must, with certain exceptions, be applied by the FDIC to the maximum extent allowed by law to the assessments imposed on such institution that become due for assessment periods beginning after the effective date of the one-time credit regulations until such time as the credit is exhausted. For assessments that become due for assessment periods beginning in fiscal years 2008, 2009, and 2010, the FDI Act provides that credits may not be applied to more than 90 percent of an institution's assessment.

FDIC-insured institutions must notify the FDIC if their one-time assessment credit is transferred, *e.g.,* through a sale of the credits or through a merger, so that the FDIC can accurately track such transfers, apply available credits appropriately against institutions' deposit insurance assessments, and determine an institution's 1996 assessment base if the transaction involved both the base and the credit amount. The need for credit transfer information will expire when the credit pool has been exhausted.

There is no change in the method or substance of the collection and the burden remains unchanged from the previous Paperwork Reduction Act submission.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, on August 2, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–16846 Filed 8–6–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receivership

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver) as Receiver for the institution listed below intends to terminate its receivership for said institution.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIP

Fund	Receivership name	City	State	Date of appointment of receiver
10407	Decatur First Bank	Decatur	GA	10/21/2011

The liquidation of the assets for the receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing, identify the receivership to which the comment pertains, and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated at Washington, DC, on August 2, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–16833 Filed 8–6–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was

charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10035	Alliance Bank	Culver City	CA	8/1/2018
10225	BC National Banks	Butler	MO	8/1/2018
10285	Sonoma Valley Bank	Sonoma	CA	8/1/2018
10460	Excel Bank	Sedalia	MO	8/1/2018
10482	1st Commerce Bank	North Las Vegas	NV	8/1/2018

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

Dated at Washington, DC, on August 2, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–16832 Filed 8–6–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 2018.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *First Mid-Illinois Bancshares, Inc., Mattoon, Illinois*; to acquire 100 percent of SCB Bancorp, Inc., and thereby indirectly acquire Soy Capital Bank and Trust Company, both of Decatur, Illinois.

B. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Park Financial Group, Inc., Minneapolis, Minnesota*; to acquire 48.46 percent of Mesaba Bancshares, Inc., Grand Rapids, Minnesota; and thereby indirectly acquire The Lake Bank, Two Harbors, Minnesota, and American Bank of the North, Nashwauk, Minnesota. In addition, Park Financial Group, Inc., has acquired an option to purchase the remaining 51.54 percent of the voting shares of Mesaba Bancshares, Inc., Grand Rapids, Minnesota.

Board of Governors of the Federal Reserve System, August 2, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–16872 Filed 8–6–18; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–17BAN]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request entitled *Strengthening United States Response to Resistant Gonorrhea (SURRG)* to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on November 15, 2017 to obtain comments from the public and affected agencies. CDC received one non-substantive comment on this 60 day public notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Strengthening U.S. Response to Resistant Gonorrhea (SURRG)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purposes of Strengthening U.S. Response to Resistant Gonorrhea (SURRG) are to: (1) Improve national capacity to detect, monitor, and respond to emerging antibiotic-resistant gonorrhea, (2) understand trends in, and factors contributing to antibiotic-resistant gonorrhea, and (3) build a robust evidence base for public health action. This information collection is important because: (1) Effective treatment of gonorrhea is critical to gonorrhea control and prevention; (2) untreated or inadequately treated gonorrhea can cause serious reproductive health complications, such as infertility; (3) *Neisseria gonorrhoeae* (the bacterium that causes gonorrhea) has consistently demonstrated the ability to develop resistance to the antibiotics used for treatment and may be developing resistance to the last remaining treatment option recommended by the CDC; and (4) antibiotic-resistant gonorrhea is extremely difficult to detect without enhanced surveillance and public health activities, such as SURRG, because healthcare providers rarely perform or have access to resistance testing for individual patients.

SURRG will support rapid detection of resistant gonorrhea and get actionable information into the hands of healthcare providers (to support appropriate treatment of individual patients) and local health departments (to support rapid public health response to slow the spread of resistant infections).

Jurisdictions participating in SURRG applied, as part of a competitive process, and will participate voluntarily. As an overview of SURRG, healthcare providers at participating clinics (sexually transmitted disease [STD] clinics affiliated with a single public health department or other participating non-STD clinic sites) will collect specimens for *N. gonorrhoeae* culture testing from men and women seeking care for possible gonorrhea. Specimens that demonstrate *N. gonorrhoeae* (called ''isolates'') will undergo antibiotic resistance testing within several days at the local public health laboratory. Laboratory results demonstrating resistance will be rapidly communicated by the laboratory to the healthcare provider and designated health department staff member, who will initiate a field investigation. Researchers will interview the patient (from whom the resistant specimen was collected) about risk factors and recent contacts, and will re-test to ensure cure. The health department will interview recent contacts and test them for gonorrhea. The participating health departments will collect and transmit to CDC, demographic and clinical data about persons tested for and diagnosed with gonorrhea in the participating clinics, results of local antibiotic resistance testing, and information about field investigations. None of the data transmitted to CDC will contain any personally identifiable information. CDC will use the data to monitor resistance, understand risk factors for resistance, and identify new approaches to prevent the spread of resistance. CDC will receive transmitted data through its Secure Access Management Services (SAMS). SAMS is an approved federal information technology system that provides authorized and validated users secure and encrypted access to CDC file transfer applications. The encrypted data will be stored in a secure CDC server with strictly controlled and restricted access rights. Isolates will be shipped each month to one of four Antibiotic Resistance Regional Laboratory Network (ARLN) laboratories for confirmatory antibiotic susceptibility testing and molecular characterization.

Under the SURRG protocol, the local SURRG data managers from each of the funded jurisdictions will abstract STD clinic data for patients tested for gonorrhea, receive data from non-STD clinic healthcare sites about persons tested for gonorrhea, receive resistance testing laboratory results from local public health laboratories, abstract data about field investigations, and will merge the data. Every two months, the local SURRG data manager will clean the data, remove personally identifiable information, and transmit the data to CDC. We estimate these data processes will take 16 hours every two months. Annually, the local SURRG data manager will send a final cumulative data file. Seven data transmissions/responses will occur.

Every two months, data managers at each of the participating non-STD clinic health centers will abstract and clean data and securely transmit the data to the local SURRG data manager. We estimate that it will take 3 hours each time data managers at each non-STD SURRG location abstract, clean, and transmit SURRG data.

Microbiologists at public health laboratories from each of the nine SURRG funded jurisdictions will conduct antibiotic resistance testing on all *N. gonorrhoeae* isolates from all STD clinic sites and non-STD clinic sites participating in SURRG. Each test takes approximately 10 minutes of staff time, and testing of control strains will also be conducted approximately twice per week at each laboratory. On average, each jurisdiction will conduct approximately 600 resistance tests per year for patient care, plus 100 control strains per year for quality assurance. Thus, each grantee will perform approximately 700 tests per year. Every two months, a laboratory data manager will abstract test results and securely send the data file to the local SURRG data manager. We estimate that laboratory data managers will spend approximately 1 hour each time they abstract, clean, and transmit project data.

Health department staff will interview any person diagnosed with antibiotic-resistant gonorrhea or having a case of gonorrhea of public health significance index case, a diagnosed person's social and sexual contacts, and the sexual contacts of the index case's sexual contacts.

On average, each jurisdiction will identify four drug-resistant isolates each month. These isolates will spur field investigations, which will result in six additional interviews each month. We estimate 120 interviews will occur annually at each site (annual 1,080 interviews for the nine sites). Each interview will take 30 minutes.

The total estimated annual burden hours are 2,976. Respondents receive federal funds to participate in this project. There are no additional costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Local SURRG data manager	Facility, Laboratory and field Elements	9	7	16
Data manager at non-STD clinic health centers.	Non-STD clinic Elements	18	6	3
Public Health Laboratory Microbiologist	Laboratory Testing	9	700	10/60
Public Health Laboratory Data Manager	Laboratory Elements	9	6	1
Gonorrhea Patients, Social and Sexual Contacts.	Field Investigation Elements	1,080	1	30/60

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–16797 Filed 8–6–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Matching Program

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) is providing notice of a re-established matching program between CMS and the Social Security Administration (SSA), ''Determining Enrollment or Eligibility for Insurance Affordability Programs Under the Patient Protection and Affordable Care Act (ACA).'' The matching program provides CMS with SSA data to use in determining individuals' eligibility to enroll in a qualified health plan through an exchange established under the ACA and for insurance affordability programs and certificates of exemption, and to make eligibility redeterminations and renewals, including appeal determinations.

DATES: The deadline for comments on this notice is September 6, 2018. The re-established matching program will commence not sooner than 30 days after publication of this notice, provided no comments are received that warrant a change to this notice. The matching program will be conducted for an initial term of 18 months (from approximately September 2018 to March 2020) and within 3 months of expiration may be renewed for one additional year if the parties make no change to the matching program and certify that the program has been conducted in compliance with the matching agreement.

ADDRESSES: Interested parties may submit written comments on this notice, by mail or email, to the CMS Privacy Officer, Division of Security, Privacy Policy & Governance, Information Security & Privacy Group, Office of Information Technology, Centers for Medicare & Medicaid Services, Location: N1–14–56, 7500 Security Blvd., Baltimore, MD 21244–1850, *Walter.Stone@cms.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions about the matching program, you may contact Jack Lavelle, Senior Advisor, Marketplace Eligibility and Enrollment Group, Centers for Consumer Information and Insurance Oversight, CMS, at (410) 786–0639, or by email at *Jack.Lavelle1@cms.hhs.gov,* or by mail at 7501 Wisconsin Ave., Bethesda, MD 20814.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a) provides certain protections for individuals applying for and receiving Federal benefits. The law governs the use of computer matching by Federal agencies when records in a system of records (meaning, federal agency records about individuals retrieved by name or other personal identifier) are matched with records of other federal or non-federal agencies. The Privacy Act requires agencies involved in a matching program to:

1. Enter into a written agreement, which must be prepared in accordance with the Privacy Act, approved by the Data Integrity Board of each source and recipient Federal agency, provided to Congress and the Office of Management and Budget (OMB), and made available to the public, as required by 5 United States Code (U.S.C.) 552a(o), (u)(3)(A), and (u)(4).

2. Notify the individuals whose information will be used in the matching program that the information they provide is subject to verification through matching, as required by 5 U.S.C. 552a(o)(1)(D).

3. Verify match findings before suspending, terminating, reducing, or making a final denial of an individual's benefits or payments or taking other adverse action against the individual, as required by 5 U.S.C. 552a(p).

4. Report the matching program to Congress and the OMB, in advance and annually, as required by 5 U.S.C. 552a(o)(2)(A)(i), (r), and (u)(3)(D).

5. Publish advance notice of the matching program in the **Federal Register** as required by 5 U.S.C. 552a(e)(12).

This matching program meets these requirements.

Dated: August 1, 2018.

Walter Stone,

CMS Privacy Act Officer, Division of Security Privacy Policy and Governance, Information Security and Privacy Group, Office of Information Technology, Centers for Medicare & Medicaid Services.

PARTICIPATING AGENCIES

Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) is the recipient agency, and the Social Security Administration (SSA) is the source agency.

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

The matching program is authorized under 42 U.S.C. 18001.

PURPOSE(S):

The purpose of the matching program is to provide CMS with SSA data that CMS needs to determine individuals' eligibility to enroll in a qualified health plan through an exchange established under the ACA and for insurance affordability programs and certificates of exemption, and to make eligibility redetermination and renewal decisions, including appeal determinations. The

program enables CMS to compare its data to SSA data to confirm an applicant's or other relevant individual's identity, citizenship, status as deceased or imprisoned, and Title II disability benefit quarters of coverage (QC) and monthly and annual income. The data is used by CMS to authenticate identity, determine eligibility, and determine the amount of an advance payment of the premium tax credit (APTC) or cost sharing reduction (CSR).

CATEGORIES OF INDIVIDUALS:

The categories of individuals whose information is involved in the matching program are consumers who apply for any of the following eligibility determinations, and other relevant individuals (*e.g.,* an applicant's household members) who have eligibility to enroll in a qualified health plan through an exchange established under the ACA, eligibility for insurance affordability programs and certificates of exemption, and subsequent eligibility redeterminations and renewals, including appeal determinations.

CATEGORIES OF RECORDS:

The categories of records used in the matching program are identity, citizenship, birth, death, disability coverage and income, and imprisonment status records. The data elements are as follows:

1. For each applicant and for relevant individuals, CMS will submit a request file to SSA that contains the following mandatory specified data elements in a fixed record format: Last name, first name, date of birth, social security number (SSN), and citizenship indicator.

2. For each applicant, SSA will provide CMS with a response file in a fixed record format. Depending on CMS' request, SSA's response may include the following data elements: Last name, first name, date of birth, death indicator, disability indicator, prisoner information, Title II (annual and monthly) income information, and confirmation of attestations of citizenship status and SSN. SSA may also provide QC data when CMS requests it.

3. For relevant individuals, CMS will request a limited amount of SSA information. Based on CMS' request, SSA will verify a relevant individual's SSN with a death indicator and may provide a relevant individual's QC data or Title II (annual and monthly) income information. CMS will not request citizenship or immigration status data for a relevant individual.

4. For renewals and redeterminations, CMS will request and SSA will verify SSN with a death indicator, disclose Title II income information, and provide the disability indicator.

5. For self-reported redeterminations, CMS will provide SSA with the following: Updated or new information reported by the enrollee or enrolled individual, last name, first name, date of birth, and SSN. Depending on CMS' request, SSA's response will include each of the following data elements that are relevant and responsive to CMS' request: Last name, first name, date of birth, death indicator, disability indicator, prisoner information, Title II (annual and monthly) income information, and confirmation of new attestations of citizenship status, verification of SSN, and QC data.

6. For individuals seeking an exemption, CMS will provide last name, first name, date of birth, citizenship indicator, and SSN to SSA. SSA will provide CMS with a response including: Last name, first name, date of birth, confirmation of attestations of citizenship status, verification of SSN, death indicator, disability indicator, prisoner information, and Title II (annual and monthly) income information.

SYSTEM(S) OF RECORDS:

The records used in this matching program are disclosed from the following systems of records, as authorized by routine uses published in the System of Records Notices (SORNs) cited below:

CMS System of Records:

☐ The CMS SOR that supports this matching program is the ''CMS Health Insurance Exchanges System (HIX)'', CMS System No. 09–70–0560, last published in full at 78 FR 63211 (October 23, 2013), as amended at 83 FR 6591 (February 14, 2018).

SSA Systems of Records:

☐ Master Files of SSN Holders and SSN Applications, 60–0058, 75 FR 82121 (Dec. 29, 2010), as amended at 78 FR 40542 (July 5, 2013), and 79 FR 8780 (Feb. 13, 2014);

☐ Prisoner Update Processing System (PUPS), 60–0269, 64 FR 11076 (Mar. 8, 1999), as amended at 72 FR 69723 (Dec. 10, 2007) and 78 FR 40542 (July 5, 2013);

☐ Master Beneficiary Record, 60–0090, 71 FR 1826 (Jan. 1, 2006), as amended at 72 FR 69723 (Dec. 10, 2007) and 78 FR 40542 (July 5, 2013); and

☐ Earnings Recording and Self-Employment Income System, 60–0059, 71 FR 1819 (Jan. 11, 2006), as amended at 78 FR 40542 (July 5, 2013).

[FR Doc. 2018–16821 Filed 8–6–18; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3366–PN]

Medicare and Medicaid Programs: National Dialysis Accreditation Commission (NDAC) for Approval of its End Stage Renal Disease (ESRD) Facility Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Notice with request for comment.

SUMMARY: This proposed notice acknowledges the receipt of an application from the National Dialysis Accreditation Commission (NDAC) for recognition as a national accrediting organization (AO) for End Stage Renal Disease (ESRD) Facilities that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on September 6, 2018.

ADDRESSES: In commenting, refer to file code CMS–3366–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3366–PN, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3366–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Tara Lemons, (410) 786–3030, Monda Shaver, (410) 786–3410, or Marie Vasbinder, (410) 786–8665.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from an end-stage renal disease (ESRD) facility provided the facility meets the requirements established by the Secretary of the Department of Health and Human Services (Secretary). Section 1881(b) of the Social Security Act (the Act) establishes distinct requirements for facilities seeking designation as an ESRD facility under Medicare. Regulations concerning provider agreements and supplier approval are at 42 CFR part 489 and those pertaining to activities relating to the survey, certification, and enforcement procedures of suppliers which include ESRD facilities are at 42 CFR part 488. The regulations at 42 CFR part 494 subparts A through D implement section 1881(b) of the Act, which specify the conditions that an ESRD facility must meet in order to participate in the Medicare program and the conditions for Medicare payment for ESRD facilities.

Generally, to enter into a Medicare agreement, an ESRD facility must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 494 subparts A through D of our Medicare regulations. Thereafter, the ESRD facility is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by a Centers for Medicare & Medicaid Services (CMS) approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we may deem those provider entities as having met the requirements. Section 1865(a)(1) of the Act had historically prohibited dialysis facilities from participating in Medicare via a CMS-approved accreditation program; however, section 50403 of the Bipartisan Budget Act of 2018 amended section 1865(a) of the Act to include renal dialysis facilities as provider entities allowed to participate in Medicare through a CMS-approved accreditation program. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. An AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AOs are set forth at § 488.5.

II. Provisions of the Proposed Notice

A. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of an AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of National Dialysis Accreditation Commission's (NDAC) request for CMS-approval of its ESRD facility accreditation program. This notice also solicits public comment on whether NDAC's requirements meet or exceed the Medicare conditions for coverage (CfCs) for ESRD facilities.

This is the first application from a national accreditation body seeking approval of an accreditation program for ESRD facilities.

B. Evaluation of Deeming Authority Request

NDAC submitted all the necessary materials to enable us to make a determination concerning its request for CMS-approval of its ESRD facility accreditation program. This application was determined to be complete on June 8, 2018. Under section 1865(a)(2) of the Act and our regulations at § 488.5, our review and evaluation of NDAC will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of NDAC's standards for ESRD facilities as compared with Medicare's CfCs for ESRD facilities.
- NDAC's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of NDAC's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ NDAC's processes and procedures for monitoring an ESRD facility found out of compliance with NDAC's program requirements. These monitoring procedures are used only when NDAC identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the State survey agency monitors corrections as specified at § 488.9(c)(1).

++ NDAC's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ NDAC's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of NDAC's staff and other resources, and its financial viability.

++ NDAC's capacity to adequately fund required surveys.

++ NDAC's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ NDAC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as CMS may require (including corrective action plans).

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

Dated: July 27, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2018–16871 Filed 8–6–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–2382]

Opioid Use Disorder: Endpoints for Demonstrating Effectiveness of Drugs for Medication-Assisted Treatment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Opioid Use Disorder: Endpoints for Demonstrating Effectiveness of Drugs for Medication-Assisted Treatment.'' This guidance addresses the clinical endpoints acceptable to demonstrate effectiveness of drugs for medication-assisted treatment of opioid use disorder. FDA is also requesting comments on when the use of placebo or active controls is most appropriate in clinical trials for such drugs.

DATES: Submit either electronic or written comments on the draft guidance by October 9, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–2382 for ''Opioid Use Disorder: Endpoints for Demonstrating Effectiveness of Drugs for Medication-Assisted Treatment.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Silvana Borges, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 3200,

Silver Spring, MD 20993–0002, 301–796–0963.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Opioid Use Disorder: Endpoints for Demonstrating Effectiveness of Drugs for Medication-Assisted Treatment.'' This guidance addresses the clinical endpoints acceptable to demonstrate effectiveness of drugs for medication-assisted treatment of opioid use disorder. FDA is also requesting comments on when the use of placebo or active controls is most appropriate in clinical trials for such drugs.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on endpoints for demonstrating effectiveness of drugs for medication-assisted treatment of opioid use disorder. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: August 1, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–16813 Filed 8–6–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[OMHA–1801–N]

Medicare Program; Administrative Law Judge Hearing Program for Medicare Claim and Entitlement Appeals; Quarterly Listing of Program Issuances—April Through June 2018

AGENCY: Office of Medicare Hearings and Appeals (OMHA), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice announces the reorganization and revision of the OMHA Case Processing Manual (OCPM) and lists the OCPM manual instructions that were published from April through June 2018. This manual standardizes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives, and gives OMHA staff direction for processing appeals at the OMHA level of adjudication.

FOR FURTHER INFORMATION CONTACT: Amanda Axeen, by telephone at (571) 777–2705, or by email at *amanda.axeen@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Medicare Hearings and Appeals (OMHA), a staff division within the Office of the Secretary within the U.S. Department of Health and Human Services (HHS), administers the nationwide Administrative Law Judge hearing program for Medicare claim, organization and coverage determination, and entitlement appeals under sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D–4(h) of the Social Security Act (the Act). OMHA ensures that Medicare beneficiaries and the providers and suppliers that furnish items or services to Medicare beneficiaries, as well as Medicare Advantage Organizations (MAOs), Medicaid State Agencies, and applicable plans, have a fair and impartial forum to address disagreements with Medicare coverage and payment determinations made by Medicare contractors, MAOs, or Part D Plan Sponsors (PDPSs), and determinations related to Medicare eligibility and entitlement, Part B late enrollment penalty, and income-related monthly adjustment amounts (IRMAA) made by the Social Security Administration (SSA).

The Medicare claim, organization and coverage determination appeals processes consist of four levels of administrative review, and a fifth level of review with the Federal district courts after administrative remedies under HHS regulations have been exhausted. The first two levels of review are administered by the Centers for Medicare & Medicaid Services (CMS) and conducted by Medicare contractors for claim appeals, by MAOs and an independent review entity for Part C organization determination appeals, or by PDPSs and an independent review entity for Part D coverage determination appeals. The third level of review is administered by OMHA and conducted by Administrative Law Judges and attorney adjudicators. The fourth level of review is administered by the HHS Departmental Appeals Board (DAB) and conducted by the Medicare Appeals Council (Council). In addition, OMHA and the DAB administer the second and third levels of appeal, respectively, for Medicare eligibility, entitlement, Part B late enrollment penalty, and IRMAA reconsiderations made by SSA; a fourth level of review with the Federal district courts is available after administrative remedies within SSA and HHS have been exhausted.

Sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D–4(h) of the Act are implemented through the regulations at 42 CFR part 405 subparts I and J; part 417, subpart Q; part 422, subpart M; part 423, subparts M and U; and part 478, subpart B. As noted above, OMHA administers the nationwide Administrative Law Judge hearing program in accordance with these statutes and applicable regulations. To ensure nationwide consistency in that effort, OMHA established a manual, the OMHA Case Processing Manual (OCPM). Through the OCPM, the OMHA Chief Administrative Law Judge establishes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations and OMHA directives. The OCPM provides direction for processing appeals at the OMHA level of adjudication for Medicare Part A and B claims; Part C organization determinations; Part D coverage determinations; and SSA eligibility and entitlement, Part B late enrollment penalty, and IRMAA determinations.

Section 1871(c) of the Act requires that the Secretary publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides the specific updates to the OCPM that have

occurred in the three-month period of April through June 2018. A hyperlink to the available chapters on the OMHA website is provided below. The OMHA website contains the most current, up-to-date chapters and revisions to chapters, and will be available earlier than we publish our quarterly notice. We believe the OMHA website provides more timely access to the current OCPM chapters for those involved in the Medicare claim, organization and coverage determination and entitlement appeals processes. We also believe the website offers the public a more convenient tool for real time access to current OCPM provisions. In addition, OMHA has a listserv to which the public can subscribe to receive notification of certain updates to the OMHA website, including when new or revised OCPM chapters are posted. If accessing the OMHA website proves to be difficult, the contact person listed above can provide the information.

This notice lists the OCPM chapters and subjects published during the quarter covered by the notice so the reader may determine whether any are of particular interest. We expect this notice to be used in concert with future published notices. The OCPM can be accessed at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.*

III. How To Use the Notice

This notice lists the OCPM chapters and subjects published during the quarter covered by the notice so the reader may determine whether any are of particular interest. We expect this notice to be used in concert with future published notices. The OCPM can be accessed at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.*

IV. Reorganization and Revision of the OCPM

OMHA is in the process of restructuring, reorganizing, and reformatting the OCPM to make it more user friendly. As part of this ongoing process, we are drafting new OCPM chapters and revising existing OCPM chapters to conform to the new format. Previously, the OCPM contained separate divisions for each Medicare part, and most chapters were repeated in each division. New and revised chapters provide information pertaining to all appeals arising under all Medicare parts. Plain language is used where possible and guidance is provided in a user-friendly, question-and-answer format. The manual is also being revised to reflect regulatory changes made by the final rule that was published in the January 17, 2017 **Federal Register** and became effective on March 20, 2017 (82 FR 4974). New and revised chapters can be accessed at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.* Unless inconsistent with a statute, regulation, or other controlling authority, provisions of chapters that were published before May 10, 2018, remain in effect until revised, and can be accessed at: *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/2017/index.html.*

IV. OCPM Releases for April Through June 2018

The OCPM is used by OMHA adjudicators and staff to administer the OMHA program. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, and OMHA directives.

The following is a list and description of new OCPM provisions and the subject matter. For future quarterly notices, we will list only the specific updates to the list of manual provisions that have occurred in the covered 3-month period. This information is available on our website at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.*

OCPM Chapter 1: Manual Overview, Definition, and Governance

Chapter 1, Manual Overview, Definition, Governance. This chapter describes the OCPM's purpose and organization. It also describes how to navigate the OCPM, and when and how to cite an OCPM provision as an authority in an action issued by an OMHA adjudicator.

OMHA receives a variety of appeals, as discussed in section I above. This chapter describes when a specific OCPM provision may be read to apply to all or certain types of appeals, and describes OCPM conventions for citing to statutory, regulatory, and other applicable authorities. In addition, this chapter describes the process for updating an OCPM chapter, as well as how to determine when a revision was issued or became effective, and how to access prior versions of a chapter.

OCPM Chapter 19: Closing the Case

Chapter 19, Closing the Case. Timely notice of the disposition and closing of a case, in compliance with applicable laws and policy, is important to ensure that effectuation of a decision, or other necessary actions, can be undertaken by the parties to the appeal, CMS, CMS contractors, plans, SSA, or the Council. Receipt of the disposition package also governs the timing for parties to file an appeal, and for the Council to initiate a review of a case on its own motion. In addition, the timely transfer of the administrative record helps ensure effectuation can occur, SSA, CMS, or CMS contractors can refer cases for review by the Council, and the record can be transitioned to storage. This revised chapter describes the necessary steps to timely and accurately close appeals pending at OMHA.

OCPM Chapter 20: Post-Adjudication Actions

Chapter 20, Post-Adjudication Actions. This new chapter describes the various potential actions that may occur after an OMHA adjudicator issues a decision, dismissal, or remand, and the procedures for responding to such actions. These actions include requests to correct a clerical error, reopen a decision, vacate a dismissal, or review a remand issued by an OMHA adjudicator. OMHA adjudicators take action to grant or deny such a request, and in some instances may initiate an action on their own motion.

In addition, parties may seek Council review of decisions and dismissals. CMS and its contractors, or SSA, may also refer decisions and dismissals to the Council for possible own motion review. The chapter also describes actions the Council may take on an appealed or referred case, including remanding the case to OMHA.

Dated: July 23, 2018.

Amanda M. Axeen,

Acting Chief Advisor, Office of Medicare Hearings and Appeals.

[FR Doc. 2018–16860 Filed 8–6–18; 8:45 am]

BILLING CODE 4150–46–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Declaration Under the Public Readiness and Emergency Preparedness Act for Zika Virus Vaccines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Secretary is amending a Declaration pursuant to the Public Health Service Act to provide liability immunity protection for activities related to Zika virus vaccines consistent with the terms of the Declaration.

DATES: The declaration is effective as of August 1, 2018.

FOR FURTHER INFORMATION CONTACT: Robert P. Kadlec, MD, MTM&H, MS, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201; Telephone: 202–205–2882.

SUPPLEMENTARY INFORMATION: The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the administration or use of medical countermeasures (Covered Countermeasures), except for claims that meet the PREP Act's definition of willful misconduct. The Secretary may, through publication in the **Federal Register**, amend any portion of a Declaration. Using this authority, effective August 1, 2016 (82 FR 10365 (February 10, 2017)), Acting Secretary Norris Cochran issued a Declaration to provide liability immunity to Covered Persons for activities related to the Covered Countermeasures, Zika virus vaccines as listed in Section VI of the Declaration, consistent with the terms of the Declaration. The Secretary is amending the August 1, 2016 Declaration to extend the effective time period of the declaration through December 31, 2022 and to clarify and add to the list of covered countermeasures to include all Zika virus vaccine types and technologies.

The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, Section 2. It amended the Public Health Service (PHS) Act, adding Section 319F–3, which addresses liability immunity, and Section 319F–4, which creates a compensation program. These sections are codified in the U.S. Code as 42 U.S.C. 247d–6d and 42 U.S.C. 247d–6e, respectively.

The Pandemic and All-Hazards Preparedness Reauthorization Act (PAHPRA), Public Law 113–5, was enacted on March 13, 2013. Among other things, PAHPRA added sections 564A and 564B to the Federal Food, Drug & Cosmetic (FD&C) Act to provide new authorities for the emergency use of approved products in emergencies and products held for emergency use. PAHPRA accordingly amended the definitions of ''Covered Countermeasures'' and ''qualified pandemic and epidemic products'' in Section 319F–3 of the Public Health Service Act (PREP Act provisions), so that products made available under these new FD&C Act authorities could be covered under PREP Act Declarations. PAHPRA also extended the definition of qualified pandemic and epidemic products that may be covered under a PREP Act Declaration to include products or technologies intended to enhance the use or effect of a drug, biological product, or device used against the pandemic or epidemic or against adverse events from these products. Zika virus is a mosquito-borne flavivirus that usually causes mild symptoms but has been determined to cause microcephaly and other severe brain abnormalities in fetuses and infants born to women infected with Zika virus before birth. Zika virus has also been associated with other adverse pregnancy outcomes, including miscarriage, stillbirth, and congenital Zika syndrome, and is linked to Guillain-Barre Syndrome. Beginning in 2015, Brazil experienced the largest outbreak of disease caused by Zika infection since its discovery in Uganda in 1947. On February 1, 2016, the World Health Organization (WHO) determined that microcephaly cases and other neurologic disorders reported in Brazil constituted a Public Health Emergency of International Concern (PHEIC) in accordance with the International Health Regulations (IHR). Since 2015, Zika virus has been detected in nations throughout the world. In the United States, traveler-associated cases have been identified in all the states, and local transmission of Zika virus is occurring in Puerto Rico; American Samoa; areas of Miami, Florida; and Texas. On August 12, 2016, former Secretary Sylvia M. Burwell determined that a public health emergency of national significance existed within the Commonwealth of Puerto Rico relating to pregnant women and children born to pregnant women with Zika. Former Secretary Burwell renewed that determination on November 4, 2016; Acting Secretary Norris Cochran renewed that determination on January 31, 2017; and former Secretary Thomas E. Price renewed that declaration on April 28, 2017. The Secretary's public health emergency declaration expired on July 26, 2017. On November 18, 2016, the WHO Director-General declared the end of the PHEIC based on recommendations of the WHO Emergency Committee that Zika virus and associated consequences no longer represent a PHEIC as defined under the IHR, but remain a significant enduring public health challenge requiring intense action that should be escalated into a sustained program of work with dedicated resources to address the long-term nature of the disease and its associated consequences. In 2018, cases continue to be reported throughout the U.S. states and territories of laboratory-confirmed Zika virus disease in individuals returning from travel to affected areas, or presumed local mosquito-borne transmission, or other modes of transmission.[1]

Unless otherwise noted, all statutory citations below are to the U.S. Code.

Section I, Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

Before issuing a Declaration under the PREP Act, the Secretary is required to determine that a disease or other health condition or threat to health constitutes a public health emergency or that there is a credible risk that the disease, condition, or threat may constitute such an emergency. This determination is separate and apart from a Declaration issued by the Secretary under Section 319 of the PHS Act that a disease or disorder presents a public health emergency or that a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists, or other Declarations or determinations made under other authorities of the Secretary. Accordingly, in Section I, the Secretary determines that there is a credible risk that the spread of Zika virus and the resulting disease may constitute a public health emergency.

Section II, Factors Considered

In deciding whether and under what circumstances to issue a Declaration with respect to a Covered Countermeasure, the Secretary must consider the desirability of encouraging the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the countermeasure. In Section II, the Secretary states that he has considered these factors.

Section III, Recommended Activities

The Secretary must recommend the activities for which the PREP Act's liability immunity is in effect. These activities may include, under conditions as the Secretary may specify, the manufacture, testing, development, distribution, administration, or use of

[1] CDC Zika case reporting; *https://www.cdc.gov/zika/reporting/2018-case-counts.html,* accessed 23July2018, 1630.

one or more Covered Countermeasures (Recommended Activities). In Section III, the Secretary recommends activities for which the immunity is in effect.

Section IV, Liability Immunity

The Secretary must also state that liability protections available under the PREP Act are in effect with respect to the Recommended Activities. These liability protections provide that, ''[s]ubject to other provisions of [the PREP Act], a covered person shall be immune from suit and liability under federal and state law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a covered countermeasure if a Declaration has been issued with respect to such countermeasure.'' In Section IV, the Secretary states that liability protections are in effect with respect to the Recommended Activities.

Section V, Covered Persons

The PREP Act's liability immunity applies to ''Covered Persons'' with respect to administration or use of a Covered Countermeasure. The term ''Covered Persons'' has a specific meaning and is defined in the PREP Act to include manufacturers, distributors, program planners, and qualified persons, and their officials, agents, and employees, and the United States. The PREP Act further defines the terms ''manufacturer,'' ''distributor,'' ''program planner,'' and ''qualified person'' as described below.

A manufacturer includes a contractor or subcontractor of a manufacturer; a supplier or licenser of any product, intellectual property, service, research tool or component or other article used in the design, development, clinical testing, investigation or manufacturing of a Covered Countermeasure; and any or all the parents, subsidiaries, affiliates, successors, and assigns of a manufacturer.

A distributor means a person or entity engaged in the distribution of drugs, biologics, or devices, including but not limited to: Manufacturers; repackers; common carriers; contract carriers; air carriers; own-label distributors; private-label distributors; jobbers; brokers; warehouses and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies.

A program planner means a state or local government, including an Indian tribe; a person employed by the state or local government; or other person who supervises or administers a program with respect to the administration, dispensing, distribution, provision, or use of a Covered Countermeasure, including a person who establishes requirements, provides policy guidance, or supplies technical or scientific advice or assistance or provides a facility to administer or use a Covered Countermeasure in accordance with the Secretary's Declaration. Under this definition, a private sector employer or community group or other ''person'' can be a program planner when it carries out the described activities.

A qualified person means a licensed health professional or other individual authorized to prescribe, administer, or dispense Covered Countermeasures under the law of the state in which the Covered Countermeasure was prescribed, administered, or dispensed; or a person within a category of persons identified as qualified in the Secretary's Declaration. Under this definition, the Secretary can describe in the Declaration other qualified persons, such as volunteers, who are Covered Persons. Section V describes other qualified persons covered by this Declaration.

The PREP Act also defines the word ''person'' as used in the Act: A person includes an individual, partnership, corporation, association, entity, or public or private corporation, including a federal, state, or local government agency or department.

Section V describes Covered Persons under the Declaration, including Qualified Persons.

Section VI, Covered Countermeasures

As noted above, Section III describes the Secretary's Recommended Activities for which liability immunity is in effect. This section identifies the Covered Countermeasures for which the Secretary has recommended such activities. The PREP Act states that a ''Covered Countermeasure'' must be: A ''qualified pandemic or epidemic product,'' or a ''security countermeasure,'' as described immediately below; or a drug, biological product or device authorized for emergency use in accordance with Sections 564, 564A, or 564B of the FD&C Act.

A qualified pandemic or epidemic product means a drug or device, as defined in the FD&C Act or a biological product, as defined in the PHS Act that is: (i) Manufactured, used, designed, developed, modified, licensed or procured to diagnose, mitigate, prevent, treat, or cure a pandemic or epidemic or limit the harm such a pandemic or epidemic might otherwise cause; (ii) manufactured, used, designed, developed, modified, licensed, or procured to diagnose, mitigate, prevent, treat, or cure a serious or life-threatening disease or condition caused by such a drug, biological product, or device; (iii) or a product or technology intended to enhance the use or effect of such a drug, biological product, or device.

A security countermeasure is a drug or device, as defined in the FD&C Act or a biological product, as defined in the PHS Act that: (i)(a) The Secretary determines to be a priority to diagnose, mitigate, prevent, or treat harm from any biological, chemical, radiological, or nuclear agent identified as a material threat by the Secretary of Homeland Security, or (b) to diagnose, mitigate, prevent, or treat harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device against such an agent; and (ii) is determined by the Secretary of Health and Human Services to be a necessary countermeasure to protect public health.

To be a Covered Countermeasure, qualified pandemic or epidemic products or security countermeasures also must be approved or cleared under the FD&C Act; licensed under the PHS Act; or authorized for emergency use under Sections 564, 564A, or 564B of the FD&C Act.

A qualified pandemic or epidemic product also may be a Covered Countermeasure when it is subject to an exemption (that is, it is permitted to be used under an Investigational Drug Application or an Investigational Device Exemption) under the FD&C Act and is the object of research for possible use for diagnosis, mitigation, prevention, treatment, or cure, or to limit harm of a pandemic or epidemic or serious or life-threatening condition caused by such a drug or device.

A security countermeasure also may be a Covered Countermeasure if it may reasonably be determined to qualify for approval or licensing within 10 years after the Department's determination that procurement of the countermeasure is appropriate.

Section VI lists Zika virus vaccines that are Covered Countermeasures. The Secretary is amending the list of vaccines by: Deleting ''whole particle'' from the first category of vaccines listed to clarify that the category includes all inactivated virus vaccines; adding ''and/or polysaccharide and/or conjugate'' to the sixth category of vaccines listed to include these types of peptide vaccine; and adding a new ninth category, ''recombinant vaccines'' to include any Zika virus vaccines using this type of technology.

Section VI also refers to the statutory definitions of Covered Countermeasures

to make clear that these statutory definitions limit the scope of Covered Countermeasures. Specifically, the Declaration notes that Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

Section VII, Limitations on Distribution

The Secretary may specify that liability immunity is in effect only to Covered Countermeasures obtained through a particular means of distribution. The Declaration states that liability immunity is afforded to Covered Persons for Recommended Activities related to: (a) Present or future federal contracts, cooperative agreements, grants, other transactions, interagency agreements, or memoranda of understanding or other federal agreements; or (b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasures following a Declaration of an emergency.

Section VII defines the terms ''Authority Having Jurisdiction'' and ''Declaration of an emergency.'' We have specified in the definition that Authorities having jurisdiction include federal, state, local, and tribal authorities and institutions or organizations acting on behalf of those governmental entities.

For governmental program planners only, liability immunity is afforded only to the extent they obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles. This last limitation on distribution is intended to deter program planners that are government entities from seizing privately held stockpiles of Covered Countermeasures. It does not apply to any other Covered Persons, including other program planners who are not government entities.

Section VIII, Category of Disease, Health Condition, or Threat

The Secretary must identify, for each Covered Countermeasure, the categories of diseases, health conditions, or threats to health for which the Secretary recommends the administration or use of the countermeasure. In Section VIII, the Secretary states that the disease threat for which he recommends administration or use of the Covered Countermeasures is Zika virus.

Section IX, Administration of Covered Countermeasures

The PREP Act does not explicitly define the term ''administration'' but does assign the Secretary the responsibility to provide relevant conditions in the Declaration. In Section IX, the Secretary defines ''Administration of a Covered Countermeasure:''

Administration of a Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution, and dispensing of the countermeasures to recipients; management and operation of countermeasure programs; or management and operation of locations for purpose of distributing and dispensing countermeasures.

The definition of ''administration'' extends only to physical provision of a countermeasure to a recipient, such as vaccination or handing drugs to patients, and to activities related to management and operation of programs and locations for providing countermeasures to recipients, such as decisions and actions involving security and queuing, but only insofar as those activities directly relate to the countermeasure activities. Claims for which Covered Persons are provided immunity under the Act are losses caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a Covered Countermeasure consistent with the terms of a Declaration issued under the Act. Under the definition, these liability claims are precluded if they allege an injury caused by physical provision of a countermeasure to a recipient, or if the claims are directly due to conditions of delivery, distribution, dispensing, or management and operation of countermeasure programs at distribution and dispensing sites.

Thus, it is the Secretary's interpretation that, when a Declaration is in effect, the Act precludes, for example, liability claims alleging negligence by a manufacturer in creating a vaccine, or negligence by a health care provider in prescribing the wrong dose, absent willful misconduct. Likewise, the Act precludes a liability claim relating to the management and operation of a countermeasure distribution program or site, such as a slip-and-fall injury or vehicle collision by a recipient receiving a countermeasure at a retail store serving as an administration or dispensing location that alleges, for example, lax security or chaotic crowd control. However, a liability claim alleging an injury occurring at the site that was not directly related to the countermeasure activities is not covered, such as a slip and fall with no direct connection to the countermeasure's administration or use. In each case, whether immunity is applicable will depend on the particular facts and circumstances.

Section X, Population

The Secretary must identify, for each Covered Countermeasure specified in a Declaration, the population or populations of individuals for which liability immunity is in effect with respect to administration or use of the countermeasure. This section explains which individuals should use the countermeasure or to whom the countermeasure should be administered—in short, those who should be vaccinated or take a drug or other countermeasure. Section X provides that the population includes ''any individual who uses or who is administered a Covered Countermeasure in accordance with the Declaration.''

In addition, the PREP Act specifies that liability immunity is afforded: (1) To manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; and (2) to program planners and qualified persons when the countermeasure is either used by or administered to this population or the program planner or qualified person reasonably could have believed the recipient was in this population. Section X includes these statutory conditions in the Declaration for clarity.

Section XI, Geographic Area

The Secretary must identify, for each Covered Countermeasure specified in the Declaration, the geographic area or areas for which liability immunity is in effect with respect to administration or use of the countermeasure, including, as appropriate, whether the Declaration applies only to individuals physically present in the area or, in addition, applies to individuals who have a described connection to the area. Section XI provides that liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation. This could include claims related to administration or use in

countries outside the U.S. It is possible that claims may arise in regard to administration or use of the Covered Countermeasures outside the U.S. that may be resolved under U.S. law.

In addition, the PREP Act specifies that liability immunity is afforded: (1) To manufacturers and distributors without regard to whether the countermeasure is used by or administered to individuals in the geographic areas; and (2) to program planners and qualified persons when the countermeasure is either used or administered in the geographic areas or the program planner or qualified person reasonably could have believed the countermeasure was used or administered in the areas. Section XI includes these statutory conditions in the Declaration for clarity.

Section XII, Effective Time Period

The Secretary must identify, for each Covered Countermeasure, the period or periods during which liability immunity is in effect, designated by dates, milestones, or other description of events, including factors specified in the PREP Act. Section XII extends the effective period for different means of distribution of Covered Countermeasures through December 31, 2022.

Section XIII, Additional Time Period of Coverage

The Secretary must specify a date after the ending date of the effective time period of the Declaration that is reasonable for manufacturers to arrange for disposition of the Covered Countermeasure, including return of the product to the manufacturer, and for other Covered Persons to take appropriate actions to limit administration or use of the Covered Countermeasure. In addition, the PREP Act specifies that for Covered Countermeasures that are subject to a Declaration at the time they are obtained for the Strategic National Stockpile (SNS) under 42 U.S.C. 247d–6b(a), the effective period of the Declaration extends through the time the countermeasure is used or administered pursuant to a distribution or release from the stockpile. Liability immunity under the provisions of the PREP Act and the conditions of the Declaration continues during these additional time periods. Thus, liability immunity is afforded during the ''Effective Time Period,'' described under XII of the Declaration, plus the ''Additional Time Period'' described under Section XIII of the Declaration.

Section XIII provides for 12 months as the additional time period of coverage after expiration of the Declaration. Section XIII also explains the extended coverage that applies to any products obtained for the SNS during the effective period of the Declaration.

Section XIV, Countermeasures Injury Compensation Program

Section 319F–4 of the PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to eligible individuals who sustain a serious physical injury or die as a direct result of the administration or use of a Covered Countermeasure. Compensation under the CICP for an injury directly caused by a Covered Countermeasure is based on the requirements set forth in this Declaration, the administrative rules for the Program, and the statute. To show direct causation between a Covered Countermeasure and a serious physical injury, the statute requires ''compelling, reliable, valid, medical and scientific evidence.'' The administrative rules for the Program further explain the necessary requirements for eligibility under the CICP. Please note that, by statute, requirements for compensation under the CICP may not align with the requirements for liability immunity provided under the PREP Act. Section XIV, ''Countermeasures Injury Compensation Program'' explains the types of injury and standard of evidence needed to be considered for compensation under the CICP.

Further, the administrative rules for the CICP specify if countermeasures are administered or used outside the United States, only otherwise eligible individuals at American embassies, military installations abroad (such as military bases, ships, and camps) or at North Atlantic Treaty Organization (NATO) installations (subject to the NATO Status of Forces Agreement) where American servicemen and servicewomen are stationed may be considered for CICP benefits. Other individuals outside the United States may not be eligible for CICP benefits.

Section XV, Amendments

The Secretary may amend any portion of this Declaration through publication in the **Federal Register**.

Declaration

Declaration for Public Readiness and Emergency Preparedness Act Coverage for Zika Virus Vaccines.

I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that there is a credible risk that the spread of Zika virus and the resulting disease or conditions may in the future constitute a public health emergency.

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing, or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend, under the conditions stated in this Declaration, the manufacture, testing, development, distribution, administration, and use of the Covered Countermeasures.

IV. Liability Immunity

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability immunity as prescribed in the PREP Act and conditions stated in this Declaration is in effect for the Recommended Activities described in Section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2), (3), (4), (6), (8)(A) and (B)

Covered Persons who are afforded liability immunity under this Declaration are ''manufacturers,'' ''distributors,'' ''program planners,'' ''qualified persons,'' and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States.

In addition, I have determined that the following additional persons are qualified persons: (a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, as described in Section VII below, to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures, and their officials, agents, employees, contractors and volunteers, following a Declaration of an emergency; (b) any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use

Authorization in accordance with Section 564 of the FD&C Act; (c) any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with Section 564A of the FD&C Act.

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are the following Zika virus vaccines, all components and constituent materials of these vaccines, and all devices and their constituent components used in the administration of these vaccines:

(1) Inactivated virus vaccines
(2) Live-attenuated vaccines
(3) mRNA vaccines
(4) DNA vaccines
(5) Subunit vaccines
(6) Peptide and/or polysaccharide and/or conjugate vaccines
(7) Virus-like particles vaccines
(8) Nanoparticle vaccines
(9) Recombinant vaccines

Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

VII. Limitations on Distribution

42 U.S.C. 247d–6d(a)(5) and (b)(2)(E)

I have determined that liability immunity is afforded to Covered Persons only for Recommended Activities involving Covered Countermeasures that are related to:

(a) Present or future federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other federal agreements; or,

(b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute or dispense the Covered Countermeasures following a Declaration of an emergency.

i. The Authority Having Jurisdiction means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, tribal, state, or federal boundary lines) or functional (*e.g.,* law enforcement, public health) range or sphere of authority.

ii. A Declaration of Emergency means any Declaration by any authorized local, regional, state, or federal official of an emergency specific to events that indicate an immediate need to administer and use the Covered Countermeasures, with the exception of a federal Declaration in support of an Emergency Use Authorization under Section 564 of the FD&C Act unless such Declaration specifies otherwise;

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from state, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of the Covered Countermeasures is Zika virus.

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for purpose of distributing and dispensing countermeasures.

X. Population

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered Countermeasures in accordance with this Declaration.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered to this population, or the program planner or qualified person reasonably could have believed the recipient was in this population.

XI. Geographic Area

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(D)

Liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in any designated geographic area; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in any designated geographic area, or the program planner or qualified person reasonably could have believed the recipient was in that geographic area.

XII. Effective Time Period

42 U.S.C. 247d-6d(b)(2)(B)

Liability immunity for Covered Countermeasures through means of distribution, as identified in Section VII(a) of this Declaration, other than in accordance with the public health and medical response of the Authority Having Jurisdiction and extends through December 31, 2022.

Liability immunity for Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction begins with a Declaration and lasts through (1) the final day the emergency Declaration is in effect, or (2) December 31, 2022, whichever occurs first.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(B) and (C)

I have determined that an additional 12 months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasures.

Covered Countermeasures obtained for the SNS during the effective period of this Declaration are covered through the date of administration or use pursuant to a distribution or release from the SNS.

XIV. Countermeasures Injury Compensation Program

42 U.S.C 247d–6e

The PREP Act authorizes the Countermeasures Injury Compensation

Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a covered serious physical injury as the direct result of the administration or use of the Covered Countermeasures, and benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services. Information about the CICP is available at the toll-free number 1–855–266–2427 or *http://www.hrsa.gov/cicp/.*

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

Amendments to this Declaration will be published in the **Federal Register**.

Authority: 42 U.S.C. 247d–6d.

Dated: August 1, 2018.

Alex M. Azar II

Secretary, Department of Health and Human Services.

[FR Doc. 2018–16856 Filed 8–6–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Clinical Aging Review Committee NIA–C.

Date: September 27–28, 2018.

Time: 3:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Alicja L. Markowska, Ph.D., DSC, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 1, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–16787 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S.

FOR FURTHER INFORMATION CONTACT: Licensing information may be obtained by emailing the indicated licensing contact at the National Heart, Lung, and Blood, Office of Technology Transfer and Development Office of Technology Transfer, 31 Center Drive Room 4A29, MSC2479, Bethesda, MD 20892–2479; telephone: 301–402–5579. A signed Confidential Disclosure Agreement may be required to receive any unpublished information.

SUPPLEMENTARY INFORMATION: This notice is in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve commercialization of results of federally-funded research and development.

Technology description follows.

Neuroendocrine Tumor Evans Blue Containing Radiotherapeutics

The invention pertains to a radiotherapeutic against neuroendocrine tumors that express somatostatin receptor. Radionuclide therapies directed against tumors that express somatostatin receptors (SSTRs) have proven effective for the treatment of advanced, low- to intermediate-grade neuroendocrine tumors. The subject radiotherapeutic covered by the subject patent estate includes a somatostatin (SST) peptide derivative like octreotate (TATE), conjugated to an Evans Blue (EB) analog, and further chelated via DOTA to therapeutic radionuclide ^{177}Lu, a beta emitter. The EB analog reversibly binds to circulating serum albumin and improves the pharmacokinetics of SST peptide derivatives and reduce peptide-receptor radionuclide therapy toxicity. EB analog conjugated to octreotate (EB–DOTATATE) has been shown by the inventors to provide reversible albumin binding in vivo and extended half-life in circulation. When EB–TATE is slowly released into the tumor microenvironment, tumor uptake and internalization into SSTR positive tumors resulted in delivery of radioactive particles and tumor cell killing. EB–TATE displayed significantly more favorable pharmacokinetics than TATE alone by achieving higher tumor to non-tumor penetration as evidenced by positron emission tomography.

Potential Commercial Applications:

- Cancer therapeutics
- Higher stability/Lower toxicity

Development Stage:

- Early stage

Inventors: Xiaoyuan Chen and Orit Jacobson Weiss (both of NIBIB).

Intellectual Property: HHS Reference No. E–150–2016–1; International Patent Application PCT/US2017/031696.

Licensing Contact: Michael Shmilovich, Esq, CLP; 301–435–5019; *shmilovm@mail.nih.gov*.

Dated: July 20, 2018.

Michael Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.

[FR Doc. 2018–16839 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: Treatment of Type I Diabetes and its Comorbidities

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Heart, Lung and Blood Institute (NHLBI), National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent License to Inversago Pharma, Inc., located in Montreal, Quebec, Canada, to practice the inventions embodied in the patent applications

listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Only written comments and/or applications for a license which are received by the NHLBI Office of Technology Transfer and Development August 22, 2018 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated exclusive patent license should be directed to: Michael Shmilovich, Esq., Senior Licensing and Patent Manager, 31 Center Drive Room 4A29, MSC2479, Bethesda, MD 20892–2479, phone number 301–435–5019, or *shmilovm@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The following and all continuing U.S. and foreign patents/patent applications thereof are the intellectual properties to be licensed under the prospective agreement to Inversago Pharma, Inc.:

HHS Reference No.	Patent No. or application No.	Filing date	Title
E–282–2012–0–US–01	61/725,949	November 13, 2012	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–PCT–02	PCT/US2013/069686	November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–US–03	9,765,031	November 12, 2013	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–CA–04	2889697	April 27, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–EP–05	13802153.0	June 01, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–IN–06	3733/DELNP/2015	May 1, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–JP–07	2015–542015	May 11, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–CN–08	201380069389.9	July 3, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–US–09	15/674,365	August 10, 2017	Cannabinoid Receptor Mediating Compounds.
E–282–2012–0–US–10	15/674,333	August 10, 2017	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–US–01	61/991,333	May 9, 2014	Cannabinoid Receptor Mediating Compounds.
E–282–2012–1–US–01	62/171,179	June 4, 2015	Cannabinoid Receptor Mediating Compounds.
E–282–2012–1–PCT–02	PCT/US2016/035291	June 1, 2016	Cannabinoid Receptor Mediating Compounds.
E–282–2012–1–EP–05	16728547.7	June 1, 2016	Cannabinoid Receptor Mediating Compounds.
E–282–2012–1–US–08	15/579,123	December 1, 2017	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–PCT–02	PCT/US2015/029946	May 8, 2015	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–AU–03	2015255765	November 7, 2016	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–CA–04	2948349	May 8, 2015	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–EP–06	15728668.3	May 8, 2015	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–CN–05	201580028788.X	May 8, 2015	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–IN–07	201637038171	November 8, 2016	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–JP–08	2017–511558	May 8, 2015	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–US–09	15/309,728	November 8, 2016	Cannabinoid Receptor Mediating Compounds.
E–140–2014–0–HK–10	17105705.6	June 9, 2017	Cannabinoid Receptor Mediating Compounds

The patent rights in these inventions have been assigned to the Government of the United States of America. The prospective exclusive patent license territory will be granted worldwide and in a field of use not broader than human therapeutics for type I diabetes and its comorbidities diabetic nephropathy, chronic kidney disease, diabetic retinopathy, and peripheral and autonomic neuropathy.

The invention covered by the patents and patent applications pertaining to HHS Ref. No. E–282–2012–0 pertain to cannabinoid receptor 1 (CN_1R) inverse agonists. CN_1R activation plays a key role in appetitive behavior and metabolism. Of importance as a therapeutic target here is that the receptor is expressed in both peripheral tissue as well as the central nervous system. The invention is a class of pyrazole compounds that act as CN1 receptor inverse agonists and have been shown effective at reducing obesity and its associated metabolic consequences while having no experimentally discernable neuropsychotropic side effects that are considered adverse such as the earlier antagonists rimonabant. These CN_1R receptor compounds were developed with the goals of limiting their brain penetrance without losing their metabolic efficacy due to CN1 inverse agonism, and having a primary metabolite directly targeting enzymes involved in inflammatory and fibrotic processes associated with metabolic disorders. The patent rights cover both compositions of matter and methods of use.

The inventions covered by HHS Ref. E–140–2014–0 also pertain to pyrazole CN_1R receptor inverse agonists. In addition, some of these compounds also have a direct inhibitory effect on inducible nitric oxide synthase (iNOS), whereas another group of the compounds directly activates AMP kinase. There is evidence that the metabolic effects of endocannabinoids are mediated by CN1 receptors in peripheral tissues. These dual-target compounds may be useful for treating metabolic disease and related conditions such as obesity and diabetes and their complications, including liver or kidney fibrosis, without the dangerous the side effects.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive patent license will be royalty bearing and may be granted unless within fifteen (15) days from the date of this published notice, the NHLBI receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are timely filed in response to this notice will be treated as objections to the grant of the contemplated exclusive patent license.

Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: July 25, 2018.

Michael A. Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.

[FR Doc. 2018–16836 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE ON AGING, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: October 9, 2018.

Time: October 9, 2018, 8:00 a.m. to 8:20 a.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD.

Time: October 9, 2018, 8:20 a.m. to 10:50 a.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institutes on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD.

Time: October 9, 2018, 10:50 a.m. to 11:05 a.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD.

Time: October 9, 2018, 11:05 a.m. to 11:30 a.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD.

Time: October 9, 2018, 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD.

Time: October 9, 2018, 2:30 p.m. to 5:10 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD.

Time: October 9, 2018, 5:10 p.m. to 6:10 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes on Aging, Biomedical Research Center, 3rd Floor Conference Room 03C227, 251 Bayview Boulevard, Baltimore, MD.

Contact Person: Luigi Ferrucci, Ph.D., MD, Scientific Director, National Institute on Aging, 251 Bayview Boulevard, Suite 100, Room 4C225, Baltimore, MD 21224, 410–558–8110, *LF27Z@NIH.GOV*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 1, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–16785 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Metformin and Aging.

Date: September 12, 2018.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2W–200, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Anita H. Undale, Ph.D., MD, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, 240–747–7825, *anita.undale@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 1, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–16786 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID SBIR Phase II Clinical Trial Implementation Cooperative Agreement Applications (U44).

Date: August 22, 2018.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Priti Mehrotra, Ph.D., Chief, Immunology Review Branch, Scientific Review Program, Division of Extramural Activities, Room #3G40 National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–7616, 240–669–5066, *pmehrotra@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial

Planning Grant (R34) and Implementation Cooperative Agreement (U01).

Date: August 28, 2018.

Time: 10:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Louis A. Rosenthal, Ph.D., Scientific Review Officer Scientific Review Program, Division of Extramural Activities, Rm. 3G42B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5070, *rosenthalla@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 1, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–16789 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Clinical and Translational Exploratory/Developmental Studies.

Date: September 14, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203.

Contact Person: Robert S. Coyne, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Bethesda, MD 20892–9750, 240–276–7684, *coyners@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–7: NCI Clinical and Translational R21 and Omnibus R03.

Date: September 27, 2018.

Time: 7:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Saejeong J. Kim, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W640, Bethesda, MD 20892–9750, 240–276–5179, *saejeong.kim@nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee J—Career Development.

Date: October 11–12, 2018.

Time: 5:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard Bethesda, MD 20817.

Contact Person: Tushar Deb, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Bethesda, MD 20892–9750, 240–276–6132, *tushar.deb@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Molecular and Cellular Analysis Technologies (IMAT).

Date: October 19, 2018.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 2E908, Rockville, MD 20850.

Contact Person: Yasuko Furumoto, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W634, Bethesda, MD 20892–9750, 240–276–5287, *yasuko.furumoto@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; R25 Review.

Date: October 24, 2018.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W110, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Robert E. Bird, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W110, Bethesda, MD 20892–9750, 240–276–6344, *birdr@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Molecular Analysis Technologies (IMAT).

Date: November 1, 2018.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W634, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Yasuko Furumoto, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W634, Bethesda, MD 20892–9750, 240–276–5287, *yasuko.furumoto@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; UH2/UH3 Review.

Date: November 7, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W110, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Robert E. Bird, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W110, Bethesda, MD 20892–9750, 240–276–6344, *birdr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 1, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–16784 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S.

FOR FURTHER INFORMATION CONTACT: Licensing information may be obtained by emailing the indicated licensing contact at the National Heart, Lung, and Blood, Office of Technology Transfer and Development Office of Technology Transfer, 31 Center Drive, Room 4A29, MSC2479, Bethesda, MD 20892–2479; telephone: 301–402–5579. A signed

Confidential Disclosure Agreement may be required to receive any unpublished information.

SUPPLEMENTARY INFORMATION: This notice is in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve commercialization of results of federally-funded research and development.

Technology description follows.

Albumin Binding Prostate Cancer Treating Compositions

The invention pertains to a therapeutic agent that includes a chemically conjugated residue derived from (((R-)-1-carboxy-2-mercaptoethyl)carbamoyl)-L-glutamic acid that is further bound to an Evans blue analog (EB). The EB analog reversibly binds to circulating serum albumin to provide a radiopharmaceutical that retains affinity and specificity to prostate specific membrane antigen (PSMA; in this case PSMA–617). PSMA is a surface molecule shown to be specifically expressed by prostate tumor cells. PSMA expression levels correlate with disease stage and with hormone refractory cancers. Although most PSMA expression appears to be restricted to the prostate cancer, low levels of expression can also be detected in the brain, kidneys, salivary glands, and small intestine. The antigen is also shown to be expressed by neovascular tumor vessels of multiple other cancers. Inclusion of the Evans blue analog promotes high internalization and retention rates of the conjugated target ligand, and therefore, higher accumulation in PSMA positive tumors. Labeling EB–PSMA–617 derivatives with the therapeutic beta emitters, *e.g.,* 90Y, 86Y, and 177Lu gives rise to improved tumor response and survival rates.

Potential Commercial Applications:

- Cancer therapeutics
- Higher stability/Lower toxicity

Development Stage:

- Early stage

Inventors: Xiaoyuan Chen and Orit Jacobson Weiss (both of NIBIB).

Intellectual Property: HHS Reference No. E–054–2018/0; U.S. Provisional Patent Applications 62/633,648 filed February 22, 2018.

Licensing Contact: Michael Shmilovich, Esq, CLP; 301–435–5019; *shmilovm@mail.nih.gov*.

Dated: July 20, 2018.

Michael Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.

[FR Doc. 2018–16838 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Barry Buchbinder, Ph.D., 240–627–3678; *barry.buchbinder@nih.gov.* Licensing information and copies of the U.S. patent application listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Self-Assembling Insect Ferritin Nanoparticles for Display of Co-assembled Trimeric Antigens Description of Technology

Antigens on the surface of virus particles are displayed in a regular, repetitive pattern which facilitates B cell activation. Presenting trimeric antigens on engineered particles that mimic the geometric patterns observed for native viral proteins can lead to an improved host antibody response.

Self-assembling globular ferritin nanoparticles have previously been used to display multiple copies of a co-assembled trimeric antigen to the immune system. However, prior ferritin nanoparticle technologies only permit a random co-assembly of diverse trimeric antigens, and therefore cannot guarantee the pattern and ratio of diverse trimeric antigens on a single ferritin nanoparticle.

Researchers at the Vaccine Research Center (VRC) of the National Institute of Allergy and Infectious Diseases are developing novel recombinant ferritin nanoparticles that are based on insect ferritin proteins, and that have been engineered to display two different trimeric antigens in a defined ratio and geometric pattern. This system has been tested with antigens derived from HIV–1 envelope (Env) and influenza hemagglutinin (HA). Interestingly, when guinea pigs are immunized with ferritin nanoparticles displaying two different trimeric antigens, induced B cells could simultaneously recognize both trimeric antigens, thus leading to an immune response with improved neutralization breadth.

This technology can be used as a platform for multimerized display of trimeric antigens such as viral type I fusion glycoproteins, and may be applied to many high-priority vaccine targets, such as HIV–1, influenza, respiratory syncytial virus, parainfluenza viruses, and coronaviruses.

Potential Commercial Applications:

- Platform for multimerized immunogen presentation and vaccine design.
- Vaccines for pathogens that use genetic diversity to escape the immune response.

Competitive Advantages:

- Particles have equal fractions of two different antigens in a specific configuration on the nanoparticle surface (unlike regular ferritin used previously)
- Designed particles have a geometry that allows for attachment of trimeric antigens (unlike the native insect ferritin).

Development Stage:

- *In vivo* testing (rodents).

Inventors: Peter Kwong (NIAID), Ivelin Georgiev (NIAID), Michael Gordon Joyce (NIAID), Masaru Kanekiyo (NIAID), Aliaksandr Druz (NIAID), Ulrich Baxa (NIAID), Joseph Van Galen (NIAID), Rita Chen (NIAID), Cheng Cheng (NIAID), John Mascola (NIAID), Yaroslav Tsybovsky (Leidos Biomedical Research, Inc), Yongping Yang (NIAID), Paul Thomas (NIAID), Barney Graham (NIAID).

Publications: Georgiev, Ivelin S., et al., ACS Infectious Diseases (2018) 4 (5), 788–796.

Intellectual Property: HHS Reference Number E–270–2015: U.S. Patent Application No. 62/355,212 filed 06/27/

2016; PCT Application No. PCT/US2017/039595 filed 06/27/2017 (pending).

Related Intellectual Property: HHS Reference Number E–531–2013, E–293–2011, E–060–2015.

Licensing Contact: Barry Buchbinder, Ph.D., 240–627–3678; *barry.buchbinder@nih.gov*.

Dated: July 20, 2018.

Suzanne M. Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2018–16841 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Scientific Advisory Committee on Alternative Toxicological Methods; Announcement of Meeting; Request for Comments

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM). SACATM, a federally chartered, external advisory group composed of scientists from the public and private sectors, including representatives of regulated industry and national animal protection organization, will review and provide advice on programmatic activities. SACATM advises the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), the National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), and the Director of the National Institute of Environmental Sciences (NIEHS) and NTP regarding statutorily mandated duties of ICCVAM and activites of NICEATM. The meeting is open to the public and registration is requested for both attendance and oral comment and required to access the webcast. Information about the meeting and registration are available at *https://ntp.niehs.nih.gov/go/32822.*

DATES:

Meeting: September 5–6, 2018; Begins at 9:00 a.m. (EDT) each day and continues until adjournment.

Written Public Comment Submissions: Deadline is August 29, 2018.

Oral Comments: Deadline is August 29, 2018.

Registration for Meeting: Deadline September 6, 2018.

Registration to view the meeting via the webcast is required.

ADDRESSES:

Meeting Location: Rodbell Auditorium, Rall Building, National Institute of Environmental Health Sciences (NIEHS), 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Meeting web page: The preliminary agenda, registration, and other meeting materials are at *https://ntp.niehs.nih.gov/go/32822.*

Webcast: The meeting will be webcast; the URL will be provided to those who register for viewing.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Wolfe, Designated Federal Official for the SACATM, Office of Liaison, Policy and Review, Division of NTP, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709. Phone: 984–287–3209, Fax: 301–451–5759, Email: *wolfe@niehs.nih.gov.* Hand Deliver/Courier address: 530 Davis Drive, Room K2130, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Meeting and Registration: The meeting is open to the public with time scheduled for oral public comments; attendance at the meeting is limited only by the space available.

SACATM will provide input to ICCVAM, NICEATM, and NIEHS on programmatic activities and issues. Preliminary agenda includes the US Strategic Roadmap including challenges to and opportunities for implementing non-animal approaches to evaluate chemicals and medical products and the importance of international harmonization through the Organisation for Economic Co-operation and Development activites. Please see the preliminary agenda for information about the specific presentations. The preliminary agenda, roster of SACATM members, background materials, public comments, and any additional information, when available, will be posted on the SACATM meeting website (*https://ntp.niehs.nih.gov/go/32822*) or may be requested in hardcopy from the Designated Federal Official for SACATM. Following the meeting, summary minutes will be prepared and made available on the BSC meeting website.

The public may attend the meeting in person or view the webcast. Registration is required to view the webcast; the URL for the webcast will be provided in the email confirming registration. Individuals who plan to provide oral comments (see below) are encouraged to register online at the SACATM meeting website (*https://ntp.niehs.nih.gov/go/32822*) by August 29, 2018, to facilitate planning for the meeting. Individuals are encouraged to access the website to stay abreast of the most current information regarding the meeting. Visitor and security information for those attending in-person is available at *niehs.nih.gov/about/visiting/index.cfm.* Individuals with disabilities who need accommodation to participate in this event should contact Ms. Robbin Guy at phone: (984) 287–3136 or email: *guyr2@niehs.nih.gov.* TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Written Public Comments: Written and oral public comment are invited for the agenda topics. Guidelines for public comments are available at *https://ntp.niehs.nih.gov/ntp/about_ntp/guidelines_public_comments_508.pdf.*

The deadline for submission of written comments is August 29, 2018. Written public comments should be submitted through the meeting website. Persons submitting written comments should include name, affiliation, mailing address, phone, email, and sponsoring organization (if any). Written comments received in response to this notice will be posted on the NTP website, and the submitter will be identified by name, affiliation, and sponsoring organization (if any).

Oral Public Comment Registration: The preliminary agenda allows for several public comment periods with each allowing for up to 4 commenters for up to 5 minutes per speaker. Oral comments may be presented in person at NIEHS or by teleconference line. Registration for oral comments is on or before August 29, 2018, at *https://ntp.niehs.nih.gov/go/32822.* Registration is on a first-come, first-served basis, and registrants will be assigned a number in their confirmation email. Each organization is allowed one time slot per comment period. After the maximum number of speakers per comment period is exceeded, individuals registered to provide oral comment will be placed on a wait list and notified should an opening become available. Commenters will be notified after August 29, 2018, about the actual time allotted per speaker, and the teleconference number will be sent to those registered to give oral comments by teleconference line.

If possible, oral public commenters should send a copy of their slides and/or statement or talking points to Robbin

Guy by email: *guyr2@niehs.nih.gov* by August 29, 2018.

Meeting Materials: The preliminary meeting agenda is available on the meeting web page *https://ntp.niehs.nih.gov/go/32822* and will be updated one week before the meeting. Individuals are encouraged to access the meeting web page to stay abreast of the most current information regarding the meeting.

Background Information on ICCVAM, NICEATM, and SACATM: ICCVAM is an interagency committee composed of representatives from 16 federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological and safety-testing methods that more accurately assess the safety and hazards of chemicals and products and that reduce, refine (decrease or eliminate pain and distress), or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM.

NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts independent validation studies to assess the usefulness and limitations of new, revised, and alternative test methods and strategies. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods and strategies applicable to the needs of U.S. federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about ICCVAM and NICEATM can be found at *http://ntp.niehs.nih.gov/go/iccvam* and *http://ntp.niehs.nih.gov/go/niceatm.*

SACATM was established in response to the ICCVAM Authorization Act [Section 285*l*–3(d)] and is composed of scientists from the public and private sectors. SACATM advises ICCVAM, NICEATM, and the Director of the NIEHS and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM. SACATM provides advice on priorities and activities related to the development, validation, scientific review, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods.

Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167.*

Dated: July 24, 2018.

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2018–16840 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Interagency Autism Coordinating Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of Meeting: Open Meeting.

Date: Wednesday, October 17, 2018.

Time: 9:00 a.m. to 5:00 p.m. *Eastern Time* Approximate end time.

Agenda: To discuss business, updates, and issues related to ASD research and services activities.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C and D, Rockville, MD 20852.

Webcast Live: https://videocast.nih.gov.

Conference Call Access: Dial: 800–369–3190.

Access Code: 1724926.

Cost: The meeting is free and open to the public.

Registration: A registration web link will be posted on the IACC website (*www.iacc.hhs.gov*) prior to the meeting. Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis. Onsite registration will also be available.

Deadlines: Notification of interest to present oral comments: Friday, October 5, 2018 by 5:00 p.m. ET

Submission of written/electronic statement for oral comments: Tuesday, October 9, 2018 by 5:00 p.m. ET

Submission of written comments: Tuesday, October 9, 2018 by 5:00 p.m. ET

For IACC Public Comment guidelines please see: *https://iacc.hhs.gov/meetings/public-comments/guidelines/*

Access: White Flint Metro Station (Red Line) in combination with a brief walk.

Contact Person: Ms. Angelice Mitrakas, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6182A, Bethesda, MD 20892–9669, Phone: 301–435–9269, Email: *IACCPublicInquiries@mail.nih.gov.*

Public Comments: Any member of the public interested in presenting oral comments to the IACC must notify the Contact Person listed on this notice by 5:00 p.m. ET on Friday, October 5, 2018 with their request to present oral comments at the meeting, and a written/electronic copy of the oral presentation/statement must be submitted by 5:00 p.m. ET on Tuesday, October 9, 2018. A limited number of slots for oral comment are available, and in order to ensure that as many different individuals are able to present throughout the year as possible, any given individual only will be permitted to present oral comments once per calendar year (2018). Only one representative of an organization will be allowed to present oral comments in any given meeting; other representatives of the same group may provide written comments. If the oral comment session is full, individuals who could not be accommodated are welcome to provide written comments instead. Comments to be read or presented in the meeting will be assigned a 3–5 minute time slot depending on the number of comments, but a longer version may be submitted in writing for the record. Commenters going beyond their allotted time in the meeting may be asked to conclude immediately in order to allow other comments and presentations to proceed on schedule.

Any interested person may submit written public comments to the IACC prior to the meeting by emailing the comments to *IACCPublicInquiries@mail.nih.gov* or by submitting comments at the web link: *https://iacc.hhs.gov/meetings/public-comments/submit/index.jsp* by 5:00 p.m. ET on Tuesday, October 9, 2018. The comments should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person. National Institute on Mental Health (NIMH) anticipates written public comments received by 5:00 p.m. ET on Tuesday, October 9, 2018 will be presented to the IACC prior to the meeting for the IACC's consideration. Any written comments received after the 5:00 p.m. ET, October 9, 2018 deadline through October 15,

2018 will be provided to the IACC either before or after the meeting, depending on the volume of comments received and the time required to process them in accordance with privacy regulations and other applicable Federal policies. All written public comments and oral public comment statements received by the deadlines for both oral and written public comments will be provided to the IACC for their consideration and will become part of the public record. Attachments of copyrighted publications are not permitted, but web links or citations for any copyrighted works cited may be provided.

In the 2016–2017 IACC Strategic Plan, the IACC listed the ''Spirit of Collaboration'' as one of its core values, stating that, ''We will treat others with respect, listen with open minds to the diverse views of people on the autism spectrum and their families, thoughtfully consider community input, and foster discussions where participants can comfortably where participants can comfortably offer opposing opinions.'' In keeping with this core value, the IACC and the NIMH Office of Autism Research Coordination ask that members of the public who provide public comments or participate in meetings of the IACC also seek to treat others with respect and consideration in their communications and actions, even when discussing issues of genuine concern or disagreement.

Remote Access: The meeting will be open to the public through a conference call phone number and webcast live on the internet. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the webcast or conference call, please send an e- mail to *IACCPublicInquiries@mail.nih.gov* or call 240–668–0302.

Individuals wishing to participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least five days prior to the meeting.

Security: Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Also, as a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered.

Meeting schedule subject to change. Information about the IACC is available on the website: *http://www.iacc.hhs.gov.*

Dated: August 1, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–16794 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the meeting of the Council of Councils.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Council of Councils.

Open: September 7, 2018.

Time: 8:15 a.m. to 12:15 p.m.

Agenda: Call to Order and Introductions; Announcements and Updates; Environmental influences on Child Health Outcomes (ECHO), Program Genetics and Epigenetics Research to be Supported by Future ECHO Genetics Core; *All of Us* Research Program Update; NIH Update; Common Fund Program—Stimulating Peripheral Activity to Address Conditions.

Place: National Institutes of Health, 9000 Rockville Pike, Building 60/Cloisters, Lecture Hall/Chapel, Bethesda, MD 20892.

Closed: September 7, 2018.

Time: 12:25 p.m. to 1:25 p.m.

Agenda: Review of Grant Applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 60/Cloisters, Lecture Hall/Chapel, Bethesda, MD 20892.

Open: September 7, 2018.

Time: 1:25 p.m. to 4:30 p.m.

Agenda: Council Operating Procedures; Workshop Report on Contributions of Social and Behavioral Research in Addressing the Opioid Crisis; Retiring Council Members' Perspectives.

Place: National Institutes of Health, 9000 Rockville Pike, Building 60/Cloisters, Lecture Hall/Chapel, Bethesda, MD 20892.

Contact Person: Franziska Grieder, D.V.M., Ph.D., Executive Secretary, Council of Councils Director, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov*, 301–435–0744.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/* where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: August 1, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–16792 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with a short public comment period at the end. Attendance is limited by the space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will also be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: September 13–14, 2018.

Time: September 13, 2018, 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Time: September 14, 2018, 8:30 a.m. to 12:00 p.m.

Agenda: For the discussion of program policies and issues; opening remarks; report of the Director, NIGMS; and other business of the Council.

Place: National Institutes of Health Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, Ph.D., Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24B, MSC 6200, Bethesda, MD 20892–6200, (301) 594–4499, *hagana@nigms.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/About/Council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: August 1, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–16791 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Workshop

Notice is hereby given of a workshop convened by the Interagency Autism Coordinating Committee (IACC).

The purpose of the 2018 IACC Workshop, Addressing the Health Needs of People with Autism Spectrum Disorder (ASD), is to convene a working group of the IACC that will focus on health needs and outcomes among individuals with ASD. The working group will use this workshop to discuss health epidemiology, patient-provider interactions, and co-occurring health conditions that affect individuals with ASD. The workshop will be open to the public, will include time for public comments, and will be accessible by live webcast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: 2018 IACC Workshop on Addressing the Health Needs of People with Autism Spectrum Disorder (ASD).

Date: Thursday, September 27, 2018.

Time: 8:30 a.m. to 5:00 p.m. Eastern Time (ET).

Agenda: The workshop will focus discussion on the health and wellness of individuals with ASD, including health epidemiology, patient-provider interaction, and the state of the science on commonly co-occurring health conditions affecting individuals on the autism spectrum.

Place: National Institute of Mental Health (NIMH), 6001 Executive Boulevard, Neuroscience Center (NSC), Conference Rooms C, D, and E, Rockville, MD 20852.

Conference Call: 800–369–1744.

Access Code: 6697418.

Webcast Live: http://videocast.nih.gov/.

Cost: The meeting is free and open to the public.

Registration: Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first serve basis. To register, please visit *www.iacc.hhs.gov.*

Deadlines: Notification of intent to present oral comments: Friday, September 14, 2018 by 5:00 p.m. ET.

Submission of written/electronic statement for oral comments: Wednesday, September 19, 2018 by 5:00 p.m. ET.

Final deadline for submission of written comments: Wednesday, September 19, 2018 by 5:00 p.m. ET. For IACC public comment guidelines, please see: *https://iacc.hhs.gov/meetings/public-comments/guidelines/.*

Access: White Flint Metro Station (Red Line).

Contact Person: Ms. Angelice Mitrakas, Office of Autism Research Coordination, National Institute of Mental Health, National Institutes of Health, 6001 Executive Boulevard, Room 6182A, Bethesda, MD 20892–9669, Phone: 301–435–9269, Email: *IACCPublicInquiries@mail.nih.gov*.

The IACC invites oral and written public-related comments relevant to the topic of the workshop. Individuals interested in presenting oral comments must notify the Contact Person listed on this notice by 5:00 p.m. ET on Friday, September 14, 2018 with their request to present oral comments at the meeting, and a written/electronic copy of the oral presentation/statement must be submitted by 5:00 p.m. ET on Wednesday, September 19, 2018. A limited number of slots for oral comment are available and will be assigned on a first come, first serve basis. Only one representative of an organization will be allowed to present oral comments at this meeting; other representatives of the same group may provide written comments. If the oral comment session is full, individuals who could not be accommodated are welcome to provide written comments instead. Comments to be read or presented in the meeting will be assigned a 3-minute time slot, but a longer version may be submitted in writing for the record. Commenters going beyond their allotted time in the meeting may be asked to conclude immediately to allow other comments and presentations to proceed on schedule.

Any interested person may submit written public comments to the IACC prior to the meeting by emailing the comments to *IACCPublicInquiries@mail.nih.gov,* or by submitting comments at the web link: *https://iacc.hhs.gov/meetings/public-comments/submit/index.jsp* by 5:00 p.m. ET on Wednesday, September 19, 2018. The comments should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. NIMH anticipates written public comments received by 5:00 p.m. ET on

Wednesday, September 19, 2018 will be presented to the working group prior to the workshop. Any written comments received after the 5:00 p.m. ET, Wednesday, September 19, 2018 deadline through Tuesday, September 25, 2018 will be provided to the working group either before or after the meeting, depending on the volume of comments received and the time required to process them in accordance with privacy regulations and other applicable Federal policies. All written public comments and oral public comment statements received by the deadlines for both oral and written public comments will be provided to the IACC for their consideration and will become part of the public record. Attachments of copyrighted publications are not permitted, but web links or citations for any copyrighted works cited may be provided.

In the 2009 IACC Strategic Plan, the IACC listed the ''Spirit of Collaboration'' as one of its core values, stating that, ''We will treat others with respect, listen to diverse views with open minds, discuss submitted public comments, and foster discussions where participants can comfortably offer opposing opinions.'' In keeping with this core value, the IACC and the NIMH Office of Autism Research Coordination (OARC) ask that members of the public who provide public comments or participate in meetings of the IACC also seek to treat others with respect and consideration in their communications and actions, even when discussing issues of genuine concern or disagreement.

Remote Access: The meeting will be open to the public through a conference call phone number and webcast live on the internet. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the webcast or conference call, please send an e- mail to *IACCPublicInquiries@mail.nih.gov.* Individuals wishing to participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 5 days prior to the meeting.

Special Accommodations: Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 5 days prior to the meeting.

Security: Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Also, as a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first serve basis, with expedited check-in for those who are pre-registered.

Meeting schedule subject to change. Information about the IACC is available on the website: *http://www.iacc.hhs.gov.*

Dated: August 1, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–16793 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee NIA–B.

Date: September 27–28, 2018.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Bita Nakhai, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 1, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–16788 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Vince Contreras, Ph.D., 240–669–2823; *vince.contreras@nih.gov.* Licensing information and copies of the U.S. patent application listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Substitutions-Modified Prefusion RSV F Proteins and Their Use

Description of Technology: The respiratory syncytial virus (RSV) fusion (F) glycoprotein is the primary target of neutralizing antibodies. The F glycoprotein exists in at least two conformations, a meta-stable prefusion state, and an extremely stable postfusion state. Both states share several epitopes targeted by neutralizing antibodies, but it has been demonstrated that the prefusion conformation of F contains at least one epitope not present in the postfusion conformation. Natural infection results in neutralizing antibodies that are primarily directed against the prefusion conformation of F, not its postfusion conformation. The instability of the prefusion form of F has

hindered both its characterization and its use as a vaccine antigen.

Researchers at the Vaccine Research Center (VRC) of the National Institute of Allergy and Infectious Diseases have overcome technical obstacles to produce a homogeneous, soluble RSV F glycoprotein vaccine which is stabilized in the prefusion conformation and has improved stability and immunogenicity compared to the native protein. Additionally, several modifications were introduced to remove the requirement for furin during production, resulting in an increase in expression levels of the immunogen. Stability of the immunogen was increased 20-fold as compared to DS–CAV1 (a prefusion-stabilized RSV F glycoprotein vaccine candidate that is currently being assessed in clinical trials) upon incubation at 60 °C. In mice, these immunogens elicited neutralization titers that were 2 to 5-fold higher than DS–CAV1.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- *Vaccine:* RSV vaccine for human use.
- *Probe:* B cell-sorting probe to isolate potent neutralizing monoclonal antibodies.
- *Diagnostics:* To assess the titer of prefusion-specific antibodies in sera.

Competitive Advantages:

- Increased stability compared to the current leading RSV vaccine candidate (DS-Cav1).
- Elicits increased neutralization titers in mice.

Development Stage:

- *In vivo* testing (mice).

Inventors: Peter D. Kwong (NIAID), M. Gordon Joyce (NIAID), Baoshan Zhang (NIAID), Man Chen (NIAID), Barney S. Graham (NIAID), John R. Mascola (NIAID), Aliaksandr A. Druz (NIAID), Wing-Pui Kong (NIAID), Ivelin Georgiev (NIAID), Yaroslav Tsybovsky (Leidos Biomedical Research), Paul V. Thomas (NIAID), Marie L. Pancera (NIAID), Mallika Sastry (NIAID), Cinque Soto (NIAID), Guillaume B.E. Stewart-Jones (NIAID), Yongping Yang (NIAID), Li Ou (NIAID), Ulrich Baxa (NCI), Emily Rundlet (NIAID), Joseph Van Galen (NIAID).

Publications: Joyce, M. Gordon, *et al.*, Nature structural & molecular biology, 23.9 (2016): 811; PMID: 27478931.

Intellectual Property: HHS Reference Number E–064–2016: U.S. Patent Application No. 62/314,946 filed 03/29/2016; PCT Application Number PCT/US2017/024714 filed 03/29/2017 (pending).

Related Intellectual Property: HHS Reference Number E–081–2013.

Licensing Contact: Vince Contreras, Ph.D., 240–669–2823; *vince.contreras@nih.gov.*

Dated: July 20, 2018.

Suzanne M. Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2018–16835 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Interagency Coordinating Committee on the Validation of Alternative Methods Biennial Progress Report: 2016–2017; Availability of Report

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) announces availability of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) Biennial Progress Report: 2016–2017. This report, prepared in accordance with requirements of the ICCVAM Authorization Act of 2000, describes activities and accomplishments from January 2016 through December 2017.

ADDRESSES: The report is available at *http://ntp.niehs.nih.gov/iccvamreport/2017/index.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Warren Casey, Director, NICEATM; email: *warren.casey@nih.gov*; telephone: (984) 287–3118.

SUPPLEMENTARY INFORMATION:

Background: The ICCVAM Authorization Act of 2000 established ICCVAM as a permanent interagency committee of the National Institute of Environmental Health Sciences (NIEHS) under NICEATM. ICCVAM's mission is to facilitate development, validation, and regulatory acceptance of new and revised regulatory test methods that reduce, refine, or replace the use of animals in testing while maintaining and promoting scientific quality and the protection of human health, animal health, and the environment.

A provision of the ICCVAM Authorization Act states that ICCVAM shall prepare ''reports to be made available to the public on its progress under this Act.'' The eighth ICCVAM biennial progress report describing ICCVAM activities and accomplishments from January 2016 through December 2017 is now available.

Summary of Report Contents: Key ICCVAM, ICCVAM agency, and NICEATM accomplishments summarized in the report include:

- Development of a strategic roadmap for incorporating new approaches into safety testing of chemicals and medical products in the United States.
- Publication of two guidance documents by the U.S. Environmental Protection Agency (EPA) in 2016. One included a policy statement to waive all acute dermal lethality studies for pesticide formulations. The other described a transparent, stepwise process for evaluating and implementing alternative methods for six-pack studies, which test for acute systemic toxicity by the oral, dermal, and inhalation routes; skin and eye irritation; and skin sensitization.
- Publication of notices permitting removal of back-titration hamsters for potency testing of vaccines containing *Leptospira pomona* and *Leptospira grippotyphosa* by the U.S. Department of Agriculture, further reducing the number of hamsters required for leptospirosis vaccine potency testing.
- Publication by the U.S. Food and Drug Administration of the Predictive Toxicology Roadmap for integrating predictive toxicology methods into safety and risk assessments.
- Development by NICEATM and EPA scientists of a defined approach that combines data from 11 high-throughput screening assays with a computational model to identify chemicals with the potential to interact with the androgen receptor pathway.
- Development by NICEATM and ICCVAM scientists of a defined approach that uses non-animal approaches to predict murine local lymph node assay outcomes and human skin sensitization hazard and potency.
- Submission of a proposal to develop a performance-based test guideline for defined approaches to skin sensitization testing and assessment to the Organisation for Economic Co-operation and Development (OECD) by partners in the International Cooperation on Alternative Test Methods in 2016. The proposal was approved as part of the OECD workplan in 2017.
- Launch of the Integrated Chemical Environment, a publicly accessible online resource developed to provide high-quality curated data and

computational workflows to facilitate chemical safety assessment, by NICEATM.

Availability of Report: The report is available at *http://ntp.niehs.nih.gov/iccvamreport/2017/index.html.* Links to this report and all past ICCVAM annual and biennial reports are available at *http://ntp.niehs.nih.gov/go/iccvam-bien.*

Background Information on ICCVAM and NICEATM: ICCVAM is an interagency committee composed of representatives from 16 federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods and integrated testing strategies with regulatory applicability. ICCVAM also promotes the scientific validation and regulatory acceptance of testing methods that more accurately assess the safety and hazards of chemicals and products and replace, reduce, or refine (enhance animal well-being and lessen or avoid pain and distress) animal use.

The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) establishes ICCVAM as a permanent interagency committee of NIEHS and provides the authority for ICCVAM involvement in activities relevant to the development of alternative test methods. Additional information about ICCVAM can be found at *http://ntp.niehs.nih.gov/go/iccvam.*

NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts and publishes analyses and evaluations of data from new, revised, and alternative testing approaches. NICEATM and ICCVAM work collaboratively to evaluate new and improved testing approaches applicable to the needs of U.S. federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative testing approaches for validation studies and technical evaluations. Additional information about NICEATM can be found at *http://ntp.niehs.nih.gov/go/niceatm.*

Dated: July 24, 2018.

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2018–16837 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 7, 2018.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Closed: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Acting Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: September 7, 2018.

Open: 1:00 p.m. to 2:45 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 7, 31 Center Drive, Bethesda, MD 20892.

Closed: 2:45 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 7, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Acting Director, Division Of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: September 7, 2018.

Open: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Closed: 2:00 p.m. to 3:15 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Acting Director, Division Of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Digestive Diseases and Nutrition Subcommittee.

Date: September 7, 2018.

Open: 1:00 p.m. to 2:00 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Closed: 2:15 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Acting Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 1, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–16790 Filed 8–6–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0495]

Merchant Mariner Medical Advisory Committee

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Merchant Mariner Medical Advisory Committee and its Working Groups will meet to discuss matters relating to medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents, medical standards and guidelines for the physical qualifications of operators of commercial vessels, medical examiner education, and medical research. The meetings will be open to the public.

DATES:

Meetings: The Merchant Mariner Medical Advisory Committee and its Working Groups are scheduled to meet on Thursday, September 13, 2018, and on Friday, September 14, 2018, from 8:00 a.m. until 5:30 p.m. each day. These meetings may adjourn early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by Committee members before the meetings, submit your written comments no later than September 5, 2018.

ADDRESSES: The meetings will be held at STAR Center, 2 West Dixie Highway, Dania Beach, FL 33004, *https://www.star-center.com/.*

Pre-registration Information: Pre-registration is not required for access to this meeting by the public. All attendees will be required to provide a driver's license or government-issued identification card in order to gain admittance to the building.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Alternate Designated Federal Officer as soon as possible using the contact information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Instructions: You are free to submit comments at any time, including orally at the meetings, but if you want Committee members to review your comment before the meetings, please submit your comments no later than September 5, 2018. We are particularly interested in comments on the issues in the ''Agenda'' section below. You must include ''Department of Homeland Security'' and the docket number USCG–2018–0495. Written comments may also be submitted using the Federal eRulemaking Portal at *http://www.regulations.gov.* If you encounter technical difficulties with comments submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review the Privacy and Security Notice for the Federal Docket Management System at *https://www.regulations.gov/privacyNotice.*

Docket Search: For access to the docket, to read documents or comments related to this notice, go to *http://www.regulations.gov,* type USCG–2018–0495 in the ''Search'' box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Mr. Davis Breyer, Alternate Designated Federal Officer of the Merchant Mariner Medical Advisory Committee, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509, telephone 202–372–1445, fax 202–372–8382 or *davis.j.breyer@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is pursuant with the Federal Advisory Committee Act, Title 5 United States Code Appendix.

The Merchant Mariner Medical Advisory Committee Meeting is authorized by U.S. Code, Title 46, section 7115. The Committee advises the Secretary of the Department of Homeland Security on matters related to (a) medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents; (b) medical standards and guidelines for the physical qualifications of operators of commercial vessels; (c) medical examiner education; and (d) medical research.

Agenda

Day 1

The agenda for the September 13, 2018, meeting is as follows:

(1) The full Committee will meet briefly to discuss the Working Groups' business/task statements, which are listed under paragraph 2 and 3 (a)–(b) below.

(2) General Discussion of Mariner Mental Health Issues with presentations by mariner service organizations and industry.

(3) Working Groups will separately address the following task statements, which are available at *https://homeport.uscg.mil/missions/ports-and-waterways/safety-advisory-committees/medmac.*

(a) Task statement 16–24 Recommendations on Appropriate Diets and Wellness for Mariners While Onboard Merchant Vessels; and

(b) Task statement 17–26, Input to Support Regulatory Reform of Coast Guard Regulations-Executive Orders 13771 and 13783.

(4) Public comment period.

(5) Reports of Working Groups. At the end of the day, the Working Groups will report to the full Committee on what was accomplished in their meetings. The full Committee will not take action on these reports on this date. Any official action taken as a result of these Working Group meetings will be taken on day two of the meeting.

(6) Adjournment of meeting.

Day 2

The agenda for the September 14, 2018, meeting is as follows:

(1) Introduction.

(2) Designated Federal Officer announcements.

(3) Remarks from U.S. Coast Guard Leadership.

(4) Roll call of Committee members and determination of a quorum.

(5) Reports from the following Working Groups:

(a) Task statement 16–24, requesting recommendations on appropriate diets

and wellness for mariners while aboard merchant vessels; and

(b) Task statement 17–26, Input to Support Regulatory Reform of Coast Guard Regulations-Executive Orders 13771 and 13783.

(6) New Business:

(a) Task Statement X–1, Communication Between External Stakeholders and the Mariner; and

(b) Task Statement X–2, Mariner Health Issues.

(7) Other items for discussion:

(a) Report on the Mariner Credentialing Program;

(b) Report on National Maritime Center activities; and

(c) Drug and Alcohol Prevention and Investigations.

(8) Public comment period.

(9) Discussion of Working Group recommendations. The Committee will review the information presented on each issue, deliberate on any recommendations presented by the Working Groups, approve/formulate recommendations and close any completed tasks. Official action on these recommendations may be taken on this date.

(10) Closing remarks/plans for next meeting.

(11) Adjournment of meeting.

A copy of all meeting documentation will be available at *https://homeport.uscg.mil/missions/ports-and-waterways/safety-advisory-committees/medmac* no later than September 5, 2018. Alternatively, you may contact Mr. Davis Breyer as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

A public comment period will be held during each Working Group and full Committee meeting concerning matters being discussed. Public comments will be limited to three minutes per speaker. Please note that the meeting may adjourn early if the work is completed.

Dated: August 1, 2018.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2018–16867 Filed 8–6–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1842]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before November 5, 2018.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1842, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found

online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Barnstable County, Massachusetts (All Jurisdictions) **Project: 16–01–0273S Preliminary Date: April 18, 2018**	
Town of Bourne	Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, MA 02532.
Bristol County, Massachusetts (All Jurisdictions) **Project: 16–01–0273S Preliminary Date: April 18, 2018**	
City of Fall River	City Hall, 1 Government Center, Fall River, MA 02722.
City of New Bedford	City Hall, 133 William Street, New Bedford, MA 02740.
Town of Acushnet	Parting Ways Building, 130 Main Street, 2nd Floor, Acushnet, MA 02743.
Town of Dartmouth	Town Hall, 400 Slocum Road, Dartmouth, MA 02747.
Town of Fairhaven	Town Hall, 40 Center Street, Fairhaven, MA 02719.
Town of Freetown	Freetown Town Hall, 3 North Main Street, Assonet, MA 02702.
Town of Westport	Town Hall, 816 Main Road, Westport, MA 02790.
Norfolk County, Massachusetts (All Jurisdictions) **Project: 16–01–0273S Preliminary Date: April 18, 2018**	
Town of Cohasset	Town Hall, 41 Highland Avenue, Cohasset, MA 02025.
Plymouth County, Massachusetts (All Jurisdictions) **Project: 16–01–0273S Preliminary Date: April 18, 2018**	
Town of Abington	Town Hall, 500 Gliniewicz Way, Abington, MA 02351.
Town of Carver	Town Hall, 108 Main Street, Carver, MA 02330.
Town of Duxbury	Town Hall, 878 Tremont Street, Duxbury, MA 02332.
Town of Halifax	Town Hall, 499 Plymouth Street, Halifax, MA 02338.
Town of Hanover	Town Hall, 550 Hanover Street, Hanover, MA 02339.
Town of Hanson	Town Hall, 542 Liberty Street, Hanson, MA 02341.
Town of Hingham	Town Hall, 210 Central Street, Hingham, MA 02043.
Town of Kingston	Town House, 26 Evergreen Street, Kingston, MA 02364.
Town of Marion	Town House, 2 Spring Street, Marion, MA 02738.
Town of Marshfield	Town Hall, 870 Moraine Street, Marshfield, MA 02050.
Town of Mattapoisett	Town Hall, 16 Main Street, Mattapoisett, MA 02739.
Town of Middleborough	Town Hall, 10 Nickerson Avenue, Middleborough, MA 02346.
Town of Norwell	Town Hall, 345 Main Street, Room 112, Norwell, MA 02061.
Town of Pembroke	Town Hall, 100 Center Street, Pembroke, MA 02359.
Town of Plymouth	Town Hall, 26 Court Street, Plymouth, MA 02360.
Town of Plympton	Town Hall, 5 Palmer Road, Plympton, MA 02367.
Town of Rochester	Town Hall, 1 Constitution Way, Rochester, MA 02770.
Town of Rockland	Town Hall, 242 Union Street, Rockland, MA 02370.
Town of Scituate	Town Hall, 600 Chief Justice Cushing Highway, Scituate, MA 02066.
Town of Wareham	Memorial Town Hall, 54 Marion Road, Wareham, MA 02571.
Musselshell County, Montana and Incorporated Areas **Project: 17–08–0803S Preliminary Date: March 22, 2018**	
City of Roundup	City Office, 34 3rd Avenue West, Roundup, MT 59072.
Unincorporated Areas of Musselshell County	Musselshell County Emergency Operations Center, 704 1st Street East, Roundup, MT 59072.
Petroleum County, Montana and Incorporated Areas **Project: 17–08–0803S Preliminary Date: March 22, 2018**	
Unincorporated Areas of Petroleum County	Petroleum County Courthouse, 302 East Main, Winnett, MT 59087.
Rosebud County, Montana and Incorporated Areas **Project: 17–08–0803S Preliminary Date: March 22, 2018**	
Unincorporated Areas of Rosebud County	Rosebud County Commission, 1200 Main Street, Forsyth, MT 59327.

Community	Community map repository address
Newport County, Rhode Island (All Jurisdictions) **Project: 16–01–0273S Preliminary Date: April 18, 2018**	
Town of Little Compton	Town Hall, 40 Commons, Little Compton, RI 02837.
Town of Tiverton	Town Hall, 343 Highland Road, Tiverton, RI 02878.

[FR Doc. 2018–16876 Filed 8–6–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO3500000.L14400000.PN0000.18X; OMB Control Number 1004–0004]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Desert Land Entry Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 6, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov*; or via facsimile to (202) 395–5806. Please provide a copy of your comments to the BLM at U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240, Attention: Jean Sonneman; or by email to *jesonnem@blm.gov.* Please reference OMB Control Number 1004–0004 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Flora Bell by email at *flbell@blm.gov,* or by telephone at 202–912–7347. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, the BLM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format. A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 5, 2018 (83 FR 14670), and the comment period ended on June 4, 2018. The BLM received one comment that did not pertain to the collection of information. The BLM did not revise the ICR in response.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BLM uses the information to determine if an individual is eligible to make a desert land entry for agricultural purposes.

Title of Collection: Desert Land Entry Application.

OMB Control Number: 1004–0004.

Form Number: 2520–1.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals who wish to make a desert land entry for agricultural purposes.

Total Estimated Number of Annual Respondents: 3.

Total Estimated Number of Annual Responses: 3.

Estimated Completion Time per Response: 2 hours.

Total Estimated Number of Annual Burden Hours: 6 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $45.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2018–16857 Filed 8–6–18; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS01000.L71220000. EU0000. LVTFF1604660; N–94498; 12–08807; MO# 4500109952; TAS: 14X5232]

Notice of Realty Action: Non-Competitive Direct Sale of the Reversionary Interest in a Recreation and Public Purposes Act (R&PP) Patent, in Clark County, Nevada (N–94498)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) intends to dispose of the reversionary interest held by the United States in a 140-acre parcel of public land in Las Vegas, Nevada, pursuant to Section 203 of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), as amended, for a non-competitive direct sale to the Black Mountain Golf and Country Club (BMGCC). The BLM has found this

parcel suitable for disposal under the authority of Section 202 of FLPMA.

DATES: Interested parties may submit written comments regarding the direct sale on or before September 21, 2018.

ADDRESSES: Send written comments to the BLM Las Vegas Field Manager, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130.

FOR FURTHER INFORMATION CONTACT: Supervisory Realty Specialist Manuela Johnson at the above address, by phone at 702–515–5224, or by email at *m15johns@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BMGCC is operated as a non-profit corporation. The land occupied by the BMGCC was patented on May 9, 1962, under the authority of the Recreation and Public Purposes (R&PP) Act of June 14, 1926. The purpose of the non-competitive direct sale is to dispose of the reversionary interest in the patented lands that prevents the BMGCC from using the land for other purposes.

The parcel, which was identified as suitable for direct sale of the reversionary interest, is located on the northwest corner of Horizon Drive and Mona Lane in Henderson, Nevada, and is legally described as:

Mount Diablo Meridian, Nevada

T. 22 S., R. 63 E.,

Sec. 20, E½SW¼, NW¼SW¼ and E½SW¼SW¼.

The area described contains 140 acres.

The 140-acre parcel of public land is difficult and uneconomic to manage, and meets the criteria for disposal set forth in 43 CFR 2710.0–3(a)(3). The parcel is within the boundaries of the City of Henderson and is surrounded by private lands. The parcel is not contiguous to any public land administered by the BLM. The location and absence of other contiguous public land makes the parcel impractical for the BLM to administer. Therefore, it is in the best interest of the public to dispose of this parcel of public land by direct sale procedures pursuant to 43 CFR 2711.3–3 to BMGCC.

The sale is consistent with the BLM Las Vegas Resource Management Plan (RMP) and the Record of Decision (ROD) approved on October 5, 1998. This sale would be made pursuant to Section 202 of the FLPMA, as amended, and Section 203, which authorizes a sale of public lands when the Secretary determines that the proposed sale parcel, ''because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency.'' The parcel is not needed for any Federal purposes; therefore, its disposal is in the public interest.

The appraised fair market value of the parcel is $30,800,000. The appraisal report, dated February 1, 2017, is available for public review at the BLM Las Vegas Field Office.

Upon conveyance of the reversionary interest, all other terms and conditions of Patent No. 1226785 will continue to apply.

The reversionary interest will not be sold until at least October 9, 2018. The conveyance document issued will only transfer the reversionary interest retained by the United States in patent 1226785 and will contain the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. The terms and conditions of the United States Patent No. 1226785, including but not limited to, the reservation of all mineral deposits in the land so patented, and the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior;

3. Additional terms and conditions that the authorized officer deems appropriate.

The purchaser, by accepting the release of the reversionary interest of the United States agrees to indemnify, defend, and hold the United States, its officers, agents, or employees harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgements of any kind arising from the past, present, or future acts or omissions of the purchaser, its employees, agents, contractors, or lessees, or third-party arising out of or in connection with the purchaser's acceptance of the aforementioned release or purchaser's use and/or occupancy of the land involved resulting in: (1) Violations of Federal, State, and local laws and regulations that are now, or in the future become, applicable to real property; (2) judgments, claims, or demands of any kind assessed against the United States; (3) cost, expenses, or damages of any kind incurred by the United States; (4) releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property, and other interests of the United States; (5) other activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the land involved, and any cleanup, response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) natural resource damages as defined by Federal and State law. Patentee shall stipulate that it will be solely responsible for compliance with all applicable Federal, State, and local environmental and regulatory provisions, throughout the life of the facility, including any closure and/or post closure requirements that may be imposed with respect to any physical plant and/or facility upon the land involved under any Federal, State, or local environmental laws or regulatory provisions. This covenant shall be construed as running with the land and may be enforced by the United States in a court of competent jurisdiction.

No warranty of any kind, express or implied, is given by the United States in connection with the sale or release of the reversionary interest. The documentation for land use conformance, National Environmental Policy Act (NEPA) procedures, a map, and the appraisal report, are available for review at the BLM Las Vegas Office located at the address listed above. A Determination of NEPA Adequacy document—with the number DOI–BLM–NV–S010–2017–0091–DNA—was prepared in connection with this Notice of Realty Action.

Interested parties may submit written comments on the direct sale of the reversionary interest for the 140-acres sale parcel. Before including your address, phone number, email address, or other personally identifying information in your comment, you should be aware that your entire comment—including your personally identifying information—may be made publicly available at any time. While you can ask the BLM in your comment to withhold your personally identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the BLM Nevada State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the decision will become effective on October 9, 2018.

Authority: 43 CFR 2711.1–2.

Kerri-Anne Thorpe,

Acting Assistant Field Manager, Las Vegas Field Office.

[FR Doc. 2018–16854 Filed 8–6–18; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO310000.L13100000.PP0000.18X; OMB Control Number 1004–0162]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Onshore Geophysical Exploration

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before September 6, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the BLM at U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240, Attention: Jean Sonneman; or by email to *jesonnem@blm.gov.* Please reference OMB Control Number 1004–0162 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jennifer Spencer by email at *j35spenc@blm.gov,* or by telephone at 202–912–7146. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, the BLM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 2, 2018 (83 FR 9025). No comments were received.

The BLM is again soliciting comments on the proposed ICR that is described below. The BLM is especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This information collection pertains to onshore geophysical exploration on Federal lands. Federal land-management agencies are responsible for regulating geophysical exploration on the Federal surface estate. The BLM regulates exploration for oil and gas on lands it manages, and on occasion regulates such exploration on lands managed by other Federal land-management agencies. The U.S. Forest Service (FS) regulates exploration for various types of minerals, including oil and gas, on lands it manages. The BLM and the FS propose to revise the accuracy and usefulness of the forms they use for this collection of information.

Title of Collection: Onshore Geophysical Exploration.

OMB Control Number: 1004–0162.

Form Numbers: BLM Form 3150–4/FS Form 2800–16 and BLM Form 3150–5/FS Form 2800–16a.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: The respondents for this collection of information are business that seek to conduct geophysical exploration on Federal lands.

Total Estimated Number of Annual Respondents: 23.

Total Estimated Number of Annual Responses: 23.

Estimated Completion Time per Response: Varies from 20 minutes to 1 hour, depending on activity.

Total Estimated Number of Annual Burden Hours: 17.67.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $25.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2018–16855 Filed 8–6–18; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[14X.LLAK942000.L54200000.FR0000. LVDIL14L0540; AA094269]

Notice of Application for a Recordable Disclaimer of Interest for Lands Underlying the Egegik River, Becharof Lake, and Ruth Lake and Outlet, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The State of Alaska (State) has filed an application with the Bureau of Land Management (BLM) for a Recordable Disclaimer of Interest (RDI) from the United States in those lands underlying the Egegik River, Becharof Lake, and Ruth Lake and Outlet in southwest Alaska. The State asserts that the Egegik River, Becharof Lake, and Ruth Lake and Outlet, were navigable and unreserved at the time of Alaska Statehood in 1959.

DATES: The BLM should receive all comments to this action on or before November 5, 2018.

ADDRESSES: You may submit comments by mail or email on the State's application for an RDI or on the BLM Draft ''Summary Report on Federal Interest in Lands Underlying the Egegik River, Becharof Lake, and Ruth Lake

and Outlet in Alaska'' (Draft Summary Report). To file comments by mail, send to: RDI Program Manager (AK–942), Division of Lands and Cadastral, BLM Alaska State Office, 222 West 7th Avenue, #13, Anchorage, Alaska 99513. To submit comments by email, send to *anichols@blm.gov.*

Copies of the State's application, supporting evidence, the Draft Summary Report, and comments, including names and street addresses of commenters, will be available for public review at the BLM Alaska Public Information Center (Public Room), 222 West 8th Avenue, Anchorage, Alaska, during regular business hours 8 a.m. to 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Angie Nichols, RDI Program Manager, 222 West 7th Avenue, #13, Anchorage, Alaska 99513; 907–271–3359; *anichols@blm.gov;* or visit the BLM RDI website at *https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/RDI/bristol-bay.*

People who use a telecommunications device for the deaf (TDD) may call the Federal Relay System (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or a question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: On Sept. 7, 2016, the State filed an application (AA–94269) for an RDI pursuant to Section 315 of the Federal Land Policy and Management Act of 1976 (FLPMA) and the regulations contained in 43 CFR subpart 1864 for the lands underlying the Egegik River, Becharof Lake, and Ruth Lake and Outlet. The State asserts that these waterbodies were navigable at the time of Alaska Statehood. As such, the State contends that ownership of the lands underlying this river system automatically passed from the United States to the State in 1959 at the time of Statehood under the Equal Footing Doctrine; the Submerged Lands Act of 1953; the Alaska Statehood Act; and other title navigability law. Section 315 of FLPMA authorizes the BLM to issue an RDI when it determines that a record interest of the United States in lands has terminated by law or is otherwise invalid, and a disclaimer will help remove a cloud on title to such lands.

The State's application is for an RDI for all submerged lands underlying the portions described below of the Egegik River, Becharof Lake, and Ruth Lake and Outlet. Specifically, these are Becharof Lake: All submerged lands and bed up to and including the ordinary high water lines of Becharof Lake upstream from its outlet within section 5, township 25 south, range 46 west, Seward Meridian, Alaska; Egegik River: All submerged lands and bed of the Egegik River lying between the ordinary high water lines of the left and right banks of the Egegik River, beginning at the outlet of Becharof Lake, downstream to the limit of tidal influence; Unnamed outlet Ruth Lake: All submerged lands up to and including the ordinary high water lines of Unnamed outlet of Ruth Lake upstream from its outlet at Becharof Lake within section 5, township 30 south, range 42 west, Seward Meridian, Alaska, upstream to Ruth Lake; and Ruth Lake: All submerged lands and bed up to and including the ordinary high water lines of Ruth Lake upstream from its outlet within section 9, township 30 south, range 42 west, Seward Meridian, Alaska.

The State listed the coverage area on the USGS 1:63,360 series topographic maps as follows: Naknek A–1 through A–3, Karluk C–6, D–6 and Ugashik C–1 and D–1, D–2, D–3. Over time, the precise location of the submerged lands described above may vary between townships due to the ambulatory nature of these water bodies.

An RDI is a legal document through which the BLM disclaims the United States' interest in, or ownership of, specified lands, but the disclaimer does not grant, convey, transfer, or renounce any title or interest in the lands, nor does it release any tax, judgment, or lien. This Notice of Application is to inform the public of the pending application and the State's supporting evidence, as well as to provide the opportunity to comment or provide additional information to the BLM.

The BLM will not make a final decision on the merits of the State's application before November 5, 2018. During this 90-day period, interested parties may comment on the State's application, AA–94269, and supporting evidence. Interested parties may also comment on the BLM's Draft Summary Report, which is available on the BLM's RDI website (see **FOR FURTHER INFORMATION CONTACT** above).

Copies of the State's application, supporting evidence, the Draft Summary Report, and comments, including names and street addresses of commenters, will be available for public review at the BLM Alaska Public Information Center (Public Room), 222 West 8th Avenue, Anchorage, Alaska, during regular business hours 8 a.m. to 4 p.m., Monday through Friday, except holidays. Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask the BLM in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

If the BLM determines the State's evidence and any additional information the agency receives concerning the State's application is sufficient to reach a favorable determination, and neither the records nor a valid objection discloses a reason not to disclaim, the BLM may decide to approve the application for the RDI.

Authority: 43 CFR 1864.2.

Erika L. Reed,

Deputy State Director, Division of Lands and Cadastral, Alaska.

[FR Doc. 2018–16858 Filed 8–6–18; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[18X.LLAK930100.L51010000.000000 .LVRWL18L1090]

Notice of Intent To Prepare an Environmental Impact Statement for the Willow Master Development Plan Oil and Gas Prospect, Alaska

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Naval Petroleum Reserves Production Act of 1976, as amended, the Bureau of Land Management (BLM) Alaska State Office, Anchorage, Alaska, intends to prepare a Master Development Plan Environmental Impact Statement (MDP/EIS) for the Willow oil and gas prospect within the Bear Tooth Unit of the National Petroleum Reserve in Alaska (NPR–A).

DATES: This Notice initiates the public scoping process for the Willow oil and gas prospect MDP/EIS. Comments on issues, impacts, and potential alternatives to be analyzed may be submitted in writing until September 6, 2018. The BLM will hold public scoping meetings in Anchorage, Fairbanks, Nuiqsut, and Utqiagvik. The dates, times, and locations of scoping meetings will be announced through local news media, newspapers, and the BLM Alaska website. Any Federal, state, local

agency, or Tribe that is interested in serving as a cooperating agency for the development of the MDP/EIS is asked to submit such requests to the BLM by September 6, 2018.

ADDRESSES: You may submit comments on issues related to the scope of the proposed Willow MDP/EIS by any of the following methods:

- *Email: BLM_AK_Willow_Comments@blm.gov*.
- *Mail:* Willow MDP/EIS Scoping Comments, Bureau of Land Management, 222 West 7th Avenue, Stop #13, Anchorage, AK 99513.

Requests for information regarding the Willow MDP/EIS and cooperating agency requests may be mailed to: Attn: Willow MDP/EIS, 222 West 7th Avenue, Stop #13, Anchorage, Alaska 99517. You may also request to be added to the mailing list for the MDP/EIS.

Documents and other information pertaining to the MDP/EIS are available on the BLM Alaska website at *http://www.blm.gov/alaska.*

You may examine documents pertinent to this proposal at the BLM Alaska Public Room, Arctic District Office, 222 University Avenue, Fairbanks, Alaska 99709, and at the BLM Alaska Public Information Center, Alaska State Office, 222 West 7th Ave., Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Ferris Couture, BLM Alaska State Office, 907–271–1306. People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: ConocoPhillips Alaska, Inc. (ConocoPhillips) initiated discussions with the BLM regarding potential development of its recently announced Willow oil and gas prospect, which is located on Federal oil and gas leases ConocoPhillips holds within the Bear Tooth Unit of the NPR–A approximately 30 air miles west of the Native Village of Nuiqsut. The BLM manages approximately 23 million acres comprising the NPR–A, located on Alaska's North Slope.

On May 10, 2018, ConocoPhillips submitted a letter requesting the development of the Willow prospect through a MDP/EIS. The letter, available on the BLM Alaska website, includes a description of the foreseeable infrastructure and activity associated with the proposed Willow prospect development and a map of the proposed area of development. Analyzing the entire proposed Willow development in a single MDP/EIS will allow the BLM to make determinations of National Environmental Policy Act (NEPA) adequacy when individual applications for permits to drill are submitted. This is expected to result in a quicker and more efficient process for the approval of applications for permits to drill.

The MDP/EIS will analyze the environmental impacts and appropriate mitigation measures to reduce adverse effects to surface resources of the proposed Willow prospect which would involve the construction, operation, and maintenance of an oil and gas development project which may include: One central processing facility, an infrastructure pad, up to five drill pads with up to fifty wells on each pad, access and infield roads, an airstrip, pipelines, a gravel mine, and a temporary island to support module delivery via sealift barges.

The MDP/EIS will be prepared in accordance with recently issued Executive Orders and Secretarial guidance on streamlining and improving the NEPA and other regulatory processes. At present, the BLM has identified the following preliminary issues for evaluation in the MDP/EIS, impacts to: Subsistence use and access; biological resources, including caribou, polar bears, spectacled and Stellar eiders, yellow billed loons, and fisheries; social and cultural resources; air quality and climate; and aquatic resources.

The BLM will use NEPA public participation guidelines to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (54 U.S.C. 306108), pursuant to 36 CFR 800.2(d)(3).

The information about historic and cultural resources within the area potentially affected by the Willow development project will assist the BLM in identifying and evaluating impacts to cultural resources in the context of both NEPA and Section 106 of the National Historic Preservation Act.

Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask the BLM in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

The BLM will consult with federally recognized Tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns will be given appropriate consideration.

Federal, state, local agencies, and Tribes that may be interested in or substantially affected by the proposal that the BLM is evaluating are invited to request participation in the development of the MDP/EIS as cooperating agencies. Appropriate cooperating agencies are those with jurisdiction by law and/or those that can offer special expertise in the development of the MDP/EIS.

Authority: 40 CFR 1501.7.

Karen E. Mouritsen,
Acting State Director, Alaska.

[FR Doc. 2018–16783 Filed 8–6–18; 8:45 am]

BILLING CODE 4310–JA–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m., August 20, 2018.

PLACE: On board MISSISSIPPI V at City Front, Caruthersville, Missouri.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Louis and Memphis Districts; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 21, 2018.

PLACE: On board MISSISSIPPI V at Beale Street Landing, Memphis, Tennessee.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any

issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 12:00 noon, August 22, 2018.

PLACE: On board MISSISSIPPI V at City Front, Vicksburg, Mississippi.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9:00 a.m., August 24, 2018.

PLACE: On board MISSISSIPPI V at Morgan City Port Commission Dock, Morgan City, Louisiana.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles A. Camillo, telephone 601–634–7023.

Charles A. Camillo,

Director, Mississippi River Commission.

[FR Doc. 2018–16943 Filed 8–3–18; 4:15 pm]

BILLING CODE 3720–58–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (18–058)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Gatrie Johnson, National Aeronautics and Space Administration, 300 E Streets SW, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Gatrie Johnson, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *Gatrie.Johnson@NASA.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

A federal grant is an award of financial assistance from a federal agency to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States. The NASA Procurement Office supports NASA research, science, and education communities through the award of research/education/and training grants in the science, technology, engineering, and math (STEM) fields. NASA has a continuing commitment to identify and address inequities associated with its grant review and awards processes. To support that commitment, NASA implemented a process to collect demographic data from grant applicants for the purpose of analyzing demographic differences associated with its award processes. Information collected includes the name, gender, race, ethnicity, disability status, citizenship status, education, and career data of the respondents.

Submission of the information is voluntary and is not a precondition of award. However, if the information is not submitted, it will undermine the usefulness of information received from other respondents.

II. Methods of Collection

Electronic.

III. Data

Title: Research and Related Personal Data.

OMB Number: 2700–0161.

Type of Review: Existing information collection.

Affected Public: Not-For-Profit Institutions.

Estimated Number of Respondents: 5,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Public Burden Hours: 416.7.

Estimated Total Annual Government Cost: $37,500.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gatrie Johnson,

NASA PRA Clearance Officer.

[FR Doc. 2018–16814 Filed 8–6–18; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meeting Notice

TIME AND DATE: Weeks of August 6, 13, 20, 27, September 3, 10, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 6, 2018—Tentative

There are no meetings scheduled for the week of August 6, 2018.

Week of August 13, 2018—Tentative

There are no meetings scheduled for the week of August 13, 2018.

Week of August 20, 2018—Tentative

There are no meetings scheduled for the week of August 20, 2018.

Week of August 27, 2018—Tentative

There are no meetings scheduled for the week of August 27, 2018.

Week of September 3, 2018—Tentative

There are no meetings scheduled for the week of September 3, 2018.

Week of September 10, 2018—Tentative

Monday, September 10, 2018

10:00 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or you may email *Patricia.Jimenez@nrc.gov* or *Wendy.Moore@nrc.gov.*

Dated: August 2, 2018.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–16894 Filed 8–3–18; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Units 3 and 4, Ventilation System Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting exemptions to allow a departure from elements of the certification information of Tier 1 of the generic AP1000 design control document (DCD) and issuing License Amendment Nos. 131 and 130 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemptions allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemptions were determined in part by the acceptability of the amendments, the exemptions and amendments are being issued concurrently.

The exemption revises the plant-specific Tier 1 information and corresponding changes to COL Appendix C, and the amendment changes the associated plant-specific DCD Tier 2 material incorporated into the VEGP Updated Final Safety Analysis Report (UFSAR), to modify an administrative program to manage unqualified inorganic zinc coatings in Service Level I areas of the VEGP Units 3 and 4 containment buildings.

DATES: The exemptions and amendments were issued on July 10, 2018.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Jennifer Borges; 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendments and exemptions was designated License Amendment Request (LAR) 17–039 and submitted by letter dated November 3, 2017, and supplemented by letter dated March 28, 2018 (ADAMS Accession No. ML17307A201 and ML18087A147, respectively).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: William (Billy) Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR) and issuing License Amendment Nos. 131 and 130 to COLs, NPF–91 and NPF–92, respectively, to the licensee. The exemption is required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested license amendment, the licensee proposed changes to plant-specific Tier 1 and associated COL Appendix C information, as well as plant-specific Tier 2 materials located in the plant-specific UFSAR, all of which are related to changes in an administrative program to manage unqualified coatings in Service Level I areas of the VEGP Units 3 and 4 containment buildings.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the

exemption request and the license amendment. The exemptions met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendments met all applicable regulatory criteria and were found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML18158A313.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML18158A307 and ML18158A308, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML18158A309 and ML18158A311, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated November 3, 2017, as supplemented March 28, 2018, Southern Nuclear Operating Company (SNC) requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, ''Design Certification Rule for the AP1000 Design,'' as part of license amendment request (LAR) 17–039, ''Unqualified Service Level I Coatings Program.''

For the reasons set forth in Section 3.2 of the NRC staff's Safety Evaluation, which can be found under ADAMS Accession No. ML18158A313, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined License, as described in the licensee's request dated November 3, 2017, as supplemented by letter dated March 28, 2018. This exemption is related to, and necessary for the granting of License Amendment No. 131 (Unit 3) and 130 (Unit 4), which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession Number ML18158A313), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated November 3, 2017, as supplemented by letter dated March 28, 2018 (ADAMS Accession No. ML17307A201 and ML18087A147), the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on December 19, 2017 (82 FR 60223). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemptions and issued the amendments that the licensee requested by letter November 3, 2017, as supplemented by letter dated March 28, 2018 (ADAMS Accession No. ML17307A201 and ML18087A147, respectively).

The exemptions and amendments were issued on July 10, 2018, as part of a combined package to the licensee (ADAMS Accession No. ML18158A305).

Dated at Rockville, Maryland, this 2nd day of August 2018.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 4, Division of Licensing, Siting and Environmental Analysis. Office of New Reactors.

[FR Doc. 2018–16831 Filed 8–6–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0162]

Radiation Safety Surveys at Medical Institutions

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 8.23, ''Radiation Safety Surveys at Medical Institutions.'' RG 8.23 is being withdrawn because the NRC amended its regulations to remove certain prescriptive requirements regarding the types and frequencies of surveys. Therefore, the prescriptive guidance in RG 8.23 is no longer needed.

DATES: The withdrawal of RG 8.23 is applicable August 7, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0162 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0162. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER**

INFORMATION CONTACT section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The basis for withdrawal is located at ADAMS Accession No. ML18122A278. RG 8.23 is available at ADAMS Accession No. ML003739603.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Vered, Shaffer, telephone: 630–829–9862, email: *Vered.Shaffer@nrc.gov,* or Harriet Karagiannis, telephone: 301–415–2493, email: *Harriet.Karagiannis@nrc.gov.* Both are staff of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: Regulatory Guide 8.23 was published in January 1981 to provide guidance on the types and frequencies of surveys that are acceptable to the NRC staff for use in medical institutions to comply with part 20 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Standards for Protection Against Radiation.''

The regulations in 10 CFR part 20 were revised after 1981 and became less prescriptive. As part of amending its regulations in 10 CFR part 20, several of the prescriptive survey requirements applicable to radiation protection programs were deleted. Therefore, the prescriptive guidance in RG 8.23 is no longer needed, and RG 8.23 is being withdrawn.

The NRC is withdrawing RG 8.23 because it is no longer needed. Withdrawal of a RG means that the guide no longer provides useful information or has been superseded by other guidance, technological innovations, congressional actions, or other events. The withdrawal of RG 8.23 does not alter any prior or existing NRC licensing approval or the acceptability of licensee commitments to RG 8.23. Although RG 8.23 is withdrawn, current licensees may continue to use it, and withdrawal does not affect any existing licenses or agreements. However, RG 8.23 should not be used in future requests or applications for NRC licensing actions.

Dated at Rockville, Maryland, this 1st day of August 2018.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2018–16830 Filed 8–6–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0092]

Standard Format and Content of Physical Security Plans, Training and Qualifications Plans and Safeguards Contingency Plans for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; extension of comment period.

SUMMARY: On May 29, 2018, the U.S. Nuclear Regulatory Commission (NRC) solicited comments on draft regulatory guide (DG), DG–5048, ''Standard Format and Content of Physical Security Plans, Training and Qualifications Plans and Safeguards Contingency Plans for Nuclear Power Plants.'' The public comment period was originally scheduled to close on August 13, 2018. The NRC has decided to extend the public comment period by 30 days to allow more time for members of the public to develop and submit their comments.

DATES: The due date of comments requested in the document published on May 29, 2018 (83 FR 24510), is extended. Comments should be filed no later than September 13, 2018. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0092. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7A86, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Dennis Gordon, Office of Nuclear Security and Incident Response, telephone: 301–287–3633, email: *Dennis.Gordon@nrc.gov* and Mekonen Bayssie, Office of Nuclear Regulatory Research; telephone: 301–415–1699, email: *Mekonen.Bayssie@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0092 when contacting the NRC about the availability of information regarding this action. You may obtain publically-available information related to this action, by any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0092.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* DG–5048 is available in ADAMS under Accession No. ML17124A490.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0092 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit

comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

On May 29, 2018 (83 FR 24510), the NRC solicited comments on DG–5048, ''Standard Format and Content of Physical Security Plans, Training and Qualifications Plans and Safeguards Contingency Plans for Nuclear Power Plants'' (ADAMS Accession No. ML17124A490). The NRC granted an initial extension of the public comment period to August 13, 2018, and the NRC held a public meeting on July 25, 2018. On July 26, 2018, the Nuclear Energy Institute (NEI) requested an additional 30 days extension to the public comment period to allow NEI and its members' sufficient time to perform a thorough review of the document, consistent with other work priorities (ADAMS Accesion No. ML18208A473). The NRC has decided to extend the public comment period on this document until September 13, 2018, to allow more time for industry and members of the public to submit their comments.

Dated at Rockville, Maryland, this 1st day of August 2018.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2018–16829 Filed 8–6–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0056]

Digital Instrumentation and Controls–Interim Staff Guidance–06, ''Licensing Process''

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Interim Staff Guidance (ISG) Digital Instrumentation and Controls (DI&C)–ISG–06, ''Licensing Process.'' This ISG defines the licensing process used to support the review of license amendment requests (LARs) associated with safety-related DI&C equipment modifications in operating plants and in new plants once they become operational. This ISG provides guidance for activities performed before an LAR is submitted and for activities performed during the LAR review. The NRC staff uses the process described in this ISG to evaluate compliance with NRC regulations.

DATES: Submit comments by September 6, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0056. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Joseph Golla, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1002, email: *Joe.Golla@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0056 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0056.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft ISG DI&C–ISG–06 ''Licensing Process,'' is available in ADAMS under Accession No. ML18123A118.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0056 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

This ISG provides guidance for the NRC staff's review of LARs supporting installation of digital I&C equipment in accordance with licensing processes defined in NRC office instruction LIC–101, ''License Amendment Review Procedures.'' This ISG identifies information the NRC staff should review for digital I&C equipment. This ISG provides guidance on when that information should be reviewed.

This ISG is designed to be used with the NRC's topical report review and approval process defined in NRC Office of Nuclear Reactor Regulation office instruction LIC–500, ''Topical Report Process.'' Where a licensee references an NRC-approved topical report, the NRC staff should be able to, where

appropriate, limit its review to assessing whether the application of the digital I&C modification falls within the envelope of the topical report approval. This ISG was developed based upon, and is designed to work in concert with, established guidance. As a result, this ISG references other guidance documents for review criteria.

The NRC staff performs evaluations of proposed digital I&C equipment to ensure equipment will perform required functions. These evaluations use the guidance in the Standard Review Plan, Chapter 7, and other associated guidance. When a license amendment is required, licensees are obligated to provide a description of the licensing basis functions of digital I&C equipment and include a description of the equipment that implements the functions. Additionally, licensees identify those parts of the licensing basis being updated as a result of the proposed change.

The NRC staff review processes include activities for evaluating documentation of plans and processes which are used to support system development activities and their outcomes.

The Standard Review Plan, Appendix 7.0–A, and Branch Technical Position 7–14, guide the NRC staff in performing reviews of digital systems in support of safety evaluations. For reviews using the Alternate Process as defined in the ISG, the ISG provides additional guidance for performing early stage reviews of digital safety-related systems in support of safety evaluations. The NRC staff may review the system design and development process to support a determination that the design meets regulatory requirements and that in safety-related applications in nuclear power plants, the process is of sufficient high quality to produce systems and software suitable for use.

Dated at Rockville, Maryland, this 1st day of August 2018.

For the Nuclear Regulatory Commission.

Eric J. Benner,

Director, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–16810 Filed 8–6–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0139]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of one amendment request. The amendment request is for Millstone Power Station, Unit No. 3. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration. Because each amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: Comments must be filed by September 6, 2018. A request for a hearing must be filed by October 9, 2018. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by August 17, 2018.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0139. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Paula Blechman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2242; email: *Paula.Blechman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0139, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0139.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0139, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should

inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notice of an amendment containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a

significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate

as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dominion Energy Nuclear Connecticut, Inc. (DENC), Docket No. 50–423, Millstone Power Station, Unit No. 3 (MPS3), New London County, Connecticut

Date of amendment request: May 3, 2018. A publicly-available version is in ADAMS under Accession No. ML18128A049.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise the MPS3 Technical Specifications (TSs). DENC performed a criticality safety evaluation for fuel assembly storage in the MPS3 spent fuel pool (SFP) storage racks and new fuel storage racks to support the proposed TS changes using a new methodology. Specifically, the proposed amendment would revise the MPS3 TSs supporting changes to the operation and administration of the SFP to (1) modify storage requirements in TSs 1.40, 1.41, 3/4.9.13 and 3/4.9.14, including updates to surveillance requirements for storing fuel assemblies and TS Figures detailing storage patterns and minimum fuel burnup versus fuel enrichment; (2) eliminate the requirement for cell blockers in Region 1 fuel storage racks; (3) modify SFP soluble boron requirements in 3/4.9.1.2; and (4) modify the description of SFP criticality control in TS 5.6.1.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will not affect plant equipment or structure, including the SFP, NFSR [new fuel storage racks], or fuel handling equipment, including how the equipment is operated and maintained. There are no changes to the equipment for fuel handling or how fuel assemblies are handled, including how fuel assemblies are inserted into and removed from SFP and NFSR storage locations. There is no change to administrative means to verify correct fuel assembly storage in the SFP, or the required response to a fuel assembly misload or drop event. There are no changes to how RCCAs [rod cluster control assemblies] will be handled, including how RCCAs are inserted into or removed from a fuel assembly or other location such as a SFP storage location. Also, since the proposed change does not modify plant equipment or its operation and maintenance, including equipment used to maintain SFP soluble boron levels, the proposed change will not impact a boron dilution event or plant response to it.

The criticality safety evaluation concluded that the NFSR limiting accident is the fully flooded condition with each storage location loaded with a maximum reactivity fuel assembly. The NFSR maintains [k-effective] $k_{eff} \leq 0.95$ for this postulated scenario including uncertainties and biases. The NFSR also maintains $k_{eff} \leq 0.98$ for the optimum moderation scenario including uncertainties and biases. Thus, the consequences of a previously evaluated NFSR related accident is not significantly increased. There is no change to the plant equipment or its operation and maintenance due to the proposed change. Thus, the probability of a flooding accident that could impact the NFSR is not significantly increased.

Regarding the SFP, the Region 1 storage configuration will change. The Region 2 and 3 burnup curves will be updated and reduced in number. The process of choosing fuel assembly storage locations will not change, except that the Region 1 storage configuration and Region 2 and 3 burnup requirements will be updated, and fuel assemblies containing RCCAs may be stored in Region 2 without consideration of the burnup curve. The physical handling, insertion, removal, and storage of fuel assemblies in SFP racks will not change. The MPS3 program for choosing fuel assembly storage locations, for fuel handling, and for assuring that the fuel assemblies are placed into correct locations will remain in place. Thus, the probability of a fuel assembly misloading or a fuel assembly drop in the SFP will not significantly increase due to the proposed change.

Several postulated accidents for the SFP were reviewed for the proposed change which included postulated fuel assembly misload and drop scenarios. The criticality safety evaluation for the SFP concluded that the limiting accident, which bounds the other scenarios, is a multiple misload of fuel assemblies into each Region 2 fuel storage location. The criticality safety evaluation concluded that a SFP soluble boron concentration of 2600 ppm [part per million] will maintain $k_{eff} \leq 0.95$, including uncertainties and biases, for this postulated scenario. The minimum TS soluble boron concentration will be increased from 800 ppm to 2600 ppm. MPS3 has maintained SFP soluble boron concentration greater than 2600 ppm for many years, so the proposed change will not affect the routine maintaining of the boron concentration.

There are no changes to plant equipment, including its operation and maintenance, as a result of the proposed change, including equipment associated with maintaining SFP soluble boron concentration or possible flow paths that could contribute to a boron dilution event. Thus, no new avenues for a boron dilution event will be created. There is no change regarding how the plant maintains boron concentration or responds to a boron dilution event. The criticality safety evaluation for the postulated boron dilution event shows the SFP maintains $k_{eff} \leq 0.95$ at 600 ppm soluble boron. Thus, there is no significant increase in the probability or consequences of a boron dilution accident.

The MPS3 SFP is currently licensed to store 1860 fuel assemblies which include a Region 2 rack that has not been placed in the SFP (TS 5.6.3).

Thus, the SFP seismic/structural loading requirements for the proposed change are bounded by the existing TS. The criticality safety evaluation shows that k_{eff} will be maintained ≤ 0.95 during a postulated seismic event. Thus, there is no increase in the consequences of a seismic event.

In each of the above scenarios the proposed change does not significantly increase the probability of an accident previously evaluated, and maintains required k_{eff} margin. Therefore, it is concluded that the probability or consequences of a previously evaluated accident do not significantly increase.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no change to any plant equipment, including how equipment is operated and maintained. There will be no changes to equipment used to handle fuel assemblies (or any heavy load) over the NFSR or the SFP.

There is no change regarding how the fuel assemblies are stored, inserted into, and removed from fuel storage locations. There is no change to how RCCAs will be inserted into or removed from a fuel assembly or other location, or otherwise how RCCAs are handled. Thus, there are no new accidents created over and above the existing postulated accidents of a fuel misload or a fuel assembly drop in the SFP or a flooding event in the NFSR area.

Also, since there is no change to the plant equipment or how equipment is operated and

maintained, the probability of a new type of accident that could impact the SFP or NFSR is not significantly increased.

The criticality safety evaluation for the first time at MPS3 specifically analyzes a boron dilution event. However, the overall accident analyzed is the potential for a SFP criticality, and the boron dilution event is another potential initiator of the postulated SFP criticality accident. Also, the possibility of a SFP boron dilution event has always existed at MPS3 and the proposed change does not newly create or change the possibility of such an event occurring.

The criticality safety evaluation for the first time at MPS3 specifically analyzes a multiple fuel misload event. As with the postulated boron dilution event, the possibility of a multiple fuel assembly misload has always existed at MPS3 and the proposed change does not newly create or change the possibility of such an event occurring. Also, this postulated event was analyzed for the MPS2 spent fuel pool criticality LAR [license amendment request] which the NRC approved in June 2016 [Reference 3 of the application dated May 3, 2018].

Since the proposed change will not change fuel/RCCA handling equipment or how fuel assemblies and RCCAs are handled and stored, nor will it change any other plant equipment, there is no mechanism for creating a new or different kind of accident not previously evaluated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change does not involve a significant reduction in a margin of safety.

The licensing requirement for the SFP is that k_{eff} remain ≤ 0.95 under normal and postulated accident conditions with credit for soluble boron. The criticality safety evaluation concluded that this requirement is met for the bounding postulated accident of a multiple misload of fuel assemblies into each Region 2 fuel storage location. The analyses apply to all of the fuel assemblies currently stored in the MPS3 SFP and to future anticipated fuel designs.

In addition, the criticality safety evaluation concludes that the SFP will maintain k_{eff} < 1.0 with 0 ppm soluble boron in the SFP under normal conditions with the maximum allowed reactivity fuel assembly stored in each fuel storage location.

The criticality safety evaluation also allows the following storage configurations. In each case the storage configuration does not increase reactivity assuring that k_{eff} margin is maintained:

- Storing non-fuel components in any spent fuel rack storage location where fuel assemblies are allowed
- Storing non-fuel components in the guide tubes of any fuel assembly.

The criticality safety evaluation evaluated non-standard fuel stored in the MPS3 to determine where they can be stored in the SFP. This information is used to maintain k_{eff} margin when storing non standard fuel assemblies.

The licensing requirement for the NFSR is that k_{eff} remain ≤ 0.95 for the fully flooded scenario, and ≤ 0.98 for the optimum moderation scenario.

The criticality safety evaluation concludes that these requirements are met assuming each fuel storage location is loaded with a maximum reactivity fuel assembly (5.0 wt% U–235 enrichment with no burnable poisons).

Therefore, all the margins of safety are maintained, and the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Energy, Inc., 120 Tredegar Street, RS–2, Richmond, Virginia 23219.

NRC Branch Chief: James G. Danna.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Dominion Energy Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 6th of July 2018.

For the Nuclear Regulatory Commission.

Russell E. Chazell,

Acting, Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information). If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Day	Event/activity
>A + 60	Decision on contention admission.

[FR Doc. 2018–14915 Filed 8–6–18; 8:45 am]

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POSTAL REGULATORY COMMISSION

[Docket Nos. CP2018–280; MC2018–202 and CP2018–281]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 9, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2018–280; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* August 1, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 9, 2018.

2. *Docket No(s).:* MC2018–202 and CP2018–281; *Filing Title:* USPS Request to Add Priority Mail Contract 458 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 1, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr*; Comments Due:* August 9, 2018.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–16873 Filed 8–6–18; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 7, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 1, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 458 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–202, CP2018–281.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–16811 Filed 8–6–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83761; File No. SR–OCC–2017–809]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Amendments No. 1 and 2 To Advance Notice Concerning Enhanced and New Tools for Recovery Scenarios

August 1, 2018.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) of the Securities Exchange Act of 1934 (''Act''),[2] The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice concerning updates to

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

and formalization of OCC's Recovery and Orderly Wind-Down Plan (''Advance Notice''). The Advance Notice was published for public comment in the **Federal Register** on January 23, 2018.[3] On January 23, 2018, the Commission requested OCC provide it with additional information regarding the Advance Notice.[4] OCC responded to this request for information, and the information was received on July 13, 2018.[5] On July 11, 2018, OCC filed Amendment No. 1 to the Advance Notice, and subsequently filed Amendment No. 2 to the advance notice to supersede and replace Amendment No. 1 in its entirety, due to technical defects in Amendment No. 1. Therefore, the Initial Filing, as modified by Amendment No. 2, reflects the changes being proposed.

Pursuant to Section 806(e)(1) of the Clearing Supervision Act[6] and Rule 19b–4(n)(1)(i) of the Act,[7] the Commission is hereby publishing notice of these Amendments No. 1 and 2 as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the Advance Notice, as amended by Amendments No. 1 and 2, from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This Amendment No. 2 to the advance notice is filed in connection with a proposed change to make certain revisions to OCC's Rules and By-Laws to enhance OCC's existing tools to address the risks of liquidity shortfalls and credit losses and to establish new tools by which OCC could re-establish a matched book following a default. Each of the tools proposed herein is contemplated to be deployed by OCC in an extreme stress event that has placed OCC into a recovery or orderly wind-down scenario.

The proposed changes to OCC's By-Laws and Rules were submitted as Exhibits 5A and 5B of the filing, respectively, and proposed changes to OCC's Default Management Policy were submitted as confidential Exhibit 5C of the filing.[8] OCC also has attached as Exhibits 4A and 4B the proposed amendments to the rule text in Exhibits 5A and 5B of the Initial Filing, respectively. Material proposed to be added to the proposed rule text in the Initial Filing is marked by double underlining and material proposed to be deleted is marked by double strikethrough text.

The proposed change is described in detail in Item II below. All terms with initial capitalization not defined herein have the same meaning as set forth in OCC's By-Laws and Rules.[9]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A and B below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the advance notice and none have been received. OCC will notify the Commission of any written comments received by OCC.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Purpose of the Proposed Change

Background

The purpose of this advance notice is to make certain revisions to OCC's Rules and By-Laws Laws that are designed to enhance OCC's existing tools to address the risks of liquidity shortfalls and credit losses and to establish tools by which OCC could re-establish a matched book following a default. Each of the tools proposed herein is contemplated to be deployed by OCC in an extreme stress event that has placed OCC into a recovery or orderly wind-down scenario. Each of the proposed revisions also is designed to further OCC's compliance, in whole or in part, with the provisions of the Commission's rules identified immediately below.

On September 28, 2016, the Commission adopted amendments to Rule 17Ad–22[10] and added new Rules 17Ad–22(e)(3)(ii), (e)(4)(viii), (e)(4)(ix), (e)(7)(ix), (e)(13), (e)(23)(i) and (e)(23)(ii)[11] pursuant to Section 17A of the Securities Exchange Act of 1934[12] and the Payment, Clearing, and Settlement Supervision Act of 2010 (''Payment, Clearing and Settlement Supervision Act'').[13] In relevant part, these new rules collectively require a covered clearing agency (''CCA''), as defined by Rule 17Ad–22(a)(5),[14] to establish, implement, maintain and enforce written policies and procedures reasonably designed to: (1) Maintain a risk management framework including plans for recovery and orderly wind-down necessitated by credit losses, liquidity shortfalls, general business risk losses or any other losses, (2) effectively identify, measure, monitor and manage its credit exposures to participants and those arising from its payment, clearing and settlement processes, including by addressing the allocation of credit losses a CCA might face if its collateral and other resources are insufficient to fully cover its credit exposures, (3) effectively identify, measure, monitor and manage credit exposures, including by describing the process to replenish any financial resource that a CCA may use following a default event or other event in which use of such resource is contemplated, (4) effectively identify, measure, monitor and manage liquidity risks that arises or is borne by the CCA by, at a minimum, describing the process for replenishing any liquid resource that a CCA may employ during a stress event, (5) ensure it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations, (6) publicly disclose relevant rules and material procedures, including key aspects of its default rules and procedures, and (7) provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the CCA. The relevant portions of each of these new requirements is restated below:

- Rule 17Ad–22(e)(3)(ii) requires that each CCA ''establish, implement,

[3] *See* Securities Exchange Act Release No. 82513 (January 17, 2018), 83 FR 3244 (January 23, 2018) (SR–OCC–2017–809) (hereinafter referred to as the ''Initial Filing'').

[4] *See* Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, dated January 23, 2018, *available at https://www.sec.gov/comments/sr-occ-2017-809/occ2017809-2948229-161855.pdf.*

[5] *See* Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, dated July 17, 2018, *available at https://www.sec.gov/comments/sr-occ-2017-809/occ2017809-4062512-169148.pdf.*

[6] 12 U.S.C. 5465(e)(1).

[7] 17 CFR 240.19b–4(n)(1)(i).

[8] OCC has filed a proposed rule change with the Commission in connection with the proposed change. *See* SR–OCC–2017–020.

[9] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[10] 17 CFR 240.17Ad–22.

[11] 17 CFR 240.17Ad–22(e)(3)(ii), (e)(4)(viii), (e)(4)(ix), (e)(7)(ix), (e)(13), (e)(23)(i) and (e)(23)(ii).

[12] 15 U.S.C. 78q–1.

[13] 12 U.S.C. 5461 et. seq.

[14] 17 CFR 240.17Ad–22(a)(5).

maintain and enforce written policies and procedures reasonably designed to . . . [m]aintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the [CCA], which . . . [i]ncludes plans for the recovery and orderly wind-down of the [CCA] necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.'' [15]

• Rule 17Ad–22(e)(4)(viii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]ffectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by . . . [a]ddressing allocation of credit losses the [CCA] may face if its collateral and other resources are insufficient to fully cover its credit exposures, including the repayment of any funds the [CCA] may borrow from liquidity providers.'' [16]

• Rule 17Ad–22(e)(4)(ix) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]ffectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by . . . [d]escribing the [CCA's] process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated.'' [17]

• Rule 17Ad–22(e)(7)(ix) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]ffectively measure, monitor, and manage the liquidity risk that arises in or is borne by the [CCA], including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, doing the following . . . [d]escribing the [CCA's] process to replenish any liquid resources that the clearing agency may employ during a stress event.'' [18]

• Rule 17Ad–22(e)(13) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]nsure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations . . .'' [19]

• Rule 17Ad–22(e)(23)(i) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [p]ublicly disclos[e] all relevant rules and material procedures, including key aspects of its default rules and procedures.'' [20]

• Rule 17Ad–22(e)(23)(ii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [p]rovid[e] sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.'' [21]

OCC meets the definition of a CCA and is therefore subject to the requirements of the CCA rules, including new Rules 17Ad–22(e)(3)(ii), (e)(4)(viii), (e)(4)(ix), (e)(7)(ix), (e)(13), (e)(23)(i) and (e)(23)(ii).[22]

Proposed Changes

Summary of Proposed Changes

In order to enhance OCC's existing tools to address the risks of liquidity shortfalls and credit losses and to establish new tools by which OCC could re-establish a matched book following a default, OCC is proposing to make the following revisions to its Rules and By-Laws:

(1) Revise the existing assessment powers in Section 6 of Article VIII of OCC's By-Laws, specifically to:

(a) Establish a rolling ''cooling-off period'' that would be triggered by the payment of a proportionate charge against the Clearing Fund (''triggering proportionate charge''), during which period the aggregate liability of a Clearing Member to replenish the Clearing Fund (inclusive of assessments) would be 200% of the Clearing Member's required contribution as of the time immediately preceding the triggering proportionate charge;

(b) Clarify that a Clearing Member that chooses to terminate its membership status during a cooling-off period will not be liable for replenishment of the Clearing Fund immediately following the expiration of such cooling-off period, provided that the withdrawing Clearing Member satisfies enumerated criteria, including providing notice of such termination by no later than the end of the cooling-off period and by closing-out and/or transferring of all its open positions with OCC by no later than the last day of the cooling-off period; and

(c) Delineate between the obligation of a Clearing Member to replenish its contributions to the Clearing Fund and its obligations to meet additional ''assessments'' that may be levied following a proportionate charge to the Clearing Fund.

(2) Adopt a new Rule 1011 [23] that would provide OCC with discretionary authority to call for voluntary payments from non-defaulting Clearing Members in a circumstance where one or more Clearing Members has already defaulted and OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities resulting from such default.[24] Rule 1011 also would establish that OCC would prioritize compensation of Clearing Members that made voluntary payments from any amounts recovered from the defaulted Clearing Members.

(3) Adopt a new Rule 1111 that would provide authority to:

(a) Allow OCC to call for voluntary tear-ups (''Voluntary Tear-Up,'' as defined below) of non-defaulting Clearing Member and/or customer positions at any time following the suspension or default of a Clearing Member, with the scope of any such Voluntary Tear-Ups being determined by the Risk Committee of OCC's Board (''Risk Committee'');

(b) Allow OCC's Board to vote to tear-up the ''Remaining Open Positions'' (defined below) of a defaulted Clearing Member, as well as any ''Related Open Positions'' (defined below) in a circumstance where OCC has attempted one or more auctions of such defaulted

[15] 17 CFR 240.17Ad–22(e)(3)(ii).

[16] 17 CFR 240.17Ad–22(e)(v)(viii).

[17] 17 CFR 240.17Ad–22(e)(4)(ix).

[18] 17 CFR 240.17Ad–22(e)(7)(ix).

[19] 17 CFR 240.17Ad–22(e)(13).

[20] 17 CFR 240.17Ad–22(e)(23)(i).

[21] 17 CFR 240.17Ad–22(e)(23)(ii).

[22] 17 CFR 240.17Ad–22(e)(3)(ii), (e)(4)(viii), (e)(4)(ix) and (e)(7)(ix).

[23] OCC is amending the Initial Filing to renumber proposed Rule 1009 to proposed Rule 1011 and updated related cross references in Rule 1111 to reflect this renumbering. OCC is also amending the Default Management Policy as submitted in the Initial Filing to update similar cross references.

[24] Under the Initial Filing, OCC's authority to conduct Partial Tear-Ups, as well as call for voluntary payments or to conduct Voluntary Tear-Ups, would be conditioned in part on OCC having determined that, notwithstanding the availability of any remaining resources, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default. Under the Initial Filing, the proposed text of Rules 1009(a), 1111(a) and 1111(b) incorrectly transcribed this condition to require that OCC determine that, notwithstanding the availability of any remaining resources, OCC *does* not have sufficient resources to satisfy its obligations and liabilities resulting from such default (emphasis added). In each such instance, OCC is amending the proposed text of Rules 1009(a) (which is being renumbered as Rule 1011(a)), 1111(a) and 1111(b) in Exhibit 5B of the Initial Filing to delete the word ''does'' and insert in its place the word ''may.''

Clearing Member's remaining open positions and OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities resulting from such default with the scope of any such tear-up (''Partial Tear-Up'') being determined by the Risk Committee; and

(c) Allow OCC's Board to vote to re-allocate losses, costs and fees imposed upon holders of positions extinguished in a Partial Tear-Up through a special charge levied against remaining non-defaulting Clearing Members.

(4) Revise the descriptions and authorizations in Article VIII of OCC's By-Laws concerning the use of the Clearing Fund to reflect the discretion of OCC to use remaining Clearing Fund contributions to re-allocate losses imposed on non-defaulting Clearing Members and customers from a Voluntary Tear-Up or a mandatory tear-up (''Partial Tear-Up,'' as defined below).

Discussion of Proposed Changes

Each of the proposed revisions to OCC's Rules and By-Laws is described in more detail in the following sub-sections:

1. Proposed Changes to OCC's Assessment Powers

a. Current Assessment Powers

OCC's current assessment powers are described in Section 6 of Article VIII of OCC's By-Laws. Section 6 establishes a general requirement for each Clearing Member to promptly make good any deficiency in its required contribution to the Clearing Fund whenever an amount is paid out of its Clearing Fund contribution (whether by proportionate charge or otherwise).[25] In this regard, a Clearing Member's obligation to replenish the Clearing Fund is not currently subject to any pre-determined limit. Notwithstanding the foregoing, a Clearing Member can limit the amount of its liability for replenishing the Clearing Fund (at an additional 100% of the amount of its then-required Clearing Fund contribution) by winding-down its clearing activities and terminating its status as a Clearing Member. Any Clearing Member seeking to so limit its liability for replenishing the Clearing Fund must: (i) Notify OCC in writing not later than the fifth business day after the proportionate charge that it is terminating its status as a Clearing Member, (ii) not initiate any opening purchase or opening writing transaction, and, if the Clearing Member is a Market Loan Clearing Member or a Hedge Clearing Member, not initiate any Stock Loan transaction, through any of its accounts, and (iii) close out or transfer all of its open positions as promptly as practicable after giving notice to OCC. Thus, withdrawal from clearing membership is the only means by which a Clearing Member currently can limit its liability for replenishing the Clearing Fund.

b. Proposed Changes to Assessment Powers

OCC proposes to revise Section 6 of Article VIII of OCC's By-Laws to make three primary modifications regarding its existing authority to assess proportionate charges against Clearing Members' contributions to the Clearing Fund. First, the proposal introduces an automatic minimum fifteen calendar day ''cooling-off'' period that begins when a proportionate charge is assessed by OCC against Clearing Members' Clearing Fund contributions. While the cooling-off period will continue for a minimum of fifteen consecutive calendar days, if one or more of the events described in clauses (i) through (iv) of Article VIII, Section 5(a) of OCC's By-Laws occur(s) during that fifteen calendar day period and result in one or more proportionate charges against the Clearing Fund, the cooling-off period shall be extended through either (i) the fifteenth calendar day from the date of the most recent proportionate charge resulting from the subsequent event, or (ii) the twentieth day from the date of the proportionate charge that initiated the cooling-off period, whichever is sooner.

During a cooling-off period, each Clearing Member would have its aggregate liability to replenish the Clearing Fund capped at 200% of the Clearing Member's then-required contribution to the Clearing Fund. Once the cooling-off period ends each remaining Clearing Member would be required to replenish the Clearing Fund in the amount necessary to meet its then-required contribution. Once the cooling-off period ends, any remaining losses or expenses suffered by OCC as a result of any event described in clauses (i) through (iv) of Article VIII, Section 5(a) of OCC's By-Laws that occurred during such cooling-off period could not be charged against the amounts Clearing Members have contributed to replenish the Clearing Fund upon the expiration of the cooling-off period.[26]

Second, in connection with the cooling-off period, the proposal would extend the time frame within which a Clearing Member may provide a termination notice to OCC to avoid liability for replenishment of the Clearing Fund after the cooling-off period and would modify the obligations of such a terminating Clearing Member for closing-out and transferring its remaining open positions. Specifically, to effectively terminate its status as a Clearing Member and not be liable for replenishing the Clearing Fund after the cooling-off period, a Clearing Member would be required to: (i) Notify OCC in writing of its intent to terminate not later than the last day of the cooling-off period, (ii) not initiate any opening purchase or opening writing transaction, and, if the Clearing Member is a Market Loan Clearing Member or a Hedge Clearing Member, not initiate any Stock Loan transaction, through any of its accounts, and (iii) close-out or transfer all of its open positions by no later than the last day of the cooling-off period. If a Clearing Member fails to satisfy all of these conditions by the end of a given cooling-off period, it would not have completed all of the requirements necessary to terminate its status as a Clearing Member under Article VIII, Section 6 of OCC's By-Laws and therefore it would remain subject to the obligation to replenish the Clearing Fund after the end of the cooling-off period.

Third, the proposal would clarify the distinction between ''replenishment'' of the Clearing Fund and a Clearing Member's obligation to answer ''assessments.'' In this context, the term ''replenish'' (and its variations) shall to refer to a Clearing Member's standing

[25] Under Article VIII, Section 6 of OCC's By-Laws, OCC currently has authority to assess proportionate charges against Clearing Members' contributions to the Clearing Fund in certain enumerated situations. For example, Section 6 generally provides that if the conditions regarding a Clearing Member default specified in subparagraphs (a)(i) through (vi) of Article VIII, Section 5 of OCC's By-Laws are satisfied, OCC will make good resulting losses or expenses that are suffered by OCC by applying the defaulting Clearing Member's Clearing Fund contribution after first applying other funds available to OCC in the accounts of the Clearing Member. If the sum of the obligations, however, exceeds the total Clearing Fund contribution and other funds of the defaulting Clearing Member available to OCC, then OCC will charge the amount of the remaining deficiency on a proportionate basis against all non-defaulting Clearing Members' required contributions to the Clearing Fund at the time. Section 5(b) of Article VIII of OCC's By-Laws similarly provides for proportionate charges against Clearing Members' contributions to the Clearing Fund when certain conditions are met that involve a failure by a bank or a securities or commodities clearing organization to perform obligations to OCC when they are due.

[26] After a cooling-off period has ended, the occurrence of any event described in clauses (i) through (iv) of Article VIII, Section 5(a) of OCC's By-Laws that results in a proportionate charge against the Clearing Fund would trigger a new cooling off period, and thusly, a cap of 200% of each Clearing Member's then-required contribution would again apply.

duty, following any proportionate charge against the Clearing Fund, to return its Clearing Fund contribution to the amount required from such Clearing Member for the month in question.[27] The term ''assessment'' (and its variations) shall refer to the amount, during any cooling-off period, that a Clearing Member would be required to contribute to the Clearing Fund in excess of the amount of the Clearing Member's pre-funded required Clearing Fund contribution.

Proposed Addition of Ability To Request Voluntary Payments

OCC proposes to add new Rule 1011, which will provide a framework by which OCC could receive voluntary payments in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211,[28] OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default. Under new Rule 1011, OCC will initiate a call for voluntary payments by issuing a ''Voluntary Payment Notice'' inviting all non-defaulting Clearing Members to make payments to the Clearing Fund in addition to any amounts they are otherwise required to contribute pursuant to Rule 1001. The Voluntary Payment Notice would specify the terms applicable to any voluntary payment, including but not limited to, that any voluntary payment may not be withdrawn once made, that no Clearing Member shall be obligated to make a voluntary payment and that OCC shall retain full discretion to accept or reject any voluntary payment. Rule 1011 specifies that if OCC subsequently recovers from the defaulted Clearing Member or the estate(s) of the defaulted Clearing Member(s), OCC would seek to compensate first from such recovery all non-defaulting Clearing Members that made voluntary payments (and if the amount recovered from the defaulted Clearing Member(s) is less than the aggregate amount of voluntary payments, non-defaulting Clearing Members that made voluntary payments each would receive a percentage of the recovery that corresponds to that Clearing Member's percentage of the total amount of voluntary payments received).

Proposed Addition of Ability To Conduct Voluntary Tear-Ups

OCC proposes to add new Rule 1111, which, in relevant part, will establish a framework by which non-defaulting Clearing Members and non-defaulting customers of Clearing Members could be given an opportunity to voluntarily extinguish (*i.e.,* voluntarily tear-up) their open positions at OCC in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default.

While Risk Committee approval is not needed to commence a voluntary tear-up, the Risk Committee would be responsible for determining the appropriate scope of each voluntary tear-up. To ensure OCC retains sufficient flexibility to effectively deploy this tool in an extreme stress event, proposed Rule 1111(c) is drafted to provide the Risk Committee with discretion to determine the appropriate scope of each voluntary tear-up.[29] New Rule 1111(c) also would impose standards designed to circumscribe the Risk Committee's discretion, requiring that any determination regarding the scope of a voluntary tear-up shall (i) be based on then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants.

Once the Risk Committee has determined the scope of the Voluntary Tear-Up, OCC will initiate the call for voluntary tear-ups by issuing a ''Voluntary Tear-Up Notice.'' The Voluntary Tear-Up Notice shall inform all non-defaulting Clearing Members of the opportunity to participate in a Voluntary Tear-Up.[30] The Voluntary Tear-Up Notice would specify the terms applicable to any voluntary tear-up, including but not limited to, that no Clearing Member or customers of a Clearing Member shall be obligated to participate in a voluntary tear-up and that OCC shall retain full discretion to accept or reject any voluntary tear-up.

OCC is not proposing a tear-up process that would require the imposition of ''gains haircutting'' (*i.e.,* the reduction of unpaid gains) on a portion of OCC's cleared contracts.[31] Instead, OCC has determined that its tear-up process—for both Voluntary Tear-Ups as well as Partial Tear-Ups—should be initiated on a date sufficiently in advance of the exhaustion of OCC's financial resources such that OCC would be expected to have adequate remaining resources to cover the amount it must pay to extinguish the positions of Clearing Members and customers without haircutting gains.[32]

In OCC's proposed tear-up process, the holders of torn-up positions would be assigned a Tear-Up Price and OCC would draw on its remaining financial resources in order to extinguish the torn-up positions at the assigned Tear-Up Price without forcing a reduction in the amount of unpaid value of such positions. OCC is amending the Initial Filing to clarify that while OCC does not intend, in the first instance, for its tear-up process to serve as a means of loss allocation, circumstances may arise such that, despite best efforts, OCC has inadequate remaining financial resources to extinguish torn-up positions at their assigned Tear-Up Price without forcing a reduction in the amount of unpaid value of such positions (*e.g.,* despite best efforts, market movements not accounted for by monitoring, additional Clearing Member defaults occur immediately preceding a tear-up). In such circumstances, despite best efforts, OCC would use its partial

[27] This assumes that the proportionate charge resulted in the Clearing Member's actual Clearing Fund contribution dropping below the amount of its required contribution (*i.e.,* that the Clearing Member did not have excess above its required contribution that was sufficient to cover the amount of the proportionate charge allocated to such Clearing Member).

[28] Rule 707 addresses the treatment of funds in a Clearing Member's X–M accounts. Rule 1001 addresses the size of OCC's Clearing Fund and the amount of a Clearing Member's contribution. Rules 1104 through 1107 concern the treatment of the portfolio of a defaulted Clearing Member. Rules 2210 and 2211 concern the treatment of Stock Loan positions of a defaulted Clearing Member.

[29] Notwithstanding the discretion that would be afforded by the text of proposed Rule 1111(c), OCC anticipates that the scope of voluntary tear-ups likely would be dictated by the cleared contracts remaining in the portfolio(s) of the defaulted Clearing Member(s).

[30] Since OCC does not know the identities of Clearing Members' customers, OCC would depend on each Clearing Member to notify its customers with positions in scope of the Voluntary Tear-Up of the opportunity to participate in such tear-up.

[31] In general, forced gains haircutting is a tool that can be more easily applied to products whose gains are settled at least daily, like futures through an exchange of variation margin, and by central counterparties with comparatively large daily settlement flows. Listed options, which constitute the vast majority of the contracts cleared by OCC, do not have daily settlement flows and any attempt to reduce the ''unrealized gains'' of a listed options contract would require the reduction of the option premium that is embedded within the required margin (such a process would effectively require haircutting the listed option's initial margin).

[32] OCC anticipates that it would determine the date on which to initiate Partial Tear-Ups by monitoring its remaining financial resources against the potential exposure of the remaining unauctioned positions from the portfolio(s) of the defaulted Clearing Member(s).

tear-up process as a means of loss allocation.[33]

The proposed changes would provide OCC with two separate and non-exclusive means of equitably re-allocating the losses, costs or expenses imposed upon the holders of torn-up positions as a result of the tear-up(s). First, the proposed changes to Article VIII would provide OCC discretion to use remaining Clearing Fund contributions to re-allocate losses imposed on non-defaulting Clearing Members and customers from such tear-up(s). Second, Rule 1111(a) would provide that if OCC subsequently recovers from the defaulted Clearing Member or the estate(s) of the defaulted Clearing Member(s) and the amount of such recovery exceeds the amount OCC received in voluntary payments, then non-defaulting Clearing Members and non-defaulting customers that voluntarily tore-up open positions and incurred losses from such tear-ups would be repaid from the amount of the recovery in excess of the amount OCC received in voluntary payments.[34] If the amount recovered is less than the aggregate amount of Voluntary Tear-Up, each non-defaulting Clearing Member and non-defaulting customer that incurred losses from voluntarily torn-up positions would be repaid in an amount proportionate to the percentage of its total amount of losses, costs and fees imposed on Clearing Members or customers as a result of the Voluntary Tear-Ups.

With respect to Voluntary Tear-Ups, new Rule 1111(h) would clarify that no action or omission by OCC pursuant to and in accordance with Rule 1111 shall constitute a default by OCC.

Proposed Addition of Ability To Conduct Partial Tear-Ups

OCC proposes to add new Rule 1111, which, in relevant part, will provide the Board with discretion to extinguish the remaining open positions of any defaulted Clearing Member or customer of such defaulted Clearing Member(s) (such positions, ''Remaining Open Positions''), as well as any related open positions as necessary to mitigate further disruptions to the markets affected by the Remaining Open Positions (such positions, ''Related Open Positions''), in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default (such tear-ups hereinafter collectively referred to as ''Partial Tear-Ups''). Like the determination for Voluntary Tear-Ups, the Risk Committee shall determine the appropriate scope of each Partial Tear-Up and such determination shall (i) be based on then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants. Once the Risk Committee has determined the scope of the Partial Tear-Up, OCC will initiate the Partial Tear-Up process by issuing a ''Partial Tear-Up Notice.'' The Partial Tear-Up Notice shall (i) identify the Remaining Open Positions and Related Open Positions designated for tear-up, (ii) identify the open positions of non-defaulting Clearing Members and non-defaulting customers that will be subject to Partial Tear-Up (such positions, ''Tear-Up Positions''), (iii) specify the termination price (''Partial Tear-Up Price'') for each position to be torn-up, and (iv) list the date and time as of which the Partial Tear-Up will occur.[35] With regard to the date and time of a Partial Tear-Up, Rule 1111(d) specifies that the Risk Committee shall set the date and time. With regard to the Partial Tear-Up Price, OCC anticipates that it is likely to use the last established end-of-day settlement price, in accordance with its existing practices concerning pricing and valuation. However, given that it is not possible to know in advance the precise circumstances that would cause OCC to conduct a tear-up, Rule 1111(f) has been drafted to allow OCC to exercise reasonable discretion, if necessary, in establishing the Partial Tear-Up Price by some means other than its existing practices concerning pricing and valuation.[36] Specifically, Rule 1111(f) would require that OCC, in exercising any such discretion, would act in good faith and in a commercially reasonable manner to adopt methods of valuation expected to produce reasonably accurate substitutes for the values that would have been obtained from the relevant market if it were operating normally, including but not limited to the use of pricing models that use the market price of the underlying interest or the market prices of its components. Rule 1111(f) further specifies that OCC may consider the same information set forth in subpart (c) of Section 27, Article VI of OCC's By-Laws.[37]

The scope of any Partial Tear-Up will be determined in accordance with Rule 1111(e).[38] With respect to the extinguishment of Remaining Open Positions, OCC will designate Tear-Up Positions in identical Cleared Contracts and Cleared Securities on the opposite side of the market and in an aggregate amount equal to that of the Remaining Open Positions. OCC will only designate Tear-Up Positions in the

[33] This change does not impact the statutory basis for the advance notice filing.

[34] In order to effect re-allocation of the losses, costs or expenses imposed upon the holders of torn-up positions, OCC expects that after it has completed its tear-up process and re-established a matched book, holders of both voluntarily torn-up and mandatorily torn-up positions would be provided with a limited opportunity to re-establish positions in the contracts that were voluntarily or mandatorily extinguished. After the expiration of such period, OCC would seek to collect the information on the losses, costs or expenses that had been imposed on the holders of torn-up positions. Based on the information collected, OCC would determine whether it can reasonably determine the losses, costs and expenses sufficiently to re-allocate such amounts.

[35] Since OCC does not know the identities of Clearing Members' customers, OCC would depend on each Clearing Member to notify its customers with positions in scope of the Partial Tear-Up of the possibility of tear-up.

[36] For example, OCC has observed certain rare circumstances in which a closing price for an underlying security of an option may be stale or unavailable. A stale or unavailable closing price could be the result of a halt on trading in the underlying security, or a corporate action resulting in a cash-out or conversion of the underlying security (but that has not yet been finalized), or the result of an ADR whose underlying security is being impacted by certain provisions under foreign laws. OCC would consider the presence of these factors on its end-of-day prices in determining whether use of the discretion that would be afforded under proposed Rule 1111(f) might be warranted.

[37] In relevant part, subpart (c) reads as follows: ''In determining a close-out amount, the Corporation may consider any information that it deems relevant, including, but not limited to, any of the following: (1) Prices for underlying interests in recent transactions, as reported by the market or markets for such interests; (2) quotations from leading dealers in the underlying interest, setting forth the price (which may be a dealing price or an indicative price) that the quoting dealer would charge or pay for a specified quantity of the underlying interest; (3) relevant historical and current market data for the relevant market, provided by reputable outside sources or generated internally; and (4) values derived from theoretical pricing models using available prices for the underlying interest or a related interest and other relevant data. Amounts stated in a currency other than U.S. Dollars shall be converted to U.S. Dollars at the current rate of exchange, as determined by the Corporation. A position having a positive close-out value shall be an 'asset position' and a position having a negative close-out value shall be a 'liability position.' ''

[38] OCC is amending the Initial Filing to reflect that after further evaluation of its proposed recovery tools and the proposed tear-up process, OCC does not believe there would be a need to assign or transfer any hedging transactions established with relation to tear-up positions. OCC is therefore amending the Initial Filing to remove text in proposed Rule 1111(e) concerning proposed authority for OCC to offer to assign or transfer any hedging transactions related to Remaining Open Positions with related Tear-Up Positions. This change does not impact the statutory basis for the advance notice filing.

accounts of non-defaulting Clearing Members (inclusive of such Clearing Members' customer accounts) with an open position in the applicable Cleared Contract or Cleared Security.[39] Tear-Up Positions shall be designated and applied by OCC on a pro rata basis across all the identical positions in Cleared Contracts and Cleared Securities on the opposite side of the market in the accounts of non-defaulted Clearing Members and their customers.[40]

Rule 1111(e)(iii) provides that every Partial Tear-Up position is automatically terminated upon and with effect from the Partial Tear-Up Time, without the need for any further step by any party to such Cleared Contract or Cleared Security, and that upon termination, either OCC or the relevant Clearing Member (as the case may be) shall be obligated to pay the other the applicable Partial Tear-Up Price. Rule 1111(e)(iii) further provides that the corresponding open position shall be deemed terminated at the Partial Tear-Up Price.[41]

Rule 1111(g) provides that to the extent losses imposed upon non-defaulting Clearing Members and non-defaulting customers resulting from a Partial Tear-Up can reasonably be determined, the Board may elect to re-allocate such losses among all non-defaulting Clearing Members through a special charge to all non-defaulting Clearing Members in an amount corresponding to each such non-defaulting Clearing Member's proportionate share of the variable amount of the Clearing Fund at the time such Partial Tear-Up is conducted.[42]

With respect to Partial Tear-Ups, new Rule 1111(h) would clarify that no action or omission by OCC pursuant to and in accordance with Rule 1111 shall constitute a default by OCC.

Expected Effect on and Management of Risk

OCC believes that the proposed changes would reduce the nature and level of risk presented to OCC in three primary ways: (i) By providing greater certainty regarding what financial resources will be available to OCC after a proportionate charge is assessed; (ii) by providing additional tools by which to allocate credit losses in excess of OCC's available financial resources; and (iii) by enhancing OCC's ability to re-establish a matched book. First, OCC believes the imposition of a 200% cap on OCC's assessment powers during any cooling-off period provides Clearing Members with greater certainty regarding their maximum liability with respect to the Clearing Fund during extreme stress events, which in turn, facilitates Clearing Members' management of their own risks, and to the extent applicable, regulatory capital considerations. Further, OCC believes that extending the window for Clearing Member withdrawal following a proportionate charge to be equivalent with the cooling-off period would afford a Clearing Member a more reasonable period in which to evaluate whether the withdrawal from clearing membership would be necessary to cap its liability for proportionate charges at 200% of its then-required Clearing Fund contributions. With this change, OCC believes the increased predictability would help it to more reliably understand the amount of Clearing Fund contributions that will likely be available to it after a proportionate charge is assessed. Second, the introduction of rules to allow for voluntary payments, Voluntary Tear-Ups and Partial Tear-Ups would provide OCC with three distinct tools that could be used to allocate any credit losses OCC may face in excess of collateral and other resources available to OCC. Finally, in the event that OCC believes its obligations and liabilities arising from remaining positions in the portfolio of a defaulted Clearing Member may exceed its remaining available financial resources, the proposed changes ultimately would enable OCC to extinguish those positions, thereby re-establishing a matched book.

The risks of a Partial Tear-Up are extremely remote; nonetheless, OCC believes that the express authority to conduct a Partial Tear-Up may be viewed as increasing Clearing Members' and customers' exposure to an extreme stress scenario. As explained above, the proposed Partial Tear-Up authority is consistent with regulatory requirements, as well as with the expectations of CCPs of various international organizations. OCC further believes that its proposed Partial Tear-Up authority strikes an appropriate balance between seeking to protect the interests of Clearing Members and customers and the need to have appropriate tools to stabilize a systemically important financial market utility and minimize the risk of disruption to the broader financial system. To address the potential impact of a Partial Tear-Up on Clearing Members and customers, OCC has proposed two tools that would enable it to equitably re-allocate the losses, costs and fees imposed upon holders of torn-up positions.

Consistency With the Clearing Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[43] Section 805(a)(2) of the Clearing Supervision Act[44] also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[45] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;

[39] Since, as stated in the Initial Filing, the objective of Partial Tear-Ups is to extinguish the Remaining Open Positions cleared by the defaulted Clearing Member(s) *or customer of such defaulted Clearing Member(s)* (emphasis added), OCC does not believe there would be a need to designate Tear-Up Positions to the non-defaulted customers of a defaulted Clearing Member. OCC is therefore amending the Initial Filing to remove references to non-defaulted customers of defaulted Clearing Members.

[40] OCC is amending the Initial Filing to clarify that a non-defaulted Clearing Member would be required to allocate the assigned Tear-Up Positions on a pro rata basis across those customers that have open positions in such Cleared Contract or Cleared Security in such account, and for any listed option positions being extinguished, allocation across customer accounts should occur in accordance with such Clearing Member's procedures for allocating exercises and assignments. This change does not impact the statutory basis for the advance notice filing.

[41] OCC is amending the Initial Filing and the proposed text of Rule 1111(e)(iii) to clarify that if, in the circumstances discussed in fn. 26 (above), OCC, in its discretion, determines that its remaining resources are inadequate to pay the applicable Partial Tear-Up Price for each position being extinguished in the Partial Tear-Up, OCC shall be obligated to pay each relevant Clearing Member a pro rata amount of the applicable Partial Tear-Up Price based on OCC's remaining resources, and the relevant Clearing Member shall have an unsecured claim against the Corporation for the value of the difference between the pro rata amount received and the Partial Tear-Up Price. With regard to amounts recovered from a suspended or defaulted Clearing Member (or from the estate of a suspended or defaulted Clearing Member) Rules 1011(b) and 111(a)(ii) would continue to apply. This change does not impact the statutory basis for the advance notice filing.

[42] For the avoidance of doubt, the special charge would be distinct and separate from a Clearing Member's obligation to satisfy Clearing Fund assessments, and therefore, would not be subject to the aforementioned assessment cap in the amount of 200% of a Clearing Member's then-required contribution to the Clearing Fund.

[43] 12 U.S.C. 5461(b).

[44] 12 U.S.C. 5464(a)(2).

[45] 12 U.S.C. 5464(b).

- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Act in furtherance of these objectives and principles, including those standards adopted pursuant to the Commission rules cited below.[46] For the reasons set forth below, OCC believes that the proposed change is consistent with the risk management standards promulgated under Section 805(a) of the Clearing Supervision Act.[47]

Recovery and Orderly Wind-Down

In relevant part, Rule 17Ad–22(e)(3)(ii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . plan[ ] for the recovery and orderly wind-down of the [CCA] necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.'' [48] As stated above, each of the proposed changes is designed to provide OCC with tools to address the risks OCC might confront in a recovery and orderly wind-down scenario.[49] Consistent with the requirements of Rule 17Ad–22(e)(3)(ii), the proposed tools would enable OCC to better address the risks of liquidity shortfalls and credit losses resulting from a Clearing Member default or certain other loss events and, if necessary, to ultimately re-establish a matched book in a recovery or orderly wind-down scenario.[50] In this context, the proposed changes serve as a critical component of OCC's recovery and orderly wind-down plan. As a result, in OCC's view, the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(3)(ii) as to the recovery and orderly wind-down plan.[51]

Allocation of Credit Losses Above Available Resources

In relevant part, Rule 17Ad–22(e)(4)(viii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [a]ddress[ ] allocation of credit losses the [CCA] may face if its collateral and other resources are insufficient to fully cover its credit exposures . . .'' [52] The proposed changes would provide OCC with three distinct tools that could be used to allocate any credit losses OCC may face in excess of collateral and other resources available to OCC. First, new Rule 1011 would provide a framework by which OCC could receive voluntary payments in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211,[53] OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default. Second, new Rule 1111 would establish a framework by which non-defaulting Clearing Members and non-defaulting customers of Clearing Members could be given an opportunity to participate in Voluntarily Tear-Ups in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default. Finally, new Rule 1111 also would provide the Board with discretion to mandatorily tear-up Remaining Open Positions and Related Open Positions, in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default.[54] In OCC's view, each of these tools could be deployed by OCC, if necessary, to allocate credit losses in excess of the collateral and other resources available to OCC, in accordance with Rule 17Ad–22(e)(4)(viii).[55]

Replenishment of Financial Resources Following a Default

In relevant part, Rule 17Ad–22(e)(4)(ix) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [d]escrib[e] the [CCA's] process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated.'' [56] OCC's Clearing Members have a standing obligation to replenish the Clearing Fund following any proportionate charge. The proposed changes would establish a rolling cooling-off period, triggered by the payment of a proportionate charge against the Clearing Fund, during which period the aggregate liability of a Clearing Member to replenish the Clearing Fund (inclusive of assessments) would be 200% of the Clearing Member's required contribution as of the time immediately preceding the triggering proportionate charge. Compared to the current requirement under which a Clearing Member may cap its liability to proportionate charges at an additional 100% of its then-required contribution, a Clearing Member would instead be permitted to cap its liability for proportionate charges at an additional 200% of its then-required Clearing Fund contribution.

OCC believes that the proposed approach improves predictability for OCC and for Clearing Members regarding the size of Clearing Fund contributions that are likely to be subject to assessments for proportionate charges. Additionally, replacing the five business day withdrawal period with the withdrawal period commensurate with the cooling-off period (which, as proposed would be a minimum of fifteen calendar days) would give Clearing Members a more reasonable period in which to meet the wind-down and termination requirements necessary to cap their liability. OCC believes that

[46] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (''Clearing Agency Standards''); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Standards for Covered Clearing Agencies''). The Standards for Covered Clearing Agencies became effective on December 12, 2016. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5) and therefore is subject to section (e) of Rule 17Ad–22.

[47] 12 U.S.C. 5464(b)(1) and (4).

[48] 17 CFR 240.17Ad–22(e)(3)(ii).

[49] Indeed, the OCC's separately filed recovery and orderly wind-down plan identifies OCC's assessment powers, ability to call for voluntary payments, ability to call for Voluntary Tear-Ups and ability to impose Partial Tear-Ups among its ''Recovery Tools.'' OCC has filed a proposed rule change with the Commission in connection with this proposal. *See* Securities Exchange Act Release No. 82352 (December 19, 2017), 82 FR 61072 (December 26, 2017) (SR–OCC–2017–021). On March 22, 2018, the U.S. Securities and Exchange Commission (''Commission'') instituted proceedings to determine whether to approve or disapprove the proposed rule change. *See* Securities Exchange Act Release No. 82927 (March 22, 2018), 83 FR 13176 (March 27, 2018) (SR–OCC–2017–021).

[50] 17 CFR 240.17Ad–22(e)(3)(ii).

[51] 17 CFR 240.17Ad–22(e)(3)(ii).

[52] 17 CFR 240.17Ad–22(e)(v)(viii).

[53] Rule 707 addresses the treatment of funds in a Clearing Member's X–M accounts. Rule 1001 addresses the size of OCC's Clearing Fund and the amount of a Clearing Member's contribution. Rules 1104 through 1107 concern the treatment of the portfolio of a defaulted Clearing Member. Rules 2210 and 2211 concern the treatment of Stock Loan positions of a defaulted Clearing Member.

[54] Rule 1111(g), which would provide the Board authority to equitably re-allocate losses, costs and fees directly imposed as a result of a Partial Tear-Up among all non-defaulting Clearing Members through a special charge, would serve as a discretionary tool to redistribute the credit losses allocated through Partial Tear-Up.

[55] 17 CFR 240.17Ad–22(e)(v)(viii).

[56] 17 CFR 240.17Ad–22(e)(4)(ix).

this would afford them greater certainty regarding their maximum liability with respect to the Clearing Fund during extreme stress events, which in turn, facilitates Clearing Members' management of their own risk management, and to the extent applicable, regulatory capital considerations. And OCC believes this increased predictability would also be beneficial to OCC by helping it to more reliably understand the amount of Clearing Fund contributions that will likely be available to it after a proportionate charge is assessed.[57]

OCC believes that the relative certainty provided by the proposed cooling-off period and 200% cap on assessments ultimately could reduce the risks of successive or ''cascading'' defaults, in which the financial demands on remaining non-defaulting Clearing Members to continually replenish OCC's Clearing Fund (and similar guaranty funds at other CCPs to which such Clearing Members might belong) have the effect of further weakening such Clearing Members to the point of default. In this regard, the proposed changes are designed to provide OCC, Clearing Members and other stakeholders with sufficient time to manage the ongoing default(s) without further aggravating the extreme stresses facing market participants.

OCC recognizes that the proposed changes would limit the maximum amount of Clearing Fund resources that could be available to OCC in an extreme stress scenario, which introduces the possibility, however remote, that the proposed 200% cap ultimately could be reached. If during any cooling-off period the amount of aggregate proportionate charges against the Clearing Fund approaches the 200% cap, the amount remaining in the Clearing Fund may no longer be sufficient to comply with the applicable minimum regulatory financial resources requirements in the CCAs. In any such event, OCC's existing authority under Rule 603 would permit OCC to call on participants for additional initial margin, which could ensure that OCC's minimum financial resources remain in excess of applicable CCA requirements.[58] OCC recognizes that the imposition of increased margin requirements could have an immediate pro-cyclical impact on participants (and consequential impacts on the broader financial system) that is potentially greater than the impact of replenishing the Clearing Fund. These risks would be limited to a specific extreme stress event and could be mitigated by certain factors. First, OCC, in coordination with its regulators, would carefully evaluate any potential increase in the context of then-existing facts and circumstances. Second, during the cooling-off period, Clearing Members and their customers will have the opportunity to reduce or rebalance their respective portfolios in order to mitigate their exposures to stress losses and initial margin increases. Finally, since initial margin is not designed to be subject to mutualized loss, the risk of loss faced by Clearing Members for amounts posted as additional margin would be substantially less than for replenishments of the Clearing Fund.

Given the products cleared by OCC and the composition of its clearing membership, OCC has determined that a minimum 15-calendar day cooling-off period, rolling up to a maximum of 20 calendar days, is likely to be a sufficient amount of time for OCC to manage the ongoing default(s) and take necessary steps in furtherance of stabilizing the clearing system. Further, through conversations with Clearing Members, OCC believes that the proposed cooling-off period is likely to be a sufficient amount for Clearing Members (and their customers) to orderly reduce or rebalance their positions, in an attempt to mitigate stress losses and exposure to potential initial margin increases as they navigate the stress event. Through conversations with Clearing Members, OCC also believes that the proposed cooling-off period is likely to be a sufficient amount for certain Clearing Members to orderly close-out their positions and transfer customer positions as they withdraw from clearing membership. OCC believes the proposed cooling-off period, coupled with the other proposed changes to OCC's assessment powers, is likely to provide Clearing Members with an adequate measure of stability and predictability as to the potential use of Clearing Fund resources, which OCC believes removes the existing incentive for Clearing Members to withdraw following a proportionate charge.[59]

In light of the foregoing, OCC believes that the proposed changes would enhance and strengthen its process to replenish the Clearing Fund following a default or other event in which use of the Clearing Fund is contemplated, in accordance with Rule 17Ad–22(e)(4)(ix).[60]

Replenishment of Liquid Resources

In relevant part, Rule 17Ad–22(e)(7)(ix) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [d]escrib[e] the [CCA's] process to replenish any liquid resources that the clearing agency may employ during a stress event.''[61] Since the use any part of the cash portion of OCC's Clearing Fund would constitute a depletion of one of OCC's liquid resources, OCC's assessment power, discussed above, is the primary means of replenishing the Clearing Fund cash that OCC used to address the stress event. For the same reasons stated above, OCC believes that the proposed changes enhance and strengthen its process to replenish the Clearing Fund, as necessary, following a default or other stress event in which the Clearing Fund is used, and therefore, OCC views the proposed changes as consistent with Rule 17Ad–22(e)(7)(ix).[62]

Timely Action To Contain Losses

In relevant part, Rule 17Ad–22(e)(13) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]nsure the [CCA] has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations . . .''[63] The proposed changes would provide OCC with the authority to call for Voluntary Tear-Ups and OCC's Board with the discretion to impose Partial Tear-Ups, which would provide OCC with authority necessary to extinguish certain losses (and attendant liquidity demands) thereby potentially enabling OCC to continue to meet its remaining obligations to participants. As designed, Voluntary Tear-Ups and Partial Tear-Ups would be initiated on a date sufficiently in advance of the exhaustion of OCC's financial resources such that OCC is expected to have adequate resources remaining to cover the amount it must pay to extinguish the

[57] Under the existing approach, it is less certain from OCC's standpoint regarding whether Clearing Members would reasonably be able to cap their liability to proportionate charges within five business days.

[58] Rule 603 provides that ''[t]he Risk Committee may, from time to time, increase the amount of margin which may be required in respect of a cleared contract, open short position or exercised contract if, in its discretion, it determines that such increase is advisable for the protection of [OCC], the Clearing Members or the general public.''

[59] OCC initially considered a fixed 15-calendar day cooling-off period; however, OCC concluded that a fixed 15-calendar day cooling-off period may increase the risks of successive or cascading Clearing Member defaults and may perversely incentivize Clearing Members to seek to withdraw from clearing membership. Through conversations with Clearing Members, OCC believes that these potentially disruptive consequences are mitigated by the proposed rolling cooling-off period.

[60] 17 CFR 240.17Ad–22(e)(4)(ix).

[61] 17 CFR 240.17Ad–22(e)(7)(ix).

[62] 17 CFR 240.17Ad–22(e)(7)(ix).

[63] 17 CFR 240.17Ad–22(e)(13).

positions of Clearing Members and customers without haircutting gains. Accordingly, OCC believes that its authority and capacity to conduct a Partial Tear-Up should be timely, relative to the adequacy of OCC's remaining financial resources. Finally, OCC believes it has the operational and systems capacity sufficient to support the proposed changes, and OCC's policies and procedures will be updated accordingly to reflect the existence of these new tools. As a result, OCC believes that the proposed changes conform to the relevant requirements in Rule 17Ad–22(e)(13).[64]

Public Disclosure of Key Aspects of Default Rules

In relevant part, Rule 17Ad–22(e)(23)(i) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [p]ublicly disclos[e] all relevant rules and material procedures, including key aspects of its default rules and procedures.'' [65] As stated above, each of the tools discussed herein are contemplated to be deployed by OCC if an extreme stress event has placed OCC into a recovery or orderly wind-down scenario, and therefore, the tools discussed herein constitute key aspects of OCC's default rules. By incorporating the proposed changes into OCC's Rules and By-Laws, as further supplemented by the discussion in OCC's public rule filing, OCC believes that proposed changes would conform to the relevant requirements in Rule 17Ad–22(e)(23)(i).[66]

Sufficient Information Regarding the Risks, Fees and Costs of Clearing

In relevant part, Rule 17Ad–22(e)(23)(ii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [p]rovid[e] sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.'' [67] The proposed changes would clearly explain to Clearing Members and market participants that an extreme stress scenario could result in the use—and theoretically the exhaustion—of OCC's financial resources, inclusive of OCC's proposed assessment powers. Proposed changes to Section 6, Article VIII of OCC's By-Laws would explain Clearing Members' replenishment obligation and liability for assessments. The proposed changes also would clearly explain, through proposed Rules 1011 and 1111, that as OCC nears the exhaustion of its assessment powers, Clearing Members may be asked for voluntary payments and, if necessary, Clearing Members and customers may be asked to participate in a Voluntary Tear-Up and/or subject to a Partial Tear-Up. Proposed Rules 1011(b) and 1111(a)(ii) also would make clear that Clearing Members that made voluntary payments and Clearing Members and customers whose tendered positions were extinguished in the Voluntary Tear-Up would be prioritized in the distribution of any recovery from the defaulted Clearing Member(s). Proposed changes to Article VIII would clarify that the Clearing Fund contributions remaining after OCC has conducted a Voluntary Tear-Up or Partial Tear-Up could be used to compensate the non-defaulting Clearing Members and non-defaulting customers for the losses, costs or fees imposed upon them as a result of such Voluntary Tear-Up or Partial Tear-Up. Proposed Rule 1111(g) would make clear that, following a Partial Tear-Up, OCC's Board may seek to equitably re-allocate losses, costs and fees directly imposed as a result of a Partial Tear-Up among all non-defaulting Clearing Members through a special charge. By incorporating the proposed changes into OCC's Rules and By-Laws, as further supplemented by the discussion in OCC's public rule filing, OCC believes that is has provided sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they could incur by participating OCC, consistent with the requirements in Rule 17Ad–22(e)(23)(ii).[68]

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2017–809 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–OCC–2017–809. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

[64] 17 CFR 240.17Ad–22(e)(13).

[65] 17 CFR 240.17Ad–22(e)(23)(i).

[66] 17 CFR 240.17Ad–22(e)(13).

[67] 17 CFR 240.17Ad–22(e)(23)(ii).

[68] 17 CFR 240.17Ad–22(e)(23)(ii).

inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp*.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal or identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2017–809 and should be submitted on or before August 22, 2018.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2018–16824 Filed 8–6–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83756; File No. SR–BYX–2012–019]

Self-Regulatory Organization; Cboe BYX Exchange, Inc.; Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program

August 1, 2018.

On November 27, 2012, the Securities and Exchange Commission (''Commission'') issued an order pursuant to its authority under Rule 612(c) of Regulation NMS (''Sub-Penny Rule) [1] that granted the BATS BYX-Exchange, Inc. (nka ''Cboe BYX'' or the ''Exchange'') a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Price Improvement (''RPI'') Program (the ''Program''). The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt the Program for a one-year pilot term.[2] The exemption was granted coterminous with the effectiveness of the pilot Program and has been extended five times; [3] both the pilot Program and exemption are scheduled to expire on July 31, 2018.

The Exchange now seeks to extend the exemption until December 31, 2018.[4] The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program until December 31, 2018.[5] In its request to extend the exemption, the Exchange notes that the Program was implemented gradually over time. Accordingly, the Exchange has asked for additional time to allow itself and the Commission to analyze data concerning the Program, which the Exchange committed to provide to the Commission, as well as to allow additional opportunities for greater participation in the Program.[6] For this reason and the reasons stated in the Order originally granting the limited exemption, the Commission finds that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

THEREFORE, IT IS HEREBY ORDERED, that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612(c) of Regulation NMS that allows it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in connection with the operation of its RPI Program.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Brent J. Fields,

Secretary.

[FR Doc. 2018–16798 Filed 8–6–18; 8:45 am]

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[1] 17 CFR 242.612(c).

[2] *See* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (''RPI Approval Order'') (SR–BXY–2012–019).

[3] *See* Securities Exchange Act Release Nos. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2012) (SR–BYX–2014–001) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 71250 (January 7, 2014), 79 FR 2234 (January 13, 2012) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 74111 (January 22, 2015), 80 FR 4598 (January 28, 2015) (SR–BYX–2015–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); and 74115 (January 22, 2015), 80 FR 4324 (January 27, 2015) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 76965 (January 22, 2016), 81 FR 4682 (January 27, 2016) (SR–BYX–2016–01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 76953 (January 21, 2016), 81 FR 4728 (January 27, 2016) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 78180 (June 28, 2016), 81 FR 43306 (July 1, 2016) (SR–BYX–2016–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 78178 (July 5, 2016), 81 FR 43689 (July 5, 2016) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 81368 (August 10, 2017), 82 FR 38960 (August 16, 2017) (SR–BatsBYX–2017–18) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 81364 (August 8, 2018), 82 FR 38733 (August 15, 2017) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program).

[4] *See* letter from Anders Franzon, Senior Vice President and Associate General Counsel, Cboe BYX, to Brent J. Fields, Secretary, Commission, dated July 30, 2018.

[5] *See* SR–CboeBYX–2018–015.

[6] *See* RPI Approval Order, *supra* note 2, at 77 FR at 71657.

[7] 17 CFR 200.30–3(a)(83).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83757]

Order Granting Applications by Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, and Nasdaq PHLX LLC for Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain CAT Rules Incorporated by Reference

August 1, 2018.

Nasdaq BX, Inc. (''BX''), Nasdaq GEMX, LLC (''GEMX''), Nasdaq ISE, LLC (''ISE''), Nasdaq MRX, LLC (''MRX''), and Nasdaq PHLX LLC (''Phlx'') (each the ''Exchange'' and collectively, the ''Exchanges'') have filed with the Securities and Exchange Commission (the ''Commission'') an application for an exemption from the rule filing requirements of Section 19(b) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] with respect to certain rules of The Nasdaq Stock Market LLC (the ''Nasdaq Market'') that the Exchanges seek to incorporate by reference. Section 36(a)(1) of the Exchange Act,[2] subject to certain limitations, authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

[1] 15 U.S.C. 78s(b).

[2] 15 U.S.C. 78mm(a)(1).

The Nasdaq Market and the Exchanges are Participants in the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'' or ''Plan'').[3] Each Participant in the CAT NMS Plan is required to enforce compliance by its members with the provisions of the Plan by adopting a Compliance Rule applicable to its members.[4] In 2017, pursuant to the CAT NMS Plan, the Nasdaq Market and the Exchanges each adopted a Compliance Rule.[5] On April 10, 2018, the Exchanges filed proposed rule changes with the Commission to delete each Exchange's Compliance Rule from the rulebook and instead incorporate by reference, in each respective Exchange's rulebook, the Nasdaq Market's Compliance Rule (''Nasdaq Market Compliance Rule'').[6]

The Exchanges request, pursuant to Rule 0–12 under the Exchange Act,[7] that the Commission grant the Exchanges an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to each Exchange's rules that are effected solely by virtue of a change to the Nasdaq Market Compliance Rule. Specifically, the Exchanges request that they be permitted to incorporate by reference changes made to the Nasdaq Market Compliance Rule that would be incorporated by reference in the Exchanges' rulebooks, without the need for each Exchange to file separately the same proposed rule changes pursuant to Section 19(b) of the Exchange Act.[8] By virtue of incorporating the Nasdaq Market Compliance Rule by reference, members of each Exchange will be required to comply with the Nasdaq Market Compliance Rule as though it is fully set forth within each of the Exchanges' rulebooks.[9]

The Exchanges do not intend to incorporate by reference any trading rules. Instead, they represent that the Nasdaq Market Compliance Rule is regulatory in nature. Further, the Exchanges represent that they will, as a condition of this exemption, provide written notice to their members whenever the Nasdaq Market proposes a change to the Nasdaq Market Compliance Rule.[10] Such notice will alert the members of each Exchange to the proposed rule change and give them an opportunity to comment on the proposal. The Exchanges state that they will also inform members in writing when the Commission approves any such proposed rule change.[11]

The Exchanges believe this exemption is appropriate because it will result in the Exchanges' rules pertaining to CAT NMS Plan compliance to remain consistent at all times, thus ensuring consistent regulation of joint members of the Nasdaq Market and Exchanges with respect to the incorporated rules.[12]

The Commission has issued exemptions similar to the Exchanges' request.[13] In granting one such exemption in 2010, the Commission repeated a prior, 2004 Commission statement that it would consider similar future exemption requests from other self-regulatory organizations (''SROs''), provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0–12 under the Exchange Act;[14]
- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (*e.g.,* the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.[15]

The Commission believes that the Exchanges have satisfied each of these conditions. Further, the Commission also believes that granting the Exchanges an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of the Commission's and the Exchanges' resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.[16] The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchanges from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rules they incorporate by reference. This exemption is conditioned upon the Exchanges promptly providing written notice to their members whenever the

[3] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''CAT NMS Plan Approval Order''). All capitalized terms not otherwise defined herein have the meaning ascribed to them in the CAT NMS Plan or CAT NMS Plan Approval Order.

[4] *Id.* at 84945, 84950.

[5] *See* Securities Exchange Act Release No. 80256, 82 FR 14526 (March 21, 2017) (order approving the Compliance Rules for the Nasdaq Market and the Exchanges). On January 29, 2018, the Nasdaq Market filed a proposed rule change with the Commission to relocate the Nasdaq Market Compliance Rule to a new section General 7 in its rulebook. *See* Securities Exchange Act Release No. 82604 (January 30, 2018), 83 FR 5154 (February 5, 2018) (SR–NASDAQ–2018–007).

[6] *See* Securities Exchange Act Release Nos. 83077 (April 20, 2018), 83 FR 18358 (April 26, 2018) (SR–Phlx–2018–30); 83081 (April 20, 2018), 83 FR 18371 (April 26, 2018) (SR–BX–2018–015); 83079 (April 20, 2018), 83 FR 18362 (April 26, 2018) (SR–ISE–2018–35); 83083 (April 20, 2018), 83 FR 18384 (April 26, 2018) (SR–GEMX–2018–13); and 83085 (April 20, 2018), 83 FR 18364 (April 26, 2018) (SR–MRX–2018–12). Although the proposed rule changes were filed pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act, and thereby became effective upon filing with the Commission, the Exchanges stipulated in their filings that the incorporation by reference would not be operative until such time as the Commission grants this exemptive request.

[7] 17 CFR 240.0–12.

[8] *See* Letter from Angela S. Dunn, Principal Associate General Counsel, Nasdaq Inc., to Brent J. Fields, Secretary, Commission, dated April 10, 2018, at 2–3.

[9] *Id.* at 2.

[10] The Exchanges also state that they will provide such notice on their websites in the same section they use to post their own proposed rule change pursuant to Rule 19b–4(l) of the Exchange Act. In addition, the Exchanges state that their website will include a link to the Nasdaq Market website where the proposed rule change would be located. *Id.*

[11] *Id.*

[12] *Id.*

[13] *See, e.g.,* Securities Exchange Act Release Nos. 80338 (March 29, 2017), 82 FR 16464 (April 4, 2017) (order granting exemptive request from MIAX PEARL, LLC relating to rules of Miami International Securities Exchange, LLC incorporated by reference); 72650 (July 22, 2014), 79 FR 44075 (July 29, 2014) (order granting exemptive requests from NASDAQ OMX BX, Inc. and the NASDAQ Stock Market LLC relating to rules of NASDAQ OMX PHLX LLC incorporated by reference); 67256 (June 26, 2012), 77 FR 39277, 39286 (July 2, 2012) (order approving SR–BX–2012–030 and granting exemptive request relating to rules incorporated by reference by the BX Options rules); 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules) (''BATS Options Market Order''); and 57478 (March 12, 2008), 73 FR 14521, 14539–40 (March 18, 2008) (order approving SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080, and granting exemptive request relating to rules incorporated by reference by The NASDAQ Options Market).

[14] *See* 17 CFR 240.0–12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (''Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule'').

[15] *See* BATS Options Market Order, *supra* note 13 (citing Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) (''2004 Order'')).

[16] *See* BATS Options Market Order, *supra* note 13, 75 FR at 8761; *see also* 2004 Order, *supra* note 15, 69 FR at 8502.

Nasdaq Market changes a rule that the Exchanges have incorporated by reference.

Accordingly, it is ordered, pursuant to Section 36 of the Exchange Act,[17] that the Exchanges are exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in its request that incorporate by reference certain Nasdaq Market rules that are the result of changes to such Nasdaq Market rules, provided that the Exchanges promptly provide written notice to their members whenever the Nasdaq Market proposes to change a rule that the Exchanges have incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2018–16799 Filed 8–6–18; 8:45 am]

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[17] 15 U.S.C. 78mm.

[18] 17 CFR 200.30–3(a)(76).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83762; File No. SR–OCC–2017–810]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Partial Amendments No. 1, 2, and 3 to Advance Notice Concerning Updates to and Formalization of OCC's Recovery and Orderly Wind-Down Plan

August 1, 2018.

I. Introduction

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i)[2] under the Securities Exchange Act of 1934 (''Act''),[3] The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice pursuant to which OCC would formalize and update its Recovery and Orderly Wind-Down Plan (''RWD Plan'' or ''Plan''), consistent with the applicable requirement in Rule 17Ad–22(e)(3)(ii)[4] (''Advance Notice''). The Advance Notice was published for public comment in the **Federal Register** on January 23, 2018.[5] On January 23, 2018, the Commission requested OCC provide it with additional information regarding the Advance Notice.[6] OCC responded to this request for information, and the information was received on July 13, 2018.[7] On July 11 and 12, 2018, OCC filed Partial Amendment No. 1 and Partial Amendment No. 2 to the Initial Filing. On July 12, 2018, OCC also filed a partial amendment (''Partial Amendment No. 3'') to the Initial Filing. This Partial Amendment No. 3 is intended to supersede and replace Amendments No. 1 and 2 in their entirety.[8] Therefore, the Initial Filing together with Partial Amendment No. 3 reflects the changes being proposed.

The Advance Notice, as amended by Partial Amendment No. 3 is described in Item II below, which Item has been prepared by OCC. The Commission is publishing this notice to solicit comments on the Advance Notice, as amended by Partial Amendments No. 1, 2 and 3, from interested persons.

II. Clearing Agency's Statement of the Terms of Substance of Partial Amendment No. 3 to the Advance Notice

This Partial Amendment No. 3 would make the following three amendments to the Initial Filing: (1) Removal of sections of the RWD Plan concerning OCC's proposed authority to require cash settlement of certain physically delivered options and single stock futures; (2) updating the list of OCC's Critical Support Functions;[9] and (3) making three changes to Chapter 5 of the RWD Plan in order to conform to a change contemporaneously proposed in Amendment No. 2 to OCC advance notice filing SR–OCC–2017–809 concerning enhanced and new tools for recovery scenarios.[10]

With regard to the removal of sections of the RWD Plan concerning OCC's proposed authority to require cash settlement of certain physically delivered options and single stock futures, OCC proposes to amend the following text on pages 16–17 and 55 of the Initial Filing (new text is underlined and proposed deletions are marked in strikethrough text).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 240.17Ad–22(e)(3)(ii).

[5] *See* Securities Exchange Act Release No. 82514 (January 17, 2018), 83 FR 3224 (January 23, 2018) (SR–OCC–2017–810) (hereinafter referred to as the ''Initial Filing''). Initial Filing, 83 FR 3224.

[6] *See* Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, dated January 23, 2018, *available at https://www.sec.gov/comments/sr-occ-2017-810/occ2017810-2948228-161854.pdf.*

[7] *See* Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, dated July 17, 2018, *available at https://www.sec.gov/comments/sr-occ-2017-810/occ2017810-4062513-169149.pdf.*

[8] This Partial Amendment No. 3 is substantially the same as Partial Amendments No. 1 and 2 but would correct certain technical errors in the previous amendments (*e.g.,* update a cross-reference to OCC filing SR–OCC–2017–809, as now amended by Amendment No. 2, and correct a pagination error in Exhibits 4 and 5). Substantive changes to the Initial Filing, as reflected in Partial Amendment No. 3, are described in Item II below.

[9] The amendment to the list of Critical Support Functions would be made to the confidential and redacted portions of the RWD Plan.

[10] *See* Amendment No. 2 to SR–OCC–2017–809. The three amendments to Chapter 5 also would be made to the confidential and redacted portions of the RWD Plan.

Proposed Chapter 5 would explain that OCC's Enhanced Risk Management Tools are designed to supplement OCC's existing processes and other existing tools in scenarios where OCC faces heightened stresses. Contrary to the Recovery Tools (which are described in greater detail below), the use of OCC's Enhanced Risk Management Tools would not be intended to be limited strictly to situations in which a Recovery Trigger Event has occurred. Rather, OCCs Enhanced Risk Management Tools have been designed such that they could be used prior to the occurrence of a Recovery Trigger Event (and preferably, the Enhanced Risk Management Tools would be used prophylactically in an effort to prevent the occurrence of a Recovery Trigger Event). As proposed, OCC would not anticipate there being a rigid order or timing for the deployment of its Enhanced Risk Management Tools~~, subject to one caveat—"Cash Settlement of Physically Delivered Options and Single Stock Futures" would only be deployed in very narrow circumstances where a correspondent clearing organization has rejected the settlement obligations of an OCC Clearing Member and OCC does not believe it has sufficient liquid resources immediately available to facilitate settlement through a substitute broker~~.

OCC also proposes to amend the following text on pages 22–23 and 61–62 of the Initial Filing (including associated footnotes).

~~Cash Settlement of Physically Delivered Options and Single Stock Futures. OCC is in the process of proposing a new Rule 913, which would provide OCC the ability to require cash settlement of otherwise physically-settled delivery obligations arising from exercised or assigned stock options and/or physically-settled matured stock futures in the event that a correspondent clearing corporation rejects the settlement obligations for such stock options and/or stock futures (such rejected stock options and/or stock futures hereinafter, "Rejected Cleared Securities") and either of the two following necessary conditions exists: (i) the liquidity demand on OCC to fund an alternative form of settlement for such Rejected Cleared Securities (i.e., settlement through the use of a "substitute broker") would exceed the amount of liquid resources immediately available to OCC, or (ii) no agent is available to serve as substitute broker to facilitate alternative settlement for OCC. In these extremely limited circumstances, fixing cash settlement amounts pursuant to proposed Rule 913 would provide OCC with the ability to substantially reduce the liquidity demands that it might otherwise face if required to fund an alternative form of settlement to effect physical delivery. The Recovery Plan would include cash settlement of otherwise physically-delivered options and single-stock futures pursuant to proposed Rule 913 among OCC's Enhanced Risk Management Tools.~~

~~The Recovery Plan would acknowledge that, assuming one of the two necessary conditions exists, the process for initiating cash settlement would be driven by the preparation of a "Close-Out Action Plan," which would recommend impacted options and single-stock futures be cash settled in lieu of physical delivery. The Recovery Plan would also acknowledge that execution of cash settlement would occur in accordance with OCC's "Alternative Cash Settlement of Cleared Contracts Procedure." The Recovery Plan recognizes that a key risk of this particular tool would be the potentially detrimental impacts on Clearing Members and their customers, who would receive a cash settlement amount when they had anticipated receiving physical securities.~~

OCC plans to resubmit the proposed cash settlement tool previously filed in SR–OCC–2017–018 and SR–OCC–2017–807 on a separate timeline from the rest of its enhanced and new tools for recovery scenarios and would submit a

subsequent filing to the Commission to amend the RWD Plan at that time.

In addition, OCC proposes to make the following amendments on pages 32 and 71 of the Initial Filing.

- *Tools to address liquidity shortfalls:* minimum Clearing Fund cash contribution, borrowing against Clearing Fund, OCC's credit facility, and OCC's non-bank facility ~~and cash settlement of physically delivered options and single stock futures~~.

With regard to updating the list of OCC's Critical Support Functions, the amendment would revise OCC's RWD Plan to consistently identify one of OCC's internal functions as a Critical Support Function.

Finally, OCC proposes to make two changes to Chapter 5 of the RWD Plan, which would align an exhibit, a related list and a related paragraph with the certain changes OCC is contemporaneously proposing in Amendment No. 2 to OCC advance notice filing SR–OCC–2017–809 concerning enhanced and new tools for recovery scenarios.[11] Specifically, OCC would change the aforementioned exhibit, list and paragraph in Chapter 5 to recognize that while OCC does not intend, in the first instance for its tear-up process to serve as a means of loss allocation, circumstances may arise such that, despite best efforts, OCC has inadequate remaining financial resources to extinguish torn-up positions at their assigned Tear-Up Price without forcing a reduction in the amount of unpaid value of such positions (*e.g.,* despite best efforts, market movements not accounted for by monitoring, additional Clearing Member defaults occur immediately preceding a tear-up). In such circumstances, despite best efforts, OCC would use its partial tear-up process as a means of loss allocation.

OCC has included an updated Exhibit 5 containing its RWD Plan as well as an Exhibit 4 showing the changes proposed in this Partial Amendment No. 3 to the proposed rule text in the Initial Filing, with the proposed changes in the Initial Filing marked in underlined and strikethrough text. Exhibits 4 and 5 have been redacted and filed separately with the Commission and confidential treatment for Exhibits 4 and 5 is requested pursuant to 17 CFR 240.24b–2.

The Partial Amendments No. 1, 2 and 3 would not change the purpose of or basis for the proposed changes. All other representations in the Initial Filing remain as stated therein and no other changes are being made.

[11] *See* Amendment No. 2 to SR–OCC–2017–809.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commissions internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2017–810 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2017–810. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *http://www.theocc.com/about/publications/bylaws.jsp*.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal or identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2017–810 and should be submitted on or before August 22, 2018.

By the Commission.

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83759; File No. SR–NYSEArca–2018–54]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend Commentary .01 to NYSE Arca Rule 8.600–E Relating to Certain Generic Listing Standards for Managed Fund Shares

August 1, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 18, 2018, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .01 to NYSE Arca Rule 8.600–E relating to certain generic listing standards for Managed Fund Shares. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Commentary .01 to NYSE Arca Rule 8.600–E sets forth generic listing standards for listing and trading of Managed Fund Shares on the Exchange.[4] The Exchange proposes to amend certain provisions in Commentary .01, as described below.[5]

Proposed Amendments to Commentary .01(a) to Rule 8.600–E

Commentary .01(a) to NYSE Arca Rule 8.600–E sets forth generic standards applicable to equity securities included in the portfolio of a series of Managed Fund Shares.[6] Commentary .01(a)(2) (''Non-U.S. Component Stocks'') sets forth criteria to be met initially and on a continuing basis by component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks.[7]

Commentary .01(a)(2)(A) provides that Non-U.S. Component Stocks each shall have a minimum market value of at least $100 million. Commentary .01(a)(2)(B) provides that Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months.

The Exchange proposes to amend Commentary .01(a)(2)(A) to provide that Non-U.S. Component Stocks that in the aggregate account for at least 90% of the weight of the Non-U.S. Component Stocks of the equity portion of a portfolio each shall have a minimum market value of at least $100 million. In addition, the Exchange proposes to amend Commentary .01(a)(2)(B) to provide that Non-U.S. Component Stocks that in the aggregate account for at least 70% of the weight of the Non-U.S. Component Stocks of the equity portion of a portfolio each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months.

The proposed amendments are comparable to the current numerical requirements in Commentary .01(a)(B)(1) and Commentary .01(a)(B)(2) to NYSE Arca Rule 5.2–E(j)(3) applicable to component stocks in an index or portfolio underlying Investment Company Units. The Exchange notes that, in originally approving the generic listing criteria in Commentary .01(a)(B) to NYSE Arca Rule 5.2–E(j)(3) applicable to indexes that include only non-U.S. Component Stocks or both U.S. and Non-U.S. Component Stocks in an index or portfolio underlying a series of Investment Company Units, the Commission stated that ''[t]hese requirements are designed, among other things, to require that components of an index or portfolio underlying an ETF are adequately capitalized and sufficiently liquid, and that no one stock dominates the index.'' [8]

Like the requirements applicable to an index or portfolio underlying

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission approved the generic listing standards in Commentary .01 to NYSE Arca Rule 8.600–E in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEArca–2015–110) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Equities Rule 8.600 to Adopt Generic Listing Standards for Managed Fund Shares) (''Approval Order'').

[6] For purposes of Commentary .01(a) to Rule 8.600–E, equity securities include the following: U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Non-U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Derivative Securities Products (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8–E); and Index-Linked Securities that qualify for Exchange listing and trading under Rule 5.2–E(j)(6).

[7] NYSE Arca Rule 5.2–E(j)(3) provides that the term ''Non-US Component Stock'' shall mean an equity security that is not registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including Real Estate Investment Trusts (REITS) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

[8] *See* Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86) (Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, 3, and 4 Thereto and Order Granting Accelerated Approval of the Proposed Rule Change as Modified by Amendments No. 2 and 4 Thereto Adopting Generic Listing Standards for Exchange-Traded Funds Based on International or Global Indexes or Indexes Described in Exchange Rules Previously Approved by the Commission as Underlying Benchmarks for Derivative Securities). *See also* Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 61811 [sic] (October 19 [sic], 2006) (SR–Amex–2006–78) (Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Relating to Generic Listing Standards for Series of Portfolio Depositary Receipts and Index Fund Shares Based on International or Global Indexes); 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR–NYSE–2006–101) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendments No. 1 and 2 Thereto Adopting Generic Listing Standards for Exchange-Traded Funds Based on International or Global Indexes or Indexes Previously Approved by the Commission as Underlying Benchmarks for Derivative Securities).

Investment Company Units noted above, the proposed amendments to Commentary .01(a)(2)(A) and (B) would subject a substantial portion of a fund's holdings in Non-U.S. Component Stocks to specified minimum liquidity and market value requirements. Such holdings also will continue to be subject to the weighting and diversification requirements of Commentary .01(a)(2)(C) and (D), which prevent any stock or small group of stocks from dominating a fund's portfolio.[9] The proposed amendments to Commentary .01(a)(2) to Rule 8.600–E would provide additional flexibility to series of Managed Fund Shares investing in Non-U.S. Component Stocks while continuing to apply substantial minimum criteria relating to liquidity, market capitalization and diversification.

Proposed Amendment to Commentary .01(b)(5) to Rule 8.600–E

Commentary .01(b) to NYSE Arca Rule 8.600–E sets forth generic standards applicable to fixed income securities included in the portfolio of a series of Managed Fund Shares.[10] Commentary .01(b)(5) provides that non-agency, non- GSE and privately-issued mortgage-related and other asset-backed securities (''ABS'') components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. The Exchange proposes to amend Commentary .01(b)(5) by deleting the words ''fixed income portion'' to provide that such 20% limitation would apply to the entire portfolio rather than to only the fixed income portion of the portfolio. Thus, Commentary .01(b)(5) would provide that non-agency, non-GSE and privately-issued mortgage-related and other ABS components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the portfolio.

This Exchange believes this amendment is appropriate because a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS may provide a fund with benefits associated with increased diversification, as such investments may be less correlated to interest rates than many other fixed income securities. In addition, a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS will be subject to a fund's liquidity procedures as adopted by a fund's board of directors. The Exchange notes that the Commission has previously approved the listing of actively managed exchange-traded funds that can invest 20% of their total assets in non-U.S. Government, non-agency, non-GSE and other privately issued asset-backed and mortgage-backed securities (''MBS'').[11] In addition, the Commission has previously approved listing and trading of shares of an issue of Managed Fund Shares where such fund's investments in non-U.S. Government, non-agency, non-GSE and other privately issued ABS will, in the aggregate, not exceed more than 20% of the total assets of the fund, rather than the weight of the fixed income portion of the fund's portfolio.[12] Therefore, the Exchange believes it is appropriate to apply the 20% limitation to a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio in Commentary .01(b)(5) to a fund's total assets.

Proposed Amendment to Commentary .01(a)(3) to Rule 8.600–E

The Exchange further proposes to add new Commentary .01(a)(3) to NYSE Arca Rule 8.600–E to provide that the portfolio of a series of Managed Fund Shares may include non-exchange-traded open-end management investment company securities, which securities shall be excluded from the equity portion of the portfolio for purposes of meeting the criteria in Commentary .01(a)(1).

A fund's investment in such securities, which are registered under the 1940 Act, may be utilized, for example, to obtain income on short-term cash balances while awaiting attractive investment opportunities, to provide liquidity in preparation for anticipated redemptions or for defensive purposes.[13] Such investments may include mutual funds that invest principally in securities and financial instruments that help the Fund meet its investment objective and/or to equitize cash in the short term.[14] Because such securities must satisfy applicable 1940 Act diversification requirements, and have a net asset value based on the value of securities and financial instruments the investment company holds, it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(a)(1)(A) through (D) to Rule 8.600–E exclude certain ''Derivative Securities Products'' that are exchange-traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E)) and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E)).[15] In its

[9] Commentary .01(a)(2)(C) provides that the most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio.

Commentary .01(a)(2)(D) provides that, where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares.

[10] Commentary .01(b) provides that fixed income securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper.

[11] *See, e.g.,* Securities Exchange Act Release Nos. 80946 (June 15, 2017) 82 FR 28126 (June 20, 2017) (SR–NASDAQ–2017–039) (permitting the Guggenheim Limited Duration ETF to invest up to 20% of its total assets in privately-issued, non-agency and non-GSE ABS and MBS); 76412 (November 10, 2015), 80 FR 71880 (November 17, 2015) (SR–NYSEArca–2015–111) (permitting the RiverFront Strategic Income Fund to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74814 (April 27, 2015), 80 FR 24986 (May 1, 2015) (SR–NYSEArca–2014–017 [sic]) (permitting the Guggenheim Enhanced Short Duration ETF to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74109 (January 21, 2015), 80 FR 4327 (January 27, 2015) (SR–NYSEArca–2014–134) (permitting the IQ Wilshire Alternative Strategies ETF to invest up to 20% of its total assets in MSB [sic] and other ABS, without any limit on the type of such MBS and ABS).

[12] *See* Securities Exchange Act Release No. 83319 (May 24, 2018) (SR–NYSEArca–2018–15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600–E).

[13] For purposes of Commentary .01(a)(3), non-exchange-traded open-end management investment company securities do not include money market funds, which are cash equivalents under Commentary .01(c) to Rule 8.600–E and for which there is no limitation in the percentage of the portfolio invested in such securities.

[14] The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder. *See, e.g.,* Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR–NYSEArca–2016–79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Rule 8.600–E).

[15] The Commission initially approved the Exchange's proposed rule change to exclude ''Derivative Securities Products'' (*i.e.,* Investment Company Units and securities described in Section

2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) to exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that ''based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.'' The Exchange notes that it would be difficult or impossible to apply to mutual fund shares certain of the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Commentary .01 (A) through (D) applicable to U.S. Component Stocks. For example, the requirements for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months are tailored to exchange-traded securities (*i.e.,* U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market and for which no such volume information is reported. In addition, Commentary .01(a)(1)(A) relating to minimum market value of portfolio component stocks, Commentary .01(a)(1)(C) relating to weighting of portfolio component stocks, and Commentary .01(a)(1)(D) relating to minimum number of portfolio components are not appropriately applied to open-end management investment company securities; open-end investment companies hold multiple individual securities as disclosed publicly in accordance with the 1940 Act.

The Exchange notes that the Commission has previously approved listing and trading of an issue of Managed Fund Shares that may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities notwithstanding that the fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to such fund's investments in such securities.[16]

The Exchange, therefore, believes it is appropriate to exclude non-exchange-traded open-end management investment company securities from the equity portion of the portfolio for purposes of meeting the criteria in Commentary .01(a)(1).

The Exchange believes the proposed amendments would provide issuers of Managed Fund Shares with additional investment choices for fund portfolios for issues permitted to list and trade on the Exchange pursuant to the Rule 19b–4(e), which would enhance competition among market participants, to the benefit of investors and the marketplace.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections [sic] 6(b)(5) of the Act,[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in series of Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange notes that the Exchange or Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, or both, would communicate as needed regarding trading in Managed Fund Shares with other markets and other entities that are members of the Intermarket Surveillance Group, and the Exchange or FINRA, on behalf of the Exchange, or both, could obtain trading information regarding trading in Managed Fund Shares from such markets and other entities. In addition, the Exchange could obtain information regarding trading in Managed Fund Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

With respect to the proposed amendment to Commentary .01(a)(2), the proposed amendments are comparable to the current numerical requirements in Commentary .01(a)(B)(1) and Commentary .01(a)(B)(2) to NYSE Arca Rule 5.2–E(j)(3) applicable to component stocks in an index or portfolio underlying Investment Company Units. The Exchange notes that, in originally approving the generic listing criteria in Commentary .01(a)(B) to NYSE Arca Rule 5.2–E(j)(3) applicable to indexes that include only non-U.S. Component Stocks or both U.S. and Non-U.S. Component Stocks in an index or portfolio underlying a series of Investment Company Units, the Commission stated that ''[t]hese requirements are designed, among other things, to require that components of an index or portfolio underlying an ETF are adequately capitalized and sufficiently liquid, and that no one stock dominates the index.''[19]

Like the requirements applicable to an index or portfolio underlying Investment Company Units noted above, the proposed amendments to Commentary .01(a)(2)(A) and (B) would subject a substantial portion of a fund's holdings in Non-U.S. Component Stocks to specified minimum liquidity and market value requirements. Such holdings also will continue to be subject to the weighting and diversification requirements of Commentary .01(a)(2)(C) and (D), which prevent any stock or small group of stocks from dominating a fund's portfolio. The proposed amendments to Commentary .01(a)(2) to Rule 8.600–E would provide additional flexibility to series of Managed Fund Shares investing in Non-U.S. Component Stocks while continuing to apply substantial minimum criteria relating to liquidity, market capitalization and diversification.

2 of Rule 8) and ''Index-Linked Securities (as described in Rule 5.2–E(j)(6)) from Commentary .01(a)(A) (1) through (4) to Rule 5.2–E(j)(3) in Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units)(''2008 Approval Order''). *See also* Securities Exchange Act Release No. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units). The Commission subsequently approved generic criteria applicable to listing and trading of Managed Fund Shares, including exclusions for Derivative Securities Products and Index-Linked Securities in Commentary .01(a)(1)(A) through (D), in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Rule 8.600–E To Adopt Generic Listing Standards for Managed Fund Shares). *See also* Amendment No. 7 to SR–NYSEArca–2015–110, available at *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf.*

[16] *See* note 12, *supra.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* note 8, *supra.*

With respect to the proposed amendment to Commentary .01(b)(5), the Exchange believes this amendment is appropriate because a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS may provide a fund with benefits associated with increased diversification, as such investments may be less correlated to interest rates than many other fixed income securities. In addition, a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS will be subject to a fund's liquidity procedures as adopted by a fund's board of directors.

The Exchange notes that the Commission has previously approved the listing of actively managed exchange-traded funds that can invest 20% of their total assets in non-U.S. Government, non-agency, non-GSE and other privately issued asset-backed and MBS. In addition, the Commission has previously approved listing and trading of shares of an issue of Managed Fund Shares where such fund's investments in non-U.S. Government, non-agency, non-GSE and other privately issued ABS will, in the aggregate, not exceed more than 20% of the total assets of the fund, rather than the weight of the fixed income portion of the fund's portfolio.[20] Therefore, the Exchange believes it is appropriate to apply the 20% limitation to a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio in Commentary .01(b)(5) to a fund's total assets.

The Exchange further proposes to add new Commentary .01(a)(3) to NYSE Arca Rule 8.600–E to provide that the equity portion of a portfolio may include non-exchange-traded open-end management investment company securities, which securities shall be excluded from the equity portion of the portfolio for purposes of meeting the criteria in Commentary .01(a)(1). A fund's investment in such securities may be utilized, for example, to obtain income on short-term cash balances while awaiting attractive investment opportunities, to provide liquidity in preparation for anticipated redemptions or for defensive purposes. Such investments may include mutual funds that invest principally in securities and financial instruments that help the Fund meet its investment objective and/or to equitize cash in the short term. Because such securities must satisfy applicable 1940 Act diversification requirements, and have a net asset value based on the value of securities and financial instruments the investment company holds, it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1). For the same reasons, such investment company securities are appropriately excluded from the equity portion of the portfolio for purposes of meeting the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(a)(1)(A) through (D) to Rule 8.600–E exclude certain ''Derivative Securities Products'' that are exchange-traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E)) and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E)). In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) to exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that ''based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.'' The Exchange notes that it would be difficult or impossible to apply to mutual fund shares certain of the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Commentary .01 (A) through (D) applicable to U.S. Component Stocks. For example, the requirements for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months are tailored to exchange-traded securities (*i.e.,* U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market and for which no such volume information is reported. In addition, Commentary .01(a)(1)(A) relating to minimum market value of portfolio component stocks, Commentary .01(a)(1)(C) relating to weighting of portfolio component stocks, and Commentary .01(a)(1)(D) relating to minimum number of portfolio components are not appropriately applied to open-end management investment company securities; open-end investment companies hold multiple individual securities as disclosed publicly in accordance with the 1940 Act.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of Managed Fund Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[21] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would permit Exchange listing and trading under Rule 19b–4(e) of additional types of Managed Fund Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[20] *See* note 11 [sic], *supra.*

[21] 15 U.S.C. 78f(b)(8).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2018–54 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2018–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–54 and should be submitted on or before August 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16803 Filed 8–6–18; 8:45 am]

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[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83758; File No. SR–CboeBYX–2018–015]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period for the Exchange's Retail Price Improvement Program

August 1, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2018, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to extend the pilot period for the Exchange's Retail Price Improvement Program, which is currently scheduled to expire on July 31, 2018, until the earlier of approval of the filing to make the Program permanent or December 31, 2018.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot period for the Exchange's Retail Price Improvement Program (the ''Program''), which is set to expire on July 31, 2018, until the earlier of approval of the filing to make the Program permanent or December 31, 2018.[5]

Background

In November 2012, the Commission approved the Program on a pilot basis.[6] The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share. Under the Program, all Exchange Users[7] are permitted to provide potential price improvement for Retail Orders[8] in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation (''Protected NBB'') or the national best offer that is a Protected Quotation (''Protected NBO'', and together with the Protected NBB, the ''Protected NBBO'').[9]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The Exchange has filed to make the pilot program permanent. *See* Cboe–BYX–2018–014 (pending publication).

[6] *See* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (''RPI Approval Order'') (SR–BYX–2012–019).

[7] A ''User'' is defined in BYX Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

[8] A ''Retail Order'' is defined in Rule 11.24(a)(2) as an agency order that originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any computerized methodology. *See* Rule 11.24(a)(2).

[9] The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid (''NBB'') and national best offer (''NBO'', together with the NBB, the ''NBBO'') will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

The Program was approved by the Commission on a pilot basis running one year from the date of implementation.[10] The Commission approved the Program on November 27, 2012.[11] The Exchange implemented the Program on January 11, 2013, and has extended the pilot period five times.[12] The pilot period for the Program is set to expire on July 31, 2018. This filing seeks to extend the pilot until the earlier of approval of the filing to make the Program permanent or December 31, 2018.

Proposal To Extend the Operation of the Program

The Exchange established the Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit Retail Price Improvement Orders (''RPI Orders'')[13] to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to gather and analyze data regarding the Program that the Exchange has committed to provide.[14] As such, the Exchange believes that it is appropriate to extend the current operation of the Program.[15] Through this filing, the Exchange seeks to extend the current pilot period of the Program until the earlier of approval of the filing to make the Program permanent or December 31, 2018.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[16] In particular, the Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,[17] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that extending the pilot period for the Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change extends an established pilot program, thus allowing the Program to enhance competition for retail order flow and contribute to the public price discovery process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and paragraph (f)(6) of Rule 19b–4 thereunder, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[19] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21]

The Exchange has requested that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b–4(f)(6) becomes operative so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to extend the Program uninterrupted and will ensure that the Program continues while the Exchange and Commission continue to analyze data. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[23] of the Act to determine whether the proposed rule

[10] *See* RPI Approval Order, *supra* note 6 at 71652.

[11] *Id.*

[12] *See* Securities Exchange Act Release Nos. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR–BYX–2014–001); 74111 (January 22, 2015), 80 FR 4598 (January 28, 2015) (SR–BYX–2015–05); 76965 (January 22, 2016), 81 FR 4682 (January 27, 2016) (SR–BYX–2016–01); 78180 (June 28, 2016), 81 FR 43306 (July 1, 2016) (SR–BYX–2016–15); 81368 (August 10, 2017), 82 FR 38960 (August 16, 2017) (SR–BYX–2017–18).

[13] A ''Retail Price Improvement Order'' is defined in Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least $0.001 and that is identified as such. *See* Rule 11.24(a)(3).

[14] *See* RPI Approval Order, *supra* note 6 at 71655.

[15] Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the RPI orders in sub-penny increments. *See* Letter from Anders Franzon, SVP, Deputy General Counsel, Cboe BYX Exchange, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission dated July 30, 2018.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] The Exchange has fulfilled this requirement.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(2)(B).

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–CboeBYX–2018–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CboeBYX–2018–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CboeBYX–2018–015 and should be submitted on or before August 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16802 Filed 8–6–18; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, August 9, 2018.

PLACE: Closed Commission Hearing Room 10800.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: August 2, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–16903 Filed 8–3–18; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15584 and #15585; Texas Disaster Number TX–00500]

Presidential Declaration Amendment of a Major Disaster for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4377–DR), dated 07/06/2018.

Incident: Severe Storms and Flooding.

Incident Period: 06/19/2018 through 07/13/2018.

DATES: Issued on 07/31/2018.

Physical Loan Application Deadline Date: 09/04/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 04/08/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Texas, dated 07/06/2018, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Jim Wells

Contiguous Counties (Economic Injury Loans Only):

Texas: Duval, Kleberg, Live Oak, Nueces, San Patricio

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–16866 Filed 8–6–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15618 and #15619; Vermont Disaster Number VT–00035]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Vermont

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of VERMONT (FEMA–4380–DR), dated 07/30/2018.

Incident: Severe Storm and Flooding.

Incident Period: 05/04/2018 through 05/05/2018.

DATES: Issued on 07/30/2018.

Physical Loan Application Deadline Date: 09/28/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 04/30/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/30/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Chittenden, Grand Isle, Lamoille, Orange, Orleans

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 156186 and for economic injury is 156190.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–16868 Filed 8–6–18; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10487]

Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII) Public Meeting Notice

The Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Advisory Committee) will convene on Wednesday, September 5, 2018, from 1:30 p.m. until approximately 3:30 p.m. The meeting will take place at the U.S. Department of State, Harry S Truman Building, 2201 C Street NW, Washington, DC, in room 1406.

The Advisory Committee will recommend grant recipients for the 2018 funding opportunity for the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union, in accordance with the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, Public Law 98–164, as amended. The agenda will include opening statements by the chairperson and members of the committee. The committee will provide an overview and discussion of grant proposals from ''national organizations with an interest and expertise in conducting research and training concerning the countries of Eastern Europe and the Independent States of the Former Soviet Union,'' based on the guidelines set forth in the June request for proposals published on *Grants.gov* and SAMS Domestic (*mygrants.service-now.com*). Following committee deliberation, interested members of the public may make oral statements concerning the Title VIII program.

This meeting will be open to the public; however, attendance is limited to available seating. Entry into the Harry S Truman building is controlled and must be arranged in advance of the meeting. Those planning to attend should notify the Title VIII Program Officer at the U.S. Department of State at *TitleVIII@state.gov,* subject: Public Meeting RSVP, no later than close of business, Tuesday, September 4, 2018.

For pre-clearance into the Harry S Truman building, the Title VIII Program Officer will request identifying data pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. This information is being collected pursuant to 22 U.S.C. 2651a and 22 U.S.C. 4802 for the purpose of screening and pre-clearing participants to enter the host venue at the U.S. Department of State, in line with standard security procedures for events of this size. The Department of State will use this information consistent with the routine uses set forth in the System of Records Notices for Security Records (State-36). Provision of this information is voluntary, but failure to provide accurate information may impede your ability to register for the event. Please see the Security Records System of Records Notice (State-36) at *https://www.state.gov/documents/organization/242611.pdf* for additional information.

All attendees must use the 2201 C Street entrance and must arrive no later than 12:30 p.m. to pass through security before entering the building. The Program Officer cannot admit visitors who arrive without prior notification or without photo identification.

Catherine L. Kuchta-Helbling

Executive Director, Advisory Committee for Study of Eastern Europe, and the Independent States of the Former Soviet Union.

[FR Doc. 2018–16851 Filed 8–6–18; 8:45 am]

BILLING CODE 4710–32–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2018–0026]

Extension of Public Comment Period Concerning Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Extension of public comment period.

SUMMARY: In a notice published on July 17, 2018 (83 FR 33608), the U.S. Trade Representative (Trade Representative) proposed a modification of the action taken in this investigation in the form of an additional 10 percent *ad valorem* duty on products of China with an annual trade value of approximately $200 billion. The July 17th notice sought public comment and provided notice of a public hearing regarding this proposed modification of the action in the investigation. On August 1, 2018, the Trade Representative announced that the President had directed the Trade Representative to consider raising the level of the additional duty in the proposed supplemental action from 10 percent to 25 percent. In light of this possible increase in the rate of additional duty, the Trade Representative is extending certain

comment periods set out in the July 17th notice.

DATES: To be assured of consideration, you must submit comments and responses in accordance with the following schedule:

August 13, 2018: The due date for filing requests to appear and a summary of expected testimony at the public hearing and for filing pre-hearing submissions is extended from July 27 to August 13, 2018.

September 6, 2018: The due date for submission of written comments is extended from August 17 to September 6, 2018.

August 20–23, 2018: The scheduled start date of the Section 301 hearing (August 20) has not changed. The Section 301 Committee may extend the length of the hearing depending on the number of additional interested persons who request to appear. The Section 301 Committee will convene the public hearing in the main hearing room of the U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436 beginning at 9:30 a.m. on August 20, 2018.

September 6, 2018: The due date for submission of post-hearing rebuttal comments is extended from August 30 to September 6, 2018.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments in sections E and F of the July 17th notice. The docket number—USTR–2018–0026—has not changed.

FOR FURTHER INFORMATION CONTACT: For questions about the ongoing investigation or proposed action, contact Arthur Tsao, Assistant General Counsel, or Justin Hoffmann, Director of Industrial Goods, at (202) 395–5725. For questions on customs classification of products, contact *Traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

In the July 17th notice, the Trade Representative proposed modifying the action in this investigation by maintaining the original $34 billion action and the proposed $16 billion action, and by taking a further, supplemental action. In particular, the Trade Representative proposed a supplemental action of an additional 10 percent *ad valorem* duty on products of China covered in a list of 6,031 tariff subheadings in the Annex to the July 17th notice.

On August 1, 2018, the Trade Representative announced that the President directed the Trade Representative to consider increasing the proposed level of the additional duty from 10 percent to 25 percent. This additional 25 percent duty would be applied to the proposed list of products in the Annex to the July 17th notice. The possible increase in the proposed rate of the additional duty is intended to provide the Administration with additional options to obtain the elimination of the acts, policies, and practices covered in the investigation.

B. Request for Public Comments and Hearing Participation

Subject to the modified due dates set out above, the procedures for submission of public comments and requests to participate in the public hearing set out in sections E and F of the July 17th notice continue to apply. Interested persons are invited to include comments in their written submissions and oral testimony on the possible imposition of a 25 percent additional duty. In the event an interested person already has provided written comments and wishes to provide further comments in light of the possible increase in the rate of additional duty, the submitter may file a supplemental comment.

Robert E. Lighthizer,

United States Trade Representative.

[FR Doc. 2018–16919 Filed 8–3–18; 11:15 am]

BILLING CODE 3290–F8–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of Noise Compatibility Program 14 CFR Part 150; Jackson Hole Airport, Jackson, WY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings (Record of Approval) on the noise compatibility program submitted by the Jackson Hole Airport under the provisions of the Aviation Safety and Noise Abatement Act, (hereinafter referred to as ''the Act'') and 14 CFR part 150 (Part 150). On March 23, 2018, the FAA determined that the noise exposure maps submitted by the Jackson Hole Airport under Part 150 were in compliance with applicable requirements. On August 1, 2018 the FAA approved the *Jackson Hole Airport Noise Compatibility Program.* Five of the 15 measures recommended in the noise compatibility plan was approved and ten measures were disapproved for the purposes of Part 150. Three of the approved recommendations were approved as a continuation of a measure approved in a prior ROA, one was approved as voluntary, and one was approved for the purposes of Part 150. The attachment to this ROA provides a summary of all of the recommendations in the three NCPs (1985, 2004 and 2018) for JAC along with FAA's decision and the status of each.

DATES: *Effective Date:* The effective date of the FAA's approval of the *Jackson Hole Airport Noise Compatibility Program* is August 1, 2018.

FOR FURTHER INFORMATION CONTACT: Kandice Krull, Federal Aviation Administration, Denver Airports District Office, 26805 E 68th Ave., Suite 224, Denver, CO 80249, telephone 303–342–1261. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for the Jackson Hole Airport, effective August 1, 2018.

Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with the Part 150 regulations is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign

commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental review of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Denver Airports District Office in Denver, CO. The Jackson Hole Airport submitted to the FAA on March 21, 2018 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study for the Jackson Hole Airport conducted in 2013–2018. The Jackson Hole Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on March 23, 2018. Notice of this determination was published in the **Federal Register** on April 5, 2018 (FR Volume 83, No. 66, pages 14713–14714).

Comments received during the noise compatibility planning public process were addressed in the final noise compatibility program submitted to FAA. No comments were received during the 60-day public comment period for the *Jackson Hole Airport Noise Compatibility Program* that ended May 22, 2018.

The Jackson Hole Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 47504 of the Act. The FAA began its review of the program on March 23, 2018, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained six (6) noise abatement recommendations, two (2) land use management recommendations and seven (7) program management recommendations for FAA action. The FAA completed its review and determined that the procedural and substantive requirements of the Act and Part 150 have been satisfied. The overall program therefore, was approved by the FAA on August 1, 2018.

Approval was granted for five of the 15 measures and ten measures were disapproved for the purposes of Part 150. Three of the approved recommendations were approved as a continuation of a measure approved in a prior ROA, one was approved as voluntary, and one was approved for the purposes of Part 150. The attachment to this ROA provides a summary of all of the recommendations in the three NCPs for JAC along with FAA's decision and the status of each.

These determinations are set forth in detail in a Record of Approval signed by the Airports Division Manager, Northwest Mountain Region on August 1, 2018. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal are available for review at the FAA office listed above and at the Jackson Hole Airport, 1250 E Airport Road, Jackson, WY 83001. The Record of Approval also will be available on-line at *http://www.faa.gov/airports/environmental/airport_noise/part_150/states/*.

Issued in Renton, Washington on August 1, 2018.

Randall S. Fiertz,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 2018–16870 Filed 8–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2018–63]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before August 27, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0725 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the

West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, AIR–673, Federal Aviation Administration, 2200 S 216th St., WA 98198–6547, email *mark.forseth@faa.gov,* phone (206) 231–3179; or Alphonso Pendergrass, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, email *alphonso.pendergrass@faa.gov,* phone (202) 267–4713.

This notice is published pursuant to 14 CFR 11.85.

Issued in Renton, Washington, on July 31, 2018.

Suzanne Masterson,

Acting Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2018–0725.

Petitioner: Gulfstream Aerospace Corporation.

Section of 14 CFR Affected: § 25.1309(b) and Special Conditions No. 25–662–SC.

Description of Relief Sought: Provide relief to allow for the installation of seat airbag systems equipped with lithium batteries on Gulfstream Model GVII–G500/G600 airplanes.

[FR Doc. 2018–16826 Filed 8–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2018–64]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before August 27, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0267 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, AIR–673, Federal Aviation Administration, 2200 S. 216th St., WA 98198–6547, email *mark.forseth@faa.gov,* phone (206) 231–3179; or Alphonso Pendergrass, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, email *alphonso.pendergrass@faa.gov,* phone (202) 267–4713.

This notice is published pursuant to 14 CFR 11.85.

Issued in Renton, Washington, on July 31, 2018.

Suzanne Masterson,

Acting Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2018–0267.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: § 25.795(b)(1).

Description of Relief Sought:

Provide relief from the requirements of flightdeck smoke protection for Boeing Model 737–7, 737–8, and 737–8200 airplanes.

[FR Doc. 2018–16825 Filed 8–6–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel. 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On August 1, 2018, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. SOYLU, Suleyman; DOB 21 Nov 1969; POB Istanbul, Turkey; nationality Turkey; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(C)(1) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption'' (E.O. 13818) for being or having been a leader or official of Turkey's

Ministry of Interior, an entity that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

2. GUL, Abdulhamit; DOB 12 Mar 1977; POB Nizip, Gaziantep, Turkey; nationality Turkey; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being or having been a leader or official of Turkey's Ministry of Justice, an entity that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

Dated: August 1, 2018.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2018–16874 Filed 8–6–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of two persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel. 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On July 31, 2018, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. JABBAR, Abdul (a.k.a. JABAR, Abdul), 124 Yasir Ghaffar Town, Okara, Punjab, Pakistan; DOB 03 Feb 1977; nationality Pakistan; Gender Male (individual) [SDGT].

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for acting for or on behalf of LASHKAR-E TAYYIBA, an entity determined to be subject to E.O. 13224.

2. HASSAN, Hameed ul (a.k.a. HASAN, Hameed ul; a.k.a. HASSAN, Hameedul), House number 4, Lane 4, Village flag 2, Dhalwan, Pasrur Tehsil, Sialkot District, Punjab Province, Pakistan; DOB 02 Jan 1980; alt. DOB 02 Nov 1980; POB Sialkot, Pakistan; nationality Pakistan; Gender Male (individual) [SDGT].

Designated pursuant to section 1(c) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for acting for or on behalf of LASHKAR-E TAYYIBA, an entity determined to be subject to E.O. 13224.

Dated: July 31, 2018.

Andrea M. Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2018–16842 Filed 8–6–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning certain gambling winnings.

DATES: Written comments should be received on or before October 9, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certain Gambling Winnings.

OMB Number: 1545–0238.

Form Number: W2–G.

Abstract: Internal Revenue Code sections 6041, 3402(q), and 3406 require payers of certain gambling winnings to withhold tax and to report the winnings to the IRS. IRS uses the information to verify compliance with the reporting rules and to verify that the winnings are properly reported on the recipient's tax return.

Current Actions: There are changes to the previously approved burden of this existing collection.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, state or local governments, and non-profit institutions.

Estimated Number of Respondents: 15,349,567.

Estimated Time per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 6,293,323.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 1, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–16804 Filed 8–6–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning long-term care and accelerated death benefits.

DATES: Written comments should be received on or before October 9, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Long-Term Care and Accelerated Death Benefits.

OMB Number: 1545–1519.

Form Number: 1099–LTC.

Abstract: File Form 1099–LTC, Long-Term Care and Accelerated Death Benefits, if you pay any long-term care benefits.

Current Actions: There are changes to the previously approved burden of this existing collection.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals or households, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 377,467.

Estimated Time per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 86,818.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 1, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–16806 Filed 8–6–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Change in Burden of Proof

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: This notice announces that the burden of proof for disciplinary and major adverse actions imposed against certain employees of the Department of Veterans Affairs has been changed from preponderance of evidence to substantial evidence.

DATES: Comments must be received on or before September 6, 2018. The proposed effective date of these amendments is 30 days after publication of this notice.

ADDRESSES: Written comments may be directed to: Elizabeth A. Hill, Team Lead, Employee Relations & Performance Management Service, Office of Human Resources Management, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Comments may also be faxed to (202) 495–5200.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Hill, Team Lead, (706) 504–3988, or by email to *Elizabeth.Hill@va.gov.*

SUPPLEMENTARY INFORMATION: Section 203 of the Department of Veterans Affairs Health Care Personnel Act of 1991 (Pub. L. 102–40), dated May 7, 1991, revised the disciplinary grievance and appeal procedures for employees appointed under 38 United States Code (U.S.C.) 7401(1). 38 U.S.C. 7461(e) requires that whenever the Secretary proposes to prescribe regulations under 38 U.S.C., Part V, Chapter 74, Subchapter V, ''the Secretary shall publish the proposed regulations in the **Federal Register** for notice-and-comment not less than 30 days before the day on which they take effect.''

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jacquelyn Hayes-Byrd, Acting Chief of Staff, Department of Veterans Affairs, approved this document on July 30, 2018, for publication.

Dated: July 30, 2018.

Luvenia Potts,

Program Specialist, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2018–16808 Filed 8–6–18; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 83 Tuesday,

No. 152 August 7, 2018

Part II

Securities and Exchange Commission

17 CFR Parts 232, 240, 242, et al.

Regulation of NMS Stock Alternative Trading Systems; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240, 242, and 249

[Release No. 34–83663; File No. S7–23–15]

RIN 3235–AL66

Regulation of NMS Stock Alternative Trading Systems

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to regulatory requirements in Regulation ATS under the Securities Exchange Act of 1934 (''Exchange Act'') applicable to alternative trading systems (''ATSs'') that trade National Market System (''NMS'') stocks (hereinafter referred to as ''NMS Stock ATSs''), including so called ''dark pools.'' First, we are adopting new Form ATS–N, which will require NMS Stock ATSs to disclose information about their manner of operations, the broker-dealer that operates the ATS (''broker-dealer operator''), and the ATS-related activities of the broker-dealer operator and its affiliates. Second, as amended, the regulations will require public posting of certain Form ATS–N filings on the Commission's website, which will be accomplished through the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'') and require each NMS Stock ATS that has a website to post on its website a direct URL hyperlink to the Commission's website. Third, the amendments that we are adopting today provide a process for the Commission to review Form ATS–N filings and, after notice and opportunity for hearing, declare an NMS Stock ATS's Form ATS–N ineffective. Fourth, the regulations, as amended, will require all ATSs subject to the regulations to place in writing its safeguards and procedures to protect subscribers' confidential trading information. We are also adopting conforming amendments.

DATES:

Effective Date: October 9, 2018.

Compliance Dates: The applicable compliance dates are discussed in the section of the release titled ''VIII. Effective Date and Compliance Date.''

FOR FURTHER INFORMATION CONTACT: Tyler Raimo, Senior Special Counsel, at (202) 551–6227; Matthew Cursio, Special Counsel, at (202) 551–5748; Marsha Dixon, Special Counsel, at (202) 551–5782; Jennifer Dodd, Special Counsel, at (202) 551–5653; David Garcia, Special Counsel, at (202) 551–5681; or Megan Mitchell, Special Counsel, at (202) 551–4887; Office of Market Supervision, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: We are adopting: (1) Amendments to 17 CFR 242.300 through 242.303 (''Regulation ATS'') to add new 17 CFR 242.304 (''Rule 304'') under the Exchange Act to provide new conditions for NMS Stock ATSs seeking to rely on the exemption from the definition of ''exchange'' provided by 17 CFR 240.3a1–1(a) (''Rule 3a1–1(a)'') of the Exchange Act; (2) new Form ATS–N [1] under the Exchange Act, which NMS Stock ATSs will file to comply with the new conditions provided under Rule 304; and (3) related amendments to 17 CFR 242.300; 17 CFR 242.301, 17 CFR 242.303, and 17 CFR 240.3a1–1 under the Exchange Act (respectively, ''Rule 300,'' ''Rule 301,'' and ''Rule 303'' of Regulation ATS, and ''Rule 3a1–1''). We are also adopting amendments to 17 CFR 242.301(b)(10) and 17 CFR 242.303 (''Rules 301(b)(10) and 303 of Regulation ATS'') under the Exchange Act to require all ATSs to make and keep written safeguards and written procedures to protect subscribers' confidential trading information.

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[1] 17 CFR 249.640.

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XI. Regulatory Flexibility Act Certification

I. Introduction

NMS Stock ATSs, including trading centers commonly referred to as dark pools,[2] have become an integral part of the national market system. Since the adoption of Regulation ATS in 1998,[3] the number of these ATSs, and the volume of NMS stocks traded on them, has significantly increased. NMS Stock ATSs, which meet the definition of an exchange but are not required to register as national securities exchanges, compete with, and operate with complexity akin to, national securities exchanges. Many NMS Stock ATSs are operated by multi-service broker-dealers, whose business activities have become increasingly intertwined with those of the ATS, adding further complexity to their operations of NMS Stock ATSs and creating the potential for conflicts between the interests of the broker-dealer operator and the ATS's subscribers.

Despite their role in the equity markets, little information is widely available to market participants about NMS Stock ATSs, which restricts their ability to adequately assess these ATSs as potential routing destinations. On November 18, 2015, we proposed to amend Regulation ATS with the stated goals of enhancing operational transparency for NMS Stock ATSs to enable market participants to make more informed order routing decisions, and to facilitate better Commission oversight of these trading venues.[4] To achieve these goals, we proposed to require NMS Stock ATSs to publicly report on new Form ATS–N information about how the ATS operates and activities of the broker-dealer operator and its affiliates that relate to the ATS; and provide a process for the Commission to determine whether an NMS Stock ATS qualifies for the exemption from the definition of ''exchange,'' in which the Commission would, by order, declare a Form ATS–N effective or, after notice and opportunity for hearing, ineffective.

We received 32 comment letters on the Proposal from a variety of interested persons, including ATSs, a national securities exchange, broker-dealers, institutional investors, industry trade groups, the Commission's Investor Advocate, and the Attorney General of the State of New York.[5] Commenters generally support the goals of the Proposal, although some commenters express concern about various specific elements, and recommend certain modifications or clarifications. We are adopting Form ATS–N and amendments to Regulation ATS and Exchange Act Rule 3a1–1(a) with modifications from the Proposal, as discussed below.[6]

II. Background

A. Role of ATSs in the Current Equity Market Structure

1. Significant Source of Liquidity for NMS Stocks

At the time Regulation ATS was proposed, there were 8 registered national securities exchanges,[7] and the Commission estimated that there were approximately 43 systems that would be eligible to operate as ATSs.[8] As of March 31, 2018, there were 21 registered national securities exchanges and 87 ATSs with a Form ATS on file with the Commission. Of these, there were 12 national securities exchanges that trade NMS stocks and 41 ATSs that had noticed on Form ATS that they expect to trade NMS stocks.[9] Approximately 502.8 billion shares ($25.4 trillion) were traded in NMS stocks during the first quarter of 2018.[10] During this period, the 33 ATSs that reported transactions in NMS stocks[11] accounted for 57.3 billion shares (approximately $2.9 trillion in dollar volume), representing 11.4% of the combined total share trading volume (11.5% of the total dollar volume) in NMS stocks on all national securities exchanges, ATSs, and non-ATS OTC trading centers.[12] By comparison, the number of active dark pools trading NMS stocks in 2002 was approximately 10,[13] and in 2009, dark

[2] The term ''dark pool'' is not used or defined in the Exchange Act or Commission rules. For purposes of this release, the term refers to NMS Stock ATSs that do not publicly display quotations in the consolidated quotation data. *See* Securities Exchange Act Release No. 76474 (Nov. 18, 2015), 80 FR 80998, 81008 n.123 (Dec. 28, 2015) (''Proposal''). Currently, NMS Stock ATSs operate predominantly as dark pools. *See infra* Section II.A.1.

A ''trading center'' means a national securities exchange or national securities association that operates an SRO trading facility, an ATS, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent. 17 CFR 242.600(b)(78). Some trading centers, such as OTC market makers, also offer dark liquidity, primarily in a principal capacity, and do not operate as ATSs. For purposes of this adopting release, these trading centers are not defined as dark pools because they are not ATSs.

[3] Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70863 (December 22, 1998) (Regulation of Exchanges and Alternative Trading Systems) (''Regulation ATS Adopting Release'').

[4] *See* Proposal, *supra* note 2. Section 11A(a)(2) of the Exchange Act (15 U.S.C. 78k–1(a)(2)) enacted as part of the Securities Acts Amendments of 1975 (''1975 Amendments'') (Pub. L. 94–29, 89 Stat. 97 (1975)) directs the Commission, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under the Exchange Act to facilitate the establishment of a national market system for securities in accordance with the Congressional findings and objectives set forth in Section 11A(a)(1) of the Exchange Act. *See* 15 U.S.C. 78k–1(a)(1). *See also* Regulation ATS Adopting Release, *supra* note 3, at 70858; Proposal, *supra* note 2, at 80999–81000.

[5] Comments received on the Proposal are available on the Commission's website, available at: *https://www.sec.gov/comments/s7-23-15/s72315.shtml. See* Appendix A for a citation key to comment letters cited in this release.

[6] If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

[7] *See* Securities Exchange Act Release No. 39884 (April 21, 1998), 63 FR 23504, 23523 (April 29, 1998) (''Regulation ATS Proposing Release'') at 23543 n.341.

[8] *See id.* at 23540 n.313 and accompanying text.

[9] Data compiled from Forms ATS submitted to the Commission as of March 31, 2018.

NYSE National, Inc. (f.k.a. National Stock Exchange, Inc.) was not trading as of March 31, 2018 but filed a proposed rule change with the Commission for its proposed relaunch. *See* Securities Exchange Act Release No. 82819 (March 7, 2018) 83 FR 11098 (March 13, 2018) (NYSENAT–2018–02) (notice of proposed ruled change). The Commission has approved the proposed rule change. *See* Securities Exchange Act Release No. 83289 (May 17, 2018) 83 FR 23968 (May 23, 2018) (NYSENAT–2018–02) (order approving proposed ruled change).

In contrast to dark pools, an ATS could be an Electronic Communication Network (''ECN''), which are ATSs that provide their best-priced orders for inclusion in the consolidated quotation data, whether voluntarily or as required by Rule 301(b)(3) of Regulation ATS. *See* Rule 600(b)(23) of Regulation NMS, 17 CFR 242.600(b)(23) (definition of ''electronic communications network''); *see also* 2010 Equity Market Structure Release, *supra* note 13, at 3599. In general, ECNs offer trading services (such as displayed or non-displayed order types, maker-taker pricing, and data feeds) that are analogous to national securities exchanges. *See id.* Currently, however, based on Form ATS filings, there are no NMS Stock ATSs operating as ECNs.

[10] *See infra* Table 1—''NMS Stock ATSs Ranked by Dollar Trading Volume—January 1, 2018 to March 30, 2018'' (citing Trade and Quote (TAQ) Data).

[11] Data compiled from Forms ATS and Forms ATS–R filed with the Commission as of the end of, and for the first quarter of 2018.

[12] *See infra* Table 1—''NMS Stock ATSs Ranked by Dollar Trading Volume—January 1, 2018 to March 30, 2018.'' *See id.* (citing Trade and Quote (TAQ) Data).

During the second quarter of 2015, there were 38 ATSs that reported transactions in NMS stocks, accounting for 59 billion shares traded in NMS stocks ($2.5 trillion), which represented approximately 15.0% of total share trading volume (15.4% of total dollar trading volume) on all national securities exchanges, ATSs, and non-ATS OTC trading venues combined. *See* Proposal, *supra* note 2, at 81008 n.121 and accompanying text.

Competitors for listed-equity (NMS) trading services also include several hundred OTC market makers and broker-dealers.

[13] *See* Regulation of Non-Public Trading Interest, Securities Exchange Act Release No. 60997 (November 13, 2009) 74 FR 61208, 61209 n.9 (November 23, 2009) (''Regulation of Non-Public Trading Interest'').

In 2009, there were 32 active dark pools trading in NMS stocks. *See* Securities Exchange Act Release

pools accounted for 7.9% of NMS share volume.[14] Additionally, no individual ATS executed more than 20.1% of the total share volume on NMS Stock ATSs or more than 2.3% of total NMS stock share volume during the first quarter of 2018.[15] Given this dispersal of trading volume in NMS stocks among an increasing number of trading centers, NMS Stock ATSs, with their approximately 11.4% market share, represent a significant source of liquidity in NMS stocks.

2. Operational Complexity; Conflict of Interests

NMS Stock ATSs have grown increasingly complex in terms of the services and functionalities that they offer subscribers, and they have used advances in technology to improve the speed, capacity, and efficiency of the trading functionalities that they offer to execute orders in NMS stocks.[16] Additionally, NMS Stock ATSs today offer a wide range of order types, matching systems to bring together orders and counterparties in NMS stocks, order interaction protocols, or opportunities to customize trading parameters, such as parameters that allow subscribers to preference interaction of their order flow with that of certain other specific subscribers or types of subscribers.[17] A variety of market participants use these ATSs to display or execute orders and trading interest in NMS stocks, including broker-dealers that route customer orders to ATSs for execution and potential price improvement, and asset managers that seek to execute large size orders without suffering adverse price impact.[18]

The relationships between broker-dealer operators [19] and the ATSs they operate have also become more complex and intertwined since the adoption of Regulation ATS.[20] The broker-dealer operator of an NMS Stock ATS controls all aspects of the operation of the ATS, including, among other things: the means of access to the ATS; who may trade on the ATS; how orders are matched and executed; and any differences in access to services among subscribers.[21] The broker-dealer operator, or its affiliate, may also own, and control access to, the technology and systems that support the trading facilities of the NMS Stock ATS, or provide and control the personnel servicing the ATS's trading facilities.[22] Additionally, the broker-dealer operator, or in some cases, its affiliates, determines the means by which orders are entered on the ATS, in many cases, through the use of a smart order router that is owned and operated by the broker-dealer operator or one of its affiliates.[23] The broker-dealer operator, or in some cases, its affiliates, also controls the market data that the ATS uses to match, and execute orders and the transmission of, and access to, confidential order and execution information sent to and from the ATS.[24] The operations of the NMS Stock ATS and the other operations of the broker-dealer operator are usually closely intertwined, and the broker-dealer operator may leverage its information technology, systems, personnel, and market data, and those of its affiliates, to operate the ATS.

Furthermore, ATSs that trade NMS stocks are increasingly operated by multi-service broker-dealers that engage in significant brokerage and dealing activities in addition to operation of their ATS.[25] These other business activities may include, among others, providing algorithmic trading software, agency sales desk support, and automated smart order routing services, often with, or through, their affiliates. As indicated by commenters, the fees charged to subscribers for their use of an NMS Stock ATS operated by a multi-service broker-dealer are generally bundled with other services offered by the broker-dealer operator to subscribers.[26] Multi-service broker-dealers that also operate NMS Stock ATSs may use the ATS as a complement to the broker-dealer's other service lines. For instance, the broker-dealer operator of an NMS Stock ATS, or its affiliate, may also operate an OTC market making desk or principal trading desk,[27] or may have other business units that actively trade NMS stocks on a principal or agency basis in the ATS or at other trading centers.[28] Some of these broker-dealer operators that operate multiple NMS Stock ATSs may use their ATSs as an opportunity to execute orders ''in house'' before seeking contra-side interest at other execution venues. A multi-service broker-dealer may also execute orders in NMS stocks internally (and not within its ATS) by trading as principal against such orders or crossing orders as agent in a riskless principal capacity, before routing the orders to its NMS Stock ATS or another external trading center. Consequently, the non-ATS trading centers operated by the broker-dealer operator of an NMS Stock ATS, or its affiliates, may compete with the ATS for the execution of transactions in NMS stocks.

B. Exemption for Alternative Trading Systems

Exchange Act Rule 3b–16(a) [29] provides a functional test to assess

No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (''2010 Equity Market Structure Release'')), at 3598 n.22 and accompanying text.

[14] *See id.* at 3598.

[15] The NMS Stock ATS with the greatest volume executed approximately 20.1% of NMS Stock ATS share volume and 2.3% of the total consolidated NMS stock share trading volume.

The market share percentages were calculated by Commission staff using aggregate trade data reported by ATSs to the FINRA equity trade reporting facilities and made available on FINRA's website and TAQ Data. *See infra* Table 1—''NMS Stock ATSs Ranked by Dollar Trading Volume—January 1, 2018 to March 30, 2018.''

Pursuant to FINRA rules, each ATS is required to use a unique MPID in its reporting to FINRA, such that its volume reporting is distinguishable from other transaction volume reported by the broker-dealer operator of the ATS, including volume reported for other ATSs operated by the same broker-dealer. *See* FINRA Rules 6160, 6170, 6480, and 6720. FINRA aggregates on a weekly basis ATS data reported by ATSs to the FINRA equity trade reporting facilities. The data can be viewed on a security-by-security basis or by ATS. *See* FINRA Rules 6110 and 6610. *See also* Securities Exchange Act Release No. 76931 (January 19, 2016), 81 FR 4076 (January 25, 2016) (SR–FINRA–2016–002) (notice of filing and immediate effectiveness of a proposed rule change relating to ATS volume and trading information) (''FINRA ATS Reporting Notice'').

[16] ATSs that traded NMS stocks prior to the adoption of Regulation ATS did not offer the same services and functionalities that they do today. *See* Proposal, *supra* note 2, at 81009.

[17] *See id.* at 81009–81010.

[18] Market participants may include many different types of persons seeking to transact in NMS stocks, including broker-dealers and institutional or retail investors. *See id.* at 81001 n.28 and accompanying text.

[19] *See* Proposal, *supra* note 2, at 81010, 81041–81043.

[20] *See id.*

[21] *See id.* at 81010.

[22] *See id.* Some technology or functions of an ATS may be licensed from a third party. The broker-dealer operator of the ATS is nonetheless legally responsible for ensuring that all aspects of the ATS comply with applicable laws. *See id.* at 81041 n.362.

[23] *See id.* at 81041.

[24] *See id.* For example, the broker-dealer operator determines the source of market data that the NMS Stock ATS uses to calculate the NBBO and how the NBBO will be calculated.

[25] Throughout the Proposal and this release, broker-dealer operators of NMS Stock ATSs that provide brokerage or dealing services in addition to operating an ATS are referred to as ''multi-service broker-dealers.'' *See id.* at 81001 n.30.

[26] *See infra* Section V.D.19.

[27] These non-ATS, OTC activities in NMS stocks may include operating as an OTC market maker or block positioner or operating an internal broker-dealer system. *See* 2010 Equity Market Structure Release, *supra* note 13, at 3599–3600. Additionally, an affiliate of the broker-dealer operator of an NMS Stock ATS may also operate non-ATS trading centers.

[28] *See id. See also infra* Section V.C (discussing comments on the proposed disclosure requirements of Form ATS–N).

[29] *See* 17 CFR 240.3b-16. *See generally* Regulation ATS Adopting Release, *supra* note 3. *See also* Proposal, *supra* note 2, at 81004 (discussing the current exemption from the definition of exchange available to ATSs).

whether a trading platform meets the definition of exchange, and if so, triggers the requirement to register as a national securities exchange pursuant to Section 5 of the Exchange Act [30] and comply with the requirements applicable to exchanges. Under Rule 3b–16(a), ''an organization, association, or group of persons shall be considered to constitute, maintain, or provide 'a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,' if such organization, association, or group of persons: (1) Brings together the orders for securities of multiple buyers and sellers; and (2) uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.'' [31] Exchange Act Rule 3b–16(b) explicitly excluded certain systems that the Commission believed were not exchanges.[32] Accordingly, a system is not included in the Commission's interpretation of ''exchange'' if: (1) The system fails to meet the two-part test in paragraph (a) of Rule 3b–16; (2) the system falls within one of the exclusions in paragraph (b) of Rule 3b–16; or (3) the Commission otherwise conditionally or unconditionally exempts [33] the system from the definition.

Section 5 of the Exchange Act [34] requires an organization, association, or group of persons that meets the definition of ''exchange'' under Section 3(a)(1) of the Exchange Act,[35] unless otherwise exempt, to register with the Commission as a national securities exchange pursuant to Section 6 of the Exchange Act.[36] Registered national securities exchanges are also SROs,[37] and must comply with regulatory requirements applicable to both national securities exchanges and SROs.[38] Before a national securities exchange may commence operations, the Commission must approve the national securities exchange's application for registration filed on Form 1. Section 6(b) of the Exchange Act requires, among other things, that the national securities exchange be so organized and have the capacity to carry out the purposes of the Exchange Act and to comply, and enforce compliance by its members and persons associated with its members, with the federal securities laws and the rules of the exchange.[39] Both a national securities exchange's registration application and the Commission's order approving the application are public. After registering, a national securities exchange must file with the Commission any proposed changes to its rules.[40] The initial application on Form 1, amendments thereto, and filings for proposed rule changes, in combination, publicly disclose important information about national securities exchanges, such as the trading services they offer and fees they charge for those services.

Exchange Act Rule 3a1–1(a)(2) [41] exempts from the Exchange Act Section 3(a)(1) definition of ''exchange'' an organization, association, or group of persons that complies with Regulation ATS,[42] which requires, among other things, meeting the definition of an ATS and registering as a broker-dealer.[43] As a result of the exemption, an organization, association, or group of persons that meets the definition of an exchange and complies with Regulation ATS is not required by Section 5 of the Exchange Act to register as a national securities exchange pursuant to Section 6 of the Exchange Act, is not an SRO, and, therefore, is not required to comply with regulatory requirements applicable to national securities exchanges and SROs.[44] An ATS that fails to comply with the requirements of Regulation ATS would no longer qualify for the exemption provided under Rule 3a1–1(a)(2), and thus, risks operating as an unregistered exchange in violation of Section 5 of the Exchange Act.[45]

C. Conditions to the ATS Exemption; Confidential Notice Regime

Rule 300(a) of Regulation ATS defines an ATS as: ''any organization, association, person, group of persons, or

[30] *See* 15 U.S.C. 78f.

[31] *See* 17 CFR 240.3b–16(a).

[32] *See* Regulation ATS Adopting Release, *supra* note 3, at 70852. Specifically, Rule 3b–16(b) excludes from the definition of exchange systems that perform only traditional broker-dealer activities, including: (1) systems that route orders to a national securities exchange, a market operated by a national securities association, or a broker-dealer for execution, or (2) systems that allow persons to enter orders for execution against the bids and offers of a single dealer if certain additional conditions are met.

[33] *See* 17 CFR 240.3b–16(e).

[34] 15 U.S.C. 78e.

[35] Pursuant to Section 3(a)(1) of the Exchange Act, the statutory definition of ''exchange'' means ''any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange. . . .'' 15 U.S.C. 78c(a)(1).

[36] 15 U.S.C. 78f. A ''national securities exchange'' is an exchange registered as such under Section 6 of the Exchange Act.

A trading platform that meets the definition of ''exchange'' under Section 3(a)(1) of the Exchange and fails to register with the Commission as a national securities exchange pursuant to Section 6 of the Exchange Act, unless exempt, risks operating as an unregistered exchange in violation of Section 5 of the Exchange Act. *See, e.g., Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO,* Securities Exchange Act Release No. 81207 (July 25, 2017) *https://www.sec.gov/litigation/investreport/34-81207.pdf* (''DAO Report'') (finding that certain tokens offered and sold by a ''virtual'' organization were securities, and confirming that issuers of distributed ledger or blockchain technology-based securities must register offers and sales of such securities unless a valid exemption applies, and that securities exchanges providing for trading in these securities must register unless they are exempt). Specifically, we confirmed that a system that meets the criteria of Rule 3b–16(a), and is not excluded under Rule 3b-16(b), must register as a national securities exchange pursuant to Sections 5 and 6 of the Exchange Act or operate pursuant to an appropriate exemption. *See id.* at Section III.D. *See also In the Matter of BTC Trading, Corp. and Ethan Burnside, Respondents,* Securities Exchange Act Release No. 73783 (December 8, 2014), *https://www.sec.gov/litigation/admin/2014/33-9685.pdf* (order instituting administrative and cease-and-desist proceedings, making findings, and imposing remedial sanctions and a cease-and-desist order and alleging, among other things, that an operator of two online venues through which account holders could trade securities using virtual currencies violated Section 5 of the Exchange Act by failing to register the trading venues as exchanges).

[37] Section 3(a)(26) of the Exchange Act defines a self-regulatory organization as any national securities exchange, registered securities association, registered clearing agency, or (with limitations) the Municipal Securities Rulemaking Board. *See* 15 U.S.C. 78c(a)(26). *See also* Proposal, *supra* note 2, at 81000–81001 nn. 20–26 and accompanying text (discussing certain differences between certain obligations and benefits applicable to national securities exchanges and those applicable to ATSs).

[38] *See, e.g.,* 15 U.S.C. 78f and 78s.

[39] *See* Section 6(b)(1) of the Exchange Act, 15 U.S.C. 78f(b)(1). The Commission must also find that the national securities exchange has rules that meet certain criteria. *See generally* Exchange Act Section 6(b)(2) through (10), 15 U.S.C. 78f(b)(2) through (10).

[40] *See generally* Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), and Exchange Act Rule 19b–4, 17 CFR 240.19b–4.

[41] *See* 17 CFR 240.3a1–1(a)(2).

[42] *See id.* Rule 3a1–1 also provides two other exemptions from the definition of ''exchange'' for any ATS operated by a national securities association and any ATS not required to comply with Regulation ATS pursuant to Rule 301(a) of Regulation ATS. *See* 17 CFR 240.3a1–1(a)(1) and (3).

Rule 3a1–1(b) provides an exception to the Rule 3a1–1(a) exemptions pursuant to which the Commission may require a trading system that is a substantial market to register as a national securities exchange, if the Commission finds doing so is necessary or appropriate in the public interest or consistent with the protection of investors. *See* 17 CFR 240.3a1–1(b). *See also* Regulation ATS Adopting Release, *supra* note 3, at 70857–70858.

[43] *See* 17 CFR 242.300(a); 17 CFR 242.301(a); and 242.301(b)(1). In addition to the other requirements of Regulation ATS, to qualify for the Rule 3a1–1(a) exemption, an organization, association, or group of persons must otherwise meet the definition of ''exchange.''

[44] *See generally* Sections 5, 6, and 19 of the Exchange Act, 15 U.S.C. 78e, 78f, and 78s.

[45] *See* 15 U.S.C. 78e.

system: (1) [t]hat constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Rule 3b–16]; and (2) [t]hat does not: (i) [s]et rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system; or (ii) [d]iscipline subscribers other than by exclusion from trading.'' [46] Governing the conduct of or disciplining subscribers are functions performed by an SRO that we believe should be regulated as such.[47] Accordingly, pursuant to the definition in Rule 300(a), a trading system that performs SRO functions, or performs functions common to national securities exchanges, such as establishing listing standards, is precluded from the definition of ATS and would be required to register as a national securities exchange or be operated by a national securities association (or seek another exemption).[48]

Rule 301(b)(1) of Regulation ATS requires that every ATS that is subject to Regulation ATS, pursuant to paragraph (a) of Rule 301,[49] be registered as a broker-dealer under Section 15 of the Exchange Act.[50] As a registered broker-dealer, an ATS must also, in addition to complying with Regulation ATS, comply with broker-dealer filing and conduct obligations, including becoming a member of an SRO, such as the Financial Industry Regulatory Authority (''FINRA''), and comply with SRO rules.[51] An ATS must also comply with Rule 301(b)(2) of Regulation ATS, which currently requires all ATSs to file an initial operation report with the Commission on Form ATS [52] at least 20 days before commencing operations.[53] Form ATS requirements include that an ATS provide information about: Classes of subscribers and differences in access to the services offered by the ATS to different groups or classes of subscribers; securities the ATS expects to trade; any entity other than the ATS involved in its operations; the manner in which the system operates; how subscribers access the trading system; procedures governing order entry; and procedures governing execution, reporting, clearance, and settlement of transactions effected through the ATS.[54] Regulation ATS states that information filed by an ATS on Form ATS is ''deemed confidential when filed'' [55] and ATSs are not otherwise required to publicly disclose such information.[56]

ATSs must notify the Commission of any changes in their operations by filing an amendment to its Form ATS initial operation report. There are three types of amendments to an initial operation report.[57] First, if any material change is made to its operations, the ATS must file an amendment on Form ATS at least 20 calendar days before implementing such change.[58] Second, if any information contained in the initial operation report becomes inaccurate for any reason and has not been previously reported to the Commission as an amendment on Form ATS, the ATS must file an amendment on Form ATS correcting the information within 30 calendar days after the end of the calendar quarter in which the system has operated.[59] Third, an ATS must promptly file an amendment on Form ATS correcting information that it previously reported on Form ATS after discovery that any information was inaccurate when filed.[60] Also, upon ceasing to operate as an ATS, an ATS is required to promptly file a cessation of operations report on Form ATS.[61] As is the case with respect to initial operation reports, Form ATS amendments and cessation of operations reports serve as notice to the Commission of changes to the ATS's operations,[62] and Rule 301(b)(2)(vii) and the Instructions to the form state that Form ATS is ''deemed confidential.'' [63]

Rule 301(b)(9) of Regulation ATS also requires an ATS to periodically report certain information about transactions on the ATS and information about certain activities on Form ATS–R within 30 calendar days after the end of each calendar quarter in which the market

[46] *See* 17 CFR 242.300(a).

[47] *See* Regulation ATS Adopting Release, *supra* note 3, at 70859. As we noted when we adopted Regulation ATS, any system that uses its market power to regulate its participants should be regulated as an SRO. We stated that it would consider a trading system to be ''governing the conduct of subscribers'' outside the trading system if it imposed on subscribers, as conditions of participation in trading, any requirements for which the trading system had to examine subscribers for compliance. In addition, we stated our belief that if a trading system imposed as conditions of participation, directly or indirectly, restrictions on subscribers' activities outside of the trading system, such a trading system should be a registered exchange or operated by a national securities association, but that the limitation would not preclude an ATS from imposing credit conditions on subscribers or requiring subscribers to submit financial information to the ATS. *See id.*

[48] *See id.*

[49] Pursuant to Rule 301(a), certain ATSs that are subject to other appropriate regulations are not required to comply with Regulation ATS. These ATSs include those that are: Registered as a national securities exchange under Section 6 of the Exchange Act; exempt from national securities exchange registration based on the limited volume of transactions effected; operated by a national securities association; Registered as a broker-dealer under Sections 15(b) or 15C of the Exchange Act, or are banks, that limits their activities to certain instruments; or exempted, conditionally or unconditionally, by Commission order, after application by such ATS. *See* 17 CFR 242.301(a).

[50] *See* 17 CFR 242.301(b)(1).

[51] Section 15(b)(8) of the Exchange Act requires a broker or dealer to become a member of a registered national securities association, unless it effects transactions in securities solely on an exchange of which it is a member. 15 U.S.C. 78*o*(b)(8). *See also* Regulation ATS Adopting Release, *supra* note 3, at 70903 (discussing some of the regulatory obligations of registered broker-dealers, such as membership in an SRO and compliance with that SRO's rules). For example, a broker-dealer that is a FINRA member must file an application for approval of a material change to its business operations (as defined in FINRA Rule 1011(k)). *See* FINRA Rule 1017(a). Among other obligations, a broker-dealer operator of an NMS Stock ATS that is a FINRA member is subject to trade reporting requirements pursuant to FINRA rules. *See, e.g., supra* note 15 (discussing FINRA trade reporting requirements applicable to NMS Stock ATSs).

[52] Form ATS and the Form ATS Instructions are available at *http://www.sec.gov/about/forms/formats.pdf.*

[53] *See* 17 CFR 242.301(b)(2)(i). The Commission stated in the Regulation ATS Adopting Release that Form ATS would provide the Commission the opportunity to identify problems that might impact investors before the system begins to operate. *See* Regulation ATS Adopting Release, *supra* note 3, at 70864; Proposal, *supra* note 2, at 81005 n.70 and accompanying text. Unlike a Form 1 filed by a national securities exchange, Form ATS is not approved by the Commission. Instead, Form ATS provides the Commission with notice about an ATS's operations prior to commencing operations. *See* Regulation ATS Adopting Release, *supra* note 3, at 70864.

[54] *See* Proposal, *supra* note 2, at 81005.

[55] 17 CFR 242.301(b)(2)(vii). *See* Form ATS.

[56] As we noted in the Proposal, some ATSs may currently make voluntary public disclosures. *See* Proposal, *supra* note 2, at 81011, n.156. *See also infra* note 559 and accompanying text (discussing comments regarding voluntary postings of Form ATS by NMS Stock ATSs).

[57] Form ATS is used for three types of submissions: Initial operation reports; amendments to initial operation reports; and cessation of operations reports. An ATS designates the type of submission on the form. *See* Form ATS.

[58] *See* 17 CFR 242.301(b)(2)(ii). A ''material change,'' includes, but is not limited to, any change to the operating platform, the types of securities traded, or the types of subscribers. In addition, the Commission has stated that ATSs implicitly make materiality decisions in determining when to notify their subscribers of changes. *See* Regulation ATS Adopting Release, *supra* note 3, at 70864. *See also* infra Section IV.B.1.a.ii (discussing the materiality standard that would apply to the filing of amendments on Form ATS–N).

[59] *See* 17 CFR 242.301(b)(2)(iii).

[60] *See* 17 CFR 242.301(b)(2)(iv).

[61] *See* 17 CFR 242.301(b)(2)(v).

[62] *See* Regulation ATS Adopting Release, *supra* note 3, at 70864.

[63] *See* 17 CFR 242.301(b)(2)(vii); Form ATS at 3, General Instructions A.7. Under the final rules, NMS Stock ATSs that trade only NMS stocks will not be required to file Form ATS in accordance with Rules 301(b)(2)(i) through (vii), but instead will be required to comply with the requirements of new Rule 304 and file Form ATS–N. *See infra* Section III.B.4. *See also infra* Sections IV.A, B, and C.

has operated.[64] Form ATS–R requires quarterly volume information for specified categories of securities, as well as a list of all securities traded on the ATS during the quarter and a list of all subscribers that were participants during the quarter.[65] As with respect to Form ATS, Rule 301(b)(2)(vii) and the instructions to Form ATS–R state that Form ATS–R is ''deemed confidential.''[66] Under the amendments we are adopting, the requirements of Rule 301(b)(9) will continue to apply to all ATSs, including NMS Stock ATSs, as will the other requirements of Regulation ATS other than the Form ATS reporting requirements of Rule 301(b)(2).[67]

Under Rule 301(b)(3), an ATS that (1) displays subscriber orders in an NMS stock to any person (other than an employee of the ATS) and (2) during at least four of the preceding six calendar months, had an average daily trading volume of 5% or more of the aggregate average daily share volume for that NMS stock, as reported by an effective transaction reporting plan, must comply with certain order display and execution access obligations.[68] An ATS that meets these criteria must comply with Rule 301(b)(3)(ii), which requires the ATS to provide to a national securities exchange or national securities association (each an SRO), for inclusion in the quotation data made available by the SRO to vendors, the prices and sizes of its orders at the highest buy price and lowest sell price for that NMS stock that are displayed to more than one subscriber.[69] An ATS that meets the volume threshold also is required to comply with Rule 301(b)(3)(iii), which sets forth certain access standards regarding the orders that the ATS is required to provide to an SRO pursuant to Rule 301(b)(3)(ii).[70] Under Rule 301(b)(4), an ATS must not charge any fee to broker-dealers that access the ATS through a national securities exchange or national securities association that is inconsistent with the equivalent access to the ATS that is required under Rule 301(b)(3)(iii).[71]

Under Rule 301(b)(5)—and even if the ATS does not display subscribers' orders to any person (other than an ATS employee)—an ATS with 5% or more of the average daily volume in an NMS stock during at least four of the preceding six calendar months, as reported by an effective transaction reporting plan, must:[72] Establish written standards for granting access to trading on its system; not unreasonably prohibit or limit any person in respect to access to services offered by such ATS by applying the above standards in an unfair or discriminatory manner; make and keep records of all grants of access including, for all subscribers, the reasons for granting such access, and all denials or limitations of access and reasons, for each applicant, for denying or limiting access; and report the information required in Exhibit C of Form ATS–R regarding grants, denials, and limitations of access.[73] These requirements are referred to as the ''fair access'' requirements and apply on a security-by-security basis.[74] A denial of access to a market participant after an ATS reaches the 5% fair access threshold in an NMS stock would be reasonable if it is based on objective standards.[75]

Prior to the Commission's adoption of Regulation SCI,[76] NMS Stock ATSs were required to comply with Rule 301(b)(6), which requires certain ATSs trading 20% or more of the volume in any equity security or debt securities to comply with standards regarding the capacity, integrity, and security of their automated systems.[77] Regulation SCI superseded and replaced Rule 301(b)(6)'s requirements with regard to ATSs that trade NMS stocks and equity securities that are not NMS stocks[78] and requires SCI entities,[79] including NMS Stock ATSs that meet the definition of an ''SCI ATS,''[80] to establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in a manner that complies with the Exchange Act.[81]

Rule 301(b)(7)[82] requires all ATSs, regardless of the volume traded on their systems, to permit the examination and inspection of their premises, systems, and records, and cooperate with the examination, inspection, or investigation of subscribers, whether such examination is being conducted by

[64] *See* 17 CFR 242.301(b)(9)(i). Form ATS–R and the Form ATS–R Instructions are available at *https://www.sec.gov/about/forms/formats-r.pdf.* In the Regulation ATS Adopting Release, the Commission stated that the information provided on Form ATS–R would permit the Commission to monitor the trading on ATSs. *See* Regulation ATS Adopting Release, *supra* note 3, at 70878.

[65] *See* Form ATS–R at 4, Items 1 and 2 (describing the requirements for Exhibit A and Exhibit B of Form ATS–R). Form ATS–R also requires an ATS that is subject to the fair access obligations under Rule 301(b)(5) of Regulation ATS to provide as Exhibit C, a list of all persons granted, denied, or limited access to the ATS during the period covered by the Form ATS–R and designate for each person (a) whether it was granted, denied, or limited access; (b) the date the ATS took such action; (c) the effective date of such action; and (d) the nature of any denial or limitation of access. ATSs must also complete and file Form ATS–R within 10 calendar days after ceasing to operate. *See* 17 CFR 242.301(b)(9)(ii); Form ATS–R at 2, General Instructions A.2 to Form ATS–R.

[66] *See* 17 CFR 242.301(b)(2)(vii); Form ATS–R at 2, General Instruction A.7.

[67] *See generally infra* Section III. *See also* Section III.B.5.

[68] *See* 17 CFR 242.301(b)(3)(i).

[69] *See* 17 CFR 242.301(b)(3)(ii).

[70] *See* 17 CFR 242.301(b)(3)(iii).

[71] *See* 17 CFR 242.301(b)(4). In addition, if the national securities exchange or national securities association to which an ATS provides the prices and sizes of orders under Rules 301(b)(3)(ii) and 301(b)(3)(iii) establishes rules designed to assure consistency with standards for access to quotations displayed on such national securities exchange, or the market operated by such national securities association, the ATS shall not charge any fee to members that is contrary to, that is not disclosed in the manner required by, or that is inconsistent with any standard of equivalent access established by such rules. *See id.*

[72] 17 CFR 242.301(b)(5)(i).

[73] *See* 17 CFR 242.301(b)(5)(ii). Regulation ATS does not mandate compliance with these requirements when an ATS reaches the 5% trading threshold in an NMS stock if the following conditions are met: The ATS matches customer orders for a security with other customer orders; such customers' orders are not displayed to any person, other than employees of the ATS; and such orders are executed at a price for such security disseminated by an effective transaction reporting plan, or derived from such prices. *See* 17 CFR 242.301(b)(5)(iii).

[74] The fair access requirements also apply for non-NMS stocks when an ATS reaches a 5% trading threshold in certain securities other than NMS stocks, including certain equity securities, municipal securities, and corporate debt securities. *See* 17 CFR 242.301(b)(5)(i).

[75] *See* Regulation ATS Adopting Release, *supra* note 3, at 70874.

[76] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (adopting final rules for systems compliance and integrity) (''SCI Adopting Release'').

[77] *See* 17 CFR 242.301(b)(6).

[78] Regulation SCI does not apply to ATSs that trade municipal securities or corporate debt securities. *See* SCI Adopting Release, *supra* note 76, at 72262.

[79] Regulation SCI defines ''SCI entity'' to mean ''an SCI self-regulatory organization, SCI alternative trading system, plan processor, or exempt clearing agency subject to [the Commission's Automation Review Policies].'' *See* 17 CFR 242.1000.

[80] Regulation SCI defines ''SCI alternative trading system'' or ''SCI ATS'' to mean an ATS, which during at least four of the preceding six calendar months: (1) Had with respect to NMS stocks (a) five percent (5%) or more in any single NMS stock, and one-quarter percent (0.25%) or more in all NMS stocks, of the average daily dollar volume reported by applicable transaction reporting plans, or (b) one percent (1%) or more in all NMS stocks of the average daily dollar volume reported by applicable transaction reporting plans; or (2) had with respect to equity securities that are not NMS stocks and for which transactions are reported to a self-regulatory organization, five percent (5%) or more of the average daily dollar volume as calculated by the self-regulatory organization to which such transactions are reported. However, an SCI ATS is not required to comply with the requirements of Regulation SCI until six months after satisfying the aforementioned criteria. *See* 17 CFR 242.1000.

[81] *See* SCI Adopting Release, *supra* note 76, 79 FR at 72252.

[82] *See* 17 CFR 242.301(b)(7).

the Commission or by an SRO of which such subscriber is a member. Rule 301(b)(8)[83] requires all ATSs to make and keep current the records specified in Rule 302 of Regulation ATS[84] and preserve the records specified in Rule 303 of Regulation ATS.[85]

Under Rule 301(b)(10), all ATSs must establish adequate safeguards and procedures to protect subscribers' confidential trading information, which includes limiting access to the confidential trading information of subscribers to those employees of the ATS who are operating the system or responsible for its compliance with Regulation ATS or any other applicable rules; and implementing standards controlling employees of the ATS trading for their own accounts.[86]

Furthermore, all ATSs must adopt and implement adequate oversight procedures to ensure that the above safeguards and procedures are followed.[87] Finally, Rule 301(b)(11)[88] expressly prohibits any ATS from using the word ''exchange'' or derivations of the word ''exchange,'' such as the term ''stock market,'' in its name.[89]

D. Concerns Regarding the Lack of Operational Transparency

Despite their role in the equity markets and complexity of their operations, NMS Stock ATSs are not required under Regulation ATS to publicly disclose information about their operations. We are concerned that little information is widely available to market participants about NMS Stock ATSs, and that the lack of, or differential access to, information about operations of NMS Stock ATSs inhibits the ability of market participants to assess NMS Stock ATSs as potential trading venues. These concerns are shared by several commenters.[90] Commenters also concur with our belief that NMS Stock ATSs today play a significant role in equity market structure, and that their role has changed since Regulation ATS was adopted in 1998.[91] In addition, commenters reinforce our belief that NMS Stock ATSs have become more operationally complex, that the potential for conflicts of interest has risen as a result of that complexity, and that the conditions to the exemption for NMS Stock ATSs should be modified.[92] Commenters also express concern about the lack of operational transparency for NMS Stock ATSs.[93] Given the complexities of NMS Stock 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 impede the ability of market participants to adequately understand how their orders in NMS stocks would interact, match, and execute.

We are also concerned that the lack of available information about the ATS-related activities of the broker-dealer operator and its affiliates may hinder the ability of market participants to evaluate potential conflicts of interest, and thus limit their ability to protect their interests. Because of overlap between a broker-dealer's ATS operations and its other operations, there is a risk of information leakage of subscribers' confidential trading information to other business units of the broker-dealer operator or its affiliates.[94] Several commenters describe NMS Stock ATS operational structures that exemplify the kinds of relationships about which the Commission expressed concern, or otherwise reinforce our belief that the complex relationship between an NMS Stock ATS and its broker-dealer operator, or its affiliates, creates potential conflicts of interest.[95] Further, in recognizing the current potential for conflicts of interest that exist as a result of the complexity of the operations of NMS Stock ATSs, the relationship many have with their broker-dealer operator or its affiliates, and the lack of transparency about those operations and potential conflicts, many commenters also highlight recent enforcement actions brought by the Commission.[96]

[83] *See* 17 CFR 242.301(b)(8).

[84] *See* 17 CFR 242.302.

[85] *See* 17 CFR 242.303. In the Regulation ATS Adopting Release, the Commission stated that these requirements to make, keep, and preserve records are necessary to create a meaningful audit trail and to permit surveillance and examination to help ensure fair and orderly markets. *See* Regulation ATS Adopting Release, *supra* note 3, at 70877–78.

[86] *See* 17 CFR 242.301(b)(10)(i).

[87] *See* 17 CFR 242.301(b)(10)(ii).

[88] *See* 17 CFR 240.301(b)(11).

[89] When we proposed Regulation ATS, we said that ''it is important that the investing public not be confused about the market role [ATSs] have chosen to assume.'' *See* Regulation ATS Proposing Release, *supra* note 7 at 23523. We expressed concern that ''use of the term 'exchange' by a system not regulated as an exchange would be deceptive and could mislead investors that such alternative trading system is registered as a national securities exchange.'' *See id.*

[90] *See, e.g.,* CFA Institute Letter at 2; ICI Letter at 3; Better Markets Letter at 2; Investor Advocate Letter at 14; Luminex Letter at 1.

[91] *See, e.g.,* SIFMA Letter at 2; Investor Advocate Letter at 4; LeveL ATS Letter at 2. Other commenters also recognized that the role of NMS Stock ATSs has changed since the adoption of Regulation ATS. *See, e.g.,* Schneiderman Letter at 1; Virtu Letter at 2; UBS Letter at 1; Fidelity Letter at 1; ICI Letter at 2–3; STANY Letter at 2–3.

[92] *See, e.g.,* Consumer Federation of America Letter at 4; ICI Letter at 2; HMA Letter at 18; Schneiderman Letter at 1–2; Better Markets Letter at 2; CFA Institute Letter at 2; SIFMA Letter at 8. *See also infra* Section V.D (describing comments on proposed disclosures required by Form ATS–N).

[93] *See, e.g.,* CBOE Letter at 1; CFA Institute Letter at 3; Consumer Federation of America Letter at 2; ICI Letter at 3. *See also* Investor Advocate Letter at 14; Luminex Letter at 1; Consumer Federation of America Letter at 4; UBS Letter at 5–7; AI Letter at 2. One commenter critiques both the current regulatory regime for ATSs, as well as the Proposal, but describes issues with the lack of transparency and states that the Proposal represents an important enhancement in the oversight of ATSs. *See* Better Markets Letter at 1–2.

[94] In the Regulation ATS Adopting Release, the Commission recognized the potential for abuse involving a broker-dealer that operates an ATS and offers other traditional brokerage services, and expressed concern about the potential for the misuse of confidential trading information. *See* Regulation ATS Adopting Release, *supra* note 3, at 70879. *See also* Proposal, *supra* note 2, at 81041–81042 n.367 and accompanying text.

[95] *See, e.g.,* Consumer Federation of America Letter at 4; LeveL ATS Letter at 3; Fidelity Letter at 2 n.4. *See also* KCG Letter at 2; Luminex Letter at 3–4; Liquidnet Letter at 11.

Not all NMS Stock ATSs, however, are operated by multi-service broker-dealers. *See, e.g.,* BIDS Letter at 1. This commenter describes itself as the owner and broker-dealer operator of an NMS Stock ATS that does not engage in any proprietary trading and does not have any trading affiliates.

The rules being adopted today would not require a broker-dealer that operates an NMS Stock ATSs to limit it business only to operating the ATS. We believe that the Form ATS–N disclosures will inform market participants about the ATS-related activities of the broker-dealer operator and its affiliates that give rise to potential conflicts between the interests of the broker-dealer operator and subscribers that use the services of the NMS Stock ATS. *See infra* Sections X.D.7 (discussing the alternative of requiring NMS Stock ATSs to operate as limited purpose entities) and V.C.8 (discussing comments stating that the Commission should prohibit conflicts of interest arising from the other business activities of the broker-dealer operator of an NMS Stock ATS, and those of its affiliates, and the Commission's response to those comments).

See also HMA Letter at 3 and attachment The Dark Side of the Pools: What Investors Should Learn from Regulator's Action, September 15, 2015, at 10; Investor Advocate Letter at 8; Better Markets Letter at 2; *infra* Section V.C (discussing comments related to disclosures about the activities of an NMS Stock ATS's broker-dealer affiliate and those of its affiliates).

[96] *See, e.g.,* Schneiderman Letter at 2; Better Markets Letter at 2–3; Consumer Federation of America Letter at 5; and HMA Letter at 12, 16–17. *See also* CFA Institute Letter at 2; Fidelity Letter at 4; Investor Advocate Letter at 5; Citadel Letter at 1–7.

One commenter, however, observes that in the recent settlements cited in the Proposal, there were conflicts of interest related to commercial relationships that had nothing to do with affiliates, and believes that all differential treatment of subscribers should be disclosed and recommends limiting disclosures regarding affiliate relationships. *See* Markit Letter at 8. Under the requirements we are adopting today, NMS Stock ATSs must disclose on Form ATS–N differences in treatment of subscribers and the broker-dealer operator and affiliate, and we have, in response to commenters, revised questions of Form ATS–N to narrow the scope of information related to affiliates to be disclosed. *See infra* Sections V.C and D.

See also Proposal, *supra* note 2, at 81042–81043 n.374 (citing prior settled enforcement actions against ATSs that trade NMS stocks). Since the Proposal, we have entered additional settlements

Continued

NMS Stock ATSs, which meet the definition of ''exchange'' but are not required to register with the Commission as national securities exchanges, compete with national securities exchanges and operate with similar complexity. Unlike national securities exchanges, NMS Stock ATSs are not required to, among other things, publicly disclose their operations and fees.[97] In addition, because we review the rules of national securities exchanges, a process which requires, among other things, that to approve certain rule changes, the Commission find [98] that the national securities exchange's proposed rule changes are consistent with the Exchange Act,[99] each existing national securities exchange has implemented rules that restrict affiliation between the national securities exchange and its members to mitigate the potential for conflicts of interest. We believe that the regulatory differences between NMS Stock ATSs and national securities exchanges with regard to disclosure obligations may create a competitive imbalance between two functionally similar trading centers that trade the same security.

Transparency has long been a hallmark of the U.S. securities markets, and is one of the primary tools used by investors to protect their interests.[100] We believe that one of the most important functions the Commission can perform for investors is to ensure that they have access to the information they need to protect and further their own interests.[101] The amendments that we are adopting to Regulation ATS and Exchange Act Rule 3a1–1 are designed to address the concerns identified above and provide benefits to a wide range of market participants. Public disclosures on Form ATS–N will provide market participants with information about the operations of an NMS Stock ATS, which they can use to understand how orders interact, match, and execute in an NMS Stock ATS and compare to other NMS Stock ATSs and national securities exchanges. Form ATS–N will also provide the public with information about the ATS-related activities of the broker-dealer operator and its affiliates, which can be used by market participants to assess potential conflicts of interest and information leakage.[102] Collectively, the Form ATS–N public disclosures will allow market participants to better evaluate an NMS Stock ATS as a potential trading destination for their orders and help them better protect their interests. The Form ATS–N public disclosures are also designed, in part, to bring the operational transparency requirements for NMS Stock ATSs more in line with the requirements for national securities exchanges. Finally, we believe that our process for reviewing Form ATS–N filings, which provides for Commission review of disclosures for compliance with the requirements of Rule 304 and Form ATS–N, and a potential declaration of ineffectiveness of a Form ATS–N, after notice and opportunity for hearing, will facilitate better Commission oversight of NMS Stock ATSs and thus, better protection of investors.

III. Heightened Regulatory Requirements for NMS Stock ATSs

A. Exchange Act Rule 3a1–1(a) Exemption: New Conditions for NMS Stock ATSs

ATSs that trade NMS stocks operate pursuant to the exemption provided by Exchange Act Rule 3a1–1(a)(2), which exempts from the definition of an ''exchange'' any ATS that complies with Rules 300 through 303 of Regulation ATS.[103] Given our concerns regarding the lack of public transparency around the operations of NMS Stock ATSs and the ATS-related activities of the broker-dealer operator and its affiliates, we proposed to expand the conditions of the Rule 3a1–1(a)(2) exemption to enhance operational transparency and oversight for these ATSs. We are adopting this requirement as proposed.[104] We proposed to require NMS Stock ATSs to comply with proposed Rule 304, in addition to existing Rules 300 through 303 of Regulation ATS (except Rule 301(b)(2)), to be eligible for the exemption.[105] Proposed Rule 304(a)(1)(i) set forth two new fundamental conditions to the Rule 3a1–1(a)(2) exemption: (1) An NMS Stock ATS must file Form ATS–N with the Commission (instead of the current Form ATS), and (2) the Commission must declare the Form ATS–N effective before the NMS Stock ATS can operate pursuant to the exemption. Adopted Rule 304(a)(1)(i) deletes the proposed condition that the Commission declare the Form ATS–N effective, and provides that the Form ATS–N must be effective

regarding NMS Stock ATSs. *See In the Matter of Barclays Capital Inc.,* Securities Exchange Act Release No. 77001 (Jan. 31, 2016), *https://www.sec.gov/litigation/admin/2016/33-10010.pdf* (order instituting administrative and cease-and-desist proceedings, making findings, and imposing remedial sanctions and a cease-and-desist order); *In the Matter of Credit Suisse Securities (USA) LLC,* Securities Act Release No. 77002 (Jan. 31, 2016), *https://www.sec.gov/litigation/admin/2016/33-10013.pdf* (order instituting administrative and cease-and-desist proceedings, making findings, and imposing remedial sanctions and a cease-and-desist order) (''Crossfinder Settlement''); *In the Matter of Credit Suisse Securities (USA) LLC,* Securities Act Release No. 77003 (Jan. 31, 2016), *https://www.sec.gov/litigation/admin/2016/33-10014.pdf* (order instituting administrative and cease-and-desist proceedings, making findings, and imposing remedial sanctions and a cease-and-desist order); *In the Matter of Deutsche Bank Securities Inc.,* Securities Exchange Act Release No. 79576 (Dec. 16, 2016), *https://www.sec.gov/litigation/admin/2016/33-10272.pdf* (order instituting administrative and cease-and-desist proceedings, making findings, and imposing remedial sanctions and a cease-and-desist order).

[97] *See infra* notes 34–40 and accompanying text (discussing the regulatory framework applicable to national securities exchanges, including that national securities exchanges are self-regulatory organizations (''SROs'')). *See also* Regulation ATS Adopting Release, *supra* note 3; *infra* Section II.B (discussing the current requirements of Regulation ATS applicable to all ATSs).

[98] *See* Proposal, *supra* note 2, at 81042 n.372 and accompanying text.

[99] *See* 15 U.S.C. 78s(b).

[100] *See id.*

[101] *See* Proposal, *supra* note 2, at 81010.

[102] *See id.* at 81042. We believe that to understand the operations of an NMS Stock ATS, it is necessary to understand the relationship and interactions between the NMS Stock ATS and its registered broker-dealer operator as well as the relationship and interactions between the NMS Stock ATS and the affiliates of its broker-dealer operator.

[103] 17 CFR 240.3a1–1(a)(2).

[104] In Exchange Act Rules 3a1–1(a)(2) and (3), Regulation ATS is currently defined as ''17 CFR 242.300 through 242.303.'' We are amending the references to Regulation ATS to define Regulation ATS as ''17 CFR 242.300 through 242.304.'' We also proposed conforming Rule 3a1–1(a)(3) by changing the reference to Rule 303 to Rule 304 to make clear that an NMS Stock ATS that meets the requirements of Rule 301(a) is not required to comply with Regulation ATS, which would be amended to include proposed Rule 304. No changes were proposed to Rule 3a1–1(a)(1), which exempts any ATS that is operated by a national securities association.

[105] Proposed Rule 304(a) provided that, unless not required to comply with Regulation ATS pursuant to Rule 301(a) of Regulation ATS, an NMS Stock ATS must comply with Rules 300 through 304 of Regulation ATS (except Rule 301(b)(2)) to be exempt from the definition of an ''exchange'' pursuant to Exchange Act Rule 3a1–1(a)(2). We are adopting proposed Rule 304(a) with certain modifications. As adopted, Rule 304(a) will state, ''[u]nless not required to comply with Regulation ATS pursuant to § 242.301(a), an NMS Stock ATS must comply with §§ 242.300 through 242.304 (except §§ 242.301(b)(2)*(i) through (vii)*) to be exempt pursuant to § 240.3a-1(a)(2)'' (emphasis added). The adopted rule text specifies the subparagraphs of Rule 301(b)(2) with which an NMS Stock ATS would not be required to comply. We believe that specifying the applicable subsections of Rule 301(b)(2) provides greater clarity, because Rule 301(b)(2)(viii) will apply to NMS Stock ATSs that also trade non-NMS stocks. The reference to Rule 301(b)(2) in the proposed rule text could be confusing to market participants because it does not make clear that Rule 301(b)(2)(viii) applies to certain NMS Stock ATSs. We believe that the added specificity in the adopted rule clarifies that only Rules 301(b)(2)(i) through (vii) will not be applicable to NMS Stock ATSs. *See infra* Section III.B.4. In addition, to reduce any potential ambiguity and improve readability, the adopted rule text deletes the language that states that the NMS Stock ATS would need to comply with the requirements to be exempt ''from the definition of an 'exchange''' pursuant to Exchange Act Rule 3a1–1(a)(2).

pursuant to Rule 304(a)(1)(iii) or Rule 304(a)(1)(iv)(A). Adopted Rule 304(a)(1)(iii) has been modified to provide that Form ATS–N will become effective if the Commission does not otherwise declare Form ATS–N ineffective—the Commission will not be declaring Form ATS–N filings effective.[106]

We proposed to amend Rules 3a1–1(a)(2) and (3) to require compliance with proposed Rule 304 as a condition to operating pursuant to the Rule 3a1–1(a)(2) exemption.[107] We received several comments on the proposal to expand the conditions of the Rule 3a1–1(a)(2) exemption for NMS Stock ATSs and require these ATSs to comply with Rule 304. We also received comments on the application of the Proposal to ATSs that trade securities other than NMS stocks, and, specifically, requiring these types of ATSs to file a Form ATS–N and operate pursuant to the effectiveness process. Both sets of comments are discussed below.

1. Comments on the Rule 304 Requirements; Effectiveness

Nearly all commenters agree with our stated goal of enhancing operational transparency for NMS Stock ATSs.[108] Several commenters agree that the Commission should adopt the heightened disclosure requirements of proposed Rule 304.[109] In particular, several commenters support enhancing the disclosure and oversight regime for NMS Stock ATSs as progress toward increasing operational transparency in NMS Stock ATSs.[110] Specifically, some commenters express support for NMS Stock ATSs to file Form ATS–N as a tool to improve transparency.[111] Several commenters assert that more transparency regarding ATS operations could help market participants evaluate and compare trading venues so they can determine where to route orders.[112] One commenter states that ''it is good for investors to have access to information on how their orders are handled and with whom they are dealing.'' [113] Several commenters believe that making Form ATS–N filings public would encourage competition among trading venues,[114] and one commenter asserts that the proposed transparency requirements could reduce competitive imbalances between NMS Stock ATSs and national securities exchanges.[115]

With respect to the Commission's effectiveness determination for Form ATS–N, another commenter states that ''given the level of competition between exchanges and NMS Stock ATSs, this effectiveness determination would better align the Commission's oversight among different types of trading venues.'' [116] One commenter, however, believes that ATSs do not add sufficient value to offset the regulatory inequity and market fragmentation they have created.[117] This commenter also states that the Proposal represents ''meaningful progress in the effort to increase the operational transparency of NMS Stock ATSs.'' [118] The Proposal was not designed to eliminate the exemption from the definition of exchange that is currently available to all ATSs, including NMS Stock ATSs. We believe that NMS Stock ATSs play a significant role in equity market structure and provide market participants with a variety of trading models to facilitate the interaction and execution of orders in NMS stocks.

We believe that the current market for NMS stock execution services, consisting of national securities exchanges, NMS Stock ATSs, and other off-exchange venues, has resulted in an improvement to market efficiency.[119] The changes to the requirements for NMS Stock ATSs that we are adopting today will increase operational transparency for these ATSs, bringing it more in line with the operational transparency for national securities exchanges, while continuing to recognize the difference in the business structure of ATSs as registered broker-dealers. We also believe that while the rules adopted today will increase the regulatory burden for NMS Stock ATSs and could result in some NMS Stock ATSs electing to no longer operate as an ATS, those NMS Stock ATSs that remain may compete more heavily with each other and with national securities exchanges, which could ultimately result in improvements to efficiency and capital formation.[120]

Another commenter believes that increased disclosure will aid in developing industry-based standards.[121] Three commenters state that increased disclosure will boost investor confidence,[122] and according to one of these commenters, increased transparency and investor confidence could lead to more investors using NMS Stock ATSs, and result in greater price discovery and lower costs of capital formation.[123]

We believe that a wide range of market participants will benefit from the enhanced operational transparency,

[106] *See infra* Section IV.A.3.

[107] In Exchange Act Rules 3a1–1(a)(2) and (3), Regulation ATS is currently defined as ''17 CFR 242.300 through 242.303.'' We proposed amending these references to Regulation ATS to define Regulation ATS as ''17 CFR 242.300 through 242.304.'' We also proposed conforming Rule 3a1–1(a)(3) by changing the reference to Rule 303 to final Rule 304 to make clear that an NMS Stock ATS that meets the requirements of Rule 301(a) is not required to comply with Regulation ATS, which would be amended to include proposed Rule 304. No changes were proposed to Rule 3a1–1(a)(1), which exempts any ATS that is operated by a national securities association.

[108] *See* SIFMA Letter at 2; Barnard Letter at Public comment on IOSCO's Consultation Report on Issues Raised by Dark Liquidity; Anonymous Letter at 1; Luminex Letter at 1; MFA/AIMA Letter at 1–2; Fidelity Letter at 1; UBS Letter at 1; Markit Letter at 3–4; Schneiderman Letter at 1; ICI Letter at 3; CFA Institute Letter at 3, 6; CBOE Letter at 1; KCG Letter at 1; PDQ Letter at 1; STA Letter at 2; Liquidnet Letter at 1; STANY Letter at 1; FINRA Letter at 1; HMA Letter at 1, 5; Citadel Letter at 1; Better Markets Letter at 3–4; BIDS Letter at 1–2; SSGA Letter at 2; T. Rowe Price Letter at 1; AI Letter at 2–3; Consumer Federation of America Letter at 4; Morgan Stanley Letter at 1; Investor Advocate Letter at 2, 6; LeveL ATS Letter at 1; Virtu Letter at 2; MFA Letter 2 at 30. *But see* Morgan Stanley Letter at 1, 3 (stating that it is important to balance public disclosure with disclosure more suitable for the Commission (*see* discussion below and *infra* note 150 and accompanying text); that certain disclosure requirements, such as any disclosure around broker trading infrastructure and order handling practices beyond ATS operations, should apply to all brokers (*see* discussion *infra* note 217–218and accompanying text and infra Section III.A.2); and that the Proposal treats all ATSs like exchanges and fails to account for distinct ATS models (*see* discussion below and *infra* note 176 and accompanying text)). One commenter commented only on whether the Proposal should apply to ATSs that trade only fixed-income securities. *See* MarketAxcess Letter; *infra* Section III.A.2.

[109] *See generally* Virtu Letter; T. Rowe Price Letter; Schneiderman Letter; ICI Letter; MFA/AIMA Letter; Consumer Federation of America Letter; CBOE Letter; Citadel Letter; Anonymous Letter; Better Markets Letter; Investor Advocate Letter. *See also* CFA Institute Letter at 6; SIFMA Letter at 3.

[110] *See* SIFMA Letter at 3; Virtu Letter at 2; T. Rowe Price at 1; Schneiderman Letter at 1; MFA/AIMA Letter at 2; MFA Letter 2 at 30; CBOE Letter at 1; Citadel Letter at 1; Consumer Federation of America Letter at 6; CFA Institute Letter at 3; Anonymous Letter at 1; KCG Letter at 3; Morgan Stanley Letter at 1; Investor Advocate Letter at 6; Better Markets Letter at 1.

[111] *See* ICI Letter at 4–6; Consumer Federation of America Letter at 6; CFA Institute Letter at 3; Citadel Letter at 3; KCG Letter at 3; STA Letter at 2; MFA/AIMA Letter at 4; CBOE Letter at 1; Investor Advocate Letter at 2, 8.

[112] *See* Luminex Letter at 1; Fidelity Letter at 1; SSGA Letter at 2; KCG Letter at 1; Citadel Letter at 1; ICI Letter at 3; STA Letter at 2; Schneiderman Letter at 2; Consumer Federation of America Letter at 6; Investor Advocate Letter at 11.

[113] *See* Luminex Letter at 1.

[114] *See* STA Letter at 2; Consumer Federation of America Letter at 6; Investor Advocate Letter at 3, 11–12.

[115] *See* Citadel Letter at 1.

[116] *See* Investor Advocate Letter at 12.

[117] *See* CBOE Letter at 1.

[118] *Id.*

[119] *See infra* Section X.B.6 (discussing the effects of NMS Stock ATSs on the market for NMS stock execution services, including fragmentation).

[120] *See infra* Section X.C (discussing the expected economic effects of today's rulemaking, as well as its expected effects on efficiency, competition, and capital formation).

[121] *See* STA Letter at 2.

[122] *See* CFA Institute Letter at 3; Schneiderman Letter at 2; Investor Advocate Letter at 11–12.

[123] *See* Investor Advocate Letter at 11, 12.

including, for example, fund managers and the many brokers that subscribe to NMS Stock ATSs and route their orders, and those of their customers, to NMS Stock ATSs for execution. Five commenters observe, for example, that more transparency regarding ATS operations could assist market participants in achieving best execution.[124] One commenter states that disclosure of material aspects of ATS operations that allow market participants to weigh the costs and benefits of venues is ''particularly important for asset managers who are acting in a fiduciary capacity.'' [125] Another commenter believes that making Form ATS–N filings publicly available would provide a ''valuable tool for funds to use to assess NMS Stock ATSs, make informed routing decisions, and evaluate the performance of their brokers.'' [126]

We believe that the information disclosed on Form ATS–N will help brokers meet their best execution obligations to their customers, as they should be better able to assess the trading venues to which they route orders.[127] We also believe that asset managers and institutional investors, who subscribe to an NMS Stock ATS or whose orders may be routed to an NMS Stock ATS by their brokers, should have more information about how NMS Stock ATSs operate, including how orders and trading interest of the institutional investor may be displayed or made known outside the ATS. This information also will enable asset managers to better evaluate the routing decisions of their brokers, including whether their brokers routed their orders to a venue that best fits their trading interests.

a. Comments on Form ATS–N Requirement

Some commenters, however, believe NMS Stock ATSs should not be required to comply with new Rule 304 and the Commission should instead simply amend Regulation ATS to require making Form ATS public for NMS Stock ATSs.[128] Two of these commenters assert that the Commission should mandate disclosure of current Form ATS as a first step to increase disclosure before considering implementing more burdensome disclosure requirements.[129]

We are not adopting commenters' suggestion to make Form ATS public rather than requiring NMS Stock ATSs to comply with Rule 304 and file Form ATS–N. First, we believe that new Form ATS–N requires important additional disclosures that are not made under existing Form ATS.[130] While Form ATS–N will require NMS Stock ATSs to disclose more information than Form ATS, in response to certain comments, we have reduced the burden of completing Form ATS–N by narrowing the scope of several requests for information and, in some cases, eliminating certain requests from the form.[131] We have also simplified Form ATS–N to make completing and maintaining the form less burdensome and have modified questions so as not to solicit competitively sensitive information.[132] We believe that Form ATS–N disclosures will help market participants compare and evaluate NMS Stock ATSs and make better informed decisions about where to route their orders to achieve their trading or investment objectives, enhance execution quality, and improve efficiency and capital allocation.[133]

Based on Commission staff's experience reviewing disclosures made by ATSs on Form ATS over the past 19 years and as discussed in the Proposal, we have observed that ATSs have often provided minimal, rudimentary, and summary disclosures about their operations on Form ATS. One commenter agrees with our assessment, stating that based on its review of publicly available Forms ATS, the forms ''often provide minimal and often generalized information'' with respect to classification and segmentation of subscribers, means of access to the ATS, matching priority, order interaction, order types, and how the NBBO is calculated, and they are often missing ''critical details'' about their operations.[134] Further, this commenter states that ''[r]arely do Form ATSs provide information relating to their fee structures and potential or actual conflicts of interest.'' [135] According to another commenter, current Form ATS is ''not adequate'' to allow the Commission and market participants to ''understand how NMS Stock ATSs operate in today's environment, given the complexity and the potential for significant conflicts of interest with the broker-dealer operator.'' [136] In addition, one commenter observes that market participants currently receive ''varying levels'' of information about the operations of the NMS Stock ATS.[137] As described in the Proposal,[138] we believe that the complexity of NMS Stock ATS operations has increased substantially and in a manner that causes the current disclosure requirements of Form ATS to result in an insufficient, and inconsistent, level of detail about the operations of NMS Stock ATSs.

Two commenters argue that a new Form ATS–N is unnecessary because most of the fundamental information required in Form ATS–N is currently covered by Form ATS.[139] In addition, three commenters suggest that, as an alternative to requiring NMS Stock ATSs to file and make public Form ATS–N, we should clarify the requests for information on Form ATS and mandate that the revised Form ATS be made public.[140] One of these commenters believes such an approach would help achieve the Commission's goal of operational transparency, while ''maintaining a regulatory structure under which NMS Stock ATSs can continue to innovate.'' [141] Even if we were to ''clarify'' the requests for information on Form ATS to standardize disclosures and make current and past Forms ATS public, Form ATS does not require the

[124] *See* Citadel Letter at 1; Consumer Federation of America Letter at 6; HMA Letter at 10; Luminex at 1; SIFMA Letter at 35.

[125] *See* SSGA Letter at 2.

[126] *See* ICI Letter at 3.

[127] *See, e.g.,* Proposal, *supra* note 2, at 81002 n.36 and accompanying text, 81013 n.187 and accompanying text (discussing that the Consumer Federation of America previously commented that Form ATS should require ATSs to provide ''critical details about an ATS's participants, segmentation, and fee structure'' because the ''information will allow market participants, regulators, and third party analysts to assess whether an ATS's terms of access and service are such that it makes sense to trade on that venue'').

[128] *See* Luminex Letter at 2–3; PDQ Letter at 2; Fidelity Letter at 5; STANY Letter at 3; Morgan Stanley Letter at 2.

[129] *See* Fidelity Letter at 5; STANY Letter at 3.

[130] *See infra* Sections X.C.1 and X.C.2. We have considered any additional burden that may result from completion of Form ATS–N and the benefits of the additional information that will be made available to market participants by requiring NMS Stock ATSs to file Form ATS–N, and making Form ATS–N public. *See id.*

[131] For example, we have narrowed a request for information regarding trading by affiliates of the broker-dealer operator on the NMS Stock ATS by requiring only the disclosures of affiliates that can enter or direct the entry of orders and trading interest into the ATS. *See infra* Section V.C.1. We are not requiring NMS Stock ATSs to provide proposed Exhibit 1 to Form ATS–N. *See infra* Section V.B.2. Exhibit 1 would have required that NMS Stock ATSs provide a copy of any materials currently provided to subscribers or other persons related to the operations of the ATS or the disclosures on Form ATS–N, such as frequently asked questions, manuals, and marketing materials.

[132] *See infra* Section V.C.

[133] *See infra* Section X.C.4.

[134] *See* Consumer Federation of America Letter at 3.

[135] *See id.*

[136] *See* Investor Advocate Letter at 8.

[137] *See* Morgan Stanley Letter at 1.

[138] *See* Proposal, *supra* note 2, at 81011.

[139] *See* Luminex Letter at 2–3; STANY Letter at 3.

[140] *See* STANY Letter at 3; PDQ Letter at 2; Fidelity Letter at 5.

[141] *See* STANY Letter at 3.

disclosure of certain information that will be required by Form ATS–N. For example, Form ATS–N requires NMS Stock ATSs to disclose information about the ATS-related activities of the broker-dealer operator and its affiliates that will allow market participants to assess potential conflicts of interest and information about the NMS Stock ATS's safeguards and procedures to protect confidential trading information. The disclosure requirements of Form ATS are not sufficient to provide market participants with adequate information about the operational complexity of NMS Stock ATSs and the ATS-related activities of the broker-dealer operator and its affiliates that exist today. Form ATS–N is designed to provide market participants with more robust, detailed, and standardized disclosures, and to enable market participants to better understand the operations of NMS Stock ATSs and potential conflicts of interest between ATS operations and the other ATS-related activities of the broker-dealer operator and its affiliates.

One commenter who suggests making Form ATS public as an alternative to requiring Form ATS–N expresses concern that the ''crippling amount of detail'' required to be disclosed under Form ATS–N would not be useful to market participants.[142] We do not believe that Form ATS–N, as modified from the Proposal, will require a ''crippling'' level of detail that will only be useful to the Commission, and several commenters agree that the Form ATS–N disclosures would be useful for market participants in comparing trading venues and assessing conflicts of interest.[143] While Form ATS–N will require NMS Stock ATSs to disclose more information than Form ATS, we have recognized commenters' concerns regarding the burden of completing Form ATS–N by narrowing the scope of several requests, eliminating certain requests altogether, and simplifying its format.[144]

Other commenters discuss how market participants currently glean information about ATSs, and suggest that such methods could serve as alternatives to the requirements of Rule 304, or inform the Rule 304 requirements.[145] One commenter states that it performs periodic due diligence on ATSs because it believes that as a fiduciary, it should only trade on venues or exchanges that further its goals of satisfying ''best execution,'' that protect client information, and generally support principles of fair access.[146] This commenter also states that currently, market participants perform such due diligence by sending ATSs questionnaires.[147] Similarly, another commenter observes that ATSs are incentivized to respond to these questionnaires to attract participants, and therefore, the Commission should not place additional disclosure burdens on ATSs.[148] We do not believe that the practice of some market participants individually soliciting information about the operations of NMS Stock ATSs and conflicts of interest through questionnaires is an adequate alternative to Form ATS–N. We believe that disclosures on Form ATS–N should be easily accessible to all market participants. This is particularly important for NMS Stock ATSs given how orders in NMS stocks may be routed among various trading centers before receiving an execution. Based on the Commission's experience, responses to questionnaires are generally unavailable to non-subscribers, including potential subscribers and customers of current subscribers. Without this information, potential subscribers would be unable to fully assess an NMS Stock ATS as a trading center and customers of subscribers would be inhibited from assessing their broker's routing decisions. In addition, we believe, as indicated by comments,[149] that the publicly available, standardized disclosure regime that will result from Rule 304 and Form ATS–N is critical for all market participants to receive equal information about NMS Stock ATSs.

One commenter suggests that, as an alternative to the proposed Form ATS–N, the Commission should mandate that ATS operators publicly disclose current and historical Form ATS filings and related amendments, and responses to standardized, frequently asked questions (''FAQs'') regarding ATS operations.[150] The commenter believes that this approach would be ''more balanced and appropriate'' and ''less burdensome and faster to implement.''[151] For the reasons discussed above in this section, we believe that the requests on Form ATS are not designed to produce adequate information for market participants about the operational complexity of NMS Stock ATSs and the ATS-related activities of their broker-dealer operators and their affiliates. We also believe that making public an ATS's responses to standardized, FAQs regarding its operations would not achieve the same level of disclosure that Form ATS–N will require, and would not facilitate our oversight of NMS Stock ATSs. Based on Commission experience, the information required to be disclosed on Form ATS–N exceeds the information provided by NMS Stock ATSs in their responses to FAQs and will provide a greater benefit to market participants. In addition, NMS Stock ATSs must file Form ATS–N disclosures with the Commission, which will be subject to Commission review before they become public. As discussed in the Proposal, the public disclosures on Form ATS–N are designed to standardize the information available to all market participants about NMS Stock ATSs and facilitate their ability to compare and evaluate these trading venues.[152] Finally, we believe that the burden resulting from filing a Form ATS–N would not be significant compared to requiring an NMS Stock ATS to prepare disclosures on Form ATS and responses to FAQs.

We received four comments about the application of Rule 304 to some or all NMS Stock ATSs. We received three comments expressing the importance of the Commission's need to heighten the regulatory requirements for all NMS Stock ATSs.[153] In particular, one commenter states that the Commission's additional disclosure requirements are important for creating a consistent and

[142] *See id.* at 4.

[143] *See supra* notes 109–123 and accompanying text.

[144] *See infra* Section V.

[145] *See* SSGA Letter at 2; PDQ Letter at 2; Morgan Stanley Letter at 2.

[146] *See* SSGA Letter at 2. *See also* Fidelity Letter at 8 (discussing that, from a due diligence perspective, subscribers may require NMS Stock ATS information).

[147] *See* SSGA Letter at 2. *See also* PDQ Letter at 2.

[148] *See* PDQ Letter at 2.

[149] *See* Virtu Letter at 2; Schneiderman Letter at 1; ICI Letter at 3; Consumer Federation of America Letter at 6; and Citadel Letter at 1.

[150] *See* Morgan Stanley Letter at 2 (asserting that ''standardization is the key to concise, comparable and meaningful information regarding ATS operations''). This commenter states that while it supports the Proposal's effort to mandate transparency, it is concerned that proposed Form ATS–N ''will result in more subjective, narrative responses that will not lend themselves to side-by-side comparison.'' *See id.* at 1.

[151] *See id.* at 2.

[152] *See* Proposal, *supra* note 2, at 81123. *See also infra* Section V.A.1. We believe that requiring NMS Stock ATSs to provide only ''yes'' or ''no'' responses would limit ATSs, which provide diverse services and often operate uniquely, from accurately describing their operations and inhibit market participants from fully understanding the operations of the ATS or the ATS-related activities of the broker-dealer operator and its affiliates. *See id.* (discussing the Commission's belief that narrative responses are important for market participants to understand the operations of NMS Stock ATSs given differences across ATSs, and provide NMS Stock ATSs with the flexibility in their responses).

[153] *See* CFA Institute Letter at 3; UBS Letter at 2. *See also* KCG Letter at 1.

fair set of obligations for all NMS Stock ATSs while providing market participants and subscribers with complete information.[154] This commenter observes that although an ATS may have a small share of volume relative to the overall equities trading marketplace, it does not necessarily follow that such ATS has a similarly small share of each subscriber's flow.[155] Another commenter cautions the Commission about allowing exemptions based on metrics such as dollar volume, trading volume, or number of subscribers because allowing such exemptions could increase ''incentives and opportunities'' for regulatory arbitrage, and may result in unintended consequences.[156] On the other hand, one commenter argues that the Commission should take a tiered regulatory approach to NMS Stock ATSs by applying certain of the enhanced requirements only to larger NMS Stock ATSs.[157] This commenter suggests that to foster competitive innovations among NMS Stock ATSs, the Commission should only apply the requirement of prior Commission ''approval'' of changes before they are implemented to ''larger ATSs with a substantial market footprint.'' [158]

We continue to believe that requiring all NMS Stock ATSs to publicly file a Form ATS–N, irrespective of the volume of NMS stocks transacted on the ATS is appropriate, and does not agree that its objectives would be achieved by applying Rule 304 on a tiered basis to NMS Stock ATSs. Given that broker-dealers can route their customers' orders to any NMS Stock ATS for execution, we do not believe that transaction volume in NMS stocks serves as a proxy for whether customers of broker-dealers or subscribers to an ATS should have information about how their orders would be prioritized, matched, or executed on an NMS Stock ATS or understand the ATS-related activities of the broker-dealer operator and its affiliates that may give rise to conflicts of interest.[159] As a result, customers of broker-dealers that route their orders to NMS Stock ATSs with low volume will have the same level of information to assess their broker-dealers' routing decisions as customers of broker-dealers that may route orders to any other NMS Stock ATSs. Amending Exchange Act Rule 3a1–1(a) to apply the requirements of Rule 304 to all NMS Stock ATSs would promote efficient and effective market operations by providing information all market participants can use to evaluate all NMS Stock ATSs that could be potential destinations for their orders. We believe that these requirements, including the requirement that NMS Stock ATSs file amendments to Form ATS–N in advance of adopting material changes,[160] would not place an undue burden on smaller NMS Stock ATSs or their ability to innovate.[161] Smaller NMS Stock ATSs that are not operated by multi-service broker-dealer operators and do not engage in other brokerage or dealing activities in addition to their ATS operations would have a lower burden than other ATSs because certain sections of Form ATS–N (such as several items of Part II) may not be applicable to these NMS Stock ATSs.[162] We believe that the reduction in costs from exempting small NMS Stock ATSs would be minimal as compared to the benefits that would result from requiring the same level of transparency from small NMS Stock ATSs as from other NMS Stock ATSs.[163] Further, under Regulation ATS, every ATS must currently wait 20 calendar days from the date of filing an amendment to Form ATS–N before implementing a material change to its operations.[164] In addition, we believe that the new process for NMS Stock ATSs applicable to filing material amendments is appropriate,[165] and, like the other requirements of Rule 304, should be applied consistently across NMS Stock ATSs, regardless of their size or trading volume. The Commission review process for Form ATS–N amendments is designed to improve operational transparency for all market participants and not only for market participants that use NMS Stock ATSs with significant trading volume as compared to other NMS Stock ATSs.

b. Comments on Effects on ATSs Relative to National Securities Exchanges

We received comments regarding the competitive effect of Rule 304 on ATSs relative to national securities exchanges.[166] Some commenters support public disclosure of Form ATS–N on the grounds that the current differences in transparency requirements for ATSs and national securities exchanges are competitively unfair.[167] On the other hand, other commenters express concern about the competitive burden that the requirements of Rule 304 could place on ATSs.[168] Specifically, one commenter states that not extending the enhanced transparency requirements to national securities exchanges may ''result in a competitive advantage to exchanges.'' [169] We believe that the new disclosure requirements for NMS Stock ATSs are not more rigorous than the disclosure standards for national securities exchanges and will not provide national securities exchanges with a competitive advantage over NMS Stock ATSs. National securities exchanges are required to publicly file proposed rule changes with the Commission to disclose, among other things, their manner of operations and fees.[170] These proposed rules changes are subject to notice and comment from the public, as well as Commission consideration, pursuant to Section 19(b) and 17 CFR 240.19b–4 (Rule 19b–4).[171] This is not the case for NMS Stock ATSs. Furthermore, Form ATS–N is designed to solicit information about ATS-related activities of the broker-dealer operator and its affiliates to help

[154] *See* UBS Letter at 2.

[155] *See id.*

[156] *See* CFA Institute Letter at 3.

[157] *See* STANY Letter at 2. *See also* Luminex Letter at 1.

[158] *See* STANY Letter at 2.

[159] National securities exchanges are subject to the same public rule filing and registration requirements irrespective of the volume transacted on the exchange. While an NMS Stock ATS may not transact significant overall volume in NMS stocks, that ATS may transact a significant volume of orders in certain NMS stocks or orders for certain subscribers. Additionally, we also believe that applying the enhanced regulatory requirements only to larger NMS Stock ATSs could create an opportunity for arbitrage without appropriate benefit, in that an NMS Stock ATS may be incentivized to structure their operations to avoid being subject to enhanced requirements. We believe that the burden of complying with the enhanced regulatory requirements imposed on lower volume NMS Stock ATSs is justified by the benefits. *See infra* Section X.D.4.

[160] One commenter expresses its concern that ''small and innovative ATSs will be frustrated by the requirement that changes to their technology must be approved by the Commission prior to implementation.'' *See* STANY Letter at 2. The Commission will not ''approve'' material amendments, but instead, may declare amendments ineffective if the disclosures filed by an NMS Stock ATS on Form ATS–N are materially deficient with respect to their completeness or comprehensibility. *See infra* Section IV.B.2. In addition, we are requiring that NMS Stock ATSs publicly disclose a brief summary of a material amendment upon filing, and after the Commission has had an opportunity to review the amendment, the material amendment would be made public. This change from the Proposal is in response to commenters who believe that an ATS may be placed at a competitive disadvantage if it is required to publicly file a material change 30 calendar days before implementing the change. *See infra* Section IV.E.2.c.

[161] *See infra* Section X.D.4.

[162] *See infra* Section V.C and Section X.C.4.a.

[163] *See infra* Section X.D.4.

[164] *See supra* note 58 and accompanying text.

[165] *See infra* Section IV.B.1.a.

[166] *See, e.g.,* Anonymous Letter at 1, Citadel Letter at 1; Markit Letter at 4; STANY Letter at 3.

[167] *See* Anonymous Letter at 1; Citadel Letter at 1.

[168] *See* Markit Letter at 4; STANY Letter at 3.

[169] *See* Markit Letter at 4.

[170] *See* Proposal, *supra* note 2, at 81011.

[171] *See id.*

market participants better understand potential conflicts of interest and information leakage. In the context of national securities exchanges, we have expressed concern that the affiliation of a national securities exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage; and because the Commission reviews the rules of national securities exchanges, a process which requires, among other things, that to approve certain rule changes the Commission find that the proposed rule change is consistent with the Exchange Act, each existing national securities exchange has implemented rules that restrict affiliation between the exchange and its members to mitigate the potential for these types of conflicts of interest.[172] NMS Stock ATSs are not subject to such restrictions with respect to the activities of their broker-dealer operator and its affiliates that may raise conflicts of interests.

Another commenter states its view that requiring public disclosure of Form ATS–N will ''alter the competitive landscape . . . between NMS Stock ATSs and national securities exchanges.'' [173] We continue to believe that since the adoption of Regulation ATS, the market in execution services for NMS stocks has evolved such that trading functions of NMS Stock ATSs have become more functionally similar to those of national securities exchanges.[174] The enhanced transparency requirements for NMS Stock ATSs are designed to allow market participants to compare execution services of NMS Stock ATSs against national securities exchanges, to appropriately calibrate the level of transparency between NMS Stock ATSs and national securities exchanges, and to foster even greater competition for order flow of NMS stocks between those trading centers.[175]

One commenter asserts that the Proposal treats all ATSs as stand-alone, exchange-like price/time priority models and fails to account for distinct ATS models (*e.g.* price/capacity/size priority and interval VWAP crossing) and does not consider that an ATS may be part of a broader, integrated electronic offering available to clients choosing to access the markets through a full-service broker-dealer.[176] This commenter also states that while Regulation ATS recognizes the distinction between exchanges and ATS offerings, the regulatory structure specifically tailored for exchanges can be seen throughout much of the Proposal and proposed Form ATS–N, such as in the Proposal's focus on: Subscribers, in the way an exchange has members; a subscriber manual, in the way an exchange has a rule book; and fees, similar to an exchange fee schedule.[177]

One commenter questions why the Commission has determined that NMS Stock ATSs should be subject to ''essentially similar disclosure requirements'' as national securities exchanges without affording NMS Stock ATSs benefits such as limited immunity and market data revenue that national securities exchanges receive.[178] NMS Stock ATSs, unlike registered national securities exchanges, are registered as broker-dealers and exempt from the requirements of, among other provisions, Sections 6 and 19(b) of the Exchange Act. However, an NMS Stock ATS that desires the benefits afforded to national securities exchanges can choose to register as a national securities exchange under Section 6 of the Exchange Act [179] and be subject to the requirements of, among other provisions, Sections 6 and 19(b) of the Exchange Act. In addition, we do not agree with the commenter's view that the disclosure requirements with which NMS Stock ATSs must comply are ''essentially similar'' to the disclosure requirements imposed on national securities exchanges. For example, a national securities exchange is required to file with the Commission all rule changes establishing or changing a due, fee, or other charge assessed to members, which the Commission reviews for consistency with the Exchange Act.[180] In contrast, an NMS Stock ATS will be required to provide disclosure on the types of fees and charges of the NMS Stock ATS.[181] Further, disclosure is only one of the requirements to which national securities exchanges are subject. Notably, the rules and changes to the rules of national securities exchanges are required to be filed with the Commission and are subject to public notice and comment.[182] NMS Stock ATSs are not subject to these requirements, as well as many others, applicable to national securities exchanges.[183]

While NMS Stock ATSs and national securities exchanges are subject to different regulatory regimes, NMS Stock ATSs are trading centers that perform similar trading functions as national securities exchanges and have evolved to become more like national securities exchanges in their operations. We believe that Form ATS–N, as adopted, accommodates the differences between the regulatory requirements for national securities exchanges and those of NMS Stock ATSs while increasing public operational transparency for NMS Stock ATSs. The Commission does not agree that NMS Stock ATSs are being treated like national securities exchanges and believes that Form ATS–N is designed in a manner that allows ATSs to explain their unique business models. For example, NMS Stock ATSs will be able to explain their trading models, and associated facilities and procedures, in Part III, Item 11 of adopted Form ATS–N (''Trading, Rules and Facilities''). In addition, Part III, Item 19 (''Fees'') requires an NMS Stock ATS to identify and describe the types of fees or charges of the ATS and any differences among subscribers, whereas national securities exchanges are required to publicly post their complete fee schedules and any changes are subject to the SRO rule filing process under Section 19 of the

[172] *See* Proposal, *supra* note 2, at 81042 n. 370–372 and accompanying text. In cases where we have approved exceptions to this prohibition, there have been limitations and conditions on the activities of the national securities exchange and its affiliated member designed to address concerns about potential conflicts of interest and unfair competitive advantage. *See id.* at 81042 n.372.

[173] *See* STANY Letter at 3.

[174] *See supra* Section II.D.

[175] *See infra* Section X.C.2.a (discussing the economic benefits of the new disclosure requirements). *See also* Section X.C.4.a.i.

[176] *See* Morgan Stanley Letter at 3.

[177] *See id.* at 2–3.

[178] *See* Fidelity Letter at 4.

[179] *See* 15 U.S.C. 78f. An ATS is not required to comply with the requirements of Rule 301(b) if it is registered as an exchange under Section 6 of the Exchange Act. *See* 17 CFR 242.301(a)(1).

[180] *See* 17 CFR 240.19b–4(f)(2). Another commenter states that while Regulation ATS recognizes the distinction between national securities exchanges and ATS offerings, the regulatory structure tailored for national securities exchanges can be seen throughout much of the Proposal and proposed Form ATS–N, and included as examples the Proposal's focus on disclosures regarding subscribers, subscriber manuals, and fees, as well as the public posting upon filing of amendments to Form ATS–N. *See* Morgan Stanley Letter at 3–4. This commenter believes this approach is contrary to the objectives of Regulation ATS and urges the Commission to reconsider aspects of the Proposal that have the effect of not recognizing the materially different roles that ATSs and exchanges are intended to play in the U.S. marketplace. *See id* at 4. We agree that registered broker-dealers that operate ATSs should continue to be able to avail themselves of the exemption from the definition of ''exchange'' provided by Exchange Act Rule 3a1–1 and Regulation ATS, but believe that due to changes in the role and operation of NMS Stock ATSs since the adoption of Regulation ATS, it is in the public interest to update the requirements for that exemption applicable to that subset of ATSs. Also many of the disclosure items identified by this commenter are the kinds of disclosures other commenters have described as significant to their understanding of the operation of NMS Stock ATSs.

[181] *See infra* Section V.D.19.

[182] *See generally* 15 U.S.C. 78s(b); 17 CFR 240.19b–4.

[183] *See* 15 U.S.C. 78f(b).

Exchange Act. The Commission also understands that some broker-dealer operators offer their NMS Stock ATSs along with other execution and routing services. We believe that requests on Form ATS–N are appropriately designed, and provide narrative flexibility, to elicit information about the varying NMS Stock ATS models, including those of multi-service broker-dealers.[184]

c. Comments on Effectiveness Requirement

We proposed that to qualify for the exemption from the definition of ''exchange,'' an NMS Stock ATS's Form ATS–N must be declared effective by the Commission; as adopted, a Form ATS–N must be effective for the ATS to qualify for the exemption.[185] Several commenters express their support for requiring that Form ATS–N be subject to Commission review,[186] and some commenters support the proposed requirement that Form ATS–N be declared effective by the Commission,[187] while other commenters raise concerns about requiring that Form ATS–N be declared effective by the Commission.[188] One commenter states that the proposed effective/ineffective process is ''unnecessary'' and ''will have a chilling effect'' on, or stifle innovation of, ATS operations.[189] Another commenter similarly questions the need for the Commission to make a determination of effectiveness for Form ATS–N, and expresses concern that such a process would increase the regulatory risk for new NMS Stock ATSs and stifle innovation in the ATS marketplace by delaying the effectiveness of NMS Stock ATSs whose features, while meeting regulatory requirements, do not meet industry norms.[190]

We do not believe that requiring Form ATS–N to become effective after Commission review is ''unnecessary;'' [191] rather, the review process will facilitate the Commission's oversight of NMS Stock ATSs and help ensure that information required by the form is disclosed in a complete and comprehensible manner. We have modified the proposed effectiveness process for initial Form ATS–N so that the Commission will not declare initial Form ATS–N effective; instead, initial Form ATS–N, as amended, will become effective, unless declared ineffective, upon the earlier of: (1) The completion of review by the Commission and publication pursuant to Rule 304(b)(2), or (2) the expiration of the Commission review period, or, if applicable, the extended review period.[192] Form ATS–N will nevertheless be subject to Commission review, and, as proposed, the Commission may declare a Form ATS–N ineffective if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors.[193] We believe that requiring Form ATS–N to be effective, which would occur only after being subject to Commission review, could incentivize NMS Stock ATSs to make more detailed and informative disclosures than under current Form ATS. While requiring Form ATS–N to be effective may have some impact on innovation,[194] our review of Form ATS–N is designed to mitigate any effect on innovation, and accordingly would focus on, for example, the completeness and comprehensibility of the Form ATS–N disclosures and not include a review of the merits of the disclosures or whether such trading functionalities meet industry norms.[195] We do not believe that requiring Form ATS–N to be effective will unduly increase the ''regulatory risk'' of launching a new NMS Stock ATS as one commenter suggests.[196] We understand that the Commission review process will generate some uncertainty for NMS Stock ATSs as a Form ATS–N could be declared ineffective, which is not currently the case with respect to Form ATS.[197] The Commission review process, however, will not be merit based, and determinations of ineffectiveness will require the Commission to make certain findings after notice to the NMS Stock ATS and opportunity for hearing.[198] In addition, the rule provides that if the Commission does not declare the Form ineffective before the end of a fixed time period, the Form ATS–N will become effective. We believe that these factors will provide NMS Stock ATSs with greater regulatory certainty regarding the effectiveness process.

2. Comments on Extending Rule 304 to Non-NMS Stock ATSs

Rule 304 of Regulation ATS, as proposed and adopted, would apply only to NMS Stock ATSs, as defined in Rule 300(k) of Regulation ATS. We are concerned that, given the significance of NMS Stock ATSs in equity market structure and their operational complexities, the lack of transparency around NMS Stock ATSs operations could inhibit market participants' ability to evaluate NMS Stock ATSs as potential routing destinations for their orders in NMS stocks. As discussed in the Proposal, we did not propose to apply Rule 304 to non-NMS Stock ATSs, which would include ATSs that trade corporate or municipal fixed income securities (''Fixed Income ATSs''), U.S. Government securities (''Government Securities ATSs''),[199] or OTC Equity securities (''OTC Equity Securities ATSs'').[200] We sought comment on whether Rule 304, in whole or in part, should apply to Fixed Income ATSs, Government Securities ATSs, and OTC Equity Securities ATSs.[201] We also did not propose to apply Rule 304 to any other type of trading center besides NMS Stock ATSs,[202] such as non-ATS OTC trading centers [203] or national securities exchanges.

[184] *See, e.g., infra* Section V.D.11 (describing Part III, Item 11 of Form ATS–N, which asks NMS Stock ATSs to provide a summary of their marketplaces and the means and facilities for bringing together the orders of multiple buyers and sellers on the NMS Stock ATS).

[185] *See infra* Section IV.A.1. As adopted, the Commission will not declare initial Form ATS–N filings effective under Rule 304.

[186] *See* Citadel Letter at 3; HMA Letter at 7–8; and Investor Advocate Letter at 11–12.

[187] *See* MFA/AIMA Letter at 4; CFA Institute Letter at 4; and PDQ Letter at 2. Two commenters do not object to the effectiveness process. *See* Liquidnet Letter at 3 *and* STANY Letter at 2.

[188] *See* Luminex Letter at 1; Fidelity Letter at 8–9.

[189] *See* Luminex Letter at 1.

[190] *See* Fidelity Letter at 8–9.

[191] *See supra* note 189 and accompanying text.

[192] *See infra* Sections IV.A.3.c and IV.A.4.a.

[193] *See id.*

[194] *See infra* Section X.C.

[195] *See supra* note 190 and accompanying text. *See also infra* Section IV.A.3.d.

[196] *See supra* note 190 and accompanying text.

[197] *See infra* Section X.C.4.

[198] *See infra* Section IV.A.3.

[199] The term ''U.S. Government securities'' is defined under Section 3(a)(42) of the Exchange Act. *See* 15 U.S.C. 78c(a)(42) (defining ''government securities'' as, among other things, ''securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States'').

[200] For purposes of this discussion, we are using the term ''OTC Equity Security'' as it is defined in FINRA's 6400 rule series for quoting and trading in OTC Equity Securities. FINRA defines OTC Equity Security as ''any equity security that is not an 'NMS stock' as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term 'OTC Equity Security' shall not include any Restricted Equity Security,'' which FINRA defines as ''any equity security that meets the definition of 'restricted security' as contained in Securities Act Rule 144(a)(3).'' *See* FINRA Rules 6420(f), (k).

[201] *See* Proposal, *supra* note 1, at 81018.

[202] *See* Proposal, *supra* note 2. *See also infra* note 668 and accompanying text (discussing the term ''trading center'').

[203] For purposes of this discussion, references to non-ATS OTC trading centers, as used herein, encompass all executions that occur off a national securities exchange and outside an ATS, including when a broker-dealer is acting as an OTC market maker, block positioner (*i.e.,* any broker-dealer in the business of executing, as principal or agent,

We received several comments generally supporting operational transparency and about whether or not to apply Rule 304 to non-NMS Stock ATSs.[204] Of the commenters generally supporting enhanced operational transparency, several encourage the Commission to make the current Form ATS public for all ATSs.[205] Some commenters urge the Commission to amend Regulation ATS to apply Rule 304 to all ATSs.[206] Two commenters explicitly support applying the Proposal solely to NMS Stock ATSs.[207]

Several commenters specifically argue for extending Rule 304, including Form ATS–N, to Fixed Income ATSs.[208] Several commenters, however, recommend against extending the Proposal requirements for NMS Stock ATSs to Fixed Income ATSs.[209] Several commenters suggest that the Commission require Fixed Income ATSs to make their Forms ATS public.[210]

We also received several comments that specifically address enhancing operational transparency for, or extending Rule 304 to, Government Securities ATSs.[211] Several commenters support applying Rule 304 requirements to Government Securities ATSs,[212] while several state that Regulation ATS should be amended to include electronic platforms for U.S. Government securities.[213] Other commenters believe that the Commission should gather additional information on fixed income markets, which include U.S. Government securities markets, and as an interim step, make the Form ATS filings for these ATSs public.[214] We also received comments that specifically oppose applying the Proposal requirements to Government Securities ATSs,[215] or more generally oppose expanding Rule 304 to non-NMS Stock ATSs.[216]

We also received comments regarding enhancing operational transparency for other non-ATS OTC trading centers—namely broker-dealers that internalize order flow.[217] In general, these commenters point out the discrepancy in disclosure obligations that would result from the Proposal, or the possibility that broker-dealers would route order flow to non-ATS trading centers as a result.[218]

Given the range of commenter views on these questions and our belief that it is appropriate to take an incremental approach by first applying the amended regime to NMS Stock ATSs before considering a further step, we are not amending Rule 3a1–1(a) and Regulation ATS for non-NMS Stock ATSs. We intend to monitor the implementation and effectiveness of Rule 304 to NMS Stock ATSs, and should we decide to take further action with respect to non-NMS Stock ATSs, we would do so in a separate rulemaking and take into account our experience with Rule 304 and NMS Stock ATSs.

The Commission notes that the Fixed Income Market Structure Advisory Committee (''FIMSAC'') was formed in 2017 pursuant to the Commission's authority under the Federal Advisory Committee Act to provide the Commission with diverse perspectives on the structure and operations of the U.S. fixed income markets, as well as advice and recommendations on matters related to fixed income market structure.[219] The FIMSAC recently issued recommendations for the Commission to review the framework for the oversight of electronic trading platforms for municipal securities and corporate bonds. Specifically, the FIMSAC recommended that the Commission form, together with FINRA and the MSRB, a joint working group to review the regulatory framework for oversight of electronic trading platforms used in the municipal securities and corporate bond markets.[220] In light of recent recommendations of the FIMSAC, and comments received, we will review the regulatory framework for fixed income electronic trading platforms, including to consider whether we should propose amendments to Regulation ATS (and any other applicable rules) to account for operational and regulatory differences among electronic trading

block size trades for its customers), or operation of an internal broker-dealer system. *See* 17 CFR 242.600(b)(52) (defining ''OTC market maker'' as any dealer that holds itself out as being willing to buy and sell to its customers, or others, in the United States, an NMS stock for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size); 17 CFR 242.600(b)(9) (defining ''block size'' as an order of at least 10,000 shares or for a quantity of stock having a market value of at least $200,000); and 17 CFR 240.17a–3(a)(16)(ii)(A) (defining ''internal broker-dealer system'' as any facility, other than a national securities exchange, an exchange exempt from registration based on limited volume, or an alternative trading system as defined in Regulation ATS that provides a mechanism, automated in full or in part, for collecting, receiving, disseminating, or displaying system orders and facilitating agreement to the basic terms of a purchase or sale of a security between a customer and the sponsor, or between two customers of the sponsor, through use of the internal broker-dealer system or through the broker or dealer sponsor of such system). *See also* 2010 Equity Market Structure Release, *supra* note 13, at 3599–3600.

[204] *See* Better Markets Letter at 3, 8; CFA Institute Letter; Citadel Letter; Consumer Federation of America Letter at 6–7; Fidelity Letter at 6–7; HMA Letter at 5–6, 10, 12; ICI Letter at 11; Investor Advocate Letter at 2, 12–15; KCG Letter at 12–13; Liquidnet Letter at 3; Luminex Letter at 2, 4; MarketAxess Letter; Markit Letter at 2, 4, 9; MFA/AIMA Letter 2–4; MFA Letter 2 at 30; Morgan Stanley Letter at 5–6; PDQ Letter at 2; SIFMA Letter at 3, 5; STANY Letter at 5; T. Rowe Price Letter at 2; Virtu Letter at 2.

[205] *See* Fidelity Letter at 7; ICI Letter at 11; Luminex Letter at 2; Morgan Stanley Letter 2, 5; Investor Advocate Letter at 2–3; PDQ Letter at 2; STANY Letter at 3; SIFMA Letter at 3–4.

[206] *See* Better Markets Letter at 3, 8; CFA Institute Letter at 3–4; Consumer Federation of America Letter at 6–7; HMA Letter 5–6, 10, 12.

[207] *See* ICI Letter at 11; Liquidnet Letter at 3.

[208] *See* Consumer Federation of America Letter at 6; Better Markets Letter at 8; CFA Institute Letter at 3–4; HMA Letter at 10; MFA/AIMA Letter at 2–3.

[209] *See* Fidelity Letter at 6–7; KCG Letter at 12–13; Liquidnet Letter at 3; MarketAxess Letter at 3–4 ; Markit Letter at 9; SIFMA Letter at 3.

[210] *See* Fidelity Letter at 6; SIFMA Letter at 34–35; Markit Letter at 9; Investor Advocate Letter at 12–16; ICI Letter at 11. *See also* Luminex Letter at 4.

[211] *See* Better Markets Letter at 8; CFA Institute Letter at 3–4; Citadel Letter at 4–5; Investor Advocate Letter at 16–17; KCG Letter; Liquidnet Letter at 3; MFA/AIMA Letter at 2–7; SIFMA Letter at 3, 5, 35–36; Virtu Letter at 2.

[212] Some commenters specifically support operational transparency and enhanced monitoring of trading activity for Government Securities ATSs. *See* Virtu Letter at 2; Better Markets Letter at 8; CFA Institute Letter at 3–4; Citadel Letter at 4–5; MFA/AIMA Letter at 2–7. *See also* Liquidnet Letter at 3 (stating that it does ''not object'' to the requirements of Regulation ATS applying to systems that cross trades in U.S. Government securities).

[213] *See* Citadel Letter at 4–5; Liquidnet Letter at 3; Investor Advocate Letter at 16–19; Virtu Letter at 2. One commenter combined its support for transparency of ATSs that trade U.S. Government securities and Fixed Income ATSs. *See* MFA/AIMA Letter at 3–4

[214] *See* SIFMA Letter at 34–35; Markit Letter at 9; Investor Advocate Letter, at 14. *See also* Fidelity Letter at 6.

[215] *See* KCG Letter at 13; SIFMA Letter at 3, 5, 36.

[216] *See supra* note 209 accompanying text.

[217] *See* ICI Letter at 12; Morgan Stanley Letter at 2–3.

[218] *See id. See also* Fidelity Letter at 11–12. Another commenter recommends that the Commission be required to conduct a review within a designated time-period to assess the effectiveness of the new rules and determine if any refinements should be proposed. *See* T. Rowe Price Letter at 3. In addition, one commenter suggests that regulators periodically monitor the development of the market and technological developments, and take appropriate action as needed. *See* Barnard Letter at 3. In addition to the Commission's ongoing oversight responsibilities under the Exchange Act, Rule 304 provides a process for the Commission to review disclosures filed on Form ATS–N, either through an initial Form ATS–N, Form ATS–N amendment, or cessation of operations.

[219] *See* 5 U.S.C.—App; Securities Exchange Act Release No. 81958 (October 26, 2017), 82 FR 50460 (October 31, 2017) (Notice of Federal Advisory Committee Establishment).

[220] *See* Recommendation for the SEC to Review the Framework for the Oversight of Electronic Trading Platforms for Corporate and Municipal Bonds (July 16, 2018) available on the Commission's website at *https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-electronic-trading-platforms-recommendation.pdf.*

platforms for municipal securities and corporate bonds.

B. Amendments to Existing Regulation ATS Rules for NMS Stock ATSs

To operate pursuant to the Exchange Act Rule 3a1–1a(2) exemption, NMS Stock ATSs will be required to comply with new Rule 304, in addition to the applicable existing Rules 300 through 303 of Regulation ATS. In light of the new requirements of Rule 304, we are adopting, with modifications discussed below, amendments to several existing rules of Regulation ATS.

1. Rule 300(k): Definition of NMS Stock ATS

Proposed Rule 300(k) of Regulation ATS defined ''NMS Stock ATS'' in new paragraph (k) as ''an alternative trading system, as defined in § 242.300(a), that facilitates transactions in NMS stocks, as defined in § 242.300(g).'' We received no comments on the proposed definition of NMS Stock ATS and are adopting Rule 300(k) with modifications. We are replacing ''facilitates transactions in'' with ''trades.'' The term ''trades'' is well understood in the context Regulation ATS [221] and the term ''facilitates'' is not used in the definition of an ATS. This change is non-substantive and will clarify the rule text.[222] Accordingly, Rule 300(k), as adopted, defines an ''NMS Stock ATS'' as ''an alternative trading system, as defined in paragraph (a) of [Rule 300], that trades NMS stocks, as defined in paragraph (g) of [Rule 300].''

2. Rule 301(a): Exemption From Compliance With Regulation ATS

We made explicit in proposed Rule 304(a) that NMS Stock ATSs must comply with Rules 300 through 304, unless not required to comply with Regulation ATS pursuant to Rule 301(a). Pursuant to Rule 301(a), certain ATSs that are subject to other appropriate regulations are not required to comply with Regulation ATS.[223] To the extent that an NMS Stock ATS meets the criteria of the Rule 301(a) exemption, such ATS would not be required to comply with Rules 300 through 304 of Regulation ATS. We received no comments on the application of Rule 301(a) to NMS Stock ATSs and are adopting as proposed this language in Rule 304(a) to make clear that Rules 300 through 303 of Regulation ATS, including Rule 301(a) continue to apply to NMS Stock ATSs, unless otherwise provided by Rule 301(a).

3. Rule 301(a)(5): Exemptions From Certain Requirements of Regulation ATS Pursuant to Application to the Commission

Rule 301(a)(5) of Regulation provides that an ATS shall comply with the requirements of Rule 301(b) unless such ATS is exempted, conditionally or unconditionally, by Commission order after application by such ATS, from one or more of the requirements of Rule 301(b), and that the Commission will grant such exemption only after determining that such an order is consistent with the public interest, the protection of investors, and the removal of impediments to, and perfection of, a national market system.[224]

When adopting Rule 301(a)(5), we stated that while the requirements of Regulation ATS are appropriate for all ATSs, a system may develop in the future for which these requirements may not be appropriate. The Commission expected to issue such an order only under unusual circumstances, and only after making the applicable determination.[225] The requirements of Rule 304 were not part of Regulation ATS at the time the Commission adopted Rule 301(a)(5). We believe that, given the amendments to Regulation ATS that will require NMS Stock ATSs to comply with the filing requirements of Rule 304, including filing Form ATS–N, instead of the Form ATS filing requirements of Rules 301(b)(2)(i)–(vii), it may be appropriate under certain limited, unusual facts and circumstances for the Commission to exempt an NMS Stock ATS, conditionally or unconditionally, by Commission order, from one or more requirements of Rule 304. As such, we are amending Rule 301(a)(5) to include exemptions from the requirements of Rule 304.[226]

In response to the Proposal, we received one comment regarding possible use of the Commission Section 36 exemptive authority in connection with the requirements of Rule 304.[227] This commenter states that instead of modifying the requirements under the Proposal in such a way that could result in less relevant information being provided to the Commission and to the public, certain concerns of other commenters could be addressed through use of the Commission's Section 36 exemptive authority. Specifically, this commenter observes that an NMS Stock ATS could seek relief tailored to its unique facts and circumstances pursuant to Section 36(a)(1) of the Exchange Act, and that Section 36(a)(1) permits the Commission to grant both conditional and unconditional exemptions from any provisions of a rule, to the extent necessary or appropriate in the public interest and consistent with the protection of investors.[228] This commenter also states that using Section 36 exemptive authority would be consistent with the manner in which the Commission generally treats requests it receives from regulated entities, and encourages the Commission to consider providing guidance as to what factors it might consider when evaluating a request for specific exemptive relief.[229] We believe that amendments made to Rule 301(a)(5) make clear that the Commission could

[221] We believe that the concept of NMS Stock ATSs ''trading'' or ''transacting'' in NMS stocks, should be familiar to existing NMS Stock ATSs as Form ATS requires disclosure regarding, among other things ''the types of securities the [ATS] trades'' and ''the name of any entity, other than the [ATS] that will be involved in the operation of the [ATS], including the execution, trading, clearing, and settling of transactions on behalf of the [ATS].'' *See* Form ATS. Additionally, Form ATS requires disclosure regarding ''[t]he procedures governing execution, reporting, clearance and settlement of transactions effected through the [ATS]''; and Form ATS–R requires NMS Stock ATSs to ''[p]rovide the total unit and dollar volume of transactions'' in specified securities categories. *See* Form ATS and Form ATS–R.

[222] As proposed, an NMS Stock ATS would include any ATS that effects transactions in securities that are listed on a national securities exchange (other than options, debt or convertible debt). *See* Proposal, *supra* note 2, at 81015–81016.

[223] ATSs that are not subject to Rule 301(a) include those that are: Registered as an exchange under Section 6 of the Exchange Act; exempt from national securities exchange registration based on limited volume; operated by a national securities association; registered as a broker-dealer, under Sections 15(b) or 15C of the Exchange Act, or that are banks, and that limit their securities activities to certain instruments; or exempted, conditionally or unconditionally, by Commission order, after application by such ATS from one or more of the requirements of Rule 301(b). *See* 17 CFR 242.301(a). *See also* Regulation ATS Adopting Release, *supra* note 3, at 70859–63.

[224] *See* 17 CFR 242.301(a)(5).

[225] Regulation ATS Adopting Release, *supra* note 3, at 70863.

[226] The Commission continues to also have general exemptive authority pursuant to Section 36(a) of the Exchange Act to grant both conditional and unconditional exemptions from any provisions or provisions of the Exchange Act, or any rule or regulation thereunder (including Rule 304 and any other provision of Rule 3a1–1 and Regulation ATS), to the extent necessary or appropriate in the public interest and consistent with the protection of investors. *See* 15 U.S.C. 78mm(a).

[227] *See* Investor Advocate Letter at 8.

[228] *See id. See also infra* notes 723–725 and accompanying text (discussing this comment in the specific context of disclosures regarding affiliates of the broker-dealer operator).

[229] *See* Investor Advocate Letter at 9. For example, in the context of any exemptions from the requirements applicable to disclosures regarding affiliates of the broker-dealer operator of an NMS Stock ATS, the commenter encouraged the Commission to consider providing guidance as to what facts and circumstances it might consider when evaluating a broker-dealer operator's request for exemptive relief. *See id. See also infra* notes 723–725 and accompanying text.

exempt an NMS Stock ATS, conditionally or unconditionally, by order, after application by the ATS from one or more of the requirements of Rule 304 of Regulation ATS provided that the Commission determines that such an exemption is consistent with the public interest, the protection of investors, and removal of impediments to, and perfection of the mechanisms of, a national market system.

We also received other comments regarding specific exceptions from the proposed requirements of Rule 304. Specifically, three commenters suggest providing an exception to the 30-calendar day advance notice requirement for material changes in case of exigent circumstances.[230] One commenter states that unless the Commission narrows the materiality standard for material amendments, the 30-calendar day advance notice requirement could affect an ATS operator's ability to take ''decisive action.'' [231] This commenter further believes that NMS Stock ATS operators often must take decisive action without time for a lengthy review and approval process, given that the speed of response to technical or operational issues (including cybersecurity) often is measured in seconds. This commenter believes there should be a carve-out for exigent circumstances when an NMS Stock ATS must act swiftly.[232] Another commenter states that there could be situations in which it would be difficult for an NMS Stock ATS to meet the 30-calendar day advance notice requirement based on ongoing business changes, and that the Commission should clarify that certain Form ATS–N disclosures may be subject to immediate change without notice.[233] Another commenter states that the Commission should allow for more rapid action (than the 30-day advance notice requirement) in the event of an ''external emergency,'' such as an extreme market event, but that such circumstances should be rare and only granted upon express approval of the Commission, upon a finding that such action is necessary to protect investors and promote fair and efficient markets.[234]

We believe that there may be unusual circumstances under which an NMS Stock ATS may need to seek an exemption from the requirements of Rule 304 or the disclosure requirements of Form ATS–N. For example, under exceptionally rare occasions, an NMS Stock ATS may need to make a material change to its operations on an expedited basis to prevent substantial harm to market participants, such as in response to a significant operational or market-wide event. The amendments to Rule 301(a)(5) are designed to address these concerns.[235] Applications for relief from a requirement of Rule 304 generally should explain why the applicant believes the relief sought is consistent with the public interest, the protection of investors, and the removal and impediments to, and perfection of the mechanism of, a national market system.[236]

As noted by commenters, circumstances may necessitate the implementation of a material change to the operations of an NMS Stock ATS on an expedited basis. We believe that, based on particular facts and circumstances, it may be appropriate to grant such an exemption from the 30-day advance notice requirement of Rule 304(a)(2)(i)(A), for example, in the event of extraordinary, unforeseen circumstances, and if delaying implementation pursuant to the 30-calendar day advance notice requirement would cause substantial harm to subscribers or other markets trading NMS stocks. By comparison, to the extent that an NMS Stock ATS may need to change its operations in response to an operational problem, as suggested by one commenter, an NMS Stock ATS could proactively develop and disclose in the relevant Form ATS–N Item alternative procedures that the ATS would apply if the ATS experiences a systems problem that causes it to be unable to perform a particular function. For example, an NMS Stock ATS that routes orders and trading interest resting in the ATS to destinations outside the ATS could state, for example, that the NMS Stock ATS will either execute or cancel orders and trading interest submitted to the ATS if the ATS is unable to route orders and trading interest away from the ATS due to a systems problem.

4. Rule 301(b)(2): Form ATS Reporting Requirements No Longer Apply to NMS Stock ATSs

We proposed in Rule 304 to except NMS Stock ATSs from complying with Rule 301(b)(2) of Regulation ATS. Existing Rule 301(b)(2) requires an ATS to file with the Commission a Form ATS initial operation report, amendments to the Form ATS initial operation report, and cessation of operations reports on Form ATS, all of which are ''deemed confidential when filed.'' [237] We proposed this exception to make clear that NMS Stock ATSs would not be required to comply with the Form ATS reporting requirements provided in Rule 301(b)(2) because the NMS Stock ATS would file a Form ATS–N pursuant to Rule 304. We also proposed Rule 301(b)(2)(viii) to make clear that NMS Stock ATSs must file with the Commission the reports and amendments required by Rule 304 and that NMS Stock ATSs were not subject to Rule 301(b)(2) of Regulation ATS. We also proposed that ATSs that effect transactions in both NMS stocks and non-NMS stocks would be subject to the requirements of proposed Rule 304, with respect to NMS stocks, and Rule 301(b)(2), with respect to non-NMS stocks.

We received one comment regarding proposed Rule 301(b)(2)(viii).[238] The commenter states that requiring an ATS that transacts in both NMS stocks and non-NMS Stocks to file reports on Form ATS–N with respect to NMS stocks but also file reports on Form ATS with respect to non-NMS stocks could be unduly burdensome.[239] The commenter states that an ATS should have the option to file reports on Form ATS–N

[230] *See* HMA Letter at 10; SIFMA Letter at 31; KCG Letter at 10.

[231] *See* SIFMA Letter at 31.

[232] *See id.*

[233] *See* KCG Letter at 10. The commenter states that, for example, if a broker-dealer operator provides a disclosure that it routes orders to the ATS from its algorithmic business, and the data center from which the algorithmic business operates subsequently experiences systems issues that force it to stop routing orders to the ATS, the disclosure would no longer be accurate and the broker-dealer operator would not be in position to provide 30-calendar day advance notice of the change.

[234] *See* HMA Letter at 10.

[235] As amended, Rule 301(a)(5) will apply to ATSs that have received exemptive relief from one or more requirements of Rule 304. *See* Rule 301(a)(5).

[236] Applications for exemptive relief from the 30-calendar day advance notice requirement of Rule 304(a)(2)(i)(A) generally should, for example, contain a description of the circumstances that necessitate the implementation of the material change on an expedited basis, and why, in the view of the NMS Stock ATS, expedited implementation is necessary or appropriate in the public interest, and consistent with the protection of investors, such as why the expedited implementation is necessary to prevent substantial harm to investors. The Commission will not consider hypothetical or anonymous requests for exemptive relief.

[237] *See* Rule 301(b)(2)(vii).

[238] *See* Liquidnet Letter at 3. We received two comments regarding the application of Rule 301(b)(2)(i) through (vii) to Legacy NMS Stock ATSs that have filed a Form ATS–N that has not yet become effective. *See* Liquidnet Letter at 3; BIDS Letter at 2–3. We are adopting a transitional rule that will not require a Legacy NMS Stock ATS to amend its Form ATS under Rule 301(b)(2) if it has filed a Form ATS–N with the Commission that has not yet become effective. We are instead requiring such Legacy NMS Stock ATS to file amendments on Form ATS–N pursuant to the requirements of Rule 304(a)(2)(i)(A) through (C). Rule 304(a)(1)(v)(C) is discussed below in greater detail. *See infra* Section IV.A.4.c.

[239] *See* Liquidnet Letter at 3.

for all U.S. equities that it trades, whether listed or unlisted because an ATS operator would otherwise have the burden of maintaining two separate ATS filings for what the commenter believes is essentially the same functionality.[240]

We do not believe that requiring an ATS that trades both NMS stocks and non-NMS stocks to file reports on Form ATS–N with respect to NMS stocks, but also file reports on Form ATS with respect to non-NMS stocks, will be unduly burdensome. We recognize the additional burdens for NMS Stock ATSs resulting from the requirement to file disclosures on new Form ATS–N; however, we estimate that the burden for these ATSs to maintain their Forms ATS will decrease, because they will no longer be required to disclose information about their NMS stock operations on Form ATS.[241] We also believe that allowing a broker-dealer operator to choose to disclose information on Form ATS–N about trading in non-NMS stocks, as suggested by the commenter,[242] would likely result in incomplete disclosures about the ATS's non-NMS stock operations that may be confusing or not useful to market participants. Form ATS–N was specifically designed to solicit information about trading in NMS stocks on an ATS to allow market participants to understand the ATS's NMS stock operations and readily compare the ATS against other ATSs and national securities exchanges that trade NMS stocks.[243] While many of the requests on Form ATS–N could apply to Fixed Income ATSs or Government Securities ATSs, the requests are not fully tailored to solicit information about trading in those types of securities and the systems that trade them. For example, transactions in NMS stocks are, in some cases, subject to different federal securities laws and Commission rules than transactions in other securities, such as fixed income securities.[244] Because Form ATS–N is specifically designed for NMS Stock ATSs, subscribers relying on Form ATS–N disclosures to assess a non-NMS Stock ATS, such as one that trades fixed income securities, as a potential trading venue may not receive a complete or comprehensible understanding of the ATS's fixed income operations, or fixed income activities of the broker-dealer operator and its affiliates as such activities relate to the ATS, because Form ATS–N does not solicit such information. We believe that allowing NMS Stock ATSs to choose whether to integrate information about trading in non-NMS stocks on a Form ATS–N could make the disclosures confusing for users and make it difficult for them to compare the operations of an NMS Stock ATS against other NMS Stock ATSs.

Because we are adopting rules that require NMS Stock ATSs to file Form ATS–N pursuant to Rule 304, we are adopting Rule 304(a) with modifications to provide that an NMS Stock ATS would specifically be excepted from compliance with Rules 301(b)(2)(i) through (vii) of Regulation ATS, which govern the filing of Form ATS.[245] An NMS Stock ATS that is operating pursuant to an initial operation report on Form ATS as of January 7, 2019 (''Legacy NMS Stock ATS'') will be required to file a Form ATS–N no earlier than January 7, 2019 and no later than February 8, 2019.[246]

We are also adopting Rule 301(b)(2)(viii) to provide for how Legacy NMS Stock ATSs transition from filing a Form ATS to filing a Form ATS–N. We are defining the term ''Legacy NMS Stock ATS'' to mean an NMS Stock ATS that is operating pursuant to an initial operation report on Form ATS as of January 7, 2019. We are also replacing proposed language that stated that an NMS Stock ATS would not be subject to the requirements of Rule 301(b)(2) with language stating that a Legacy NMS Stock ATS shall be subject to the Form ATS filing requirements of Rule 301(b)(2)(i) through (vii) until the Legacy NMS Stock ATS files an initial Form ATS–N with the Commission pursuant to Rule 304(a)(1)(iv)(A), and that thereafter, the Legacy NMS Stock ATS shall file reports[247] pursuant to Rule 304(a)(1)(iv)(A). We intended in the Proposal to except a Legacy NMS Stock ATS from compliance with Rule 301(b)(2)(i) through (vii) after it filed Form ATS–N, but also intended that a Legacy NMS Stock ATSs be subject to Rule 301(b)(2)(viii), which requires NMS Stock ATSs to file reports required by Rule 304.[248] We believe that this modification will make clear that, until a Legacy NMS Stock ATS files its Form ATS–N with the Commission, the Legacy NMS Stock ATS must amend Form ATS in compliance with Rule 301(b)(2) of Regulation ATS.

We are also including language in Rule 301(b)(2)(viii) stating that as of January 7, 2019, an entity seeking to operate as an NMS Stock ATS shall not be subject to the ATS filing requirements of Rule 301(b)(2)(i) through (vii) and shall file reports pursuant to Rule 304.[249] Rule 301(b)(2)(viii) describes the reporting obligations of Legacy NMS Stock ATSs, and we believe that this additional language will make clear that NMS Stock ATSs must file an initial Form ATS–N, and that they do not need to comply with Rule 301(b)(2)(i) through (vii) and therefore should not file Form ATS.[250]

We recognize that an entity may wish to start operating as an NMS Stock ATS between the time the final rule is adopted and January 7, 2019. During that time, an entity must file an initial operation report on Form ATS and comply with Rule 301(b)(2); after January 7, 2019, the ATS, which would operate as a Legacy NMS Stock ATS, must file an initial Form ATS–N between January 7, 2019 and February 8, 2019 pursuant to Rule 304(a)(1)(iv)(A).[251] As of January 7, 2019, an entity that seeks to operate as an NMS Stock ATS must comply with Rule 304 (and not with Rules 301(b)(2)(i) through (vii)) and file an initial Form ATS–N with the Commission.

We are adopting, with a non-substantive modification, the proposed Rule 301(b)(2)(viii) requirement that an ATS that effects transactions in both NMS stocks and non-NMS stocks be subject to the requirements of new Rule 304 with respect to NMS stocks and

[240] *See id.*

[241] An ATS that trades both NMS stocks and non-NMS stocks will be required to amend its Form ATS, after the ATS files Form ATS–N, by removing information that pertains solely to the ATS's NMS stock operations. Amending Form ATS in this manner should help ensure that the Form ATS accurately describes the ATS's non-NMS stock operations.

[242] *See* Liquidnet Letter at 3.

[243] *See supra* Section III.A.

[244] For example, Rule 611 of Regulation NMS, which requires a trading center to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center, subject to certain exceptions, applies only to protected quotations in NMS stocks, and not to non-NMS stocks. *See* 17 CFR 242.611.

[245] *See supra* Section III.A.

[246] *See infra* Section IV.A.4.

[247] To reduce redundancy, we are revising the proposed rule text to state that the Legacy NMS Stock ATS must file ''reports'' (rather than ''the reports and amendments'') required by Rule 304. Rule 304(b)(1) provides that every Form ATS–N, which will include every amendment filed on Form ATS–N, shall constitute a ''report'' within the meaning of sections 11A, 17(a), 18(a), and 32(a) (15 U.S.C. 78k–1, 78q(a), 78r(a), and 78ff(a)), and any other applicable provisions of the Exchange Act.

[248] *See* Proposal, *supra* note 2, at 81022–24, 81027–31. Without this modification, Rule 301(b)(2)(viii) could be interpreted, contrary to the Commission's intention, to except an NMS Stock ATS from compliance with all of Rule 301(b)(2), including Rule 301(b)(2)(viii) itself.

[249] EDGAR will be ready to accept Form ATS–N filings on January 7, 2019, and we have conformed Rule 301(b)(2)(iii) to be consistent with the EDGAR ability to accept Form ATS–N filings.

[250] *See infra* Section IV.A.1 (discussing the filing requirements for new NMS Stock ATSs).

[251] *See infra* Section IV.A.4.a.

Rule 301(b)(2) with respect to non-NMS stocks. We are modifying the requirement to replace ''effects transactions in'' with ''trades.'' As adopted, Rule 301(b)(2)(viii) requires that an ATS that trades both NMS stocks and non-NMS stocks be subject to the requirements of new Rule 304 with respect to NMS stocks and Rule 301(b)(2) with respect to non-NMS stocks.[252] By adopting Rule 304 and Form ATS–N, we believe it has addressed concerns raised by NMS Stock ATSs, as discussed above and in the Proposal, but that applying Rule 304 to the non-NMS Stock ATS operations of ATSs that trade both NMS stocks and non-NMS stocks would impose unequal regulatory burdens across ATSs that transact in non-NMS stocks. Finally, we are adopting as proposed non-substantive amendments to Rule 301(b)(2)(i) and Rule 301(b)(2)(vii) to delete outdated references to dates for phased-in compliance with Regulation ATS for ATSs that were operational as of April 21, 1999, and to update the name of the Division of Trading and Markets, respectively.[253]

5. Rule 301(b)(9): Form ATS–R Quarterly Reports

We also proposed to amend Rule 301(b)(9) of Regulation ATS,[254] which provides that an ATS shall report transaction volume on Form ATS–R on a quarterly basis and within 10 calendar days after it ceases operation,[255] to require an ATS that trades both NMS stocks and non-NMS stocks to separately report its transactions in NMS stocks on one Form ATS–R, and its transactions in non-NMS stocks on another Form ATS–R.[256]

We received two comments regarding Form ATS–R. One commenter states that in light of information on FINRA's website regarding ATSs,[257] and the detailed disclosures in periodic disclosures required by Form ATS–N, the Commission should no longer require an NMS Stock ATS to file Form ATS–R.[258] We are not amending Regulation ATS at this time to remove the requirement for NMS Stock ATSs to file Form ATS–R. Notwithstanding the disclosure on FINRA's website of certain volume information for ATSs that trade NMS stocks, we continue to believe that the form helps the Commission oversee and monitor the trading activity of NMS Stock ATSs, because Form ATS–R provides the Commission with information that is unavailable on the FINRA website.[259] Another commenter states that to alleviate burdens on ATSs and promote more meaningful comparisons across firms and venues, the Commission should significantly revise reporting obligations on Form ATS–R.[260] The commenter does not specify how Form ATS–R should be revised; however, we believe that the role Form ATS–R plays in helping the Commission to oversee and monitor the trading activities of NMS Stock ATSs justifies the burden on NMS Stock ATSs to file Form ATS–R.[261]

6. Rule 303: Recordkeeping Requirements for Form ATS–N

We proposed amending Rules 303(a)(1) and 303(a)(2) of Regulation ATS to reflect the proposed amendments to Rule 301(b)(2)[262] and the addition of Rule 304.[263] In addition, the proposed rules would make minor technical amendments to Rule 303. We received no comments on the proposed amendments to Rule 303 and are adopting these requirements as proposed.

Unless not required to comply with Regulation ATS pursuant to Rule 301(a)[264] of Regulation ATS, an ATS must comply with the recordkeeping requirements of Regulation ATS.[265] Specifically, Rule 301(b)(8)[266] requires an ATS to make and keep current the records specified in Rule 302[267] and to preserve the records specified in Rule 303.[268] Before the adoption of the amendments to Rule 303, Rule 303(a)(1) required an ATS to preserve certain records for at least three years, the first two years in an easily accessible place.[269] Specifically, Rule 303(a)(1)[270] required an ATS to preserve: (1) All records required to be made pursuant to Rule 302; (2) all notices provided to subscribers, including notices addressing hours of operations, system malfunctions, changes to system procedures, maintenance of hardware and software, and instructions pertaining to access to and denials of, or limitations on, access to the ATS; (3) documents made or received in the course of complying with the system capacity, integrity, and security standards in Rule 301(b)(6), if applicable;[271] and (4) if the ATS is subject to the fair access requirements under Rule 301(b)(5),[272] a record of its access standards. Rule 303(a)(2)[273] requires that certain other records must be kept for the life of the ATS and any successor enterprise, including partnership articles or articles of incorporation (as applicable), and copies of reports filed pursuant to Rule 301(b)(2),[274] which includes current Form ATS, and records made pursuant to Rule 301(b)(5).[275] In particular, reports required to be maintained for the life of the ATS, or any successor enterprise, include initial operation reports, amendments, and cessation of operations reports, filed on Form ATS.[276]

We are amending the record preservation requirements of Rule 303 to incorporate the preservation of records that would be created pursuant to the requirements that NMS Stock ATSs file initial Form ATS–N, Form ATS–N amendments, and notices of cessation on Form ATS–N, instead of Form ATS. Specifically, we are amending Rule 303(a)(2)(ii) to require that an ATS shall preserve, for the life of the enterprise and of any successor enterprise, copies of reports filed pursuant to Rule 301(b)(2) or—in the case of an NMS Stock ATS—Rule 304, and records made pursuant to Rule 301(b)(5).[277] As a result, because an NMS Stock ATS will be required to file initial Form ATS–N, Form ATS–N amendments, and notices of cessation on Form ATS–N pursuant to Rule 304,

[252] This modification is being made for clarity and consistency with the Rule 300(k) definition of NMS Stock ATS. *See supra* Section III.B.1.

[253] *See* 17 CFR 242.301(b)(2)(i) and (vii), respectively.

[254] *See* 17 CFR 242.301(b)(9).

[255] *See* Regulation ATS Adopting Release, *supra* note 3, at 70878. The information filed on Form ATS–R permits the Commission to monitor trading on an ATS.

[256] We did not propose any other changes to Rule 301(b)(9). Form ATS–R would continue to be deemed confidential.

[257] *See supra* note 15.

[258] *See* SIFMA Letter at 8 n.16.

[259] Form ATS–R requires ATSs to provide, among other things, trading volumes, a list of all subscribers that were participants of the ATS, and a list of all securities traded. The information on Form ATS–R permits the Commission to monitor ATSs for compliance with the fair access requirements of Rule 301(b)(5), as ATSs subject to those requirements must report quarterly on Form ATS–R the persons to whom they grant, deny, or limit access to the ATS, as well as the date of the action, the effective date of the action, and the nature of the denials of limitations of access. *See* Form ATS–R; *see also* Regulation ATS Adopting Release, *supra* note 3, at 70878.

[260] *See* HMA Letter at 11 n.64.

[261] *See supra* Section X.D.6.

[262] *See supra* Section III.B.4.

[263] *See infra* Section IV.

[264] 17 CFR 242.301(a).

[265] *See* Proposal, *supra* note 2, at 81087.

[266] *See* 17 CFR 242.301(b)(8).

[267] *See* 17 CFR 242.302.

[268] *See* 17 CFR 242.303.

[269] *See* 17 CFR 242.303(a)(1).

[270] *See id.*

[271] *See supra* notes 77–81 and accompanying text.

[272] *See supra* notes 72–75 and accompanying text.

[273] *See* 17 CFR 242.303(a)(2).

[274] *See* 17 CFR 242.301(b)(2).

[275] *See supra* notes 72–75 and accompanying text.

[276] *See* 17 CFR 242.301(b)(2).

[277] *See* 17 CFR 242.303(a)(2)(ii).

instead of on Form ATS pursuant to Rule 301(b)(2), the NMS Stock ATS must preserve those reports for the life of the enterprise and of any successor enterprise pursuant to Rule 303(a)(2) as amended.[278] We are not amending the recordkeeping requirements of Rule 302, or any other amendments to the record preservation requirements of Rule 303(a)(2).

We are also adopting a minor technical amendment to Rule 303(a). Currently, Rule 303(a) references ''paragraph (b)(9) of § 242.301'' when setting forth the record preservation requirements for ATSs; this reference is incorrect, as Rule 301(b)(9) describes the filing requirements, rather than the recordkeeping requirements, for ATSs. We are therefore adopting a change to correct the above reference to ''paragraph (b)(8) of § 242.301.'' In addition, we are adopting an amendment to Rule 303(a)(1) to incorporate amendments to Rule 301(b)(10).[279]

7. Comments Recommending Changes to Other Existing Regulation ATS Rules

In the Proposal, we requested comment on other potential changes to Regulation ATS rules, including the order display and execution access requirement in Rule 301(b)(3) and the fair access requirement in Rule 301(b)(5).[280] We received two comments recommending changes to Rule 301(b)(3) of Regulation ATS.[281] One commenter urges the Commission to consider lowering or eliminating the threshold for the order display requirement.[282] Another commenter states that lowering the threshold for the order display requirement would result in reduced choice and higher trading costs for long-term investors, and urges the Commission to provide a block exemption from the order display requirement.[283]

In addition, the Commission received two comments recommending changes to the fair access requirements in Rule 301(b)(5).[284] One commenter urges the Commission to eliminate the 5% trading volume fair access threshold, in light of the importance of NMS Stock ATSs to equity markets today.[285] Another commenter states that rather than lowering the trading volume threshold that triggers the fair access requirement of Rule 301(b)(5), the Commission should exclude block executions from counting towards the fair access threshold.[286] In addition, one commenter believes that, in connection with Rule 301(b)(3) of Regulation ATS (order display and execution access), it is not appropriate to include actionable indications of interest in the definitions of ''bid'' and ''offer'' under Regulation NMS.[287] Another commenter states that actionable indications of interest should be treated as quotes and should be transparent to the public.[288]

We are not adopting changes to the order display and execution requirement or the fair access requirement at this time. We believe that it is appropriate to take an incremental approach by first applying the amended regime to NMS Stock ATSs before considering a further step and we intend to monitor the effectiveness of Rule 301(b)(3) and Rule 301(b)(5) requirements. Should the Commission decide to take further action with regard to these requirements, such as proposing to amend Regulation ATS, the Commission would do so in a separate rulemaking and take into account its experience with Rule 304 and NMS Stock ATSs.

IV. Form ATS–N Filing Process; Effectiveness Review

A. Initial Form ATS–N

1. Rule 304(a)(1)(i): Filing and Effectiveness Requirement

Rule 304(a)(1)(i) requires that an NMS Stock ATS operate pursuant to an effective initial Form ATS–N to be exempt from the definition of ''exchange.'' Proposed Rule 304(a)(1)(i) (''Filing'') provided that no exemption from the definition of ''exchange'' is available to an NMS Stock ATS pursuant to § 240.3a1–1(a)(2) unless the NMS Stock ATS files with the Commission a Form ATS–N, in accordance with the Instructions therein, and the Commission declares the Form ATS–N effective. Proposed Rule 304(a)(1)(i) also included transitional provisions for Legacy NMS Stock ATSs to file Form ATS–N and operate under Rule 304. These provided that if an NMS Stock ATS is operating pursuant to a previously-filed initial operation report on Form ATS as of the effective date of the final rule, such NMS Stock ATS shall file with the Commission a Form ATS–N, in accordance with the Instructions therein, no later than 120 calendar days after the effective date of the final rule. Further, proposed Rule 304(a)(1)(i) would have provided that an NMS Stock ATS operating as of the effective date of the final rule may continue to operate pursuant to a previously-filed initial operation report on Form ATS pending the Commission's review of the filed Form ATS–N. We are adopting Rule 304(a)(1)(i) (''Filing and Effectiveness Requirement'') with modifications and relocating the provisions applicable to Legacy NMS Stock ATSs to another provision within Rule 304(a)(1). Rule 304(a)(1)(i) sets forth two principal conditions of the Exchange Act Rule 3a1–1(a)(2) exemption for NMS Stock ATSs: (1) The NMS Stock ATS must file an initial Form ATS–N, and (2) the initial Form ATS–N must be effective.[289]

We are relocating the provisions of proposed Rule 304(a)(1)(i) regarding the filing of Form ATS–N by Legacy NMS Stock ATSs during the Commission review period to Rule 304(a)(1)(iv) to better organize the rule text, particularly in light of other changes we are making to the proposed rule in response to comments. In addition, we are making other, non-substantive modifications that we believe will not impact NMS Stock ATSs and will result in a more readable rule text for the public.[290]

We are also changing Rule 304(a)(1)(i) to state that the exemption for NMS Stock ATSs will not be available unless ''the initial Form ATS–N is effective

[278] NMS Stock ATSs that had previously made filings on Form ATS must preserve those filings for the life of the enterprise, as well as filings made going forward on Form ATS–N. *See id.* We believe that the amendments to Rule 303 are necessary to create a meaningful audit trail of an ATS's current and previous written safeguards and procedures pursuant to Rule 301(b)(2) and permit surveillance and examination staff to help ensure fair and orderly markets without imposing any undue burden on ATSs.

[279] *See infra* Section VI.

[280] *See* Proposal, *supra* note 2, at 81058, 81083.

[281] *See* Citadel Letter at 3; Liquidnet Letter at 14–15; *see also supra* Section II.C (discussing the order display and execution access requirements under Rule 301(b)(3) of Regulation ATS).

[282] *See* Citadel Letter at 3.

[283] The commenter believes that the threshold for the order display requirement may prevent it from offering functionalities that may provide market participants flexibility in how they display block orders. *See* Liquidnet Letter at 14–15.

[284] *See* Citadel Letter at 2–3; Liquidnet Letter at 9–12; *see also supra* Section II.C (discussing the fair access requirements under Rule 301(b)(5) of Regulation ATS).

[285] *See* Citadel Letter at 2.

[286] *See* Liquidnet Letter at 10.

[287] *See* UBS Letter at 8. In 2009, the Commission published a proposal to address certain practices with respect to undisplayed liquidity, which is trading interest that is available for execution at a trading center, but is not included in the consolidated quotation data that is widely disseminated to the public. *See* Regulation of Non-Public Trading Interest at 61209 (proposal to amend, among other things, Rule 301(b)(3) of Regulation ATS).

[288] *See* Barnard Letter at 2.

[289] *See supra* Section III.A.1. *See also* Rule 301(a)(1)(i).

[290] We are making the following non-substantive modifications to Rule 304(a)(1)(i): (1) Deleting the phrase ''from the definition of 'exchange';'' (2) changing the phrase ''in accordance with the instructions therein'' to ''in accordance with the conditions of this section;'' and (3) adding the term ''initial'' before ''Form ATS–N.''

pursuant to paragraph (a)(1)(iii) or (a)(1)(iv)(A) of [Rule 304]'' rather than the proposed rule text, which stated that the exemption is available only if ''the Commission declares the Form ATS–N effective.'' This change is made in connection with adopted Rule 304(a)(1)(iii) and Rule 304(a)(1)(iv)(A), which, in response to comments, provide that an initial Form ATS–N for both a non-Legacy NMS Stock ATS and Legacy NMS Stock ATS, as amended, becomes effective, unless declared ineffective, upon the earlier of: (1) The completion of review by the Commission and publication pursuant to Rule 304(b)(2) or (2) the expiration of the Commission review period, or, if applicable, the end of the extended review period. Accordingly, we are adopting Rule 304(a)(1)(i), which provides that no exemption is available to an NMS Stock ATS pursuant to Rule 3a1–1(a)(2) unless the NMS Stock ATS files with the Commission an initial Form ATS–N, in accordance with the conditions of Rule 304 and the initial Form ATS–N is effective pursuant to Rule 304(a)(1)(iii) or Rule 304(a)(1)(iv)(A). Consequently, an NMS Stock ATS that is not a Legacy NMS Stock ATS operating pursuant to an initial operation report on Form ATS as of January 7, 2019, will be required to comply with the requirements of Rule 304 as of that date. [291]

2. Rule 304(a)(1)(ii): Commission Review Period

Rule 304(a)(1)(ii) describes the timing for the Commission's review of initial Form ATS–N for Legacy NMS Stock ATSs. Proposed Rule 304(a)(1)(ii) provided the timing for the Commission's review of initial Form ATS–N as adopted for both Legacy NMS Stock ATSs and non-Legacy NMS Stock ATSs. The timing for the Commission's review of initial Form ATS–N for Legacy NMS Stock ATSs is provided by Rule 304(a)(1)(iv)(B).[292]

Proposed Rule 304(a)(1)(ii)(A) (''Review period and extension of the 120-day review period'') provided that the Commission would declare a Form ATS–N filed by a Legacy NMS Stock ATS effective or ineffective no later than 120 calendar days from filing with the Commission. Proposed Rule 304(a)(1)(ii)(A) also provided that the Commission could extend the review period for Forms ATS–N filed by Legacy NMS Stock ATSs: (1) An additional 120 calendar days if the Form ATS–N is unusually lengthy or raises novel or complex issues that require additional time for review, in which case the Commission will notify the NMS Stock ATS in writing within the initial 120-calendar day review period and will briefly describe the reason for the determination for which additional time for review is required; or (2) any extended review period to which a duly-authorized representative of the NMS Stock ATS agrees in writing.

Proposed Rule 304(a)(1)(ii)(B) would have provided that the Commission would declare a Form ATS–N filed by an non-Legacy NMS Stock ATS effective or ineffective no later than 120 calendar days from filing with the Commission. The proposed rule also would have provided that the Commission may extend the Form ATS–N review period for: (1) An additional 90 days, if the Form ATS–N is unusually lengthy or raises novel or complex issues that require additional time for review, in which case the Commission will notify the NMS Stock ATS in writing within the initial 120-calendar day review period and will briefly describe the reason for the determination for which additional time for review is required; or (2) any extended review period to which a duly-authorized representative of the NMS Stock ATS agrees in writing. We received three comments regarding the length of the Commission review period and extended review period for Form ATS–N filings.[293] One commenter states that the 120-calendar day period for the Commission to review Form ATS–N filings is a reasonable amount of time for the Commission to process each filing, and the 120-day extension of the review period for Form ATS–N filings by Legacy NMS Stock ATSs that are particularly novel or complex is agreeable.[294] Another commenter does not object to the proposed period for reviewing Form ATS–N.[295] We continue to believe that an initial review period of 120 calendar days for Form ATS–N filings would provide the Commission adequate time to carry out its oversight functions with respect to its review of Forms ATS–N filed by both Legacy NMS Stock ATSs and non-Legacy NMS Stock ATSs, including its responsibilities to protect investors and maintain fair, orderly, and efficient markets.[296] We also continue to believe that extended review periods of 120 calendar days for Form ATS–N filings by Legacy NMS Stock ATSs, and 90 calendar days for filings by non-Legacy NMS Stock ATSs, that are unusually lengthy or raise novel or complex issues, are appropriate. As discussed in the Proposal, these time periods will allow the Commission and its staff to conduct a thorough review of certain lengthy, novel, or complex Form ATS–N filings and provide sufficient opportunity to discuss a filing with an NMS Stock ATS if necessary.[297]

One commenter worries the review process may devolve into other market centers seeking to have the Commission preserve their market positions, and urges the Commission to promptly evaluate and act on initial Form ATS–N filings.[298] We believe that the proposed time periods for review of Form ATS–N filings are appropriate. The Commission could, depending on the length and complexity of a Form ATS–N filing, complete the review prior to the expiration of the review period; thus, the Form ATS–N would become effective upon publication, pursuant to Rule 304(b)(2).[299] The review periods and extended review periods combined cannot exceed 240 calendar days for a Legacy NMS Stock ATS or 210 calendar days for a non-Legacy NMS Stock ATS unless the NMS Stock ATS agrees, in writing, to a longer review period.[300]

In addition, one commenter states that the proposed process for determining whether an NMS Stock ATS qualifies for the exemption from the definition of ''exchange'' could, in light of the Commission's SRO rule filing review responsibilities, overwhelm staff by adding potentially hundreds of new NMS Stock ATS filings.[301] This commenter expresses concern that Commission staff may spend too much time reviewing whether an NMS Stock ATS meets its procedural obligations rather than trying to better understand the ''substance, merits, and potential misconduct of ATSs' trading operations and activities, and how they fit into the broader market structure,'' and worries that Commission staff ''might get caught in a procedural morass and miss the

[291] *See* Rule 301(b)(1). An entity seeking to operate as an NMS Stock ATS that has filed an initial operation report on Form ATS prior to January 7, 2019, but has not yet become operational pursuant to Rule 301(b)(2)(i), must file an initial operation report on Form ATS–N, in accordance with the conditions of Rule 304, and the initial Form ATS–N must become effective before the new NMS Stock ATS may commence operations.

[292] *See infra* Section IV.A.4.b.

[293] *See* CFA Institute Letter at 4; Liquidnet Letter at 3; PDQ Letter at 2. *See also infra* note 435.

[294] *See* CFA Institute Letter at 4.

[295] *See* Liquidnet Letter at 3. *See* also PDQ Letter at 2.

[296] *See* Proposal, *supra* note 2, at 81023–81024. *See infra* Section IV.A.4.b for a description of Rule 304(a)(1)(iv)(B), which provides the Commission review period for Legacy NMS Stock ATSs.

[297] *See* Proposal, *supra* note 2, at 81024.

[298] *See* HMA Letter at 7–8.

[299] *See* Rule 304(a)(1)(iii); Rule 304(a)(1)(iv)(A). *See also* Section IV.A.4.b.

[300] *See* Rule 304(a)(1)(ii)(A); 304(a)(1)(iv)(B). *See also infra* Section IV.A.4.b.

[301] *See* Consumer Federation of America Letter at 10.

forest for the trees.'' [302] This commenter compares the proposed review process for Form ATS–N filings to the review and approval process for SRO rule changes, and states that unless the Commission is more willing than it has previously been to challenge applications, the proposed process for reviewing Form ATS–N filings will devolve into an ''unreasonably burdensome exercise for Commission staff while providing little benefit to market integrity or investor protection.'' [303] We do not believe that the review process would be unreasonably burdensome to the Commission or its staff. The Commission's review will not be merit-based; instead, it will focus on the completeness and comprehensibility of disclosures. In addition, under the adopted rules, a Form ATS–N, as amended, will become effective, unless declared ineffective, upon the earlier of the completion of Commission review or the end of the Commission review period. This streamlined process will facilitate efficient Commission review, which is designed to protect investors by allowing the Commission to review disclosures on Form ATS–N for potential deficiencies that might otherwise confuse or mislead market participants about the operations of the NMS Stock ATS or the ATS-related activities of the broker-dealer operator and its affiliates.

We are adopting proposed Rule 304(a)(1)(ii)(B) with modifications, renumbering the proposed rule as Rule 304(a)(1)(ii) (''Commission review period''), and relocating Rule 304(a)(1)(ii)(A), which relates to Legacy NMS Stock ATSs, to Rule 304(a)(1)(iv)(B). We are modifying proposed Rule 304(a)(1)(ii) to state that the Commission ''may,'' ''by order,'' [304] as provided in Rule 304(a)(1)(iii), declare an initial Form ATS–N filed by an NMS Stock ATS ineffective no later than 120 calendar days from the date of filing with the Commission or, if applicable, the end of the extended review period.[305] Proposed Rule 304(a)(1)(iv) (''Order regarding effectiveness'') would have required the Commission to issue an order to declare a Form ATS–N effective or ineffective. We are not adopting the proposed requirement [306] that the Commission issue an order to declare a Form ATS–N effective because, as described below, the Commission will only issue orders of ineffectiveness. In addition, to improve readability, the adopted rule references the ineffectiveness process in Rule 304(a)(1)(iii). The Commission will make public, on its website, any effective initial Form ATS–N, as amended.[307]

We are modifying Rule 304(a)(1)(ii) to add a provision that will allow NMS Stock ATSs to amend their initial Forms ATS–N during the Commission review period. We discussed in the Proposal that during the Commission's review, the Commission staff may provide comments to the entity, and may request that the entity supplement information in the Form ATS–N or revise its disclosures on Form ATS–N.[308] In addition, an NMS Stock ATS may need to update disclosures on its initial Form ATS–N to otherwise reflect changes during the Commission review period. To allow an NMS Stock ATS to correct or update its disclosures on an initial Form ATS–N during the review period, we are modifying Rule 304(a)(1)(ii) to provide that during the review period of the initial Form ATS–N, the NMS Stock ATS shall amend its initial Form ATS–N pursuant to the requirements of Rules 304(a)(2)(i)(B) and (C), which are discussed further below.[309] We believe that updates or corrections to an NMS Stock ATS's disclosures about its intended operations would be properly filed as updating or correcting amendments pursuant to Rules 304(a)(2)(i)(B) and (C).[310] We believe allowing an entity seeking to operate as an NMS Stock ATS to amend its initial Form ATS–N during the Commission review period will promote transparency and facilitate complete and comprehensible disclosures. Once an initial Form ATS–N becomes effective, the Commission will make public the initial Form ATS–N, as amended, which will incorporate any amendments that were filed during the Commission review period. An NMS Stock ATS (other than a Legacy NMS Stock ATS),[311] however, seeking to amend its initial Form ATS–N to make a material change to its Form ATS–N disclosures during the Commission review period must withdraw its initial Form ATS–N and may refile a new, initial Form ATS–N pursuant to Rule 304(a)(1). We believe a material change to the disclosures on an initial Form ATS–N would necessitate a full review period.[312] In addition, we have made several technical, non-substantive modifications to Rule 304(a)(1)(ii) that are designed to improve the readability of the rule, reduce potential ambiguity, or both.[313]

3. Rule 304(a)(1)(iii): Effectiveness; Ineffectiveness Determination

Rule 304(a)(1)(iii) describes the process by which an initial Form ATS–N would become effective, or be declared ineffective by the Commission. Proposed Rule 304(a)(1)(iii) (''Effectiveness'') provided that the Commission will declare effective a Form ATS–N if the NMS Stock ATS qualifies for the Rule 3a1–1(a)(2) exemption and that the Commission will declare ineffective a Form ATS–N if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors.[314] Proposed Rule 304(a)(1)(iv) (''Order regarding effectiveness'')

[302] *See id.*

[303] *See id.* at 2, 10.

[304] We are: (1) Deleting proposed Rule 304(a)(1)(iv), which stated that the Commission would issue an order declaring a Form ATS–N effective or ineffective and (2) adding the words ''by order'' to adopted Rule 304(a)(1)(ii). These changes simplify the rule text without changing the Commission's proposal to inform the public about the ineffectiveness of Form ATS–N by issuing an order.

[305] We are deleting text that states that this provision applies to ''an NMS Stock ATS that was not operating as of [effective date of the final rule]'' as it will be clear that the provisions of Rule 304(a)(1)(ii) apply to the filing of initial Form ATS–N by non-Legacy NMS Stock ATSs and that the provisions of Rule 304(a)(1)(iv) will apply to filings by Legacy NMS Stock ATSs.

[306] *See* proposed Rule 304(a)(1)(iv).

[307] *See* Rule 304(b)(2)(i).

[308] *See* Proposal *supra* note 2, at 81026.

[309] *See infra* Sections IV.B.1.b and IV.B.1.c. Amendments will be subject to Commission review under Rule 304(a)(2)(ii), which states that the Commission will, by order, declare ineffective any Form ATS–N amendment no later than 30 calendar days from filing of such amendment with the Commission if the Commission finds that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[310] *See id.*

[311] Unlike non-Legacy NMS Stock ATSs, Legacy NMS Stock ATSs will operate during the Commission review period pursuant to a filed, but not yet effective, initial Form ATS–N. Accordingly, Legacy NMS Stock ATSs may file amendments to their Form ATS–N during the Commission review period to make material changes to their operations and introduce new functionalities. *See infra* Section IV.A.4.c.

[312] The Commission could, however, complete its review of a refiled initial Form ATS–N in less than 120 calendar days from the date of filing, and the Form ATS–N would become effective upon publication. *See* Rules 304(a)(1)(ii)-(iii) and 304(b).

[313] We are making additional changes from proposed Rule 304(a)(1)(ii) to: (1) Rename the paragraph from ''Review period and extension of the 120-day review period'' to ''Commission review period;'' (2) add to the end of the first sentence that the Commission may declare an initial Form ATS–N ineffective no later than 120 calendar days from the date of filing with the Commission ''or, if applicable, the end of the extended review period;'' (3) specify that the Commission will declare an initial Form ATS–N ineffective no later than 120 calendar days from ''the date of'' filing with the Commission; (4) add the word ''initial'' before Form ATS–N; and (5) add the word ''calendar'' before ''day'' in the description of the 90-day extension period.

[314] *See* proposed Rule 304(a)(1)(iii).

provided that the Commission will issue an order to declare a Form ATS–N effective or ineffective. Proposed Rule 304(a)(1)(iv) also provided that upon the effectiveness of the Form ATS–N, the NMS Stock ATS may operate pursuant to the conditions of Rule 304, and if the Commission declares a Form ATS–N ineffective, the NMS Stock ATS shall be prohibited from operating as an NMS Stock ATS. Proposed Rule 304(a)(1)(iv) further provided that a Form ATS–N declared ineffective would not prevent the NMS Stock ATS from subsequently filing a new Form ATS–N. We also discussed in the Proposal our preliminary beliefs regarding when it would be necessary or appropriate in the public interest to declare ineffective a Form ATS–N.[315] We received several comments related to proposed Rule 304(a)(1)(iii), proposed Rule 304(a)(1)(iv), and the standard of review for declaring Form ATS–N filings effective or ineffective, which are summarized below.

Pursuant to Rule 304 and Form ATS–N, as adopted and as discussed below, an NMS Stock ATS must provide all the information required by the form and respond to each item, as applicable, and disclose information that is accurate, current, and complete. A Form ATS–N filing that is defective may be rejected. If the filing is accepted for review, it will become effective unless the Commission finds, after notice and opportunity for hearing, that it is necessary or appropriate in the public interest, and consistent with the protection of investors, to declare the filing ineffective. Responsibility for current, complete, and accurate disclosures rests with the NMS Stock ATS.[316] The Commission will consider whether it is necessary or appropriate in the public interest, and consistent with the protection of investors, to declare an initial Form ATS–N filing ineffective because, for example, the Form ATS–N was filed by an entity that does not meet the proposed definition of NMS Stock ATS; one or more disclosures reveal non-compliance with federal securities laws, or the rules or regulations thereunder, including Regulation ATS; or the disclosures are materially deficient with respect to completeness or comprehensibility.

a. Comments on the Standard of Review To Accept Filings of Form ATS–N

The determination of whether to reject a Form ATS–N filing is separate from the Commission's determination to declare a filed Form ATS–N ineffective after Commission review. We received one comment regarding the process pursuant to which a Form ATS–N would be accepted for Commission review.[317] The commenter states that the Commission should not review a Form ATS–N filing for accuracy and completeness in connection with accepting a Form ATS–N filing, but rather that such review should be conducted when the Commission is considering whether to declare the Form ATS–N effective or ineffective.[318] The commenter states that the Commission's standards for accepting a Form ATS–N should be clear and objective, and Form ATS–N should be rejected only for purely ''technical deficiencies.''[319]

As proposed, the Instructions to Form ATS–N required that ''[a]n NMS Stock ATS must respond to each item, as applicable, in detail and disclose information that is accurate, current, and complete. An NMS Stock ATS must provide all the information required by the form, including the exhibits, and must present the information in a clear and comprehensible manner. A filing that is incomplete or similarly deficient may be returned to the NMS Stock ATS.''[320] In the Proposal, we stated that ''a Form ATS–N that contains technical deficiencies, such as missing pages or one in which the entity does not respond to all questions, including sub-questions, would not be complete and would be returned to the NMS Stock ATS.''[321]

We believe that it would be appropriate to reject a Form ATS–N if the filing is defective.[322] For example, a Form ATS–N is defective if it is missing sections or missing responses to any questions, including sub-questions, or does not comply with the electronic-filing requirements. A decision to reject a Form ATS–N filing, and not accept it for review, would be for reasons distinct from Commission review pursuant to Rule 304(a)(1)(iii), as discussed below. The rejection of a Form ATS–N would not prejudice any decision by the Commission regarding ineffectiveness should the NMS Stock ATS resubmit a Form ATS–N.[323] An NMS Stock ATS also may choose to withdraw a filed Form ATS–N.[324] The Commission will apply the same standard when determining whether to accept an amendment to Form ATS–N for review or reject the filing.

b. Comments on the Review for Declarations of Ineffectiveness

We proposed that the Commission will declare effective a Form ATS–N if the NMS Stock ATS qualifies for the Rule 3a1–1(a)(2) exemption, and will declare it ineffective if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors.[325] We discussed in the Proposal that the Commission would use Form ATS–N to evaluate whether an entity qualifies for the exemption, and would evaluate, among other things, whether the entity satisfies the definition of NMS Stock ATS.[326] We also discussed our preliminary beliefs regarding when it would be necessary or appropriate in the public interest to declare ineffective

[315] *See* Proposal, *supra* note 2, at 81024–81026.

[316] *See* Rule 304(c); Instructions to Form ATS–N. The Commission's staff may become aware of information, as a result of discussions with the NMS Stock ATS or otherwise, that calls into question, for example, the currency or accuracy of the disclosures on a Form ATS–N, which may result in a determination to begin the process to declare the Form ATS–N ineffective. *See infra* Section IV.A.3.d.

[317] *See* SIFMA Letter at 28.

[318] *See id.*

[319] *See id.*

[320] *See* proposed Instructions to Form ATS–N. As adopted, the Instructions to Form ATS–N state that: ''An NMS Stock ATS must provide all the information required by Form ATS–N, including responses to each Item, as applicable, and the Exhibits, and disclose information that is accurate, current and complete. . . . A filing that is defective may be rejected and not accepted by the EDGAR system. Any filing so rejected shall be deemed not to have been filed.'' The Instructions to Form ATS–N replace the proposed cite to 17 CFR 240.0–3 under the Exchange Act, which applies to paper filings, with a cite to Regulation S–T, which applies to electronic filings, because the form will be electronically filed via EDGAR. *See* Instructions to Form ATS–N. Because Form ATS–N will be electronically filed, we do not believe it is necessary to return a copy of Form ATS–N filings and are therefore replacing the word ''returned'' with ''rejected'' to specify this.

We are also modifying the Instructions to Form ATS–N to delete the phrase: ''and must present the information in a clear and comprehensible manner.'' *See* Instructions to Form ATS–N. This modification to the Instructions to Form ATS–N will streamline the instructions by removing confusing language relating to the Commission's standard of review, but will not modify an NMS Stock ATS's obligations with respect to Form ATS–N. Additionally, the Commission has reorganized the Instructions to differentiate between an NMS Stock ATS's filing obligations, and the consequences of incompleteness or similar deficiency.

We are modifying our guidance and the rule text for determinations of ineffectiveness, and believe these modifications to the Instructions to Form ATS–N better align them with that guidance and adopted rule text and reduce any potential confusion about the difference between an NMS Stock ATS's obligations with respect to completing Form ATS–N and the standard of review that the Commission will apply when determining whether to declare a Form ATS–N ineffective. *See infra* Section IV.A.3.d. *See also* infra Section V.A.1 (discussing the Form ATS–N disclosure requirements).

[321] *See* Proposal, *supra* note 2, at 81024 n.284.

[322] *See* 17 CFR part 232.

[323] Proposal, *supra* note 2, at 81024 n.284.

[324] *See id.*

[325] *See* proposed Rule 303(a)(1)(iii).

[326] *See* Proposal, *supra* note 2, at 81024.

a Form ATS–N, and provided examples.[327] We stated that it would be necessary and appropriate in the public interest to declare a Form ATS–N ineffective if the Commission finds, after notice and opportunity for hearing, that: An entity does not meet the definition of NMS Stock ATS; one or more disclosures on Form ATS–N are materially deficient with respect to their accuracy, currency or completeness; or one or more disclosures reveal non-compliance with federal securities laws, or the rules and regulations thereunder, including Regulation ATS.[328] We also stated that a declaration of effectiveness would not constitute a finding that the NMS Stock ATS's operations are consistent with the Exchange Act, but rather only address the issue of whether the NMS Stock ATS had complied with the requirements of Form ATS–N.[329]

We received several comments regarding the standard that the Commission would apply to declare a Form ATS–N effective or ineffective. One commenter asserts that it would be helpful to have the Commission review initial Forms ATS–N for completeness and accuracy, and legal and regulatory compliance, and to help standardize the level of disclosure across NMS Stock ATSs.[330] Another commenter urges the Commission to move forward with the effectiveness determination as proposed.[331] This commenter states that market participants will use the information disclosed on Form ATS–N to evaluate whether a particular NMS Stock ATS would be a desirable venue to which to route their orders, and that it is important that the detailed information be accurate, current, and complete.[332] This commenter also states that the Commission should be able to conduct a ''red flag'' review of the disclosures for apparent non-compliance with the federal securities laws, and avoid having a noncompliant NMS Stock ATS begin operation with inadequate system operations; this commenter states that while not affording complete certainty, this review process would be an improvement over the review process for Form ATS.[333] Further, the commenter states that the notice and hearing process will furnish the industry with useful information regarding specific regulatory concerns and questions.[334] One commenter expresses concern that the Commission would lack objective standards to evaluate initial Forms ATS–N and amendments.[335] Another commenter believes that in the Proposal, the Commission did not articulate a ''consistent standard of review'' for declaring a Form ATS–N or Form ATS–N amendment effective or ineffective.[336] The commenter expresses its view that the standard for declaring a Form ATS–N ineffective should be only if the Form ATS–N is ''materially deficient with respect to completeness,'' [337] asserting that criteria such as currency, accuracy, and fair presentation are subjective standards that could make it difficult for NMS Stock ATSs to understand the level of disclosure necessary to satisfy the Commission's review requirements, and therefore require extended discussion with the Commission.[338] Further, the commenter believes that such subjective standards would be difficult to standardize in application from firm to firm, would complicate the Commission's review of Form ATS–N, and are unnecessary to increase the operational transparency of NMS Stock ATSs and to ensure a consistent level of information regarding NMS Stock ATSs is available to market participants.[339] The commenter believes that the rule's directives to consider whether to declare a Form ATS–N ineffective would provide the Commission with flexibility to determine whether declaring a Form ATS–N ineffective is ''necessary or appropriate in the public interest'' and ''consistent with the protection of investors,'' and therefore that including additional subjectivity in the Commission's standard is unnecessary.[340] The commenter believes that NMS Stock ATSs would have other incentives to ensure the accuracy of their Forms ATS–N.[341]

This commenter also states that the Commission should only find a disclosure to be ''materially deficient'' with respect to the accuracy, currency, and completeness in an ''extreme situation, not a circumstance where additional color or language might be viewed as preferable to a disclosure as filed,'' and asserts that a response that is facially responsive to a question on Form ATS–N should be deemed sufficient.[342] This commenter agrees with the examples of ''materially deficient'' disclosures that the Commission provided in the Proposal, but also requests that the Commission provide examples of ''disclosures that would *not* be viewed as materially deficient.'' [343] Additionally, this commenter states that if the Commission declares an initial Form ATS–N or amendment ineffective, it should provide the NMS Stock ATS with a clear written statement of the reasons for the declaration.[344] The commenter urges the Commission to provide clarity and practical guidance around its expectations on declaring Form ATS–N filings effective.[345] Another commenter raises concerns that the process for declaring Form ATS–N effective or ineffective may result in the Commission staff undertaking merit-based reviews of the disclosures on Form ATS–N that could be used to delay the effectiveness of NMS Stock ATSs whose features, ''while meeting regulatory requirements, do not meet current industry norms.'' [346]

We believe that it would be necessary or appropriate in the public interest, and consistent with the protection of investors, to declare ineffective a Form ATS–N if, for example, the Commission finds, after notice and opportunity for hearing, the Form ATS–N was filed by an entity that does not meet the definition of NMS Stock ATS; one or more disclosures reveal non-compliance

[327] *See id.* at 81024–81026.

[328] *See id.*

[329] *See id.* at 81026. With respect to compliance with federal securities laws, we stated that the Commission's evaluation would involve a ''red-flag'' review of the Form ATS–N disclosures. *See id.* at 81025. With respect to whether an entity meets the definition of NMS Stock ATS, we stated our preliminary belief that proper classification of an entity would clearly indicate to market participants, as well as the Commission, the functions that entity performs and the regulatory framework and attendant obligations that attach to that entity. *See id.* at 81024 n.288 and accompanying text.

[330] *See* MFA/AIMA Letter at 4.

[331] *See* Investor Advocate Letter at 11.

[332] *See id.*

[333] *See id.*

[334] *See id.* We agree with the commenter and intend to help market participants understand the reason the Form ATS–N was declared ineffective by explaining the Commission's reasoning for the ineffective declaration in the Commission order. *See supra* Section IV.A.3.d.

[335] *See* LeveL ATS Letter at 8–9.

[336] *See* SIFMA Letter at 32.

[337] *See id.*

[338] *See id.* at 33.

[339] *See id.*

[340] *See id.*

[341] *See id.*

[342] *See id.* at 30.

[343] *See id.* at 30 (emphasis in original). *See also* Proposal, *supra* note 2, at 81025. Another commenter states that it recognizes the difficulty associated with identifying every potential scenario that might cause a Form ATS–N to be declared ineffective, but requests that the Commission provide additional guidance to ensure that NMS Stock ATS operators understand the standard to be applied. *See* LeveL ATS Letter at 9.

[344] *See* SIFMA Letter at 30.

[345] *See id.*

[346] *See* Fidelity Letter at 2, 9. This commenter requests that the Commission implement a ''completeness review'' under which the Commission would review responses to Form ATS–N for completeness and consistency without considering the merits of each answer. The commenter also requests that the Commission provide additional guidance with respect to the process by which it could declare a Form ATS–N ineffective, and questions how review by Commission staff of initial filings will be undertaken to ensure consistency across Form ATS–N filings. *See id.* at 9.

with federal securities laws, or the rules or regulations thereunder, including Regulation ATS; or one or more disclosures on Form ATS–N are materially deficient with respect to their completeness or comprehensibility.[347] We are providing additional examples of when, depending on the facts and circumstances, the Commission may make such a finding.[348] In response to comments regarding the scope of the Commission's review of initial Form ATS–N filings and the standard to be applied for declarations of ineffectiveness, we are making clear that the Commission will not be conducting a merit-based review.[349]

c. Effectiveness, Ineffectiveness Process

The Commission received comments about the proposed process by which a Form ATS–N would become effective or ineffective, including the potential implications of the proposed process. One commenter expresses concern that a declaration of effectiveness may give market participants a false sense of security that the Commission's deeming an NMS Stock ATS's Form ATS–N ''effective'' will be tantamount to the Commission's approval of an ATS's operations on the merits, as market participants may not fully understand that a declaration of effectiveness only implies that the NMS Stock ATS has met the Form ATS–N filing requirements, and that the Commission is not approving the merits of the NMS Stock ATS's operations or conflicts of interest.[350] The commenter believes that such mistaken belief could cause market participants to route orders to venues that are not in their best interests.[351] Another commenter states that there is the danger that the Commission review process would encourage market complacency, and that the Commission, through guidance in this adopting release and continuing investor education, should help to ensure that: (1) Investors understand that such a determination would not constitute a finding that the NMS Stock ATS's operations are necessarily consistent with the Exchange Act; and (2) operators of NMS Stock ATSs understand that the determination would not preclude the Commission from later determining that an NMS Stock ATS has violated federal securities laws.[352]

We also received two comments about an NMS Stock ATS potentially using a declaration of effectiveness to shield itself from potential liability.[353] Both express concern that, although the Proposal explains that a declaration of effectiveness is not an ''approval'' of Form ATS–N, the process could be used to inappropriately inoculate NMS Stock ATS operators from liability.[354] One of these commenters states that its concern is heightened by a recent court decision in which the court found that the Commission's review and approval of exchanges' activities made the activities legal.[355] One commenter believes that a declaration of ineffectiveness will ''sound the death knell'' for an NMS Stock ATS and that the opportunity to file a new Form ATS–N would be of no practical value because the marketplace would not use the ATS.[356]

While we do not believe that providing a process by which Form ATS–N filings will become effective or ineffective[357] would risk misleading market participants about the kind of review that will be undertaken by the Commission,[358] we are modifying the process for initial Form ATS–N filings to become effective, to mitigate any such risk. Accordingly, the Commission will not declare initial Form ATS–N filings effective pursuant to Rule 304(a)(1)(iii). Further, the Commission will only declare ineffective an initial Form ATS–N if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors. An initial Form ATS–N, as amended, will become effective, unless declared ineffective, upon the earlier of completion of review by the Commission and publication pursuant to Rule 304(b)(2), or the expiration of the review period, or, if applicable, the extended review period. Unlike proposed rule changes filed by national securities exchanges, the Commission will not make affirmative findings about Form ATS–N filings with regard to consistency with the Exchange Act in the general course of the review of Form ATS–N filings.[359] As discussed below, the Commission's review will not focus on the merits of the Form ATS–N disclosures, such as determining the strengths and weaknesses of the trading platform or a protocol offered by the NMS Stock ATS, nor is the Commission making findings regarding whether the means by which orders will interact on the trading platform are consistent with certain provisions of the Exchange Act.[360] If disclosures on Form ATS–N reveal non-compliance with federal securities laws or the rules and regulations thereunder, however, the Commission may find that it is appropriate to declare the filing ineffective. We believe that the scope of the Commission's review is clear and that the benefits of the Commission review process for Form ATS–N filings justify any risk that market participants misunderstand that the Commission is not performing a merit review of Form ATS–N. We further believe that adopting a process for initial Form ATS–N filings to become effective without the Commission affirmatively declaring them effective by order will help signal to market participants that the Commission is not passing on the merits of the NMS Stock ATSs' disclosures regarding their operations. Even if we assume that a declaration of ineffectiveness will ''sound the death knell,'' as suggested by a commenter,[361] or result in reputational harm to an NMS Stock ATS, the process for declaring a Form ATS–N filing ineffective will be consistent with the Commission's objective to protect investors and the public interest and will provide NMS Stock ATSs with opportunities to avoid or mitigate such a declaration. An NMS Stock ATS would be given notice and an opportunity for hearing to respond to the Commission's concerns. A non-Legacy NMS Stock ATS would also have the option of withdrawing and subsequently refiling its Form ATS–N. In addition, during the Commission review period, both non-Legacy NMS Stock ATSs and Legacy NMS Stock ATSs can amend their initial Form ATS–N to cure potential deficiencies. Additionally, if the Commission does

[347] *See infra* Section IV.A.3.d.

[348] *See id.*

[349] *See infra* notes 404–407 and accompanying text.

[350] *See* Consumer Federation of America Letter at 2, 10–11.

[351] *See id.* at 11.

[352] *See* Investor Advocate Letter at 12. *See also supra* note 340 and accompanying text. Pursuant to Rule 304(a)(1)(iii) the Commission will issue an order declaring an initial Form ATS–N filing ineffective if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors if, for example, the Form ATS–N was filed by an entity that does not meet the definition of NMS Stock ATS; one or more disclosures reveal non-compliance with federal securities laws, or the rules or regulations thereunder, including Regulation ATS; or the disclosures are materially deficient with respect to completeness or comprehensibility.

[353] *See* HMA Letter at 8; Consumer Federation of America Letter at 11.

[354] *See id.*

[355] *See* HMA Letter at 8.

[356] *See* Fidelity Letter at 9.

[357] *See* Rule 304(a)(1)(iii).

[358] *See* Consumer Federation of America Letter at 2, 10.

[359] *See supra* note 405.

[360] *See infra* notes 404–407 and accompanying text.

[361] *See supra* note 356.

declare an initial Form ATS–N ineffective, the NMS Stock ATS will have an opportunity to revise its disclosures, or change its operations, and subsequently file a new initial Form ATS–N, and such filing could become effective.

In addition, one commenter argues that a Form ATS–N should be considered ineffective upon filing until the Commission affirmatively declares it effective or ineffective.[362] However, this commenter also recommends that if the Commission fails to declare a Form ATS–N effective or ineffective within the 120-calendar day review period, or does not extend the review period, the ''default decision'' should be that the Form ATS–N is declared effective.[363] We believe that it would be appropriate for an initial Form ATS–N to become effective if the Commission does not declare, by order, the filing ineffective during the initial review period, or in the case of an extended review period, during the extended period, to provide certainty about timing of the Commission's review to the NMS Stock ATS and to market participants. Providing for an initial Form ATS–N filed by a Legacy NMS Stock ATS to become effective in this manner will allow the Legacy NMS Stock ATS to continue to operate without disruption to its subscribers (provided the Commission does not declare the Form ATS–N ineffective).[364] Considering an initial Form ATS–N ineffective upon filing, before the Commission has completed the review, as suggested by a commenter, would cause a Legacy NMS Stock ATS to stop operating, which may harm the market participants that currently use the services on the Legacy NMS Stock ATS. Once an initial Form ATS–N is effective, Rule 304(a)(4) provides a process for the Commission to suspend, limit, or revoke the exemption for the NMS Stock ATS. Given this change in the effectiveness determination process, we do not believe that requiring that an initial Form ATS–N filing be considered ineffective upon filing would provide any additional benefit, because an NMS Stock ATS (except for a Legacy NMS Stock ATS) may not operate pursuant to the conditions of the Rule 3a1–1(a)(2) exemption unless its Form ATS–N has become effective, pursuant to Rule 304(a)(1)(iii).

[362] *See* CFA Institute Letter at 5.

[363] *See id.* at 4.

[364] *See* Rule 304(a)(1)(iv)(A). *See also infra* Section IV.A.4.a (discussing the initial Form ATS–N requirements for Legacy NMS Stock ATSs).

d. Effectiveness; Ineffectiveness Determinations Under Rule 301(a)(1)(iii)

We are adopting Rule 304(a)(1)(iii) with modifications, and relocating most of proposed Rule 304(a)(1)(iv), with modifications,[365] to adopted Rule 304(a)(1)(iii) (''Effectiveness; Ineffectiveness determination''). For the reasons described above, we are modifying Rule 304(a)(1)(iii) to provide that an initial Form ATS–N filed by an NMS Stock ATS, as amended,[366] will become effective, unless declared ineffective, upon the earlier of: (1) The completion of review by the Commission and publication pursuant to Rule 304(b)(2)(i), or (2) the expiration of the review period, or, if applicable, the end of the extended review period, pursuant to Rule 304(a)(1)(ii). Rule 304(a)(1)(iii) will further provide that the Commission will, by order, declare ineffective an initial Form ATS–N if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors.[367]

We are also relocating two provisions of proposed Rule 304(a)(1)(iv), with non-substantive modifications,[368] to adopted Rule 304(a)(1)(iii). As a result, Rule 304(a)(1)(iii) states that if the Commission declares an initial Form ATS–N ineffective, the NMS Stock ATS shall be prohibited from operating as an NMS Stock ATS pursuant to § 240.3a1–1(a)(2); and that an initial Form ATS–N declared ineffective does not prevent the NMS Stock ATS from subsequently filing a new Form ATS–N. We believe Rule 304(a)(1)(iii), as modified, clearly explains when an initial Form ATS–N will become effective or declared ineffective, and the consequences of an order of ineffectiveness. Accordingly, an NMS Stock ATS whose initial Form ATS–N has become effective may commence operations and will be required to comply with Rule 304 as well as applicable provisions of Rules 300 through 303 of Regulation ATS. An NMS Stock ATS whose initial Form ATS–N was declared ineffective would be prohibited from operating pursuant

[365] *See infra* note 368 and accompanying text.

[366] We are adopting a process that allows NMS Stock ATSs to file an updating and correcting amendment to an initial Form ATS–N during the Commission review period. *See supra* Section IV.A.2. We are adding to Rule 304(a)(1)(iii) that an initial Form ATS–N ''as amended'' will become effective, which includes any amendments filed to the initial Form ATS–N during the Commission review period. Amendments filed by an NMS Stock ATS to an initial Form ATS–N during the Commission review period are subject to Rule 304(a)(2)(ii), which provides that the Commission will, by order, declare ineffective any Form ATS–N amendment no later than 30 calendar days from filing with the Commission. The Commission will have 30 calendar days to declare any amendments ineffective, including amendments to Form ATS–N that are filed during the Commission review period. For example, if an NMS Stock ATS files an updating or correcting amendment to an initial Form ATS–N on calendar day 110 of the Commission review period, and the initial Form ATS–N becomes effective on calendar day 120, the updating or correcting amendment could be declared ineffective by the Commission up to an additional 20 calendar days after the initial Form ATS–N becomes effective—until the Commission's 30-calendar day review period has expired.

[367] We are also making technical changes to the proposed text of Rule 304(a)(1)(iii) by adding to Rule 304(a)(1)(iii) the word ''initial'' before Form ATS–N and renaming the paragraph as ''Effectiveness; Ineffectiveness determination.''

In the Proposal, we stated that it would be necessary or appropriate in the public interest, and consistent with the protection of investors, to declare ineffective a Form ATS–N if it finds, after notice and opportunity for hearing, that one or more disclosures on Form ATS–N are materially deficient with respect to their accuracy, currency, or completeness. *See* Proposal, *supra* note 2, at 81025. As discussed further below, we are modifying the proposed guidance regarding when it may be necessary or appropriate to declare a Form ATS–N ineffective.

We are also modifying the Instructions to Form ATS–N to better align them with that guidance, and to reduce any potential confusion about the difference between an NMS Stock ATS's obligations with respect to completing Form ATS–N and the standard of review that the Commission will apply when determining whether to declare a Form ATS–N ineffective. *See supra* note 320.

The same standard for declarations of ineffectiveness will apply to filings of both initial Form ATS–N and Form ATS–N amendments. *See infra* Section IV.B.2.

[368] We are deleting the following language, which was part of proposed Rule 304(a)(1)(iv): ''The Commission will issue an order to declare a Form ATS–N effective or ineffective.'' This is addressed in the adopted rule text stating that ''[a]n initial Form ATS–N, as amended, filed by an NMS Stock ATS will become effective, unless declared ineffective, upon the earlier of: (1) [T]he completion of review by the Commission and publication pursuant to paragraph (b)(2)(i) of [Rule 304] or (2) [t]he expiration of the review period, or, if applicable, the end of the extended review period, pursuant to paragraph (a)(1)(ii) of [Rule 304]'' and that ''[t]he Commission will, by order, declare an initial Form ATS–N ineffective if it finds, after notice and opportunity for hearing, that such action is necessary and appropriate in the public interest, and is consistent with the protection of investors.'' *See* Rule 304(a)(1)(iii)(B). In addition, we are not adopting the language that states ''[u]pon the effectiveness of the Form ATS–N, the NMS Stock ATS may operate pursuant to the conditions of this section'' or language that states ''[i]f the Commission declares an initial Form ATS–N effective, the NMS Stock ATS may operate pursuant to the conditions of this section'' for purposes of clarity and readability. Rule 304(a)(1)(i) provides that an initial Form ATS–N must be effective for the NMS Stock ATS to avail itself of the Rule 3a1–1(a)(2) exemption (*see supra* Section IV.A.1), and Rule 304(a)(1)(iii) specifies when an initial Form ATS–N filing will become effective. Rule 304(a)(1)(iii) also states that: (1) if the Commission declares an initial Form ATS–N ineffective, the NMS Stock ATS shall be prohibited from operating as an NMS Stock ATS ''pursuant to § 240.3a1–1(a)(2);'' and (2) an initial Form ATS–N declared ineffective ''does'' not (rather than ''would'' not) prevent the NMS Stock ATS from subsequently filing a new Form ATS–N.

to the Rule 3a1–1(a)(2) exemption. Similarly, a Legacy NMS Stock ATS whose initial Form ATS–N was declared ineffective would no longer be eligible for the Rule 3a1–1(a)(2) exemption and would be required to cease operations.[369] If the Commission declares an initial Form ATS–N ineffective, the NMS Stock ATS that filed the form could subsequently file a new Form ATS–N for Commission consideration.

In the Proposal, we provided certain examples of scenarios in which we believed that it would be necessary or appropriate in the public interest, and consistent with the protection of investors, to declare ineffective a Form ATS–N, after notice and opportunity for hearing.[370] We continue to believe that the examples provided in the Proposal are appropriate for the Commission to declare a Form ATS–N ineffective and will provide NMS Stock ATSs and market participants with clarity with respect to when the Commission could find, after notice and opportunity for hearing, it necessary or appropriate in the public interest, and consistent with the protection of investors, to declare ineffective a Form ATS–N. We are also providing additional clarity with respect to this guidance.

Several commenters request additional guidance and clarity regarding the Commission's review of initial Form ATS–N filings and Form ATS–N amendments and the circumstances under which the Commission may declare a Form ATS–N ineffective.[371] We believe that it would be necessary or appropriate in the public interest, and consistent with the protection of investors, to declare ineffective a Form ATS–N if the Commission finds, for example, after notice and opportunity for hearing, the Form ATS–N was filed by an entity that does not meet the definition of NMS Stock ATS; one or more disclosures reveal non-compliance with federal securities laws, or the rules or regulations thereunder, including Regulation ATS; or one or more disclosures on Form ATS–N are materially deficient with respect to their completeness or comprehensibility. Given that the objective of Rule 304 is to provide market participants with information about NMS Stock ATSs through Form ATS–N disclosures, our review is designed to focus on the Form ATS–N disclosures and is not a merit-based review of the operations of the NMS Stock ATS or the ATS-related activities of the broker-dealer operator.[372]

We believe[373] that it would be necessary to declare ineffective a Form ATS–N if the Form ATS–N was filed by an entity that does not satisfy the definition of ATS, and more specifically, the definition of NMS Stock ATS.[374] The proper classification of an entity would clearly indicate to market participants, as well as the Commission, the functions that entity performs and the regulatory framework and attendant obligations that attach to that entity.[375] We believe that the review of Form ATS–N disclosures will help mitigate concerns that market participants may be confused or misled about whether an entity in fact meets the definition of an NMS Stock ATS. If an entity does not meet the definition, market participants may hold false expectations about how their orders may interact or be matched with other orders or they may not fully understand whether the entity with which they are doing business is required to comply with Regulation ATS.

We believe that it would be necessary to declare Form ATS–N ineffective if one or more disclosures reveal non-compliance with federal securities laws, including Regulation ATS. As discussed in the Proposal,[376] the Commission will conduct a ''red-flag'' review for instances of non-compliance with federal securities laws that seem apparent from the disclosures on Form ATS–N. For example, as a condition to the Rule 3a1–1(a)(2) exemption, Rule 301(b)(1) of Regulation ATS requires that an ATS register as a broker-dealer under Section 15 of the Exchange Act.[377] Section 15(b)(8) of the Exchange Act[378] prohibits a registered broker or dealer from effecting a transaction unless the broker or dealer is a member of a securities association registered pursuant to Section 15A of the Exchange Act[379] or effects transactions solely on a national securities exchange of which it is a member. Therefore, to comply with Regulation ATS, and thus qualify for the Rule 3a1–1(a)(2) exemption, an ATS must become a member of an SRO and comply with the rules of the SRO, including obtaining approval by the SRO to operate an ATS in accordance with applicable SRO rules. If an entity were to file a Form ATS–N before registering as a broker-dealer under Section 15 of the Exchange Act, the entity would not be in compliance with Rule 301(b)(1) of Regulation ATS.[380] Moreover, if the entity were to file a Form ATS–N before becoming a member of an SRO, the entity would not be in compliance with Rule 301(b)(1) of Regulation ATS because Section 15(b)(1) of the Exchange Act provides that a Commission order granting registration is not effective until the broker-dealer has become a member of a national securities association registered pursuant to Section 15A of the Exchange Act,[381] and the Commission's order granting broker-dealer registration would not be effective.[382] As another example, if the Form ATS–N reveals non-compliance with Regulation NMS, including, among other provisions, Rule 612, known as the ''Sub-Penny Rule,'' which prohibits market participants, including ATSs, from displaying, ranking, or accepting orders, quotations, or indications of interest in NMS stock priced in an increment smaller than $0.01,[383] the Form ATS–N would not be consistent with Rule 304 because the NMS Stock ATS would operate in a manner that may violate the federal securities laws.

We believe that it would be necessary to declare Form ATS–N ineffective if one or more disclosures are materially deficient with respect to their completeness and comprehensibility. The following are non-exhaustive examples of Form ATS–N disclosures that may be deficient with respect to

[369] The initial filing of Form ATS–N by Legacy NMS Stock ATSs is discussed further below. *See infra* Section IV.A.4.a.

[370] *See* Proposal, *supra* note 2, at 81024–26.

[371] *See supra* notes 343, 345, and 346 and accompanying text. *See also supra* notes 335–340 and accompanying text discussing commenter concerns regarding whether the Commission articulated an objective or consistent standard of review.

[372] *See infra* notes 404–407 and accompanying text.

[373] *See* Proposal, *supra* note 2, at 81024–81025.

[374] *See* Rule 300(k).

[375] For example, an ATS that is not an NMS Stock ATS would be subject to different conditions under Regulation ATS to be eligible for the Rule 3a1–1(a)(2) exemption. Similarly, depending on the facts and circumstances, an entity that is not an ATS may be subject to requirements as a broker-dealer, but not the conditions of Regulation ATS, or may be required to register as a national securities exchange. *See* Proposal, *supra* note 2, at 81024 n.288 and accompanying text.

[376] *See* Proposal at 81025–26.

[377] 17 CFR 242.301(b)(1).

[378] 15 U.S.C. 78*o*(b)(8).

[379] 15 U.S.C. 78*o*–3.

[380] *See* 17 CFR 301(b)(1). Rule 301(b)(1) of Regulation ATS requires an ATS to register as a broker-dealer under Section 15 of the Exchange Act.

[381] *See* 15 U.S.C. 78*o*(b)(1).

[382] *See* 17 CFR 242.301(b)(1).

[383] Specifically, Rule 612(a) of Regulation NMS provides that ''no national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than $0.01 if that bid or offer, order, or indication of interest is priced equal to or greater than $1.00 per share.'' *See* 17 CFR 242.612(a).

their completeness:[384] an NMS Stock ATS discloses an order type on Form ATS–N but does not describe the key attributes of the order type, such as time-in-force limitations that can be placed on the ability to execute the order, the treatment of unfilled portions of orders, or conditions for cancelling orders in whole or in part;[385] an NMS Stock ATS describes some of its priority rules, but fails to describe conditions or exceptions to its priority rules, or fails to describe any priority overlays;[386] an NMS Stock ATS, in response to Part II, Item 1 of adopted Form ATS–N, discloses that a principal trading desk of the broker-dealer operator trades on the NMS Stock ATS, but does not explain advantages the broker-dealer operator receives compared to other subscribers; an NMS Stock ATS, in response to Part III, Item 19 of adopted Form ATS–N, fails to provide complete information about fees and rebates charged for use of the NMS Stock ATS; an NMS Stock ATS discloses that it has only one class of subscribers but the Commission or its staff learns through discussions (during the review period) with the NMS Stock ATS or otherwise that the ATS in fact has several classes of subscribers; or an NMS Stock ATS discloses that it has two classes of subscribers that are charged the same trading fees, but the Commission or its staff learns through discussions with the ATS or otherwise that in fact one class receives more favorable fees than the other.[387]

The following are non-exhaustive examples of Form ATS–N disclosures that may be deficient with respect to their comprehensibility:[388] Form ATS–N includes inconsistent information among the disclosures, such as a statement by the NMS Stock ATS in one part of the form that the ATS uses private feeds to calculate the NBBO but in another part of the form indicates that it uses the SIP;[389] the NMS Stock ATS states in one part of Form ATS–N that it does not segment its orders but provides a description in another part of the Form ATS–N that indicates that the ATS offers a functionality that allows institutional investors to limit their trading activity to interactions with other institutional investors; the Form ATS–N disclosures indicate that the NMS Stock ATS uses time/price priority to execute orders but provides an example that demonstrates an order received before an identically priced order does not receive priority over the later order; or the NMS Stock ATS states in one part of the Form ATS–N that it provides certain order types, transacts in certain types of securities, or provides access to certain classes of subscribers, and there is contrary disclosure in other parts of the Form ATS–N.

We do not agree with the commenter that believes that the term materially deficient should be understood to represent only ''extreme situation[s].''[390] The Commission review will focus on whether the lack of completeness or comprehensibility in a Form ATS–N disclosure would prevent market participants from understanding an ATS's operations or the ATS-related activities of its broker-dealer operator or its affiliates. We believe that subscribers and market participants will rely on Form ATS–N disclosures to understand and evaluate the operations of the NMS Stock ATS and conflicts of interest that may arise from the ATS-related activities of the broker-dealer operator and its affiliates and use this information to help determine where to route their orders, or the orders of their customers. We believe that a disclosure on Form ATS–N that is materially deficient with respect to its completeness or comprehensibility could mislead market participants or impede their ability to understand an NMS Stock ATS's operations, or the ATS-related activities of its broker-dealer operator, which would frustrate the purpose of the transparency goals of this rulemaking. We do not believe that it would be practical, as one commenter suggests,[391] to provide examples of disclosures that the Commission would not view as materially deficient because the context of each disclosure is crucial to determining whether a disclosure is complete and comprehensible. Whether a disclosure deficiency is material depends on the facts and circumstances, as does whether the deficiency would support a finding that the deficiency is such that a declaration of ineffectiveness would be in the public interest and consistent with the protection of investors.

As discussed above, one commenter questions how the Commission's review will be undertaken to help ensure consistency across filings when initial Form ATS–N filings are made ''without any prior knowledge of the detail the Commission expects,''[392] and another states that it ''would be helpful'' to have the Commission review initial filings to, among other things, help ''standardize the level of disclosure across NMS Stock ATSs.''[393] We have revised Form ATS–N in a number of ways in response to comments. For instance, we added more ''yes'' or ''no'' questions, separated questions into distinct subject matter categories, provided additional examples as guidance, and made requests more explicit for more targeted responses.[394] These changes to Form ATS–N are designed to better inform NMS Stock ATSs of the requirements of Form ATS–N and to solicit more consistent responses from NMS Stock ATSs. However, NMS Stock ATSs operate differently, and with different complexities, and use different terms to describe their systems. While this could lead to different levels of disclosures among ATSs, we believe that the combination of refinements to the form, and the Commission's review of all Forms ATS–N filed by Legacy NMS Stock ATSs during the same period of time, will assist the Commission in providing a consistent level of comment on the forms that will help facilitate a more consistent and standard level of information disclosed across NMS Stock ATSs.

[384] These are some, but not all, of the types of circumstances that could result in the Commission declaring a Form ATS–N ineffective due to being materially deficient with respect to completeness. We also provided some of these examples in the Proposal as examples of disclosures that could cause the Commission to declare a Form ATS–N ineffective because it contains one or more disclosures that appear to be materially deficient. *See* Proposal, *supra* note 2, at 81025. Because we are modifying the standard of review to focus on completeness and comprehensibility, some of the examples discussed in the Proposal are also discussed below to show application of the standard the Commission is adopting to the same scenarios.

[385] This example was discussed in the Proposal as an example of a disclosure that may be materially deficient because it may not be sufficiently detailed. *See* Proposal, *supra* note 2, at 81025.

[386] *See id.* Another example would be if the NMS Stock ATS fails to describe which order would receive priority where two or more orders are otherwise on par, such as a situation in which a customer and non-customer order are at the same price in a price priority system.

[387] These examples were discussed in the Proposal as examples of disclosures that may be materially deficient because they would not be accurate. *See* Proposal, *supra* note 2, at 81025.

[388] These are some, but not necessarily all, of the types of circumstances that could result in the Commission declaring a Form ATS–N ineffective due to being materially deficient with respect to comprehensibility.

[389] In the Proposal, this was provided as an example of a disclosure that may be materially deficient because it may not be accurate; however, inconsistent disclosures in a Form ATS–N also may render disclosures unclear as to which rule or procedure, for example, controls and how the NMS Stock ATS intends to operate. *See* Proposal, *supra* note 2, at 81025. Depending on the facts and circumstances, inconsistent or contradictory disclosures in a Form ATS–N may be materially deficient with respect to comprehensibility.

[390] *See supra* note 342 and accompanying text.

[391] *See supra* note 343 and accompanying text.

[392] *See* Fidelity Letter at 9. *See also* supra note 346.

[393] *See* MFA/AIMA Letter at 4. *See also supra* note 330 and accompanying text.

[394] *See infra* Section V (discussing modifications to Proposed Form ATS–N).

Any order declaring a Form ATS–N ineffective will require the Commission to find that such action is necessary or appropriate in the public interest, and consistent with the protection of investors. Rule 304(a)(1)(iii) provides that the Commission must provide notice to the NMS Stock ATS and provide an opportunity for a hearing. As such, an NMS Stock ATS will have the opportunity to be heard before the Commission declares its Form ATS–N ineffective.

As discussed above, we do not agree with a commenter's suggestion that a Form ATS–N be considered ineffective upon filing.[395] We also do not agree with the comment that a declaration of ineffectiveness of a Form ATS–N will prejudice an entity such that a revised filed Form ATS–N will have no practical value.[396] We anticipate a dialogue between Commission staff and the NMS Stock ATS regarding the Form ATS–N disclosures and an NMS Stock ATS will have the opportunity to amend its initial Form ATS–N during the Commission review period. If a Form ATS–N is declared ineffective by the Commission, the Commission's order will provide the basis for the declaration of ineffectiveness, and the NMS Stock ATS will have the opportunity to file another Form ATS–N that addresses the basis for the ineffectiveness determination. To the extent that the NMS Stock ATS files a revised initial Form ATS–N or Form ATS–N amendment that no longer contains, for example, material deficiencies with respect to its completeness or comprehensibility, the Form ATS–N would become effective, assuming no other basis for an ineffectiveness determination. Regarding the comment that the Commission should provide an NMS Stock ATS with a clear written statement of the reasons for a declaration of ineffectiveness,[397] the Commission intends to provide the basis for declaring a Form ATS–N ineffective in an order declaring a Form ATS–N ineffective, which will help the NMS Stock ATS address disclosure deficiencies if the ATS decides to refile an initial Form ATS–N and help market participants understand the reason the Form ATS–N was declared ineffective.

We also received three comments regarding whether the Commission should add a requirement to make available Form ATS–N filings for public notice and comment before the Commission declares a Form ATS–N effective or ineffective. One commenter notes that the rule filings of national securities exchanges are made publicly available and subject to notice and comment before approval, and that Form ATS–N should be the same.[398] Another commenter expresses the view that it would be helpful for the Commission to receive feedback from market participants regarding Form ATS–N filings, and supports harmonizing the process with the application and filing process for national securities exchanges.[399] One commenter, however, expresses the view that Form ATS–N should not be subject to a public notice and comment process.[400] This commenter states that the Commission has long recognized several fundamental differences between national securities exchanges and ATSs, and that imposing a public notice and comment period on ATSs would not be equitable and would impede dynamic market structure advances because the Commission has fostered competition among different types of trading venues.[401]

We believe that it would not be appropriate to subject Form ATS–N filings to public notice and comment, as some commenters suggest. The Commission did not propose to subject Form ATS–N filings to a public notice and comment process. As discussed above,[402] the Commission is not performing a review of the merits of initial Form ATS–N disclosures, such as determining the strengths and weaknesses of the trading platform or a protocol offered by the NMS Stock ATS. The Commission also is not making findings regarding whether the means by which orders will interact on the trading platform are, or are not, consistent with the Exchange Act, as is the case with respect to certain SRO rule filings.[403] Rather the Commission's review of Form ATS–N disclosures will focus on the completeness and comprehensibility of the disclosures, which does not lend itself to public notice and comment. We do not believe that public comment would facilitate the review of Form ATS–N, and are not subjecting Form ATS–N filings to a process similar to SROs' proposed rule change filings, which are subject to notice and comment, and consideration by the Commission.

The standard of review for ineffectiveness of Form ATS–N filings that we are adopting does not include an evaluation of the merits of the services that an NMS Stock ATS offers to subscribers. As discussed above, some commenters raise concerns about whether the Commission review process will result in imposing substantive standards on NMS Stock ATSs.[404] Rule 304 and Form ATS–N are designed to enhance operational transparency for NMS Stock ATSs, and therefore, the standard of review undergirding the Commission review will focus on the disclosures on Form ATS–N, as described above, and not the manner in which the NMS Stock ATS operates. Unlike proposed rule changes filed by national securities exchanges, the Commission will not make affirmative findings about Form ATS–N filings with regard to consistency with the Exchange Act.[405] Regulation ATS was designed to encourage innovation [406] and provide enough flexibility to accommodate the business objectives of, and benefits provided by, alternative trading systems.[407] As follows, the standard of review for ineffectiveness of Form ATS–N is designed to enhance the transparency objectives of the new disclosure requirements in a manner consistent with allowing NMS Stock ATSs to continue to innovate and provide benefits to the market. The Commission review is not intended to evaluate an NMS Stock ATS's services against industry norms, nor approve or disapprove aspects of the NMS Stock ATS's operations, for example, a new trading functionality, order type, or execution protocol.

[395] *See supra* notes 362–363 and accompanying text.

[396] *See supra* note 356 and accompanying text.

[397] *See supra* note 344 and accompanying text.

[398] *See* CBOE Letter at 2.

[399] *See* Citadel Letter at 3.

[400] *See* UBS Letter at 4.

[401] *See id.* Another commenter, in expressing the view that Form ATS–N amendments should not be made public upon filing, states that doing so would risk turning the effectiveness process into an extended review, notice, and comment period, which the commenter believes would be inappropriate and unwarranted. *See* SIFMA Letter at 31–32.

[402] *See supra* Section IV.A.3.c.

[403] *See supra* note 359 and accompanying text.

[404] *See, e.g., supra* note 346 and accompanying text.

[405] Proposed rule changes filed by national securities exchanges pursuant to Section 19 of the Exchange Act must be consistent with the Exchange Act. In addition, filings made pursuant to Section 19(b)(2) require the Commission to approve a proposed rule change if it finds the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder, or it must disapprove the proposed rule change. While a disclosure that reveals non-compliance with the federal securities laws or the rules and regulations thereunder may be a basis for the Commission finding that a declaration of ineffectiveness would be in the public interest and consistent with the protection of investors, Regulation ATS is a disclosure regime, and the Commission will not be making findings on consistency with the Exchange Act with respect to disclosures on Form ATS–N.

[406] *See* Regulation ATS Adopting Release, *supra* note 3, at 70910.

[407] *See id.* at 70847.

4. Rule 304(a)(1)(iv): Transition for Legacy NMS Stock ATSs

a. Rule 304(a)(1)(iv)(A): Initial Filing Requirements

Rule 304(a)(1)(iv) describes the process through which Legacy NMS Stock ATSs would file their initial Form ATS–N. We are adopting Rule 304(a)(1)(iv) (''Transition for Legacy NMS Stock ATSs'') to provide a process for a Legacy NMS Stock ATS to file its initial Form ATS–N, and to continue to operate while its initial Form ATS–N is under Commission review.[408] Adopted Rule 304(a)(1)(iv)(A) (''Initial Form ATS–N filing requirements'') requires that a Legacy NMS Stock ATS shall file with the Commission an initial Form ATS–N, in accordance with the conditions of Rule 304(a)(1)(iv), no earlier than January 7, 2019, and no later than February 8, 2019. Further, adopted Rule 304(a)(1)(iv)(A) provides that an initial Form ATS–N filed by a Legacy NMS Stock ATS shall supersede and replace for purposes of the exemption the previously-filed Form ATS (including any amendments to Form ATS) of the Legacy NMS Stock ATS.[409] The Legacy NMS Stock ATS may operate, on a temporary basis, pursuant to the filed initial Form ATS–N, and any amendment thereto, during the review of the initial Form ATS–N by the Commission.[410] In addition, adopted Rule 304(a)(1)(iv)(A) provides that an initial Form ATS–N filed by a Legacy NMS Stock ATS, as amended, will become effective, unless declared ineffective, upon the earlier of: (1) The completion of review by the Commission and publication pursuant to Rule 304(b)(2) or (2) the expiration of the review period, or, if applicable, the end of the extended review period, pursuant to Rule 304(a)(1)(iv)(B).

Adopted Rule 304(a)(1)(iv) modifies proposed Rule 304(a)(1)(i) to address certain commenter concerns, as described below. Under the proposed rule, an NMS Stock ATS operating as of the effective date of the final rule would continue to operate pursuant to its previously filed initial operation report on Form ATS, pending the Commission's review of the filed Form ATS. We modified this proposed process in response to comments. In the Proposal, we asked whether the Commission should allow a Legacy NMS Stock ATS to continue operations pursuant to Form ATS pending the Commission's review of Form ATS–N.[411] Two commenters express support for certain aspects of the proposed transition process for Legacy NMS Stock ATSs (including that the Commission allow Legacy NMS Stock ATSs to operate during the Commission review period).[412] One commenter states that it supports requiring Legacy NMS Stock ATSs to file an initial Form ATS–N.[413]

A Legacy NMS Stock ATS will be required to file an initial Form ATS–N to continue to operate pursuant to the Rule 3a1–1(a)(2) exemption with respect to its Rule 3b–16 activity in NMS stocks beyond January 7, 2019. This provision will allow a Legacy NMS Stock ATS to continue its current operations without disruptions to the ATS or its current subscribers and provide the Legacy NMS Stock ATS with sufficient time to make an orderly transition from compliance under the current Regulation ATS requirements to compliance with Rule 304.

Under the adopted rule, both Legacy NMS Stock ATSs and non-Legacy NMS Stock ATSs will be required to file an initial Form ATS–N. We believe that market participants should have access to the same level of information disclosed by both Legacy NMS Stock ATSs and non-Legacy NMS Stock ATSs as market participants will consider routing orders to both types of NMS Stock ATS. Allowing Legacy NMS Stock ATSs to file Form ATS instead of Form ATS–N would limit the amount of information available to market participants about these ATSs' operations and the ATS-related activities of their broker-dealer operators, and would thereby make it difficult for market participants to assess Legacy NMS Stock ATSs as potential routing destinations for their orders.

We believe that a Legacy NMS Stock ATS should be permitted to continue to operate during the Commission review period for initial Form ATS–N.[414] Therefore, we are adopting Rule 304(a)(1)(iv)(A) to transition Legacy NMS Stock ATSs from operating pursuant to Form ATS to operating pursuant to Form ATS–N without interruption. As noted above, the transition for Legacy NMS Stock ATSs will benefit Legacy NMS Stock ATSs and their subscribers, as subscribers will be able to continue to send their orders to Legacy NMS Stock ATSs without disruption.

Two commenters request clarification about the process for a Legacy NMS Stock ATS to file an initial Form ATS–N and its obligations to update its Form ATS on file with the Commission while the Commission reviews its initial Form ATS–N.[415] One commenter expresses concerns about the regulatory and legal uncertainties that could result from a Legacy NMS Stock ATS operating while having filed with the Commission both a Form ATS and a Form ATS–N.[416] Similarly, another commenter requests clarification about how a Legacy NMS Stock ATS should handle material changes to the NMS Stock ATS's Form ATS.[417] This commenter also asks the Commission to clarify whether a Legacy NMS Stock ATS should amend its Form ATS to avoid potential liability caused by the NMS Stock ATS submitting the additional information required in Form ATS–N.[418]

These commenters suggest processes that they believe will address these concerns.[419] One commenter suggests that the Commission deem effective a Legacy NMS Stock ATS's Form ATS–N upon filing but nevertheless subject it to a review and comment period by the Commission.[420] We are not adopting this suggestion because labeling an initial Form ATS–N ''effective'' before the Commission has completed the review could mislead market participants. Another commenter suggests that a Legacy NMS Stock ATS that makes changes to its operations during the 120-calendar day review period or extended review period should only be required to amend its Form ATS, and that the Legacy NMS Stock ATS should not be required to

[408] We are adopting Rule 304(a)(1)(iv) to delineate the initial filing process applicable to Legacy NMS Stock ATSs from the initial filing process applicable to non-Legacy NMS Stock ATSs. This differs from the proposed rule text, which integrated the requirements applicable to Legacy NMS Stock ATSs within the requirements applicable to all NMS Stock ATSs set forth in proposed Rule 304(a)(1)(i) through (iii). Providing these requirements in a separate section of the rule better organizes the rule text so filers can more easily understand the initial Form ATS–N filing process that is applicable to Legacy NMS Stock ATSs and is responsive to comments, which are discussed below.

[409] Although the Form ATS for a Legacy NMS Stock ATS will no longer have any legal effect for purposes of the exemption after the ATS files a Form ATS–N, a Form ATS will nevertheless continue to be subject to the federal securities laws and the regulations thereunder, including Regulation ATS, as a Form ATS previously filed with the Commission will constitute a ''report'' within the meaning of sections 11A, 17(a), 18(a), and 32(a), and any other applicable provisions of the Exchange Act. *See* 17 CFR 242.301(b)(2)(vi).

[410] *See* Rule 304(a)(1)(iv)(A).

[411] *See* Proposal, *supra* note 2, at 81026.

[412] *See* CFA Institute Letter at 5; BIDS Letter at 3.

[413] *See* CFA Institute Letter at 4.

[414] *See also supra* note 412 and accompanying text.

[415] *See* BIDS Letter at 2–3; SIFMA Letter at 29.

[416] *See* BIDS Letter at 2.

[417] *See* SIFMA Letter at 29.

[418] *See id.*

[419] *See* BIDS Letter at 2–3; SIFMA Letter at 29.

[420] *See* BIDS Letter at 2.

also amend its initial Form ATS–N until the Commission declares it effective, and that the NMS Stock ATS could then file a ''clean-up'' amendment to its initial Form ATS–N.[421] We are not adopting this approach because, as discussed below, our adopted approach to require a Legacy NMS Stock ATS to amend Form ATS–N would be less burdensome for the ATS than requiring the Legacy NMS Stock ATS to amend its Form ATS during the Commission review period and Form ATS–N after the Form ATS–N becomes effective.

In response to these commenters, and after considering their alternative suggestions, we are adopting Rule 304(a)(1)(iv)(A), which is modified from proposed Rule 304(a)(1)(i), to provide that a filed Form ATS–N shall supersede and replace for purposes of the exemption a Legacy NMS Stock ATS's previously-filed Form ATS. After considering the comments, we acknowledge that if the Commission were to require a Legacy NMS Stock ATS to file and amend both Form ATS and Form ATS–N during the Commission review period for an initial Form ATS–N, the Legacy NMS Stock ATS could incur additional legal and regulatory risks, as it would be required to make changes to two forms and ensure that the information on the two forms is consistent. The disclosures on an initial Form ATS–N would include the vast majority of information provided to the Commission on Form ATS that pertains to the ATS's NMS stock operations. Therefore, we believe that the modifications to the proposed rule would alleviate the burden on Legacy NMS Stock ATSs of filing two separate documents with the Commission that would likely contain significantly overlapping information. In addition, to address the commenters' concerns, and facilitate the ability of a Legacy NMS Stock ATS to maintain only one filing for a limited time during the transition, we are also modifying proposed Rule 304(a)(1)(i), and adopting as Rule 304(a)(1)(iv)(A), to provide that the Legacy NMS Stock ATS may operate, on a provisional basis, pursuant to the filed Form ATS–N, and any amendments thereto,[422] during the Commission review period of the filed initial Form ATS–N. This provision is designed to facilitate an orderly transition for Legacy NMS Stock ATSs from the Form ATS regime to the Form ATS–N regime while at the same time requiring an appropriate level of disclosure by NMS Stock ATSs.

In addition, we are adopting a provision in Rule 304(a)(1)(iv)(A) that provides that an initial Form ATS–N filed by a Legacy NMS Stock ATS, as amended, will become effective, unless declared ineffective, upon the earlier of: (1) The completion of review by the Commission and publication pursuant to Rule 304(b)(2) or (2) the expiration of the review period, or, if applicable, the end of the extended review period, pursuant to Rule 304(a)(1)(iv)(B). We are adding this provision to reflect changes to the effectiveness process; this provision is designed to replace parts of proposed Rule 304(a)(1)(iii). In addition, because we are adopting a process that allows a Legacy NMS Stock ATS to amend its initial Form ATS–N during the Commission review period, we are adding to Rule 304(a)(1)(iv)(A) that a Legacy NMS Stock ATS's Form ATS–N ''as amended'' will become effective, which will include any amendments made to an initial Form ATS–N during the Commission review period.

Finally, proposed Rule 304(a)(1) would have required Legacy NMS Stock ATSs to submit their initial Form ATS–N filings within 120 days of the effective date of this rulemaking. We received one comment supporting the requirement that Legacy NMS Stock ATSs file Form ATS–N within 120 calendar days of the effective date of the final rule, ''given the reasonable assumption that the operators of the ATS should be very familiar with the operational structure of said ATS.''[423] We are modifying proposed Rule 304(a)(1)(i) (as part of adopted Rule 304(a)(1)(iv)(A)) to require Legacy NMS Stock ATSs to file an initial Form ATS–N no earlier than January 7, 2019, and no later than February 8, 2019 and making additional technical modifications.[424] We believe that this will provide adequate time following the date that the enhanced disclosure requirements under Rule 304 become effective and for NMS Legacy NMS Stock ATSs to prepare and file an initial Form ATS–N with the Commission. NMS Stock ATSs will file Form ATS–N via EDGAR, which will be ready to accept Form ATS–N filings on January 7, 2019. We agree with the commenter that a Legacy NMS Stock ATSs should be knowledgeable of the operations of its system and the ATS-related activities of the broker-dealer operator and its affiliates and believes that requiring Legacy NMS Stock ATSs to file their initial Form ATS–N between January 7, 2019 and February 8, 2019 provides these with reasonable time to prepare and file their disclosures on Form ATS–N.[425] We note that, until a Legacy NMS Stock ATS files its initial Form ATS–N with the Commission, the Legacy NMS Stock ATS must provide notice of changes to its operations by amending its Form ATS on file with the Commission pursuant to Rule 301(b)(2) of Regulation ATS.[426]

b. Rule 304(a)(1)(iv)(B): Commission Review Period; Ineffectiveness Determination

Rule 304(a)(1)(iv)(B) provides the process and timing for the Commission to review a Legacy NMS Stock ATS's initial Form ATS–N, and, if applicable, declare such initial Form ATS–N effective. We are adopting Rule 304(a)(1)(iv)(B) (''Commission review period; Ineffectiveness determination''), which provides that the Commission may, by order, as provided in Rule 304(a)(1)(iii), declare an initial Form ATS–N filed by a Legacy NMS Stock ATS ineffective no later than 120 calendar days from the date of filing with the Commission, or, if applicable, the end of the extended review period. The Commission may extend the initial Form ATS–N review period for a Legacy NMS Stock ATS for: (1) An additional 120 calendar days if the initial Form ATS–N is unusually lengthy or raises novel or complex issues that require additional time for review, in which case the Commission will notify the

[421] *See* SIFMA Letter at 29.

[422] A Legacy NMS Stock ATS may file amendments pursuant to Rule 304(a)(1)(iv)(C) during the Commission review period. A change subject to a material amendment filed by a Legacy NMS Stock ATS within 30 calendar days of the end of the 240-calendar day extended review period, as provided by Rule 304(a)(1)(iv)(B)(*1*), or other period to which the Legacy NMS Stock ATS agrees in writing described in Rule 304(a)(1)(iv)(B)(*2*), may only be implemented by the Legacy NMS Stock ATS after the expiration of the 30-calendar day period provided by Rule 304(a)(2)(i)(A), and the Commission may declare such an amendment ineffective, as appropriate, until the 30-calendar day review period expires.

[423] *See* CFA Institute Letter at 5.

[424] This provision, which was proposed as the second sentence of proposed Rule 304(a)(1)(i) is now the first sentence of adopted Rule 304(a)(1)(iv)(A). In the adopted rule, we are making technical, non-substantive modifications to the proposed rule text, including: (1) Referring to ''an'' NMS Stock ATS rather than ''the'' NMS Stock ATS; (2) defining an NMS Stock ATS operating pursuant to an initial operation report on Form ATS as of the effective date as a ''Legacy NMS Stock ATS;'' (3) revising the definition of Legacy NMS Stock ATS to state that it operates pursuant to ''an initial operation report'' rather than a ''previously filed'' initial operation report; and (4) adding to Rule 304(a)(1)(i) the term ''initial'' before Form ATS–N. We are also changing the term ''in accordance with the instructions therein'' to ''in accordance with the conditions of this section'' because we intended for NMS Stock ATSs to comply with all of the applicable provisions of Rule 304, including any procedural provisions, in addition to the Instructions on Form ATS–N.

[425] *See* Proposal, *supra* note 2, at 81023.

[426] *See* 17 CFR 242.301(b)(2). *See supra* notes 57–63 and accompanying text.

Legacy NMS Stock ATS in writing within the initial 120-calendar day review period and will briefly describe the reason for the determination for which additional time for review is required; or (2) any extended review period to which a duly-authorized representative of the Legacy NMS Stock ATS agrees in writing.

As discussed above, we received comments on the 120-calendar day review period and extended review periods that either support or do not object to the time frames proposed for both non-Legacy NMS Stock ATSs and Legacy NMS Stock ATSs.[427] We continue to believe that 120 calendar days typically would provide the Commission adequate time to carry out its oversight functions with respect to the review of Forms ATS–N filed by Legacy NMS Stock ATSs, including its responsibilities to protect investors and maintain fair, orderly, and efficient markets, and that the extended review period for filings that are unusually lengthy or raise novel or complex issues will allow the Commission and its staff to conduct a thorough review and provide sufficient opportunity to discuss the filing with the NMS Stock ATS if necessary.[428] We are adopting Rule 304(a)(1)(iv)(B), which was proposed as part of Rule 304(a)(1)(ii)(A), with modifications, consistent with and for the reasons discussed above with respect to the Commission review period for Form ATS–N filings by non-Legacy NMS Stock ATSs.[429]

One commenter suggests that if the Commission declares a Legacy NMS Stock ATS's initial Form ATS–N ineffective, the NMS Stock ATS should have the opportunity to amend its Form ATS–N so that the form would be effective before the NMS Stock ATS is required to cease operating.[430] During the review process, we expect to engage in dialogue with the Legacy NMS Stock ATSs about their Form ATS–N disclosures. To the extent any deficiencies exist with the Form ATS–N disclosures, we expect that the Legacy NMS Stock ATSs typically will have an opportunity to understand and cure deficiencies in the filing before the Commission declares the Form ATS–N ineffective. If, after discussion with Commission staff, a Legacy NMS Stock ATS determines that it needs more time to address deficiencies in its initial Form ATS–N to avoid a Commission declaration of ineffectiveness, a Legacy NMS Stock ATS could consent to an extended Commission review period under Rule 304(a)(1)(iv)(B)(*2*). Prior to declaring a Legacy NMS Stock ATS's Form ATS–N ineffective, the Commission will provide the ATS with notice and opportunity for hearing about the Commission's intention to declare the form ineffective. After the Commission declares a Form ATS–N ineffective, however, the Legacy NMS Stock ATS will not have an opportunity to amend its Form ATS–N.[431] Upon its Form ATS–N being declared ineffective, a Legacy NMS Stock ATS must cease operating pursuant to the Rule 3a1–1(a) exemption,[432] and to the extent that the ATS does continue to operate, the Commission could find it to be an unregistered national securities exchange, and thus operating in violation of Section 5 of the Exchange Act.

This commenter also states that a declaration of ineffectiveness should remain confidential until the Legacy NMS Stock ATS has amended the Form ATS–N and the amended form is ''approved.'' [433] We do not agree with the commenter's suggestion. As discussed immediately above, there will be an opportunity during the review process for the ATS to supplement its filing. Once its initial Form ATS–N is declared ineffective, a Legacy NMS Stock ATS would not be able to operate pursuant to the Rule 3a1–1(a)(2) exemption and would not be able to amend its Form ATS–N after it is declared ineffective. It could file a new Form ATS–N, which the Commission will review without prejudice. We believe that it is in the public interest for the Commission to make an order of ineffectiveness for a Legacy NMS Stock ATS publicly available so that market participants have notice of the operating status of the NMS Stock ATS and can make appropriate adjustments to their routing strategies.[434]

Two commenters request clarification about whether amending an initial Form ATS–N as a result of a material change during the Commission review period would toll the review period, and suggest that the review period should not restart with every amendment.[435] The filing of a Form ATS–N material amendment by a Legacy NMS Stock ATS, even if filed within 30 days of the expiration of the Commission's extended review period, would not toll the review period for the Form ATS–N; initial Form ATS–N will become effective in accordance with the timeframes set forth in Rule 304(a)(1)(iv)(A). However, a change reflected in a material amendment that is filed within 30 days of the expiration of the Commission review period could not be implemented until the end of the Commission's 30-calendar day review period pursuant to Rule 304(a)(2)(i)(A).

c. Rule 304(a)(1)(iv)(C): Amendments to Initial Form ATS–N

Rule 304(a)(1)(iv)(C) describes the process through which Legacy NMS Stock ATSs would amend their initial Form ATS–N during the Commission review period. We are adopting Rule 304(a)(1)(iv)(C) (''Amendments to initial Form ATS–N''), which requires that during the review period of the initial Form ATS–N filed by a Legacy NMS Stock ATS, the Legacy NMS Stock ATS shall amend its initial Form ATS–N pursuant to the requirements of Rule 304(a)(2)(i)(A) through (D). The adopted rule differs from the Proposal. As proposed, during the Commission review period for an initial Form ATS–N filed by a Legacy NMS Stock ATS, the Legacy NMS Stock ATS would have been required to continue operating pursuant to its existing Form ATS initial operation report and file amendments on Form ATS to provide notice of changes to the operations of its

[427] *See supra* notes 294–295 and accompanying text.

[428] *See* Proposal, *supra* note 2, at 81023–24. *See also supra* notes 296–297 and accompanying text.

[429] *See supra* Section IV.A.3. We added language to the proposed rule text, and created a separate paragraph (B) of Rule 304(a)(1)(iv) to address the Commission review period for Legacy NMS Stock ATS amendments including: (1) Specifying, consistent with the proposed rule text, that the Commission will declare ''by order'' an initial Form ATS–N ineffective and referencing the paragraphs under the rule that delineate the process pursuant to which the Commission will do so; (2) specifying that the Commission will declare an initial Form ATS–N ineffective no later than 120 calendar days from ''the date of'' filing with the Commission; (3) adding to the first sentence that the Commission may declare an initial Form ATS–N ineffective no later than 120 calendar days from the date of filing with the Commission, ''or, if applicable, the end of the extended review period'' to reduce ambiguity regarding the length of the Commission review period; (4) specifying that the Commission will notify the Legacy NMS Stock ATS of any extension of the review period within the 120 ''calendar day'' review period; (5) specifying that the Commission review period described in this section applies to ''initial'' Form ATS–N; and (6) using the defined term ''Legacy NMS Stock ATS'' throughout the paragraph.

[430] *See* SIFMA Letter at 29.

[431] Because its initial Form ATS–N supersedes and replaces a Legacy NMS Stock ATS's Form ATS for purposes of the exemption and the initial Form ATS–N can be amended, a Legacy NMS Stock ATS may not withdraw its initial Form ATS–N. *See infra* Section V.B.1.

[432] *See infra* note 434.

[433] *See* SIFMA Letter at 29.

[434] The Commission could also, in the case of a Legacy NMS Stock ATS, provide in its order of ineffectiveness a period of time for the NMS Stock ATS to wind down its operations. Because Commission orders of ineffectiveness would be made public, market participants would also have notice of any wind down period.

[435] *See* BIDS Letter at 3; SIFMA Letter at 29.

system.[436] Because adopted Rule 304(a)(1)(iv)(A) states that a filed Form ATS–N will supersede and replace for purposes of the exemption a Legacy NMS Stock ATS's previously-filed Form ATS, a Legacy NMS Stock ATS will no longer file Form ATS amendments once it files an initial Form ATS–N. Instead, a Legacy NMS Stock ATS will be required to update Form ATS–N during the Commission review period.[437] If the ATS trades both NMS stocks and non-NMS stocks, such ATS would update its Form ATS with respect to its non-NMS stock operations.

As discussed above, two commenters request that the Commission clarify the process for filing amendments during the Commission review period for Legacy NMS Stock ATSs[438] and suggest alternative approaches.[439] The modifications in adopted Rule 304(a)(1)(iv)(C) are designed to address the comments requesting clarification about the process for reporting material changes during the time the Commission reviews the initial Form ATS–N of a Legacy NMS Stock ATS.[440] Adopted Rule 304(a)(1)(iv)(C) also addresses the alternative approaches that the commenters suggest by requiring a Legacy NMS Stock ATS to update its Form ATS–N (rather than Form ATS), and operate pursuant to its Form ATS–N (rather than Form ATS).[441] We believe that Rule 304(a)(1)(iv)(C) will relieve any unnecessary burden from maintaining two forms and ease the transition to the Form ATS–N regime.

In addition, one commenter asked the Commission to adopt a process that would allow Legacy NMS Stock ATSs to introduce a new functionality or make changes during the 120-calendar day review period for the initial Form ATS–N.[442] We agree with the commenter that Legacy NMS Stock ATSs should have a method to make changes to their operations and introduce new functionalities during the Commission review period. In accordance with Rule 304(a)(1)(iv)(C), during the Commission review period, the Legacy NMS Stock ATSs may make changes to the operations of the ATS and shall file amendments to reflect those changes pursuant to the requirements of Rule 304(a)(2)(i)(A) through (D). For example, during the period of Commission review of its initial Form ATS–N, a Legacy NMS Stock ATS may make a material change to its operations, provided that it files with the Commission an amendment to its Form ATS–N describing such change at least 30 calendar days prior to the date of implementation of such change, pursuant to Rule 304(a)(2)(i)(A). A change subject to a material amendment filed by a Legacy NMS Stock ATS may be implemented by the Legacy NMS Stock ATS after the expiration of the 30-calendar day period provided by Rule 304(a)(2)(i)(A).

Rule 304(a)(1)(iv)(C) provides that a Legacy NMS Stock ATS shall amend its initial Form ATS–N pursuant to the requirements of Rule 304(a)(2)(i)(A) through (D), which govern the process for filing amendments to Form ATS–N. Amendments will be subject to Commission review and could be declared ineffective under Rule 304(a)(2)(ii). Filed Form ATS–N amendments will not be made public until the Legacy NMS Stock ATS's initial Form ATS–N becomes effective and publicly available. Once a Legacy NMS Stock ATS's initial Form ATS–N becomes effective, the Commission will make public the Form ATS–N, as amended, which will incorporate any amendments that the Legacy NMS Stock ATS filed to the initial Form ATS–N during the Commission review period, except for any material amendments still subject to the 30-calendar day Commission review period.[443] In connection with the changes described above, we are adopting Rule 304(a)(1)(iv)(C), which provides that a Legacy NMS Stock ATS shall amend its filed Form ATS–N during the Commission review pursuant to the requirements of Rule 304(a)(2)(i)(A) through (D).

B. Rule 304(a)(2): Form ATS–N Amendments

1. Rule 304(a)(2)(i): Filing Requirements

Rule 304(a)(2)(i) describes the types of amendments that NMS Stock ATSs would be required to file to their Form ATS–N. We proposed Rule 304(a)(2)(i) (''Form ATS–N amendment filing requirements'') to require an NMS Stock ATS to update information disclosed on Form ATS–N concerning its manner of operations and the ATS-related activities of its broker-dealer operator and its affiliates. Proposed Rule 304(a)(2)(i) would have required an NMS Stock ATS to amend an effective Form ATS–N in accordance with the Instructions therein: (A) at least 30 calendar days prior to the date of implementation of a material change to the operations of the NMS Stock ATS or to the activities of the broker-dealer operator or its affiliates that are subject to disclosure on Form ATS–N; (B) within 30 calendar days after the end of each calendar quarter to correct any other information that has become inaccurate for any reason and has not been previously reported to the Commission as a Form ATS–N amendment; or (C) promptly, to correct information in any previous disclosure on Form ATS–N, after discovery that any information filed under proposed Rule 304(a)(1)(i) or (a)(2)(i)(A) or (B) was inaccurate or incomplete when filed.

We are adopting Rule 304(a)(2)(i) with modifications. As adopted, Rule 304(a)(2)(i) requires an NMS Stock ATS to amend a Form ATS–N in accordance with the conditions of Rule 304:[444] (1) At least 30 calendar days, except as provided by Rule 304(a)(2)(i)(D), prior to the date of implementation of a material change to the operations of the NMS Stock ATS or to the activities of the broker-dealer operator or its affiliates that are subject to disclosure on Form ATS–N; (2) no later than 30 calendar days after the end of each calendar quarter to correct information that has become inaccurate or incomplete for any reason and was not required to be reported to the Commission as a Form ATS–N amendment pursuant to Rules 304(a)(2)(i)(A), (C), or (D); (3) promptly, to correct information in any previous disclosure on Form ATS–N, after

[436] *See* Proposal, *supra* note 2, at 81023; *see also* 17 CFR 242.301(b)(2)(ii) through (iv). The Commission is modifying the proposed rule by creating a new paragraph (C) of Rule 304(a)(1)(iv), which provides a process for reporting changes during the Commission review period for Legacy NMS Stock ATSs.

[437] *See supra* note 409.

[438] *See supra* note 415 and accompanying text.

[439] *See supra* notes 420 and 421 and accompanying text.

[440] *See supra* note 415 and accompanying text.

[441] *See id.*

[442] *See* Liquidnet Letter at 4.

[443] *See infra* note 587 and accompanying text.

[444] The proposed rule text required that an NMS Stock ATS amend ''an effective'' Form ATS–N in accordance with the ''instructions therein.'' We have modified this requirement in the Rule 304(a)(2)(i) as adopted by deleting the word ''effective'' because, as discussed in Section IV.A.4.c, we are adopting Rule 304(a)(1)(ii) and Rule 304(a)(1)(iv)(C), which allow an NMS Stock ATS to amend a Form ATS–N that has not yet become effective.

In addition, we are replacing the rule text that stated that an NMS Stock ATS shall amend Form ATS–N in accordance with ''the instructions therein'' with text requiring an NMS Stock ATS to amend Form ATS–N in accordance with ''the conditions of this section'' because we intended for NMS Stock ATSs to comply with all of the applicable provisions of Rule 304, including any procedural provisions, in addition to the Instructions on Form ATS–N.

We are also adding a separate amendment filing process for changes to information disclosed in Part III, Item 24 and 25 of Form ATS–N. *See infra* Sections IV.B.1.a.iii. Because in Rule 304(a)(2)(i)(D) we are specifying treatment for order display and fair access amendments, which generally would be material changes, we are also adding that Rule 304(a)(2)(i)(A) applies ''except as provided by'' Rule 304(a)(2)(i)(D). *See infra* Sections IV.B.1.a.iii.

discovery that any material information previously filed on Form ATS–N was inaccurate or incomplete when filed; and (4) no later than seven calendar days after information required to be disclosed in Part III, Items 24 and 25 on Form ATS–N has become inaccurate or incomplete. Form ATS–N requires an NMS Stock ATS filing an amendment to ''select one'' of the four types of amendments; each amendment type is mutually exclusive.[445]

a. Material Changes

(i) Comments on Advance Notice

We proposed that an NMS Stock ATS would be required to amend an effective Form ATS–N at least 30 calendar days prior to the date of implementation of a material change to the operations of the NMS Stock ATS or to the activities of the broker-dealer operator or its affiliates that are subject to disclosure on Form ATS–N.[446] In the Proposal, we stated that a 30-calendar day advance notice period would give the Commission the opportunity to clarify any questions that might arise or to take action, if appropriate, regarding problems that may impact market participants, before the NMS Stock ATS implemented the change.[447] We also stated that such advance notice would allow market participants to evaluate the changes before implementation and assess the NMS Stock ATS as a continued, or potential, trading venue.[448]

We received several comments relating to the proposed 30-calendar day advance notice requirement for material changes in proposed Rule 304(a)(2)(i)(A). One commenter states that it supports the requirement that an NMS Stock ATS file a material amendment to Form ATS–N 30 days in advance of implementing a material change to the operations of the NMS Stock ATS, or the activities of the broker-dealer operator or its affiliates.[449] Another commenter states that although advance notice of 20 calendar days before implementing a material change may be adequate, it believes that the 30-calendar day advance notice requirement strikes an appropriate balance between an NMS Stock ATS's ability to innovate, while also providing market participants and regulators adequate time to evaluate and respond to the intended change.[450]

Two commenters suggest that instead of requiring 30 calendar days of advance notice, the Commission should require NMS Stock ATSs to file an amendment on Form ATS–N at least 20 calendar days in advance of implementing a material change, which is the same as the current requirement for filing amendments to Form ATS.[451] One commenter believes the 30-calendar day advance notice period would provide minimal benefit for the Commission because the Commission may at any time object to an NMS Stock ATS's functionality or require clarification.[452] This commenter also states that lengthening the advance notice period would create an unnecessary delay for NMS Stock ATSs in introducing new functionality and improving existing functionality and processes.[453] The other commenter supports retaining the 20-calendar day advance notice period, stating that due to the breadth of disclosures on Form ATS–N and the fact that Form ATS–N disclosures will be made public, market participants will have access to a much greater level of information about ATS operations and changes than in the past.[454] Another commenter states that a process for reviewing Form ATS–N amendments that extends beyond 30 days could have a significant impact on NMS Stock ATS operations, particularly with regard to the launch of new technologies.[455]

We are adopting Rule 304(a)(2)(i)(A) with modifications. We do not agree with commenters who believe that the current 20-calendar day advance notice period for material amendments to be filed on Form ATS would be more appropriate for NMS Stock ATSs than a 30-calendar day period. We believe that a 30 calendar day advance notice period for a material change would allow the Commission sufficient time to review the amendment and determine, if necessary, whether the filing should be declared ineffective. Although we agree with the commenter that states that market participants will have access to more information regarding NMS Stock ATS operations than in the past,[456] given the complexity of NMS Stock ATSs today and the breadth of disclosures required on Form ATS–N, the 10 additional calendar days provides the Commission with the necessary time to review, and communicate with the NMS Stock ATS about, the Form ATS–N disclosures. We believe that the benefits of a longer advance notice period justify any potential burden on an NMS Stock ATS and any potential delay to the introduction of a new technology. We believe that a 30-calendar day review period will benefit subscribers and market participants as the time will allow the Commission to help ensure that disclosures made available to the public are complete and comprehensible.

One commenter states that the advance notice requirement for material changes would be close to an ''advance notice and approval'' approach that may effectively result in a merit review process of NMS Stock ATS operations.[457] As discussed above with respect to the Commission's review of an initial Form ATS–N pursuant to Rule 304(a)(1)(iii),[458] the Commission's review of a Form ATS–N amendment does not weigh the merits of a change that is the subject of a Form ATS–N amendment. Rather, the Commission's review is focused on the completeness and comprehensibility of the disclosures themselves.

Another commenter expresses concern regarding situations in which it files a material amendment to Form ATS–N but needs to modify a functionality based on customer feedback or unanticipated workflows or scenarios.[459] The commenter states that it would be beneficial for an NMS Stock ATS to have the flexibility to make modifications without delay, as long as any modifications were disclosed in advance to customers, would not adversely impact customers, and do not change the key elements of the new functionality that had been previously described in a Form ATS–N amendment.[460] In addition to providing advance notice to the public about a potential material change to the NMS Stock ATS, the advance notice period allows the Commission to review the disclosures on Form ATS–N, and we believe that the review will help ensure that market participants receive complete and comprehensible disclosures. We are providing guidance for determining whether a change is material.[461] In deciding whether to implement a modification to a functionality without delay in response to customer feedback or unanticipated workflows or scenarios, an NMS Stock ATS is required to determine if, in light of all relevant facts and circumstances,

[445] *See* cover page to Form ATS–N.

[446] *See* proposed Rule 304(a)(2)(i)(A).

[447] *See* Proposal, *supra* note 2, at 81027–28.

[448] *See id.* at 81028.

[449] *See* MFA/AIMA Letter at 4.

[450] *See* HMA Letter at 9.

[451] *See* Liquidnet Letter at 4; KCG Letter at 5.

[452] *See* Liquidnet Letter at 4.

[453] *See id.*

[454] *See* KCG Letter at 5.

[455] *See* Fidelity Letter at 10.

[456] *See* KCG Letter at 5.

[457] *See* KCG Letter at 4.

[458] *See supra* Section IV.A.3.

[459] *See* Liquidnet Letter at 5.

[460] *See id.*

[461] *See infra* Section IV.B.1.a.ii.

the modification constitutes a material change. If the modification does not constitute a material change, the NMS Stock ATS could implement the change and file an updating amendment. However, if the modification is material, the NMS Stock ATS must file a material amendment and wait 30 calendar days before implementing the change.[462]

(ii) Comments on Materiality

In the Proposal, we stated our belief that a change to the operations of an NMS Stock ATS, or the disclosures regarding the activities of the broker-dealer operator and its affiliates, would be material if there is a substantial likelihood that a reasonable market participant would consider the change important when evaluating the NMS Stock ATS as a potential trading venue.[463] We continue to believe that this standard of materiality is appropriate. This standard of materiality is similar to materiality standards applied in the context of securities disclosures made pursuant to other rules.[464]

Some commenters agree that materiality is an appropriate standard for requiring advance notice.[465] One commenter states that it agrees with the guidance regarding materiality set forth in the Proposal[466] but notes that facts and circumstances could determine whether the scenarios the Commission provided in the Proposal would likely constitute material changes, and states that although the scenarios set forth in the Proposal are helpful examples, they are broadly written.[467] We continue to believe that scenarios that are particularly likely to implicate a material change would include: (1) A broker-dealer operator or its affiliates beginning to trade on the NMS Stock ATS; (2) a change to the broker-dealer operator's policies and procedures governing the written safeguards and written procedures to protect the confidential trading information of subscribers pursuant to Rule 301(b)(10)(i) of Regulation ATS; (3) a change to the types of participants on the NMS Stock ATS; (4) the introduction or removal of a new order type on the NMS Stock ATS; (5) a change to the order interaction and priority procedures; (6) a change to the segmentation of orders and participants; (7) a change to the manner in which the NMS Stock ATS displays orders or quotes; and (8) a change of a service provider to the operations of the NMS Stock ATS that has access to subscribers' confidential trading information.[468] This list is not intended to be exhaustive, and we do not mean to imply that other changes to the operations of an NMS Stock ATS or the activities of the broker-dealer operator or its affiliates could not constitute material changes. Further, the NMS Stock ATS should generally consider whether the cumulative effect of a series of changes to the operations of the NMS Stock ATS or the activities of the broker-dealer operator or its affiliates with regard to the NMS Stock ATS is material. In addition, in determining whether a change is material, an ATS generally should consider whether such change would affect: (1) The competitive dynamics among ATS subscribers; (2) the execution quality or performance of the orders of any subscriber or category of subscribers; (3) the fees that any subscriber or category of subscribers would pay to access and/or use the ATS; (4) the nature or composition of counter-parties with which any subscriber or category of subscribers interact; and (5) the relative speed of access or execution of any subscriber or group of subscribers.

Some commenters ask that we provide greater clarity with respect to the types of changes that would be material changes.[469] One commenter states that we should provide examples of types of changes that would not be considered material or would be excluded from being considered ''material'' given the impracticality of the 30-calendar day amendment period, and states that changes that are not subscriber-facing (*e.g.,* changes to software, hardware, or other trading infrastructure) should not be deemed to be material changes.[470] This commenter also states that NMS Stock ATSs should not be required to make a good-faith decision that a change is not material ''only to be informed that the Commission has decided the change is material based on an unpublished standard.''[471] Another commenter states that the ''standard'' for determining material changes is one of the most difficult and potentially unworkable obligations under the Proposal.[472] Another commenter states that the Commission should provide ''clear and objective standards'' on what triggers the requirement for an NMS Stock ATS to file a Form ATS–N amendment; this commenter states that if the Commission staff regards every change as material, then it means nothing to provide that amendments are required only for material changes.[473] In addition, one commenter states that a clearer ''definition'' of what is considered a ''material amendment'' is critical to NMS Stock ATS broker-dealer operators due to the fact that NMS Stock ATSs must provide advance notice before implementing a material change.[474] Another commenter observes that NMS Stock ATSs have operations, offerings, and interactions that regularly evolve and states that it is ''essential'' for NMS Stock ATSs to have ''clear and specific expectations'' on what types of changes would be deemed material and what level of detail should be included in the disclosures.[475] Another commenter states that without descriptive and informative commentary from the Commission, there will be uncertainty and disparity as to which changes are actually filed by NMS Stock ATS operators as material changes, and suggests that the Commission provide a clear set of standards that would trigger a Form ATS–N amendment.[476]

We continue to believe that the Proposal's guidance regarding whether a change is material is appropriate. In addition, we agree with the comment that a change that falls in one of the categories set forth in the Proposal, including a change to the manner in which the NMS Stock ATS displays orders or trading interest, such as the font size in which orders are displayed,[477] would not be a material change if there would not be a substantial likelihood that a reasonable market participant would consider the change important when evaluating the NMS Stock ATS as a potential trading venue. We also do not believe that market participants should be concerned, as suggested by one commenter,[478] that the Commission staff may regard ''every change'' as material and thereby render

[462] In the event that it is appropriate for the Commission to exempt an NMS Stock ATS, conditionally or unconditionally, by Commission order, after application by the ATS, from the advance filing requirement, the Commission will be able to issue exemptions. *See supra* note 226 and accompanying text.

[463] *See* Proposal, *supra* note 2, at 81028.

[464] *See id.* at 81028 n.309.

[465] *See* BIDS Letter at 3; SIFMA Letter at 30–31.

[466] *See infra* note 468 and accompanying text.

[467] *See* Liquidnet Letter at 4.

[468] *See* Proposal, *supra* note 2, at 81028.

[469] *See* BIDS Letter at 3–4; Fidelity Letter at 10; UBS Letter at 3; SIFMA Letter at 31.

[470] *See* SIFMA Letter at 31.

[471] *See id.*

[472] *See* KCG Letter at 5.

[473] *See* SIFMA Letter at 30–31.

[474] *See* Fidelity Letter at 10.

[475] *See* SIFMA Letter at 5.

[476] *See* UBS Letter at 3.

[477] *See* Liquidnet Letter at 4.

[478] *See* SIFMA Letter at 30–31.

meaningless the Commission's materiality guidance.

One commenter notes that NMS Stock ATSs may over-file material amendments to avoid risk, and that over-filing would cost substantial time and resources for NMS Stock ATSs, as well as burden the Commission staff that will be processing and reviewing the submissions.[479] Another commenter expresses concern that the requirements for amending Form ATS–N would create a reporting regime that is ''overly voluminous'' and may be less effective for market participants seeking transparency.[480]

The Commission does not believe that its materiality standard will result in overreporting or underreporting of information by an NMS Stock ATS or create an overly time-consuming and voluminous Form ATS–N amendment filing process for NMS Stock ATSs or the Commission. The Commission recognizes that Form ATS–N will require an NMS Stock ATS to provide more information about its operations and ATS-related activities of the broker-dealer operator and its affiliates than Form ATS. The Commission also recognizes that the structure and complexities of NMS Stock ATS operations have significantly changed since Regulation ATS was adopted, and believes that these changes require enhanced disclosures for subscribers to better understand how NMS Stock ATSs operate. Given the technology advancements and the proclivity for NMS Stock ATSs to enhance the operations of their ATSs, and the fact that market participants search for the best trading venue for their orders, we believe that it is important for an NMS Stock ATS to amend its Form ATS–N as required to ensure disclosures on Form ATS–N are complete and comprehensible. Based on the Commission experience with Form ATS filings, we believe that we have provided reasonable estimates of the time and resources that NMS Stock ATSs will need to expend to ensure that disclosures on amended Form ATS–N are accurate, current, and complete.

With regard to the commenter that asks for more specificity about the level of detail that amendments to Form ATS–N require,[481] we have revised Parts II and III of adopted Form ATS–N to make requests more explicit and clear about information that would be responsive to form requirements, and in some questions, we are requiring NMS Stock ATSs to provide a ''summary'' or a ''list'' of information.[482] These changes are designed to provide an NMS Stock ATS with more specificity about the level of detail that is required by the form and to alleviate the burden on NMS Stock ATSs. Further, we revised Form ATS–N to remove certain terms that commenters believe are vague and, in some cases, reduced the scope of information requested, and revised requests in adopted Form ATS–N to make more explicit what we meant by these terms. We believe that the requests in adopted Form ATS–N, as revised from the Proposal, provide NMS Stock ATSs the appropriate level of specificity for them to understand the information that is required by the form. In addition, the Commission will apply the same standard of review for declaring ineffective a Form ATS–N amendment as it will apply for declaring ineffective an initial Form ATS–N.

One commenter states that it may be worth considering an approach that leverages the Regulation SCI framework of major changes determined to be material because such an approach would help ensure consistency between different Commission regulations that impact and govern ATSs.[483] We are declining to adopt the commenter's suggestion to apply the Regulation SCI framework for materiality. Regulation SCI does not define material systems changes but requires an SCI entity to establish written criteria for identifying a change to its SCI systems and the security of indirect SCI systems as material and to report to the Commission those changes the SCI entity identified as material in accordance with such criteria.[484] Additionally, Form ATS–N is a public reporting form, and we believe the materiality guidance for material amendments to Form ATS–N is more appropriate than the Regulation SCI framework because it provides NMS Stock ATSs, market participants, and the Commission a clearer standard for determining whether a change would be material in the context of public reporting.

In addition, one commenter states that because consumers of ATS disclosures vary widely in business models and sophistication, the Commission should not create ''tiers'' of materiality, and states that although the Commission has always understood that some ''material'' factors may be more or less important to different market participants, it should not substitute its priorities and relative rankings of importance for those of diverse market participants.[485] We are not adopting ''tiers'' of materiality or using our own priorities or other relative ''rankings'' to determine whether a change to an NMS Stock ATS's operations is material. The materiality of any change is dependent on the specific facts and circumstances, and we believe that creating tiers of materiality would add unnecessary complexity and would be inconsistent with the Commission's approach to materiality in other contexts.

(iii) Order Display and Fair Access Amendments

In the Proposal, we stated that if an NMS Stock ATS triggers the Rule 301(b)(3)(i) order display and execution access volume thresholds after commencing operations pursuant to an effective Form ATS–N, the Commission generally would consider this to be a material change to the operations of the NMS Stock ATS.[486] We also stated in the Proposal that if an NMS Stock ATS triggers the Rule 301(b)(5)(i) fair access volume thresholds after commencing operations pursuant to an effective Form ATS–N, the Commission would generally consider this to be a material change to the operations of the NMS Stock ATS.[487]

Under Rule 304(a)(i)(2)(A), an NMS Stock ATS is required to file a material amendment at least 30 calendar days prior to the date of implementation of a material change. We continue to believe that it generally would be a material change to the operations of an NMS Stock ATS if the ATS were to exceed the order display and execution access threshold or become subject to the order display and execution access requirements under Rule 301(b)(3). Likewise, we continue to believe that it generally would be a material change to the operations of an NMS Stock ATS if the ATS were to exceed the fair access threshold or become subject to the order display and execution access requirements under Rule 301(b)(5). We recognize, however, that an NMS Stock ATS may not be able to comply with the 30-calendar day advance notice period for material amendments because the ATS may not be able to foresee when it will exceed the order display and execution access or fair access volume thresholds. To provide market participants with information about when an NMS Stock ATS becomes subject to, or no longer is subject to, the

[479] *See* BIDS Letter at 3–4.

[480] *See* STA Letter at 5.

[481] *See supra* note 475 and accompanying text.

[482] *See* Part II, Items 4, 5, 6, and 7 of adopted Form ATS–N; Part III, Items 2, 3, 5, 6, 11, 13, and 19 of adopted Form ATS–N.

[483] *See* UBS Letter at 3.

[484] *See* Regulation SCI Adopting Release, *supra* note 76, 79 FR at 72341–42.

[485] *See* HMA Letter at 9–10.

[486] See Proposal, *supra* note 2, at n.500.

[487] See *id.* at n.506.

order display and execution access and fair access requirements, while not placing an undue burden on the NMS Stock ATS, we are adding to Rule 304(a)(2)(i) new subparagraph (D) to require an NMS Stock ATS to amend its Form ATS–N no later than seven calendar days after a change to the information required to be disclosed in Part III, Items 24 and 25 on Form ATS–N by an NMS Stock ATS (''order display and fair access amendments'').[488] We believe that requiring NMS Stock ATSs to disclose changes to the information required to be disclosed in Part III, Items 24 and 25 of adopted Form ATS–N no later than seven calendar days from such changes will provide sufficient time for NMS Stock ATSs to comply with the requirement, while providing market participants with timely notice.

b. Updating Amendments

We proposed in Rule 304(a)(2)(i)(B) that an NMS Stock ATS is required to update its Form ATS–N within 30 calendar days after the end of each calendar quarter to correct any other information that has become inaccurate for any reason and has not been previously reported to the Commission as a Form ATS–N amendment.

We are amending Rule 304(a)(2)(i)(B) to expand the circumstances under which ''updating amendments'' [489] would be filed. As proposed, NMS Stock ATSs would have been required to file updating amendments to correct information that has become ''inaccurate.'' [490] We are amending Rule 304(a)(2)(i)(B) also to require that NMS Stock ATSs file updating amendments to correct information that has become ''incomplete.'' Although we received no comments directly on proposed Rule 304(a)(2)(i)(B), one comment on the amendment process in general expresses the view that an ATS must have the ability to update its filing to address ambiguities in how its rules would apply to different scenarios or uses.[491] The commenter also states that if an ATS determines that it can ''make its disclosure clearer, add detail, or improve the organization of the disclosure, the ATS should be encouraged to do so.'' [492] We are modifying proposed Rule 304(a)(2)(i)(B) to specify that an NMS Stock ATS will be required to file an updating amendment to revise disclosures that become ''inaccurate or incomplete.'' Although, as proposed, Rule 304(a)(2)(i) did not explicitly require an NMS Stock ATS to disclose changes (other than material changes under Rule 304(a)(2)(i)(A)) that would render its Form ATS–N incomplete, the Commission stated its intent for Rule 304(a)(2)(i)(B) to provide a ''a mechanism for NMS Stock ATSs to disclose changes to their operations or to update information that does not constitute a material change.'' [493] We continue to believe that it is important that market participants have access to accurate, current, and complete disclosures on Form ATS–N. Accordingly, the Commission is requiring that an NMS Stock ATS disclose, no later than 30 calendar days after the end of the calendar quarter, changes that would render its Form ATS–N inaccurate or incomplete, but would not be required to be filed as correcting, material, or order display and fair access amendments.

We also are revising Rule 304(a)(2)(i)(B) to provide that an updating amendment shall be filed ''no later than'' 30 calendar days after the end of the calendar quarter. This change allows, but does not require, an NMS Stock ATS to file amendments required by Rule 304(a)(2)(i)(B) earlier than the 30 calendar day window at the end of each calendar quarter.

In addition, proposed Rule 304(a)(2)(i)(B) would have required an NMS Stock ATS to file an amendment to correct ''any other'' information that has not been previously reported as a Form ATS–N amendment. We believe that, as proposed, the phrase ''any other'' information could be vague and therefore, it could have been unclear when it would be permitted for an NMS Stock ATS to file an updating amendment, as opposed to a material or correcting amendment. To distinguish between what information may be filed pursuant to Rule 304(a)(2)(i)(B), rather than as a material amendment under Rule 304(a)(2)(i)(A), correcting amendment under Rule 304(a)(2)(i)(C), or order display and fair access amendment under Rule 304(a)(2)(i)(D), we are making a change to provide that updating amendments shall be filed to correct information that ''was not required to be reported to the Commission as a Form ATS–N amendment pursuant to paragraphs 304(a)(2)(i)(A), (C), or (D) of this section.''

We believe that requiring NMS Stock ATSs to correct information that has become inaccurate or incomplete for any reason (and was not required to be reported to the Commission as a material amendment, correcting, or order display and fair access amendment) no later than 30 calendar days after the end of each calendar quarter would tailor the reporting burden for filing amendments on NMS Stock ATSs to the degree of significance of the change in a manner that does not compromise the Commission's oversight of NMS Stock ATSs or its ability to protect investors and the public interest. For example, if an NMS Stock ATS that publishes or otherwise provides to one or more subscribers or persons aggregate platform-wide order flow and execution statistics of the NMS Stock ATS that are not otherwise required disclosures under Rule 605 of Regulation NMS, the NMS Stock ATS could, depending on the facts and circumstances, disclose changes to such statistics in a updating amendment no later than 30 calendar days after the end of the calendar quarter in which the changes occurred.[494]

We continue to believe that allowing NMS Stock ATSs to implement non-material changes immediately would allow NMS Stock ATSs to make updating changes to their operations and disclosures without delay, while at the same time provide disclosure about those changes to market participants and the Commission within an appropriate time frame. Updating amendments, like all amendments to Form ATS–N, will be subject to Commission review pursuant to Rule 304(a)(2)(ii) and could be declared ineffective if the Commission makes the required findings.

c. Correcting Amendments

We proposed in Rule 304(a)(2)(i)(C) to require an NMS Stock ATS to amend its Form ATS–N promptly to correct information in any previous disclosure on Form ATS–N after discovery that any information previously filed on Form ATS–N was inaccurate or incomplete when filed. We proposed that such amendments will be subject to

[488] Because order display and fair access amendments generally would be material changes, we are also adding to Rule 304(a)(2)(i)(A) that such amendments must be filed under Rule 304(a)(2)(i)(A) ''except as provided by'' Rule 304(a)(2)(i)(D).

[489] In the Proposal, we referred to these amendments as ''periodic amendments.'' *See* Proposal, *supra* note 2, at 81029. We believe that calling these amendments ''updating amendments'' reduces any potential ambiguity regarding the timing and purpose of these amendments, which is discussed below.

[490] Proposed Rule 304(a)(2)(i)(B).

[491] *See* Liquidnet Letter at 7.

[492] *See id.*

[493] *See* Proposal, *supra* note 2, at 81029.

[494] *See* Proposal, *supra* note 2 at 81084 (stating that to comply with the requirements of Part IV, Item 16 (adopted Part III, Item 26), an NMS Stock ATS would file a Form ATS–N amendment within 30 calendar days after the end of each calendar quarter). *See also infra* Section V.D.26.a.

Commission review pursuant to Rule 304(a)(2)(ii).[495]

We received one comment regarding proposed Rule 304(a)(2)(i)(C) that supports allowing an NMS Stock ATS to file a Form ATS–N amendment to correct information in a previous Form ATS–N disclosure that was inaccurate or incomplete when filed.[496]

Another commenter is generally concerned about the amount and types of amendment filings required under the Proposal, and the burden that filing such amendments could impose on NMS Stock ATSs.[497] To address this concern, we are modifying proposed Rule 304(a)(2)(i)(C) to require that NMS Stock ATSs file correcting amendments after discovery that any information previously filed on Form ATS–N was materially inaccurate or incomplete when filed.[498] We believe that it is appropriate to require NMS Stock ATSs to promptly file an amendment only when the information previously filed was materially inaccurate or incomplete because such information is likely to be important to current subscribers and market participants and could impact their decision to use the NMS Stock ATS's services. Corrections of immaterial inaccuracies and completeness can be made by updating amendments. In determining whether previously filed information is materially inaccurate or incomplete, an NMS Stock ATS should consider the factors it would consider in determining whether a change would require a material amendment.[499]

2. Rule 304(a)(2)(ii): Commission Review Period; Ineffectiveness Determination

Rule 304(a)(2)(ii) provides the process through which the Commission would review and declare Form ATS–N amendments to Form ATS–N. Proposed Rule 304(a)(2)(ii) (''Commission review period; Ineffectiveness determination'') provided that the Commission will, by order, if it finds that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors, declare ineffective any Form ATS–N amendment filed pursuant to Rule 304(a)(2)(i)(A) through (C) no later than 30 calendar days from filing with the Commission. The proposed rule also provided that if the Commission declares a Form ATS–N amendment ineffective, the NMS Stock ATS shall be prohibited from operating pursuant to the ineffective Form ATS–N amendment. Under proposed Rule 304(a)(2)(ii), the NMS Stock ATS could have, however, continued to operate pursuant to a Form ATS–N that was previously declared effective. In addition, the proposed rule provided that a Form ATS–N amendment declared ineffective would not prevent the NMS Stock ATS from subsequently filing a new Form ATS–N amendment that resolves the disclosure deficiency that resulted in the declaration of ineffectiveness. We are adopting Rule 304(a)(2)(ii) with modifications to provide that the Commission will, by order, declare ineffective any Form ATS–N amendment filed pursuant to Rule 304(a)(2)(i)(A) through (D), no later than 30 calendar days from filing with the Commission, if the Commission finds that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors.[500]

We stated in the Proposal that the Commission could declare ineffective a Form ATS–N amendment if one or more disclosures on an amended Form ATS–N are materially deficient with respect to its accuracy, currency, completeness, or fair presentation.[501] We also stated that it could declare ineffective a Form ATS–N amendment if it finds that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors, because the amendment disclosures reveal that, under a ''red flag'' review, the activity described would not comply with the federal securities laws or the rules or regulations thereunder, including Regulation ATS.[502] We further stated that like the review of an initial Form ATS–N, the Commission's review of a Form ATS–N amendment would focus on the disclosures made on Form ATS–N, and that the Commission would not be precluded from later determining that an NMS Stock ATS had violated the federal securities laws or the rules and regulations thereunder.[503] As discussed above in the context of initial Form ATS–N filings, we are not performing a review of the merits of the disclosures on Form ATS–N amendments, such as determining the strengths and weaknesses of the trading platform or a protocol offered by the NMS Stock ATS. The Commission also is not making findings regarding whether the means by which orders will interact on the trading platform are, or are not, consistent with the Exchange Act, as is the case with respect to certain SRO rule filings.[504] As with respect to initial filings of Form ATS–N, the Commission could declare a Form ATS–N amendment ineffective if the Commission finds that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors. The Commission notes that this process will be similar to the review process for initial Form ATS–N. Accordingly, the examples provided above to illustrate scenarios that would cause the Commission to declare an initial Form ATS–N ineffective (*e.g.,* materially deficient disclosures with respect to completeness or comprehensibility) would equally apply in the context of a Form ATS–N amendment filed with the Commission.[505]

[495] *See* Proposed Rule 304(a)(2)(ii).

[496] *See* Liquidnet Letter at 7.

[497] *See* Fidelity Letter at 10.

[498] In addition, we are adopting Rule 304(a)(2)(i)(C) with technical modifications. The rule text of proposed Rule 304(a)(2)(i)(C) stated that an NMS Stock ATS must amend Form ATS–N upon discovery that any information ''filed under paragraphs (a)(1)(i) or (a)(2)(i)(A) or (B)'' was inaccurate or incomplete when filed. This inadvertently excluded applying the requirement to inaccurate or incomplete information filed under paragraph (a)(2)(i)(C). We believe that deleting the cross-references and simply stating that an NMS Stock ATS must file an amendment when ''any previous disclosure on Form ATS–N'' was materially inaccurate or incomplete when filed would require that an NMS Stock ATS correct materially incomplete or inaccurate information on initial Form ATS–N and any amendment thereto (including any amendment previously required by Rule 304(a)(2)(C)). We are making this change to correct this error, and to specify that an NMS Stock ATS would have an obligation to promptly correct a materially inaccurate or incomplete disclosure on any initial Form ATS–N or amendment thereto.

Generally, we will consider a correcting amendment to be filed ''promptly,'' if it is filed within five business days after discovery that any material information previously filed on Form ATS–N was materially inaccurate or incomplete when filed.

In addition, we are making a technical change by defining the type of amendment described in Rule 304(a)(2)(i)(C) as a ''correcting amendment.''

[499] *See supra* Section IV.B.1.a.

[500] We are also making several other changes to Rule 304(a)(2)(ii): (1) Reordering some of the language of Rule 304(a)(2)(ii) from the proposed rule text; (2) changing the heading of the paragraph from ''Commission review period'' to ''Commission review period; Ineffectiveness determination''; (3) revising the proposed rule text that stated ''If the Commission declares a Form ATS–N Amendment ineffective, the NMS Stock ATS shall be prohibited from operating pursuant to the ineffective Form ATS–N'' to simply state ''A Form ATS–N amendment declared ineffective shall prohibit the NMS Stock ATS from operating pursuant to the ineffective Form ATS–N amendment''; (4) deleting references to the defined term ''Form ATS–N Amendment''; (5) stating that a Form ATS–N amendment declared ineffective ''does'' not (rather than ''would'' not) prevent the NMS Stock ATS from subsequently filing a new Form ATS–N amendment; and (6) referring to amendments filed pursuant to Rule 304(a)(2)(i)(A) ''through (D)''.

[501] *See* Proposal, *supra* note 2, at 81029.

[502] *See id.* at 81030.

[503] *See id.*

[504] *See supra* note 359 and accompanying text.

[505] *See supra* Section IV.A.3.

We received comments regarding the proposed process for reviewing Form ATS–N amendments. One commenter expresses support for the proposal not to require the Commission to affirmatively declare material amendments effective, and states that such a requirement might serve as an impediment to NMS Stock ATSs seeking to introduce a new functionality, would unnecessarily burden Commission staff, and would discourage NMS Stock ATSs from filing changes more than 30 days in advance of implementation.[506] This commenter expresses concern that requiring pre-approval of changes to Form ATS–N would inhibit informal communication between an NMS Stock ATS and the Commission staff in cases where an ATS may otherwise be willing to share information with the Commission staff in advance of filing.[507] We are not adopting a rule to declare a Form ATS–N amendment effective. The Commission's oversight function of NMS Stock ATSs will be preserved because the Commission will be able to declare ineffective a Form ATS–N if it finds that such action is necessary or appropriate in the public interest and consistent with the protection of investors. This process will be similar to the review process for initial Form ATS–N.[508] Accordingly, the examples provided above to illustrate scenarios that would cause the Commission to declare an initial Form ATS–N ineffective (*e.g.,* materially deficient disclosures with respect to completeness or comprehensibility) would equally apply in the context of a Form ATS–N amendment filed with the Commission.

One commenter does not object to the Commission having the ability to declare a material amendment ineffective, but hopes the Commission would identify concerns as soon as practical during the review period so an NMS Stock ATS could address any issues.[509] The Commission intends to engage in dialogue with an NMS Stock ATS regarding its Form ATS–N amendment disclosures and communicate to the NMS Stock ATS any concerns so the ATS may amend its disclosures, as appropriate or necessary to avoid an ineffective declaration. Such dialogue will benefit market participants by creating more effective disclosures in Form ATS–N amendments that will help enable them to make more informed routing decisions. To facilitate this, we are adopting a process for an NMS Stock ATS to file, during the Commission's review of a material amendment, a correcting or updating amendment pursuant to Rule 304(a)(2)(i)(B) through (C) to the material amendment.[510] This process is designed to promote transparency and facilitate complete and comprehensible disclosure. Any updating or correcting amendments to a material amendment filed during the Commission review period will be subject to Commission review under Rule 304(a)(2)(ii).[511] Although a correcting or updating amendment is not subject to an implementation delay, Rule 304(a)(2)(i)(A) requires that the NMS Stock ATS delay the implementation of the change subject to the material amendment until 30 calendar days following filing of the material amendment; therefore, any correcting or updating amendment that amends a material amendment during the Commission review could not be implemented before the material amendment that it is amending is effective.

In contrast, we believe a material change to a Form ATS–N material amendment could reflect a significant change to the intended operations of the ATS or the ATS-related activities of its broker-dealer operator, which would necessitate a full review period. Therefore, we are modifying Rule 304(a)(a)(2)(ii) to specify that an NMS Stock ATS making material changes to a filed material amendment during the Commission review period shall withdraw its filed material amendment and, if the NMS Stock ATS chooses to pursue the change, must file a new material amendment pursuant to Rule 304(a)(2)(i)(A).

Another commenter suggests that similar to the current process for reviewing Form ATS amendments, the Commission should require advanced notice of material changes, but not impose a review process for ineffectiveness.[512] The commenter states that requiring NMS Stock ATSs to provide advance notice and receive Commission ''approval'' before an NMS Stock ATS can implement a material change could incent an NMS Stock ATS to err on the side of submitting ''vague'' disclosures, which are less helpful to market participants, so that it has ''sufficient operational flexibility'' to make future changes, or could stifle ATS innovation as NMS Stock ATSs may be reluctant to make changes that would be subject to the ''approval/disapproval'' review process.[513] The commenter further states that NMS Stock ATS operators should be allowed to furnish universal operations and systems material via a web link, and updates to such materials should not be subject to advance notice and Commission review because requiring an NMS Stock ATS to provide advance notice of changes to operations and systems ''would cause lengthy delays and stifle NMS Stock ATS technical innovation.'' [514] Another commenter observes that ''approval'' of Form ATS–N amendments ''would require positive response from the Commission instead of the current passive approval after a certain period of time.'' [515]

We are declining to adopt the commenter's suggestion to not review Form ATS–N amendments for ineffectiveness because the review process allows the Commission to better fulfill its oversight responsibilities of NMS Stock ATSs and to help ensure that Form ATS–N amendments contain disclosures that are complete and comprehensible. We also disagree with the commenter's view that the Commission review process will incentivize NMS Stock ATSs to make vague disclosures to allow for operational flexibility. Rather, we believe that without a process to declare ineffective a Form ATS–N amendment, an NMS Stock ATS may have less incentive to provide complete and comprehensible disclosures.

While the review process for Form ATS–N amendments may have some

[506] *See* Liquidnet Letter at 5–6.

[507] *See id.* at 6.

[508] *See supra* Section IV.A.3.

[509] *See* Liquidnet Letter at 5.

[510] Although we acknowledged in the Proposal that the Commission staff would likely engage in discussions with NMS Stock ATSs during the review period, we did not propose a process for NMS Stock ATSs to amend a material amendment during the Commission review period. *See* Proposal, *supra* note 2, at 81035. The adopted process is similar to the process we are adopting to allow non-Legacy NMS Stock ATSs to amend initial Form ATS–N during the Commission review period. *See supra* Section IV.A.2.

[511] Rule 304(a)(2)(ii) states that the Commission will, by order, declare ineffective any Form ATS–N amendment no later than 30 calendar days from filing of such amendment with the Commission. We will have 30 calendar days to declare any amendment ineffective, including updating or correcting amendments to material amendments that are filed during the Commission review period. For example, if an NMS Stock ATS files an updating or correcting amendment to a material amendment on calendar day 25 of the Commission review period of the material amendment, the updating or correcting amendment could be declared ineffective by the Commission up to 25 calendar days after the Commission review period for the material amendment expires—until the Commission's 30-calendar day review period for the updating or correcting amendment has expired.

[512] *See* KCG Letter at 5.

[513] *See id.*

[514] *See id.* at 7–8.

[515] *See* PDQ Letter at 1.

impact on innovation by ATSs,[516] under the rules adopted today and consistent with proposed Rule 304(a)(2)(ii), the Commission will not be declaring Form ATS–N amendments ''effective;'' if the 30-calendar day review period elapses and the Commission has not declared an amendment ineffective, the NMS Stock ATS may commence operating pursuant to the Form ATS–N amendment. Further, Form ATS–N amendments will not be approved by the Commission and the amendment review process, like the review process for initial Form ATS–N, will not be a merit-based review, but rather will focus on the completeness and comprehensibility of the disclosures. We are declining to adopt the commenter's suggestion to allow an NMS Stock ATS to change its operations and systems without a review process and by furnishing a web link.[517] We believe that it is important that subscribers have advance notice of material changes and that the Commission has the opportunity to review material amendments to the Form ATS–N disclosures. If the NMS Stock ATS makes changes that are not material, the NMS Stock ATS can implement such changes and report them by way of an updating amendment.[518]

Other commenters express the same concerns with regard to the review process for Form ATS–N amendments as they did for the review process for initial Form ATS–N. These comments are addressed above.[519] With respect to determining whether to declare an amendment to Form ATS–N ineffective, the Commission will apply the same standard of review that will be applied to initial filings.

C. Rule 304(a)(3): Notice of Cessation

Rule 304(a)(3) provides the requirement for NMS Stock ATSs to provide notice if they plan to cease to operate. Proposed Rule 304(a)(3) (''Notice of cessation'') provided that an NMS Stock ATS shall notice its cessation of operations on Form ATS–N at least 10 business days before the date the NMS Stock ATS ceases to operate as an NMS Stock ATS. Proposed Rule 304(a)(3) also provided that a notice of cessation shall cause the Form ATS–N to become ineffective on the date designated by the NMS Stock ATS.

We received no comments regarding proposed Rule 304(a)(3). We believe that 10 business days is a reasonable period within which an NMS Stock ATS will provide notice that it intends to cease operations and will give market participants sufficient time to seek alternative routing destinations for their orders.[520] We are adopting Rule 304(a)(3) with non-substantive modifications.[521]

D. Rule 304(a)(4): Suspension, Limitation, or Revocation of the Exemption From the Definition of Exchange

Paragraph (i) of proposed Rule 304(a)(4) (''Suspension, limitation, and revocation of the exemption from the definition of exchange'') provided that the Commission will, by order, if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors, suspend for a period not exceeding twelve months, limit, or revoke an NMS Stock ATS's exemption from the definition of ''exchange'' pursuant to Rule 3a1–1(a)(2). Further, proposed Rule 304(a)(4)(ii) provided that if an NMS Stock ATS's exemption is suspended or revoked pursuant to proposed Rule 304(a)(4)(i), the NMS Stock ATS would be prohibited from operating pursuant to the exemption from the definition of an ''exchange'' pursuant to Rule 3a1–1(a)(2). In addition, proposed Rule 304(a)(4)(i) provided that if an NMS Stock ATS's exemption is limited pursuant to proposed Rule 304(a)(4)(i), the NMS Stock ATS shall be prohibited from operating in a manner otherwise inconsistent with the terms and conditions of the Commission order. We are adopting Rule 304(a)(4) with minor modifications.[522]

We received four comments regarding proposed Rule 304(a)(4).[523] One commenter supports the Commission's proposal to introduce a mechanism for the suspension for a period not exceeding 12 months, limitation, or revocation of the exemption provided under Rule 3a1–1(a)(2) because it believes that there must be a clear mechanism for removing non-compliant trading venues from ''the exchange-waiver regime rather than relying on more general enforcement powers.'' [524] This commenter asserts that considering whether an NMS Stock ATS has accurately and timely filed Form ATS–N in determining whether the ATS qualifies for an exemption ''is necessary to ensure the credibility of these public disclosure documents and the accountability of the entities seeking the exemption.'' [525]

In addition, one commenter states that the Commission ''should be empowered to suspend, limit, or revoke an ATS's exemption from the definition of an 'exchange', irrespective of the assets traded on the ATS.'' [526] We have determined to apply the additional conditions to the Exchange Act Rule 3a1–1(a) exemption, including Rule 304(a)(4), only to NMS Stock ATSs [527] and are not adopting Rule 304(a)(4) to apply to non-NMS Stock ATSs at this time. We will consider the comment if we propose in the future to apply Rule 304, including Rule 304(a)(4), to non-NMS Stock ATSs. We intend to monitor the implementation of Rule 304 to NMS Stock ATSs, and should we decide to take further action with applying Rule 304, including Rule 304(a)(4), to non-NMS Stock ATSs, we would do so in a separate rulemaking and take into account our experience with Rule 304 and NMS Stock ATSs.

One commenter is concerned that the process to suspend, limit, or revoke an NMS Stock ATS's exemption provided under Rule 3a1–1(a)(2) could result in a sanction (such as suspension or revocation of its exemption) that is ''disproportionate to the alleged violation,'' and asks the Commission to reconsider such requirement.[528] The Rule 304(a)(4) process for the suspension, limitation, or revocation of the Rule 3a1–1(a)(2) exemption is designed in part to help prevent failure by an NMS Stock ATS to adhere to the conditions for the exemption. The conditions of the Rule 3a1–1(a) exemption are designed to, among other things, protect investors.[529] We believe

[516] *See infra* Section X.C.

[517] *See supra* note 514 and accompanying text.

[518] *See* Rule 304(a)(2)(i)(B).

[519] Several commenters address our proposed review process for all Form ATS–N filings, rather than specifically addressing the review of Form ATS–N amendments. *See supra* Section IV.A.3.

[520] After ceasing operations, the broker-dealer operator of an NMS Stock ATS will be required to file Form ATS–R within 10 calendar days as required by Rule 301(b)(9) of Regulation ATS.

[521] As proposed, Rule 304(a)(3) states that an NMS Stock ATS shall notice its cessation at least 10 business days ''before'' the date it ''ceases'' to operate. As adopted, Rule 304(a)(3) states that an NMS Stock ATS shall notice its cessation at least 10 business days ''prior to the date'' it ''will cease'' to operate. We believe these changes enhance the readability of the rule.

[522] We made technical, non-substantive changes from the proposed rule by: (1) Replacing references to an ''NMS Stock ATS's exemption'' to ''the exemption for an NMS Stock ATS'' throughout Rule 304(a)(4); and (2) deleting the reference to ''the definition of an 'exchange' '' in Rule 304(a)(4).

[523] *See* CFA Institute Letter at 4; Liquidnet Letter at 7–8; HMA Letter at 5–6; Better Markets Letter at 7.

[524] *See* CFA Institute Letter at 4.

[525] *See id.*

[526] *See* HMA Letter at 5.

[527] *See supra* Section III.A.2.

[528] *See* Liquidnet Letter at 7–8.

[529] In the Regulation ATS Adopting Release, we stated our belief that the enhanced regulation of alternative trading systems that choose to remain registered broker-dealers under Regulation ATS provides more protection for the investors who use

that it is important to provide a process tailored to the regulatory structure for NMS Stock ATSs for the Commission to use in the event an NMS Stock ATS does not meet the conditions of the exemption as investor protections may be at risk. As proposed, prior to issuing an order suspending, limiting, or revoking an NMS Stock ATS's exemption pursuant to Rule 304(a)(4)(i), the Commission would provide notice and opportunity for hearing to the NMS Stock ATS, and make the findings specified in Rule 304(a)(4)(i), that, in the Commission's opinion, the suspension, limitation, or revocation is necessary or appropriate in the public interest, and is consistent with the protection of investors. We believe that this process will provide an NMS Stock ATS with adequate opportunity to respond before Commission action, and will provide the Commission with an appropriate tool, subject to notice and hearing safeguards, to protect the public from an NMS Stock ATS that fails to comply with Regulation ATS or otherwise violates any provision of the federal securities laws.

The exemption from the definition of ''exchange'' provided under Rule 3a1–1(a)(2) is conditional upon initial and ongoing compliance with Regulation ATS. As a result of this rulemaking, the conditions of the Rule 3a1–1(a)(2) exemption are being expanded for NMS Stock ATSs. An ATS that fails to comply with those conditions would fall outside the scope of the exemption. We believe that it is appropriate to provide a process by which the Commission may, by order, suspend, limit, or revoke an NMS Stock ATS's exemption provided under Rule 3a1–1(a)(2) if the NMS Stock ATS is operating or has operated in a manner such that the exemption for the NMS Stock ATS is not necessary or appropriate in the public interest, or is inconsistent with the protection of investors,[530] and are adopting Rule 304(a)(4) substantially as proposed.[531] We believe that a determination as to whether to suspend, limit, or revoke an NMS Stock ATS's exemption would depend on the particular facts and circumstances; however, we believe that revocation of the exemption would be appropriate upon the existence of a problem involving the ATS that significantly impacts the public interest and the protection of investors.

Pursuant to Rule 304(a)(4)(ii), an NMS Stock ATS whose exemption has been suspended or revoked would be prohibited from operating pursuant to the Rule 3a1–1(a)(2) exemption; if an NMS Stock ATS were to continue to engage in Rule 3b–16 activity in NMS stocks without the exemption, it would be operating as an unregistered national securities exchange because it would no longer qualify for the exemption.[532] If an NMS Stock ATS's exemption were limited pursuant to Rule 304(a)(4)(i), the NMS Stock ATS would be prohibited from operating in a manner otherwise inconsistent with the terms and conditions of the Commission order, and if it operated in a manner inconsistent with the terms and conditions of the order, it would risk operating as an unregistered national securities exchange. The exemption provided under Rule 3a1–1(a)(2) is conditional upon initial and ongoing compliance with Regulation ATS. We believe that the process for suspending, limiting, or revoking an NMS Stock ATS's exemption, if necessary or appropriate in the public interest, and consistent with the protection of investors, will protect investors in the event of non-compliance by an NMS Stock ATS with the conditions with which the NMS Stock ATS must adhere to continue to qualify for the exemption.

We also continue to believe that providing a process by which the Commission can determine to suspend, limit, or revoke an NMS Stock ATS's exemption will provide appropriate flexibility to address the specific facts and circumstances of an NMS Stock ATS's failure to comply with Regulation ATS.[533] This process will also allow the Commission to consider the nature of the violation of federal securities laws and the potential harm to investors as a result of the non-compliance or violation. The process for the Commission to limit the exemption in Rule 3a1–1(a)(2) will allow flexibility to address specific disclosures or activities that are the cause of the non-compliance with Regulation ATS or that violate federal securities laws.[534] We believe that, depending on the facts and circumstances, it may be more appropriate in the public interest, and consistent with the protection of investors, to limit the scope of an NMS Stock ATS's exemption, instead of revoking or suspending the exemption and causing the NMS Stock ATS to cease operating as an ATS.[535] By comparison, we believe it would be more appropriate to revoke the exemption of an NMS Stock ATS that no longer meets the definition of NMS Stock ATS or is no longer a registered broker-dealer, as these conditions are fundamental to the exemption.[536] Additionally, we believe that it could be necessary or appropriate in the public interest, and consistent with the protection of investors, to revoke the exemption of an NMS Stock ATS if, for example, the NMS Stock ATS appears to be violating, or to have violated, the antifraud provisions of the federal securities laws.[537] Nonetheless, the entry of an order revoking an NMS Stock ATS's exemption would not prohibit the broker-dealer operator of the NMS Stock ATS from continuing its other broker-dealer operations.[538]

Another commenter requests clarification regarding the process for revoking, suspending, or limiting an NMS Stock ATS's exemption. The commenter asks the Commission to clarify how an ATS could reestablish its exemption provided under Rule 3a1–1(a)(2) after it has been revoked. This commenter also questions whether there

these systems. *See* Regulation ATS Adopting Release, *supra* note 3, at 70857.

[530] *See* Proposal, *supra* note 2, at 81032.

[531] *See supra* note 522 and accompanying text. In the Proposal, we provided examples of when it would be appropriate to provide for the suspension, limitation, or revocation of an NMS Stock ATS's exemption pursuant to Rule 3a1–1(a)(2). *See* Proposal, *supra* note 2 at 81032.

[532] If the Commission revoked or suspended the exemption of an NMS Stock ATS, the Commission could provide in its order a period of time for the NMS Stock ATS to wind down its operations. Because Commission orders revoking or suspending the exemption would be made public, market participants would also have notice of any wind down period. Additionally, if the Commission revoked the exemption of an NMS Stock ATS and the entity wished to continue operations, the entity could do so only if it were registered as a national securities exchange pursuant to Section 6 of the Exchange Act or were exempted by the Commission from such registration based on the limited volume of transactions effected on such exchange, or seeks another exemption. *See* 17 CFR 242.301(a)(1)–(2). The entity would not be prohibited from filing a new Form ATS–N, pursuant to Rule 304(a)(1)(i). An NMS Stock ATS that has had its exemption suspended or limited may, depending on the facts and circumstances, be able to file a Form ATS–N amendment or revise its operations to come into compliance with the conditions of the exemption or the provision of any other federal securities law that may have been the basis of the Commission's findings.

[533] *See* Proposal, *supra* note 2, at 81033.

[534] *See id.* If the Commission finds that an NMS Stock ATS implemented a material change to its operations, but failed to disclose the material change on its Form ATS–N, the Commission could determine to allow the ATS to continue to operate as disclosed on its Form ATS–N, but prohibit the ATS from engaging in the undisclosed activity until the ATS properly amends its Form ATS–N in accordance with Rule 304(a)(2). Or, if the Commission finds that an NMS Stock ATS offers an order type that resulted in violations of the Commission's rules restricting the acceptance and ranking of orders in impermissible sub-penny increments, the Commission could allow the ATS to continue to operate but prohibit the ATS from offering the order type, if it finds that doing so is necessary or appropriate in the public interest, and consistent with the protection of investors.

[535] *See* Proposal, *supra* note 2, at 81033.

[536] *See id.*

[537] *See id.*

[538] *See id.*

will be penalties for non-compliance or whether the Commission's deliberations on the re-submitted Form ATS–N would in any way differ from those on initial Form ATS–N.[539] An NMS Stock ATS whose exemption has been revoked cannot operate pursuant to the Rule 3a1–1(a)(2) exemption, and if such entity were to continue to engage in Rule 3b–16 activity, it could be determined to be an unregistered national securities exchange in violation of Section 5 of the Exchange Act.[540] To operate as an NMS Stock ATS after revocation, the entity would need to file a new initial Form ATS–N with the Commission. The Commission would review the Form ATS–N without prejudice and would not apply a different standard than it would to any other entity filing Form ATS–N pursuant to Rule 304(a)(1).

One commenter also requests clarification regarding the procedure that the Commission will follow for an NMS Stock ATS that has had its exemption suspended for the maximum 12 months.[541] Upon the expiration of the suspension period, an NMS Stock ATS could operate pursuant to its initial Form ATS–N, as long as its exemption is not otherwise limited or revoked and the NMS Stock ATS is otherwise in compliance with Rule 304. The suspension period is not to exceed 12 months, and the Commission could order a suspension period of less than 12 months. During the suspension period, the Commission could reevaluate the status of the NMS Stock ATS's exemption and determine, pursuant to Rule 304(a)(4), to revoke or limit the Rule 3a1–1(a) exemption if the Commission finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors.

An additional commenter questions what action the Commission would take in the event that there are ''ambiguous, seemingly incomplete, or otherwise questionable disclosures that do not rise to the level of material deficiency,'' and suggests that the Commission apply ''intermediate'' sanctions, such as monetary fines and the temporary suspension of the right to operate as an NMS Stock ATS without notice or hearing.[542] The purpose of Rule 304(a)(4) is to prohibit the NMS Stock ATSs from operating in a manner inconsistent with the Rule 3a1–1(a)(2) exemption, which we believe is necessary or appropriate in the public interest and consistent with the protection of investors. We do not believe it is appropriate to impose monetary fines or temporarily suspend an NMS Stock ATS's exemption without such due process, as suggested by the commenter. Any suspension, limitation, or revocation of an NMS Stock ATS's exemption provided by Rule 3a1–1(a)(2) would not preclude the Commission from using its enforcement authority if the NMS Stock ATS fails to comply with the federal securities laws.[543]

E. Rule 304(b): Public Disclosure of Form ATS–N and Related Commission Orders

1. Rule 304(b)(1): Form ATS–N ''Report''

Rule 304(b)(1) provides that every Form ATS–N would constitute a report under the Exchange Act. Paragraph (1) of proposed Rule 304(b) (''Public disclosures'') provided that every Form ATS–N filed pursuant to Rule 304 shall constitute a ''report'' within the meaning of Sections 11A, 17(a), 18(a), and 32(a) and any other applicable provisions of the Exchange Act. Because proposed Form ATS–N is a report that is required to be filed under the Exchange Act, it would be unlawful for any person to willfully or knowingly make, or cause to be made, a false or misleading statement with respect to any material fact in Form ATS–N. Proposed Rule 304(b)(1) is nearly identical to current Rule 301(b)(2)(vi),[544] which provides that every notice or amendment filed pursuant to Rule 301(b)(2), including Form ATS, shall constitute a ''report'' within the meaning of Sections 11A, 17(a), 18(a), and 32(a), and any other applicable provisions of the Exchange Act.[545]

We received two comments on proposed Rule 304(b)(1).[546] One commenter supports that Form ATS–N shall constitute a ''report'' within the meaning of applicable provisions of the Exchange Act.[547] The other commenter expresses concern regarding the potential liability and consequences of the provision that Form ATS–N would constitute a ''report'' within the meaning of Sections 11A, 17(a), 18(a), and 32(a) of the Exchange Act in light of the increased disclosure requirements under Form ATS–N.[548] This commenter states that although this same standard applies to current Form ATS, the potential for an NMS Stock ATS to unknowingly but willfully file a statement that turns out to be false is heightened by the increased amount and scope of disclosure contemplated under Form ATS–N.[549]

We do not believe that the fact that Form ATS–N requires more detailed disclosures than Form ATS would justify reducing the potential liability for false or misleading statements made in Form ATS–N disclosures. The information required on Form ATS–N is designed to provide the public with transparency into an NMS Stock ATS's operations and the ATS-related activities of the broker-dealer operator and its affiliates. Although the commenter does not directly object to Rule 304(b)(1), the commenter argues that the Commission should narrow the scope of disclosures and standardize the Form ATS–N format in light of the potential liability this presents.[550] In response to the comments, we have modified certain requests on Form ATS–N to remove language that some commenters believe is vague, and in many cases, changed questions to solicit more general information.[551] Further, given that Form ATS–N will be made public, we expect that market participants will rely on these disclosures when making routing

[539] *See* CFA Institute Letter at 5.

[540] *See infra* note 532 and accompanying text.

[541] *See* CFA Institute Letter at 5.

[542] *See* Better Markets Letter at 7.

[543] *See generally* Exchange Act Section 21C. The use of the process whereby the Commission could suspend, limit, or revoke an NMS Stock ATS's Rule 3a1–1(a)(2) exemption would not preclude the Commission from using its enforcement authority, such as, for example, pursuant to Sections 10(b), 15(b)(4), and 15(c) (15 U.S.C. 78(j)(b), 15 U.S.C. 78o(b)(4); 15 U.S.C. 78o(c)). Rather, it would provide an additional means of helping to ensure that NMS Stock ATSs that no longer qualify for the Rule 3a1–1(a)(2) exemption are unable to take advantage of the exemption. For example, if an NMS Stock ATS failed to file a Form ATS–N amendment to disclose material changes to the operation of the ATS, the Commission could invoke the process to suspend, limit, or revoke the ATS's exemption, but would not be precluded from bringing an action against the broker-dealer operator of the ATS for failing to comply with Rule 304(a)(2), or violating the antifraud provisions of the federal securities laws.

[544] *See* 17 CFR 301(b)(2)(vi).

[545] 15 U.S.C. 78k–1, 78q(a), 78r(a), and 78ff(a). *See* 17 CFR 242.301(b)(2)(vi). Section 17(a) of the Exchange Act imposes recordkeeping requirements on national securities exchanges and registered securities associations; Section 18(a) of the Exchange Act imposes liability for false or misleading statements with respect to a material fact in applications, reports, or documents filed pursuant to the Exchange Act or any rule or regulation thereunder; and Section 32(a) of the Exchange Act provides for penalties against any person that willfully violates any provision of, or that willfully and knowingly makes, or causes to be made, any false or misleading statements with respect to a material fact in any application, report, or document required to be filed under the Exchange Act or any rule or regulation thereunder.

[546] *See* Better Markets Letter at 7; SIFMA Letter at 33.

[547] *See* Better Markets Letter at 7.

[548] *See* SIFMA Letter at 33.

[549] *See id.*

[550] *See id.*

[551] *See infra* Section V.

decisions or assessing their brokers' routing practices, so it is critical that the disclosures constitute a ''report'' and are subject to the applicable consequences. We also believe that making Form ATS–N disclosures subject to liability as a ''report'' under the Exchange Act further will incentivize NMS Stock ATS operators to make truthful statements on Form ATS–N. We are adopting Rule 304(b)(1) as proposed.

2. Rule 304(b)(2): Making Public Form ATS–N Filings and Commission Orders.

Rule 304(b)(2) provides which Form ATS–N filings and related orders the Commission would make public. Proposed Rule 304(b)(2) provided that we would make public, via posting on the Commission's website, each (1) order of effectiveness of a Form ATS–N; (2) order of ineffectiveness of a Form ATS–N; (3) effective Form ATS–N; (4) filed Form ATS–N amendment; (5) order of ineffectiveness of a Form ATS–N amendment; (6) notice of cessation; and (7) order suspending, limiting, or revoking the exemption from the definition of an ''exchange'' pursuant to Exchange Act Rule 3a1–1(a)(2). We are adopting Rule 304(b)(2) with modifications discussed below.[552] In addition, as proposed, we specify that we will make NMS Stock ATS filings public via posting on the Commission's website.

As discussed above, many commenters support making Form ATS–N public, observing that market participants do not currently have access to sufficient, standardized information about the operations and ownership of NMS Stock ATSs.[553] Nearly all commenters agree with the Commission's stated goal of enhancing transparency.[554] Although many commenters express general support for public disclosure of Form ATS–N, many commenters recommend certain modifications or clarifications.

We continue to believe that making Form ATS–N filings publicly available is important because most market participants have limited access to information that permits them to adequately compare and contrast how an NMS Stock ATS would handle its orders with how a national securities exchange or other NMS Stock ATS would handle its orders.[555] Currently, a Form ATS filed with the Commission by an ATS that trades NMS stocks is ''deemed confidential when filed'' under Rule 301(b)(2)(vii) of Regulation ATS,[556] whereas a national securities exchange is required to both (1) make available to the public its entire rulebook and (2) publicly file all proposed rule changes pursuant to Section 19(b) of the Exchange Act.[557] The only information the Commission currently makes publicly available regarding ATSs is a list of the names and locations of ATSs with a Form ATS on file with the Commission, which is updated monthly.[558] Unless an NMS Stock ATS voluntarily publicizes how its functionalities operate, market participants have limited information to adequately compare and contrast the operation of the ATS with that of a national securities exchange or another NMS Stock ATS. And when NMS Stock ATSs voluntarily make their Forms ATS–N public, the lack of uniformity or standardization makes it difficult to compare disclosures across ATSs. Currently, approximately 20 NMS Stock ATSs voluntarily post a Form ATS on their website. Some commenters, however, observe that in the absence of mandatory and uniform disclosure requirements, Forms ATS vary in content and the level of detail disclosed, and are therefore difficult to compare.[559] Accordingly, through Form ATS–N, we are adopting disclosures that will provide information that market participants can use to perform these comparisons as they evaluate the ATS as a potential destination for their orders.

We are adopting Rule 304(b)(2), with the modifications to address commenters' concerns, to mandate greater public disclosure of NMS Stock ATS operations through the publication of Form ATS–N. Adopted Rule 304(b)(2) provides that the Commission will make Form ATS–N and related filings available via posting on the Commission's website. NMS Stock ATS broker-dealer operators will submit Form ATS–N filings via EDGAR, and the Commission will make such filings available on its website.

a. Public Disclosure of Effective Initial Form ATS–N, As Amended

Several commenters express support for proposed Rule 304(b)(2)(iii), which would make public an effective Form ATS–N.[560] Four commenters agree with the Commission's approach of making initial Forms ATS–N publicly available once the Commission declared such forms effective.[561] One commenter asserts that publishing a filing that is not yet effective, and may ultimately not be ''approved,'' will cause confusion among market participants regarding the manner of operation of the NMS Stock ATS.[562] Another commenter states that requiring disclosure of Forms ATS–N that the Commission has declared ineffective ''may place undue suspicion from market participants on ATSs that fail to gain exemption status on the first

[552] To conform to changes that provide that we will not issue orders of effective initial Form ATS–N, we have eliminated proposed Rule 304(b)(2)(i) from adopted Rule 304(b)(2). *See supra* Section IV.A.1. In addition, the Commission made the following technical, non-substantive modifications to the proposed text of Rule 304(b)(2): (1) Renumbered proposed Rule 304(b)(2)(ii) through (vii); (2) reordered proposed Rule 304(b)(2)(iii) so that ''Effective Form ATS–N'' is adopted Rule 304(b)(2)(i); (3) changed the proposed language stating that the Commission ''would'' make public the documents specified in Rule 304(b)(2)(i)–(vii) to the Commission ''will'' make public the documents specified in Rule 304(b)(2)(i) through (vi); (4) specified that the Commission will publish ''initial'' Form ATS–N, as amended, under adopted Rule 304(b)(2)(i); (5) changed the proposed language that the Commission will make public each ''Order of ineffectiveness of a Form ATS–N'' to ''Order of ineffective initial Form ATS–N''; (6) changed references to uppercase ''Amendment'' in adopted Rule 304(b)(2)(iii) and (iv) to lowercase; (7) changed the language in adopted Rule 304(b)(2)(iv) from describing an ''Order of ineffectiveness of a'' Form ATS–N amendment to a ''Order of ineffective'' Form ATS–N amendment; and (8) modified language in the rule to state that the order suspending, limiting, or revoking the exemption in adopted Rule 304(b)(2)(vi) will apply to the exemption for an ''NMS Stock ATS.'' We are adopting these changes to simplify and improve the clarity of the rule text and we do not believe that these changes impact the operation of the proposed rules. Because we are providing a process for NMS Stock ATSs to amend their initial Forms ATS–N during the Commission review period, we are also revising proposed Rule 304(b)(2)(iii) (renumbered as Rule 304(b)(2)(i)) to state that the Commission will publish initial Form ATS–N, ''as amended,'' to specify that the initial Form ATS–N will reflect amendments made during the Commission review period. *See supra* Section IV.A.2 and Section IV.A.4.b. In addition, in response to comments, we are adopting a modified requirement that for material amendments, the cover page of the material amendment will be made public upon filing and the entirety of the material amendment, as amended, will be made public upon the expiration of the Commission review period. *See infra* Section IV.E.2.c. We are also adding to Rule 304(b)(2)(iii)(B) that the Commission will make public each updating or correcting amendment filed to a material amendment following the expiration of the review period for the material amendment pursuant to Rule 304(a)(2)(ii). *See id.* We are also adopting Rule 304(b)(2)(iii)(B) to provide that the Commission will make the entirety of order display and fair access amendments, as well as updating amendments and correcting amendments, public upon filing. *See id.* We are also adopting Rule 304(b)(2)(iii)(A) to specify that the Commission will not make public the entirety of a material amendment that it declares ineffective. *See id.*

[553] *See supra* note 93 and accompanying text.

[554] *See supra* note 108.

[555] *See* Proposal, *supra* note 2, at 81035.

[556] *See* 17 CFR 240.301(b)(2)(vii).

[557] *See* 15 U.S.C. 78s(b).

[558] *See* Alternative Trading System (''ATS'') List, *http://www.sec.gov/foia/docs/atslist.htm.*

[559] *See, e.g.,* Consumer Federation of America Letter at 3; HMA Letter at 2; Morgan Stanley Letter at 1.

[560] *See supra* notes 110–123 and accompanying text.

[561] *See* CFA Institute Letter at 6; BIDS Letter at 3; UBS Letter at 3; LeveL ATS Letter at 7.

[562] *See* LeveL ATS Letter at 7.

attempt.'' [563] The Commission will make only effective Forms ATS–N public because this would be less confusing for market participants. We expect that in the course of reviewing an initial Form ATS–N, Commission staff would likely engage in discussions with the entity regarding its disclosures and could request the entity to revise or augment its disclosures to cure deficiencies and provide market participants with greater clarity regarding the entity's operations. Accordingly, we continue to believe that it would be premature to make publicly available an initial Form ATS–N filing before it becomes effective because of the potential confusion that may result from making public disclosures on an initial Form ATS–N that is not effective. Therefore, under adopted Rule 304(b)(2)(i), the Commission will make public an effective initial Form ATS–N, as amended.

Adopted Rule 304(a)(1)(ii)(B) and Rule 304(a)(1)(iv)(C) provide processes for NMS Stock ATSs to amend their initial Forms ATS–N during the Commission review period. If, for example, the Commission staff provides comments to a broker-dealer operator suggesting modifications designed to enhance the completeness and comprehensibility of its initial Form ATS–N disclosures, the NMS Stock ATS would have the opportunity to file an amendment to respond to such comments during the Commission review period. We believe that it is appropriate to make public initial Form ATS–N, as revised by any such amendments (except for material amendments during the Commission review period),[564] when the initial Form ATS–N becomes effective. Accordingly, we are revising proposed Rule 304(b)(2)(iii) (renumbered as Rule 304(b)(2)(i)) to state that the Commission will publish initial Form ATS–N, ''as amended.''

Some commenters express concerns regarding the timing of publicly disclosing a filed Form ATS–N.[565] One commenter states its view that for Legacy NMS Stock ATSs that are filing Form ATS–N for the first time, the Commission should not make any Forms ATS–N public until the date on which the Commission has completed the review of the initial Form ATS–N filings for all Legacy NMS Stock ATSs, so that a Legacy NMS Stock ATS is not disadvantaged by making its Form ATS–N public prior to other Legacy NMS Stock ATSs.[566] As we stated in the Proposal, and as many commenters have agreed,[567] the public has a strong interest in public disclosure about the operations of NMS Stock ATSs. For some Legacy NMS Stock ATSs, the review period may be extended pursuant to Rule 304(a)(1)(iv)(B). We believe that disclosure of all Legacy NMS Stock ATSs' Forms ATS–N should not be delayed during any extended review period that may be necessary for the Commission to review any Legacy NMS Stock ATS's initial Form ATS–N that raises novel or complex issues and therefore requires additional time for review.[568] Additionally, some NMS Stock ATSs may not wish to delay public disclosure once their Forms ATS–N become effective, and it is neither in the public interest nor in the interest of those NMS Stock ATSs to withhold effective Forms ATS–N from the public.

Several commenters suggest that the Commission should make certain information required by Form ATS–N available only to the Commission.[569] Some commenters state that the scope of items required for public disclosure, particularly those related to the administration of the ATS, is too detailed and may not be helpful to market participants in making routing decisions.[570] We believe that Form ATS–N, as adopted, solicits the appropriate level of information about NMS Stock ATSs that would be useful to subscribers and market participants.[571] In response to commenters, we have revised proposed Form ATS–N to remove certain requests that commenters believe are not relevant to subscribers, limited the scope of certain requests that commenters believe to be too broad, and narrowed certain requests to only require summary information or specific information to avoid the disclosure of commercially sensitive information.[572] We nevertheless believe that responses to Form ATS–N requests must be sufficiently detailed for subscribers and market participants to adequately understand the operations of an NMS Stock ATS and the ATS-related activities of the broker-dealer operator and its affiliates.

Other commenters express concern that publicly disclosing Form ATS–N could result in the disclosure of an NMS Stock ATS's proprietary or commercially sensitive information.[573] In particular, and as discussed further below, commenters express concern about disclosing information regarding classification of subscribers,[574] details about administrative operations of broker-dealer operators,[575] and contractual agreements between broker-dealer operators and their clients,[576] and NMS Stock ATSs and their vendors.[577] One commenter raises concern about customer confidentiality.[578] We have determined not to adopt the proposed Exhibit 1 requirements [579] and have revised the Form ATS–N requests to not seek disclosure of certain information that could be proprietary or commercially sensitive, such as routing tables or numerical order flow segmentation metrics.[580] We do not believe that the vast majority of information responsive to adopted Form ATS–N would be proprietary or commercially sensitive. Furthermore, we do not believe that the requests of adopted Form ATS–N, as modified, would require NMS Stock

[563] *See* CFA Institute Letter at 6.

[564] Material amendments filed by Legacy NMS Stock ATSs during the Commission review period are subject to Rule 304(b)(2)(iii)(A), which provides that the entirety of a material amendment will not be made public until the expiration of the Commission's 30-calendar day review period. Therefore, under Rule 304(b)(2)(iii)(A), material amendments filed during the final 30 calendar days of the Commission review period would not be made public until the 30-calendar day Commission review period for such amendments has expired. For example, if an NMS Stock ATS files a material amendment on calendar day 230 of the Commission review period, and the Form ATS–N becomes effective on calendar day 240, the material amendment would remain subject to the Commission's review, and not publicly disclosed, for an additional 20 calendar days—until the Commission's 30-calendar day review period has expired. Under Rule 304(b)(2)(iii)(A), the cover page for any material amendments during the Commission review would be made public when the initial Form ATS–N becomes effective.

[565] *See* Liquidnet Letter at 3; SSGA Letter at 2; Fidelity Letter at 7–8; STANY Letter at 3; UBS Letter at 6–8; Luminex Letter at 2,4; PDQ Letter at 2; SIFMA Letter at 4.

[566] *See* Liquidnet Letter at 3.

[567] *See, e.g.,* MFA/AIMA Letter at 2; Schneiderman Letter at 2; ICI Letter at 1; CFA Institute Letter at 3; Consumer Federation of America Letter at 6.

[568] *See* Rule 304(a)(1)(ii).

[569] *See* SSGA Letter at 2; Fidelity Letter at 7–8; STANY Letter at 3; UBS Letter at 6–8; Luminex Letter at 2,4; PDQ Letter at 2; SIFMA Letter at 4.

[570] *See* Luminex Letter at 2; SIFMA Letter at 4; KCG Letter at 6.

[571] *See infra* Section V.

[572] *See id.*

[573] *See* Fidelity Letter at 8; UBS Letter at 7; Luminex Letter at 2–4; SIFMA Letter at 16.

[574] *See* Fidelity Letter at 8; UBS Letter at 7.

[575] *See* Fidelity Letter at 4; Luminex Letter at 2–4.

[576] *See* UBS Letter at 7.

[577] *See* SIFMA Letter at 16.

[578] *See* PDQ Letter at 2.

[579] *See infra* Section V.B.2. Exhibit 1 would have required NMS Stock ATSs to attach a copy of any materials currently provided to subscribers or other persons related to the operations of the NMS Stock ATS or the disclosures on Form ATS–N. The determination not to adopt this proposed requirement renders irrelevant the comment regarding allowing NMS Stock ATSs to post updated marketing materials on their websites. *See infra* note 705 and accompanying text.

[580] *See infra* Sections V.D.5, V.D.13, V.D.16.

ATSs to compromise customer confidentiality when making thorough and accurate disclosures.

Some commenters that believe that Form ATS–N disclosures may be too detailed to be helpful to market participants [581] or that they may disclose proprietary or commercially sensitive information suggest that the Commission make only parts of Form ATS–N public, or delay public disclosure of certain parts of Form ATS–N.[582] Specifically, one commenter suggests that the Commission require NMS Stock ATSs to submit a full Form ATS–N to the Commission, but only provide that a selected sub-set of fields be publicly disclosed.[583] We are not adopting the commenters' suggestions to limit public disclosures because the vast majority of adopted Form ATS–N will not require the disclosure of proprietary or commercially sensitive information.[584] In addition, not making certain items public would undercut the transparency that is the primary purpose of this rulemaking.[585] Another commenter suggests that the Commission should consider ''tiering'' proprietary information by first making it only available to the Commission and subscribers, and after a ''reasonable'' time lag, further disseminating such information to the general public.[586] In response to commenter concerns, the cover page of the filed material amendment will be made public by the Commission upon filing and, unless the Commission declares the material amendment ineffective, the entirety of the material amendment, as amended, will be made public by the Commission following the Commission's 30-calendar day review period.[587]

Another commenter states that, although the Commission should not address commenters' concerns regarding disclosure of sensitive or proprietary information,[588] by automatically making any portion of Form ATS–N confidential, if a ''genuine need for confidentiality exists,'' the broker-dealer can obtain confidential treatment under Commission Rule 24b–2, and suggests that the Commission provide guidance around the use of this limited exception.[589] We believe that questions on adopted Form ATS–N, as modified, do not solicit the type of information that typically would constitute confidential information.[590] The existing processes for obtaining confidential treatment will remain available to broker-dealer operators.[591] Furthermore, the purpose of Form ATS–N is to create a public transparency regime for NMS Stock ATSs, with commensurate benefits, and allowing disclosures to be made only to the Commission would be contrary to the purposes of this rulemaking.

In addition, FINRA requests that the Commission require NMS Stock ATSs to file duplicate copies of Form ATS–N submissions with FINRA so that FINRA has access to these filings before they become effective, or in the event that they are deemed ineffective and thus never made public.[592] Requiring an NMS Stock ATS to provide Form ATS–N filings to the SRO of which the ATS is a member before the filings become effective or are declared ineffective would place additional administrative burdens on the NMS Stock ATS, particularly in the event the NMS Stock ATS amends its Form ATS–N during discussion with the Commission staff. We continue to believe that making Form ATS–N public will enhance the information available to market participants and benefit the marketplace, and therefore are adopting Rule 304(b)(2)(i), to provide that the Commission will make public each effective initial Form ATS–N, as amended.[593]

b. Public Disclosure of Orders of an Ineffective Initial Form ATS–N

Because the Commission will not issue orders of effective initial Forms ATS–N, adopted Rule 304(b)(2) does not include each ''Order of effectiveness of a Form ATS–N.'' We continue to believe that it is appropriate to make public each order of ineffective Form ATS–N, substantially as proposed,[594] to provide the public with notice regarding the regulatory status of potential trading venues; if a Form ATS–N is declared ineffective, the ATS may not operate pursuant to the exemption from the definition of ''exchange,'' and the public should be aware of such regulatory status.

Other than the comment about orders of ineffectiveness relating to a Legacy NMS Stock ATS's initial Form ATS–N, which is discussed above,[595] we received no comments on making public orders of effective or ineffective Form ATS–N. We continue to believe that it is necessary to make public an order of ineffective Form ATS–N for market participants to be informed of the operating status of an NMS Stock ATS. Therefore, we are adopting Rule 304(a)(2)(ii) to provide that orders of ineffective initial Form ATS–N will be made public, with modifications to reduce any potential ambiguity and improve readability of the rule text.[596]

c. Public Disclosure of Form ATS–N Amendments

We proposed, in Rule 304(a)(2)(iv), making all filed amendments to Form ATS–N public; as proposed, Form ATS–N amendments would have been public during the Commission review period and prior to the Commission's determination of whether a Form ATS–N amendment should be declared ineffective.

In the Proposal, we asked whether commenters believe that the Commission should make public on its website upon filing a Form ATS–N amendment for a material change, and whether there should be a delay in when the Form ATS–N for a material change is made public.[597] We received several comments on this aspect of the Proposal.[598] Although one commenter agrees with our proposal to make Form ATS–N amendments public upon filing because it would keep market participants informed about changes to

[581] *See* SSGA Letter at 2.

[582] *See* T. Rowe Price Letter at 2.

[583] *See* SSGA Letter at 2.

[584] *See infra* Sections V.C.6, V.D.6, V.D.13, V.D.23.

[585] One commenter believes that an ATS should have the ability to file supplemental materials with the Commission that are not part of the public filing as long as the ATS's public filing accurately responds to all questions on the Form ATS–N. *See* Liquidnet Letter at 9. We have determined not to adopt a formal process through which broker-dealer operators can disclose supplemental information for Commission review alone. We believe that the primary purpose of Form ATS–N is to provide the public with critical information regarding NMS Stock ATS operations and affiliate relationships.

[586] *See* T. Rowe Price Letter at 2.

[587] *See* Section IV.E.2.c.

[588] *See supra* notes 574–578 and accompanying text.

[589] *See* Investor Advocate Letter at 10–11.

[590] *See supra* note 584 and accompanying text.

[591] *See* 17 CFR. 240.24b–2.

[592] *See* FINRA Letter at 2–3.

[593] *See supra* note 552.

[594] We proposed this requirement as Rule 304(b)(2)(i) and are adopting this requirement as Rule 304(b)(2)(ii).

[595] *See supra* note 433 and accompanying text.

[596] Adopted Rule 304(b)(2)(ii) states that this provision applies to each ''[o]rder of ineffective initial Form ATS–N'' instead of the proposed language, which stated that the provision would apply to each ''[o]rder of ineffectiveness of a Form ATS–N.'' As discussed above, the Commission will, by order, declare ineffective an *initial* Form ATS–N if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors. *See supra* Section IV.A.3. We believe that the revised rule text reduces any potential ambiguity by specifying that the public disclosure requirement applies to orders related to ''initial'' Form ATS–N and simplifying the rule language.

[597] *See* Proposal, *supra* note 2, at 81028.

[598] *See* ICI Letter at 3; Liquidnet Letter at 6; SIFMA Letter at 31; UBS Letter at 3; BIDS Letter at 4; STA Letter at 5; STANY Letter at 2; CFA Institute Letter at 6; LeveL ATS Letter at 7.

potential trading venues,[599] several other commenters express concerns about making Form ATS–N amendments public upon filing or argue that the Commission should make amendments public only once the related changes are operative.[600] Some of these commenters state that public disclosure of changes to ATS operations at least 30 calendar days before such changes are implemented may burden the ability of NMS Stock ATSs to act competitively, or may reduce the competitive advantage associated with being the first to innovate.[601] In addition, commenters assert that making public Form ATS–N amendments that may never be implemented could be confusing or misleading to market participants;[602] one commenter states that publicly disclosing material changes in advance of implementation could cause market participants to not understand current operations of an NMS Stock ATS versus its proposed, future operations.[603] One commenter asserts that immediate publication of amendments would stifle dialogue between the NMS Stock ATS and Commission staff.[604] Another commenter states that it does not believe that making Form ATS–N amendments public upon filing would provide a benefit to market participants as ''existing documents'' should be adequate for market participants considering whether to use a particular NMS Stock ATS.[605]

We are modifying the proposed rules for making Form ATS–N amendments to an effective Form ATS–N public. In response to commenters' concerns, we are adding new subparagraph (b)(2)(iii)(A) to Rule 304 to provide that, for material amendments (as defined by Rule 304(a)(2)(i)(A)) to an effective Form ATS–N, the cover page of the filed material amendment will be made public by the Commission upon filing and, unless the Commission declares the material amendment ineffective, the entirety of the material amendment, as amended, will be made public by the Commission following the Commission's 30-calendar day review period. In addition, we are adding new subparagraph (b)(2)(iii)(B) to Rule 304 to provide that, for updating, correcting, and order display and fair access amendments (as defined by Rule 304(a)(2)(i)(B), (C), and (D), respectively) to an effective Form ATS–N, the entirety of the updating, correcting, or order display and fair access amendment will be made public by the Commission upon filing. We are also adding to subparagraph (b)(2)(iii)(B) that an updating or correcting amendment filed to a material amendment will be made public by the Commission following the expiration of the review period for such material amendment pursuant to paragraph (a)(2)(ii) of Rule 304.

We share the commenters' concerns that making public Form ATS–N material amendments before expiration of the Commission's 30-day calendar review period could be confusing or misleading to the public, particularly in the event the material amendment is declared ineffective and the related change is never implemented. One commenter asserts that advance disclosure of Form ATS–N amendments may burden market participants who feel obligated to review premature disclosures for possible effects on them and their underlying customers.[606] We believe that publicly disclosing the cover page to a Form ATS–N material amendment during the review period, and disclosing the entire material amendment following the expiration of 30-calendar day Commission review period, when the related changes can be implemented, will reduce any potential for confusion and will not pose an undue burden on market participants.

In addition, we share the commenters' concerns that providing advance public notice of material changes to NMS Stock ATSs could burden ATSs, which would be required to provide at least 30-calendar day advance notice of material changes to all market participants, including their competitors. Requiring such advance public notice of material changes before they are implemented could reduce incentives for NMS Stock ATSs to innovate.

However, we continue to believe that market participants that are planning routing strategies would benefit from advance notice that the NMS Stock ATS is planning changes to its operations or conflicts of interest. To minimize the potential competitive harm of advance public notice, while also providing the benefits of immediate public transparency, the Commission will make public the cover page of a material amendment to an effective Form ATS–N upon filing of such amendment. The cover page will indicate that the NMS Stock ATS has filed a material amendment and provide a brief narrative about the content of the amendment. An NMS Stock ATS is required to indicate the part and item number of Form ATS–N that is subject to the change, state whether or not such change will apply to all subscribers and the broker-dealer operator, and provide a brief summary of the changes. For example, if an NMS Stock ATS is introducing a new order type, the brief narrative might state: ''The ATS is amending Part III, Item 7(a) of Form ATS–N to include a new order type, which will be available to all subscribers.''

In addition, we are adding, in new subparagraph (b)(2)(iii)(A) to Rule 304, that the Commission will, following the expiration of the 30-calendar day Commission review period pursuant to Rule 304(a)(2)(ii), make public the entirety of the material amendment ''as amended.'' We are providing a process, under Rule 304(a)(2)(ii), for NMS Stock ATSs to file updating and correcting amendments under Rule 304(a)(2)(i)(B) and (C), respectively, to material amendments during the Commission review period. In addition, Rule 304(b)(2)(iii)(B) provides that an updating or correcting amendment filed to a material amendment will be made public by the Commission following the expiration of the review period for such material amendment pursuant to Rule 304(a)(2)(ii). We believe that disclosing updating and correcting amendments to material amendments before expiration of the Commission's 30-day calendar review period for the material amendment (and before the material amendment is made public) could be confusing or misleading to the public as the underlying material amendment would not yet be public or operative. We will make public material amendments ''as amended;'' material amendments will reflect any updating and correcting amendments filed during the Commission review period. Such amended disclosures could provide market participants with more complete and comprehensible information about NMS Stock ATS operations and the activities of their broker-dealer operators and affiliates. Accordingly, Rule 304(b)(2)(iii)(B) provides that an updating or correcting amendment filed to a material amendment will be made public by the Commission following the

[599] *See* ICI Letter at 3, n.3.

[600] *See* Liquidnet Letter at 6; SIFMA Letter at 31; UBS Letter at 3; BIDS Letter at 4; STA Letter at 5; STANY Letter at 2; CFA Institute Letter at 6; LeveL ATS Letter at 7. Some commenters state that an amendment to Form ATS–N should not be made public until it is declared effective. *See, e.g.,* SIFMA Letter at 31; UBS Letter at 3. We, however, did not propose, and are not adopting, a process for declaring amendments to Form ATS–N effective. The Commission will have a 30-calendar day review period to declare amendments to Form ATS–N ineffective. *See supra* Section IV.B.2.

[601] *See* LeveL ATS Letter at 7–8. *See also* SIFMA Letter at 31; STANY Letter at 2.

[602] *See* BIDS Letter at 4; UBS Letter at 3; LeveL ATS Letter at 7.

[603] *See* UBS Letter at 3.

[604] *See* Liquidnet Letter at 6–7.

[605] *See* BIDS Letter at 4.

[606] *See* SIFMA Letter at 32.

expiration of the review period for such material amendment pursuant to Rule 304(a)(2)(ii), and Rule 304(b)(2)(iii)(A) provides that a material amendment will be made public, as amended, which would incorporate any amendments that were filed to the material amendment during the Commission review period.

The change to delay making the entirety of Form ATS–N material amendments, as amended, public until after the Commission has completed the review will not impact the manner in which we proposed to make public updating, correcting, and order display and fair access amendments. Form ATS–N updating amendments require NMS Stock ATSs to, no later than 30 calendar days after the end of a calendar quarter, correct information that has become inaccurate or incomplete for any reason and was not required to be reported to the Commission as a Form ATS–N amendment pursuant to Rules 304(a)(2)(i)(A), (C), or (D).[607] NMS Stock ATSs are required to correct information in any previous disclosure on Form ATS–N through a correcting amendment after discovery that any material information previously filed on Form ATS–N was inaccurate or incomplete when filed.[608] Order display and fair access amendments are required to be filed no later than seven calendar days after information required to be disclosed in Part III, Items 24 and 25 on Form ATS–N has become inaccurate or incomplete.[609] We proposed that all amendments, which include Form ATS–N updating and correcting amendments (as well as material amendments), be made public upon filing. Two commenters assert that publicly disclosing changes that the Commission could later declare ineffective could create confusion among market participants.[610] Although, as adopted, the Commission would not make the entirety of material amendments public until after its 30-calendar day review period expires, because correcting, updating, and order display and fair access amendments would be made public upon filing, the Commission could declare such an amendment ineffective after it has been made public. We continue to believe that, even with the risk of some confusion if updating, correcting, and order display and fair access amendments later were declared ineffective, it is appropriate to make updating, correcting, and order display and fair access amendments to an effective Form ATS–N public upon filing because the related changes, any inaccurate or incomplete disclosures about the operation of the NMS Stock ATS, or triggering of the order display and execution access and fair access thresholds, may have been implemented at or before the time of filing, and we believe that it is crucial that market participants have updated information about current NMS Stock ATS operations.[611]

With respect to amendments declared ineffective, one commenter states that such amendments should be returned to the NMS Stock ATS and not be made publicly accessible.[612] Under Rule 304(b)(2)(iii)(A), as adopted, the Commission is specifying that it will not make public the entirety of a material amendment that it declares ineffective. The Commission would, however, upon filing, make public on its website the cover page of the material amendment, and subsequently, any order of ineffectiveness related to such material amendment. In addition, because the Commission will make public updating, correcting, and order display and fair access amendments to an effective Form ATS–N upon filing, such amendments will be publicly available even if the Commission declares such amendments ineffective during its 30-calendar day review period. We believe that it is appropriate to make public updating, correcting, and order display and fair access amendments upon filing, even if the Commission could later declare them ineffective, because, unlike material amendments, the disclosures included in updating, correcting, and order display and fair access amendments have been implemented and reflect an NMS Stock ATS's *current* operations and affiliate relationships. If the Commission later declares an updating, correcting, or order display and fair access amendment ineffective, it will issue an order of ineffectiveness, which the Commission will make public to notify market participants that such change is no longer in effect.

Three commenters state that by making pending amendments public, the Commission may incidentally turn the process into a review, notice, and comment period.[613] Under the adopted rule, the Commission will not make material amendments to Form ATS–N public until the Commission review period has expired. Further, the Commission does not believe that publicly disclosing the brief description of a material amendment on the cover page of Form ATS–N or publicly disclosing correcting, updating, and order display and fair access amendments upon filing will create a public notice, comment, and review period, as the Commission is not soliciting public comments on amendments.[614] This process will be distinct from the proposed rule filing process for national securities exchanges, in which the Commission solicits comment for proposed rule changes and considers whether rule changes are consistent with the Exchange Act.

Two commenters suggest that material amendments should be made public after the Commission has completed its review, but prior to implementation.[615] We are not adopting this suggestion because doing so would require that, to provide additional time for public disclosure after the end of the Commission review period, either the Commission truncate the period for Commission review from the entire 30-calendar day advance notice period, which we believe is necessary for the review,[616] to a shorter segment of the total 30-calendar day advance notice period, or require that NMS Stock ATSs disclose changes further in advance, which could potentially be burdensome for NMS Stock ATSs.

In addition, we received comments asking for clarification regarding the process for a Legacy NMS Stock ATS to file amendments to its Form ATS while the Commission is reviewing the ATS's initial Form ATS–N.[617] In response, we are requiring that a Legacy NMS Stock ATSs amend only its initial Form ATS–N, and not its Form ATS, during the Commission review period.[618] Further, a Legacy NMS Stock ATS's Form ATS–N will not be made public until the end of the Commission review period under Rule 304(a)(1)(iv)(B). Rule 304(b)(2)(iii) provides that amendments to an *effective* Form ATS–N will be made public. Accordingly, amendments to a Form ATS–N filed by a Legacy NMS Stock ATS during the Commission review period will not be made public until after the Commission review period has ended and the Form ATS–N

[607] *See* Rule 304(a)(2)(i)(B) and *supra* Section IV.B.1.b.

[608] *See* Rule 304(a)(2)(i)(C).

[609] *See* Rule 304(a)(2)(i)(D).

[610] *See* LeveL ATS Letter at 7; UBS Letter at 3.

[611] An updating or correcting amendment to a material amendment during Commission review will not be made public until the material amendment that is amended becomes public. We believe this is appropriate because updating and correcting amendments to a material amendment during Commission review would amend a material amendment that is not yet public or operative.

[612] *See* SIFMA Letter at 31.

[613] *See* SIFMA Letter at 32; Morgan Stanley Letter at 4; KCG Letter at 4.

[614] *See supra* Section IV.B.2.

[615] *See* UBS Letter at 3; STA Letter at 5.

[616] *See supra* Section IV.A.2.

[617] *See supra* note 438 and accompanying text.

[618] *See supra* Section IV.A.4.

becomes effective. We believe that making Form ATS–N amendments public before the initial Form ATS–N is public would provide little utility, and would likely only confuse market participants. At the end of the Commission review period, a Legacy NMS Stock ATS's initial Form ATS–N will be made public, along with all filed correcting, updating, and order display and fair access amendments, material amendments for which the Commission's 30-calendar day review period has expired, and the cover pages to any material amendments during the Commission review period.

d. Public Disclosure of Orders of Ineffective Form ATS–N Amendment

Under Rule 304(b)(2)(iv), the Commission will make public each order of ineffective Form ATS–N amendment. This would provide notice to market participants that the Commission had declared a Form ATS–N amendment ineffective. We received no comments on making public orders of ineffective Form ATS–N amendments. We are adopting proposed Rule 304(b)(2)(v) as adopted Rule 304(b)(2)(iv).[619]

e. Public Disclosure of Notices of Cessation

Under Rule 304(b)(2)(v) (which was proposed as Rule 304(b)(2)(vi)),[620] the Commission will make public each notice of cessation of a Form ATS–N filed pursuant to Rule 304(a)(3). One commenter states that it supports our proposal to make notices of cessation publicly available.[621] No commenters express opposition to such requirement. We continue to believe that making public each properly filed Form ATS–N notice of cessation will provide the public with notice that the NMS Stock ATS will cease operations and that the organization, association, or group of persons no longer operates pursuant to the exemption provided under Exchange Act Rule 3a1–1(a)(2). The notice of cessation will provide market participants with the date that the NMS Stock ATS will cease operations, as designated by the NMS Stock ATS, and allow them to make arrangements to select alternative routing destinations for their orders. Therefore, we are adopting as proposed the requirement for public disclosure of notices of cessation.

f. Public Disclosure of Each Order Suspending, Limiting, or Revoking the Rule 3a1–1(a)(2) Exemption

Under proposed Rule 304(b)(2)(vii), the Commission would make public each order suspending, limiting, or revoking the exemption provided pursuant to Rule 3a1–1(a)(2). We did not receive any comments on this requirement. We believe that it is important for market participants to be aware of whether an NMS Stock ATS is subject to an order suspending, limiting, or revoking the exemption from the definition of ''exchange'' when they are making their routing decisions because such an order could prevent an NMS Stock ATS from operating, or it could limit its functionality. Therefore, we are adopting substantially as proposed the requirement that the Commission make public each order suspending limiting, or revoking the exemption from the definition of ''exchange,'' as renumbered Rule 304(b)(2)(vi).[622]

3. Rule 304(b)(3): Disclosure of Form ATS–N on the NMS Stock ATS's Website

Proposed Rule 304(b)(3) required each NMS Stock ATS to make public via posting on its website a direct URL hyperlink to the Commission's website that contains the documents enumerated in proposed Rule 304(b)(2).

We received two comments on proposed Rule 304(b)(3).[623] One commenter supports adding a requirement for NMS Stock ATSs to post the effective Forms ATS–N on their own websites and not simply provide links to the Commission's website.[624] Another commenter requests that rather than requiring materials to be posted centrally through the Commission, the Commission should allow an NMS Stock ATS to post its disclosure materials on its public website.[625] We are not adopting a requirement that an NMS Stock ATS post its filings on its own website because it believes that requiring each NMS Stock ATS to provide a link to the Commission's website, which will link to Form ATS–N filings in EDGAR, will provide market participants easy and uniform access to Form ATS–N filings. The link to the Commission website would provide users with access to all new filings available in EDGAR.

We are adopting, with modifications, the requirement that each NMS Stock ATS make public via posting on its website a direct URL hyperlink to the Commission's website that contains the documents enumerated in proposed Rule 304(b)(2). We continue to believe that the requirement of posting on the NMS Stock ATS's website a direct URL hyperlink to the Commission's website would make it easier for market participants to review an NMS Stock ATS's Form ATS–N filings by providing an additional means for market participants to locate Form ATS–N filings that are made available through the Commission's website.[626]

V. Form ATS–N Disclosures

A. Form ATS–N Disclosure Requirements and Definitions

1. Rule 304(c): Disclosure Requirements

Proposed Rule 304(c)(1) required NMS Stock ATSs to respond to each item on Form ATS–N, as applicable, in detail, and disclose information that is accurate, current, and complete. Unlike proposed Rule 304(c)(2), reports required under Rule 304 must be filed electronically on Form ATS–N, include all information as prescribed in Form ATS–N and the Instructions thereto, and contain an electronic signature that is authenticated by manual signature. Further, proposed Rule 304(c)(2) required that such document be executed before or at the time Form ATS–N is electronically filed and be retained by the NMS Stock ATS in accordance with Rule 303.[627] The proposed Form ATS–N required the signator to represent that the information and statements in the applicable Form ATS–N, including exhibits, schedules, or other documents attached to the Form ATS–N, and other information filed with the Form ATS–N, are current, true, and complete.[628]

We are adopting Rule 304(c)(2), with technical and non-substantive modifications to reduce redundancy and reduce potential ambiguity about the filing requirements for Form ATS–N.[629]

[619] *See supra* note 552.

[620] *See id.*

[621] *See* ICI Letter at 11.

[622] *See supra* note 552. We are making one modification to specify that this applies to the exemption ''for an NMS Stock ATS.''

[623] *See* CFA Institute Letter at 6; UBS Letter at 3.

[624] *See* CFA Institute Letter at 6.

[625] *See* UBS Letter at 3.

[626] *See* Proposal, *supra* note 2, at 81035.

[627] *See id.*

[628] *See* Proposed Form ATS–N, Part V.

[629] The Commission is deleting the word ''electronically'' and the language ''and contain an electronic signature'' in the first sentence of proposed Rule 304(c)(2). All NMS Stock ATSs are required to file Form ATS–N through EDGAR. Therefore, we believe that referencing the term ''electronic'' and ''electronic signature'' is redundant because all filings are electronically submitted through EDGAR. We are deleting the second sentence (regarding manually signing a signature page or document) and instead adding a reference to 232.302 of Regulation S–T, which includes the general rules for electronic filings, including rules governing electronic signatures. We are also modifying the third sentence of Rule 304(c)(2) to state that any report filed under Rule

In the Proposal, the Commission stated that Regulation ATS requires NMS Stock ATSs to register as broker-dealers with the Commission, which entails becoming a member of an SRO, such as FINRA, and fully complying with the broker-dealer regulatory regime.[630] The Commission requested comment on whether the certification under FINRA Rule 3130 would help ensure an NMS Stock ATS's compliance with proposed Rule 304, including the requirement that disclosures on Form ATS–N be accurate, current, and complete.[631] The Commission received two comment letters regarding the requirement that an authorized person certify that the form is ''current, true, and complete.'' [632] One commenter supports the certification requirement.[633] Another commenter expresses concern about immaterial errors being a basis for liability.[634]

The Commission continues to believe that it is appropriate to require authorized persons to certify that the Form ATS–N is ''current, true, and complete.'' We believe that market participants will rely on Form ATS–N disclosures to understand the operations of an NMS Stock ATS and ATS-related activities of the broker-dealer operator, and decide whether that trading center would be a desirable venue for their orders. The information contained on Form ATS–N will also be available for Commission use, including as part of its oversight functions. Further, existing Form ATS also requires authorized persons to certify that the information and statements in the form, exhibits, schedules and other documents attached are ''current, true, and complete.'' [635] In addition, Form 1, the application for registration or exemption from registration as a national securities exchange, requires a similar certification.[636] Neither of these certifications includes a materiality qualifier, and the Commission does not believe that it would be appropriate to include a materiality qualifier in Form ATS–N.

We are adopting Rule 304(c)(1) with certain modifications.[637] Specifically, adopted Rule 304(c)(1) requires that ''[a]n NMS Stock ATS must file a Form ATS–N in accordance with the Instructions therein.'' [638] The adopted Instructions to Form ATS–N require, among other things, that ''[a]n NMS Stock ATS must provide all the information required by Form ATS–N, including responses to each Item, as applicable, and the Exhibits, and disclose information that is accurate, current, and complete.'' [639] Similar to the Instructions of proposed Form ATS–N, the Instructions to adopted Form ATS–N asks an NMS Stock ATS to respond to each item ''in detail.'' In response to comments, we revised some of the requests on Form ATS–N to solicit ''a summary of information'' to tailor further, as appropriate, the required disclosure or avoid requiring the disclosure of personal or commercially sensitive information.[640] Accordingly, we are revising the Instructions to require that ''unless otherwise provided'' (*i.e.,* where the request indicates that the ATS is required to disclose ''summary'' information), the NMS Stock ATS respond to each request in detail.[641]

One commenter suggests that an NMS Stock ATS should be permitted to disclose additional information to its subscribers and potential customers, outside of the Form ATS–N process, or respond to requests for information from market participants.[642] Similarly, one commenter states that NMS Stock ATSs should be allowed to separately disclose information, upon request, regarding order segmentation to subscribers who require such information from a ''due diligence perspective'' and who, due to the nature of their trading, would not present gaming concerns.[643] We believe that it would be inconsistent with the goals of this rulemaking were its adoption to chill communication between broker-dealer operators and subscribers about the NMS Stock ATS. The adopted enhanced disclosure requirements do not prohibit broker-dealer operators from communicating with subscribers and other market participants about information not otherwise required by Form ATS–N in a manner that is consistent with federal securities laws and the rules or regulations thereunder. A broker-dealer operator responding to a request for information from a subscriber or market participant generally should evaluate whether the information provided in response to these requests must be disclosed on Form ATS–N if the information does not already appear in its Form ATS–N.

The Commission received several comments on the general format of the Form ATS–N. Several commenters suggest that the Commission modify Form ATS–N so that the requests for information result in disclosures that are more standardized and allow market participants to more easily compare Form ATS–N filings.[644] Some commenters express concern that requesting what they characterize as ''extraneous'' information could obscure the information that market participants would find the most relevant.[645] Some of these commenters also express concern that the volume of data that NMS Stock ATSs would provide in response to questions that require narrative responses would make it difficult for participants to understand ATS operations [646] or conduct due diligence.[647]

Although one commenter expressly agrees with the Commission's approach of requiring summaries of amendments,[648] several commenters state that narrative responses on Form ATS–N are likely to vary widely, and could make comparing multiple platforms difficult.[649] Multiple commenters advocate for replacing some of the proposed narrative responses to Form ATS–N with ''yes'' or ''no'' responses.[650] One commenter states that requiring ATSs to respond in a ''yes'' or ''no'' format would support

304 shall be executed ''at, or prior to,'' the time the Form ATS–N is filed (instead of ''before or at''). We are also adding a reference to the Instructions in Form ATS–N, which includes the requirement for NMS Stock ATSs to maintain a paper copy with original manual signatures, instead of including a reference to retaining Form ATS–N in accordance with § 242.303, as proposed.

[630] *See* Proposal, *supra* note 2, at 81005.

[631] *See id.* at 81037.

[632] *See* SIFMA Letter at 33; Better Markets Letter at 7.

[633] *See* Better Markets Letter at 7.

[634] *See* SIFMA Letter at 33.

[635] *See* Form ATS at 1.

[636] *See* Form 1 at 1.

[637] We changed the heading of proposed Rule 304(c) from ''Form ATS–N filing requirements'' to ''Form ATS–N disclosure requirements,'' which we believe more accurately describes the purpose and content of the paragraph.

[638] *See* Rule 304(c)(1).

[639] *See* Instructions to Form ATS–N.

[640] *See, e.g.,* Form ATS–N Part III, Item 13(a) (instructing NMS Stock ATS to provide a summary of the parameters for each segmented order category).

[641] In addition, to avoid potential confusion, we are removing ''in detail'' from Rule 304(c)(1) and instead, specifying that the Form ATS–N must be filed ''in accordance with the instructions therein.'' *See* Rule 304(c)(1).

[642] *See* T. Rowe Price Letter at 2.

[643] *See* Fidelity Letter at 8.

[644] *See* SSGA Letter at 2–3; BIDS Letter at 4–5; Fidelity Letter at 5; STANY Letter at 5; UBS Letter at 2–3; KCG Letter at 8–9, 11; Morgan Stanley Letter at 1; STA Letter at 2; SIFMA Letter at 9; LeveL ATS Letter at 6–7.

[645] *See* STANY Letter at 3; Luminex Letter at 4; KCG Letter at 4; SSGA Letter at 2; SIFMA Letter at 7.

[646] *See* STA Letter at 2; KCG Letter at 3–4; SIFMA Letter at 9.

[647] *See* SSGA Letter at 2.

[648] *See* Liquidnet Letter at 18.

[649] *See* SSGA Letter at 2; Fidelity Letter at 5; STA Letter at 2; BIDS Letter at 4–5; KCG Letter at 8–9; Morgan Stanley Letter at 1.

[650] *See* SSGA Letter at 2; BIDS Letter at 4; STANY Letter at 5; STA Letter at 2; UBS Letter at 2–3; KCG Letter at 8–11; SIFMA Letter at 9; LeveL ATS Letter at 6.

more fulsome disclosure and create a universal standard of review, as allowing narrative responses may allow ATSs to disclose only the information that they deem appropriate.[651] Some commenters recognize that ''yes'' or ''no'' information may need to be supplemented by short narrative responses.[652] One commenter suggests introducing a tabular format, where reasonable, to capture the disclosures required by Forms ATS–N would facilitate comparison of Forms ATS–N.[653]

The Commission has revised the format of proposed Form ATS–N to further standardize the form's requests, better organize questions by subject matter, reduce redundancy, reduce ambiguity, make more explicit requests on Form ATS–N to facilitate complete responses, and achieve the appropriate balance between yes/no and narrative responses. For instance, the adopted format of Form ATS–N changes several questions from proposed Form ATS–N for certain subject matters (*e.g.,* order display, co-location services, and segmentation) to require ''yes'' or ''no'' responses with further narrative disclosure required in connection with ''yes'' responses. We believe that adding more ''yes'' or ''no'' questioning in Form ATS–N will help standardize responses and address commenters' concerns about facilitating market participants' review and comparisons of Form ATS–N disclosures. We continue to believe, however, that narrative responses enable market participants to understand the operations of the NMS Stock ATS and the ATS-related activities of the broker-dealer operator, particularly in light of the different trading functionalities, options, and procedures that are offered across NMS Stock ATSs, and provide NMS Stock ATSs with the flexibility to communicate required information to the public that is required by the form.

Also, certain requests have been amended to only require summary information. We believe that requiring summaries for certain disclosures could help reduce potential extraneous information.

2. Terminology

a. Definitions for Form ATS–N

(i) Proposed Defined Terms

As proposed, Form ATS–N would have set forth definitions of the following terms: (1) Affiliate; (2) alternative trading system; (3) broker-dealer operator; (4) control; (5) NMS security; (6) NMS Stock; (7) NMS Stock ATS; (8) order; (9) person; and (10) subscriber.

The Commission received several comments regarding the proposed definitions of ''affiliate.'' The Commission is adopting the definition of the term ''affiliate,'' with a technical change,[654] to mean ''with respect to a specified Person, any Person that directly, or indirectly, controls, is under common control with, or is controlled by, the specified Person.'' One commenter states that the proposed definition of ''affiliate'' would include, among others, owners of the ATS operator, without regard for whether the affiliate is separately registered as a broker-dealer and therefore subject to the Commission's jurisdiction.[655] The commenter notes that the definition of ''affiliate'' would include persons ''under common control with'' the NMS Stock ATS operator, with control meaning at least 25% ownership, such that the threshold would capture entities that operate independently from one another.[656] Similarly, another commenter points out that although the Proposal contains a customary definition of the term ''affiliate,'' the definition is not limited in any way that focuses on direct interactions or relationships with the NMS Stock ATS.[657]

We do not believe that the status of an affiliate's registration with the Commission should limit the scope of the disclosures about that affiliate in Form ATS–N. However, the adopted Form ATS–N conflicts-of-interest disclosures are tailored to inform market participants about how affiliates of the broker-dealer operator trade on the NMS Stock ATS and how the use of the ATS by affiliates may affect the handling and execution of orders from unaffiliated parties. While the definition of ''affiliate'' in Form ATS–N may encompass a large number of entities for some ATSs, Form ATS–N is designed to solicit information that is relevant to a market participant's evaluation of an NMS Stock ATS as a potential trading venue. Therefore, while we have not amended the proposed definition of ''affiliate,'' the disclosures about affiliate activity on an NMS Stock ATS are not designed to require information about affiliates that the Commission and commenters believe would be extraneous to a market participant's evaluation of conflicts of interest and information leakage on the ATS.

We received two comments regarding the proposed definition of ''control.'' After carefully considering these comments, we are adopting the definition of ''control,'' as proposed, to mean:

> the power, directly or indirectly, to direct the management or policies of the broker-dealer of an alternative trading system, whether through the ownership of securities, by contract, or otherwise. A Person is presumed to control the broker-dealer of an alternative trading system, if that Person (1) is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (2) directly or indirectly has the right to vote 25% or more of a class of voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities of the broker-dealer of the alternative trading system; or (3) in the case of a partnership, has contributed, or has the right to receive, upon dissolution, 25% or more of the capital of the broker-dealer of the alternative trading system.

One commenter expresses support for the Commission's proposal that the definition of control contain a 25% ownership threshold that the commenter states currently serves as a presumption of control and is consistent with that used in other areas of the securities laws.[658] Another commenter states, however, that the proposed definition of ''control'' provides that certain persons are presumed to control the broker-dealer operator of an NMS Stock ATS, but that there is no corresponding safe harbor whereby persons are presumed not to control an NMS Stock ATS.[659] Accordingly, the commenter opines that an NMS Stock ATS operator may feel obligated to provide overly broad disclosures, which could confuse subscribers regarding potential conflicts.[660]

Disclosures related to affiliates extend to persons that control, are controlled by, or are under common control with the broker-dealer operator, and, as a result, parallel the disclosures related to ''control affiliates'' that broker-dealer

[651] *See* LeveL ATS Letter at 7.

[652] *See* BIDS Letter at 4; SIFMA Letter at 12; LeveL ATS Letter at 7.

[653] *See* BIDS Letter at 5.

[654] The Commission is making one technical change to the proposed term ''affiliate'' by capitalizing the defined term ''Person.'' This change is meant to identify the term Person as a defined term for purposes of the Form ATS–N.

[655] *See* LeveL ATS Letter at 3, n.5.

[656] *See id.* at 4, n.7.

[657] *See* UBS Letter at 4. This commenter states that the broker-dealer operator of its ATS has well over 300 global affiliates under the definition set forth in the Proposal, and that not all such affiliates are users of the ATS; only orders routed by a small number of affiliates end up in its ATS. *See id.* The commenter also points out that as proposed, it would need to disclose every affiliate regardless of whether it has any interactions with the ATS. *See id.*

[658] *See* HMA Letter at 15.

[659] *See* LeveL ATS Letter at 3, n.6.

[660] *See id.*

operators must make on Form BD.[661] The Commission disagrees that an NMS Stock ATS operator may feel obligated to provide unnecessarily broad disclosures regarding potential conflicts of interest due to the proposed definition of ''control.'' The presumed control tests set forth in the adopted definition of ''control'' are meant to provide clarity to NMS Stock ATSs as to when an entity and the broker-dealer operator are defined as ''affiliated,'' which would trigger the NMS Stock ATSs' disclosure duties under Part II of adopted Form ATS–N. We believe that the enumerated circumstances under which there is presumed control involve factors (such as a shared executive or 25% ownership) that would likely result in one entity or person having the power, directly or indirectly, to direct the management or policies of the broker-dealer operator of an ATS. Therefore, in such situations, a presumption of control is appropriate. On the other hand, because control can manifest itself in several ways under the adopted definition, the Commission does not feel that there are certain facts that would warrant a presumption of no control. For example, the unique facts and circumstances of several different ownership structures could result in different conclusions regarding control, even though the various structures contain some similarities. Accordingly, the Commission has not added provisions setting forth circumstances under which there would be a presumption of no control.

The Commission is adopting as proposed the changes to the definition of ''control'' under Rule 300(f) in Regulation ATS. The definition of the term control being adopted herein contains the additional phrase ''the broker-dealer of'' before the two instances of the phrase ''an alternative trading system'' and before the phrase ''the alternative trading system'' in subsections (2) and (3) of the definition.[662] As discussed in the Proposal, the purpose of this difference is to make clear that, because an ATS must register as a broker-dealer, control of the broker-dealer of the ATS is control of the ATS, and that the broker-dealer operator is legally responsible for all operational aspects of the ATS and for ensuring that the ATS complies with applicable federal securities laws and the rules and regulations thereunder, including Regulation ATS.[663]

The disclosures of ATS-related activities of the broker-dealer operator's affiliates in Part II of adopted Form ATS–N are designed to provide subscribers and market participants with a comprehensive understanding of the conflicts of interest that may arise from the broker-dealer operator's other business activities and its operation of the NMS Stock ATS. Under the adopted definitions of ''affiliate'' and ''control,'' any affiliate of the broker-dealer operator of the NMS Stock ATS would be an affiliate of the NMS Stock ATS. These definitions are designed to cover entities that have a close relationship with the broker-dealer operator and whose activities could raise conflicts of interest concerns, or could otherwise be relevant to market participants when evaluating an NMS Stock ATS.

Furthermore, in Part III, Item 1 of proposed Form ATS–N, the Commission used the term ''non-ATS trading center.'' A commenter requests that the Commission define the term ''non-ATS trading center'' so that broker-dealer operators can better focus on making proper disclosures.[664] As further explained below, in response to comments, the Commission is reorganizing and changing Part III, Item 1 of proposed Form ATS–N to request information about the trading activities of the broker-dealer operator and its affiliates, irrespective of whether the broker-dealer operator's business units and/or affiliates are non-ATS trading centers.[665] Given the revisions the Commission is making to Part III, Item 1, we believe that the defined term is no longer necessary, and the Commission is, therefore, eliminating the term from adopted Form ATS–N.

Another commenter agrees with the goal of highlighting potential conflicts of interest faced by broker-dealer operators of NMS Stock ATSs and their affiliates in connection with the ATS.[666] The commenter endorses the proposed requirement to identify non-ATS trading centers managed by the ATS operator or its affiliates that interact with the ATS. The commenter also states that disclosures related to non-ATS trading centers should be limited to non-ATS trading centers that interact with or exchange information with the ATS.[667] The Commission also believes that public disclosure of non-ATS trading centers managed by the broker-dealer operator or its affiliates that interact with the ATS furthers the stated goal of helping market participants evaluate potential conflicts of interest on an NMS Stock ATS. The requests in Part II of adopted Form ATS–N are tailored to elicit such information without burdening NMS Stock ATSs with a requirement to list the non-ATS trading centers of the broker-dealer operator or its affiliates that do not interact with the NMS Stock ATS.

(ii) New Defined Terms

The Commission is adding the term ''trading center'' to the definitions set forth in the Instructions to adopted Form ATS–N to define that term for purposes of its use in Part II and Part III of adopted Form ATS–N. The term ''trading center'' was used in proposed Form ATS–N with regard to arrangements with other trading centers—Part III, Item 4 of proposed Form ATS–N—and is used in adopted Form ATS–N's requests regarding the routing of orders from the NMS Stock ATS to business units or affiliates of the broker-dealer operator (adopted Part II, Items 1 and 2) and the NMS Stock ATS's arrangements with other trading centers (adopted Part II, Item 4).

The definition of the term ''trading center'' used for purposes of adopted Form ATS–N is the same as that currently set forth in Regulation NMS Rule 600(b)(78).[668] The adopted definition is ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.'' While we believe that the scope of the term ''trading center'' in Form ATS–N would likely be understood by NMS Stock ATSs, we believe that adding a definition to the Form ATS–N will reduce any potential ambiguity with regard to those requests in Part II, Items 1, 2, and 4 of adopted Form ATS–N.

One commenter states that the Commission should add additional definitions for certain terms to promote consistency throughout Forms ATS–N, which the commenter believes could ultimately facilitate comparison among

[661] *See* Form BD at 2 (defining ''control affiliate'').

[662] 17 CFR 242.300(f).

[663] *See* Proposal, *supra* note 1, at 81044.

[664] *See* SIFMA Letter at 10.

[665] *See infra* Section V.C.1.

[666] *See KCG* Letter at 8.

[667] *See id.* at 8–9. This commenter also asserts that it is imperative for the Commission to clarify that the interaction between the NMS Stock ATS and any non-ATS trading center may be subject to change and the ATS operator does not need file and receive Commission approval before implementation. *See id.* We note that the materiality of any changes to the interaction and coordination between non-ATS trading centers and the NMS Stock ATS that would require disclosure on Form ATS–N should be evaluated based on the facts and circumstances related to each change.

[668] *See* 17 CFR 242.600(b)(78).

Forms ATS–N.[669] Another commenter emphasizes that the Commission should establish fundamental uniformity in the way information is defined and disclosed.[670] We have structured adopted Form ATS–N to allow market participants to better compare disclosures among NMS Stock ATSs. We do not, however, believe that it should establish standardized terms to be used by NMS Stock ATSs when completing their disclosures on Form ATS–N. We do not desire to impose substantive standards for how disclosures should be written by adopting and defining terms to be used by all NMS Stock ATSs to describe the functionalities, operations, or procedures of their systems. The operations of NMS Stock ATSs vary, and, apart from some common terms, many NMS Stock ATSs use different terminology to describe their operations and functionalities. Based on our review of Form ATS filings, we believe that NMS Stock ATSs may use differing terms and definitions to describe functionalities, operations, or procedures, even if a particular function, operation, or procedure on one ATS may resemble that on another. We do not believe that it would be very helpful to define terms for functionalities, operations, or procedures across NMS Stock ATSs because doing so may not result in complete or comprehensible disclosures due to these substantive and semantical differences in the operations of NMS Stock ATSs. We believe that adopting standardized, substantive terms for Form ATS–N disclosures may limit the ability of an NMS Stock ATS to completely and clearly describe its system, which we believe could reduce the utility of Form ATS–N disclosures for market participants. We also believe that such defined terminology would limit the flexibility of NMS Stock ATSs to name or market new services of the ATS.

b. Comments on the Definition of ''Subscriber''

When seeking disclosures regarding how an NMS Stock ATS operates and the ATS-related activities of the broker-dealer operator and its affiliates, proposed Form ATS–N used the terms ''subscriber'' and ''person(s).'' One commenter believes that Form ATS–N should instead focus on the term ''user'' rather than ''subscriber.''[671] This commenter states that the term ''subscriber'' can be disparately interpreted and applied by broker-dealer operators of ATSs and would inhibit uniform application across ATSs in terms of disclosure, access, priority, and other purposes. This commenter further states that the current definition in Regulation ATS fails to adequately define ''subscriber'' in the case of an ATS that is part of a larger broker-dealer operation, leading to inconsistencies in the application of the requirements applicable to subscribers across ATSs. The commenter believes that disclosures in Form ATS–N should not depend on whether a broker-dealer operator has a contractual agreement with a user for accessing the ATS, but should be consistent for all users that access an ATS whether such users are internal or external and whether such users access the ATS directly or indirectly.

Similarly, another commenter believes the phrase ''subscriber orders or other trading interest'' as used in proposed Part III, Item 1—which would have required the NMS Stock ATS to disclose information about the interaction and coordination between non-ATS trading centers operated by the broker-dealer operator or its affiliates and the NMS Stock ATS—should be read as ''subscriber orders or subscriber trading interest.''[672] This commenter believes that the alternative reading would potentially capture all trading interest sent to the broker-dealer operator of the NMS Stock ATS.

We agree that responses to questions in Form ATS–N should be uniformly applied by NMS Stock ATSs regardless of the source of orders (*e.g.,* principal trading desks of the broker-dealer operator, third parties using direct connectivity, affiliates of the broker-dealer operator, customers of the broker-dealer operator whose orders are submitted to the ATS through a functionality of the broker-dealer operator, such as a smart order router (''SOR'')). We have revised several requests on proposed Form ATS–N to help facilitate a uniform application of responses by NMS Stock ATSs and, in response to commenters' concerns, are providing guidance regarding the definition of ''subscriber'' under Regulation ATS and in the context of Form ATS–N disclosures.

First, we believe that the term ''subscriber'' sufficiently captures the vast majority of market participants whose orders or trading interest are submitted to and executed in an NMS Stock ATS. Regulation ATS defines subscriber ''[a]s any person that has entered into a contractual agreement with an ATS to access such ATS for the purpose of effecting transactions in securities or submitting, disseminating, or displaying orders on such ATS, including a *customer, member, user,* or *participant* in an ATS.''[673] In the Proposal, as the Commission discussed, the broker-dealer operator of an NMS Stock ATS is legally responsible for, and controls all aspects of, the ATS operation, including, among other things, providing access to the ATS.[674] Based on our experience, persons seeking to use an ATS's services enter into agreements with the broker-dealer operator, and these agreements could cover services in addition to the ATS services. These agreements may take a variety of forms, and may or may not be written.[675] If a market participant has an agreement—written or unwritten—with a broker-dealer that allows the market participant to enter orders directly into an ATS operated by the broker-dealer, that market participant is a subscriber of the ATS for purposes of Regulation ATS and Form ATS–N.

Another example of a subscriber would include a customer of the broker-dealer operator whose orders are submitted to the ATS by the broker-dealer operator. Many NMS Stock ATSs are operated by broker-dealers that offer their customers a wide range of order handling and execution services in addition to the execution services of their NMS Stock ATSs.[676] These services typically involve functionality such as an SOR or other types of trading algorithms. In cases where a customer uses this wider range of services of the broker-dealer, the customer would not

[669] *See* BIDS Letter at 5.

[670] *See* UBS Letter at 2.

[671] *See* Morgan Stanley Letter at 4.

[672] *See* UBS Letter at 5.

[673] 17 CFR 242.300(b) (emphasis added). Additionally, the definition of the term ''subscriber'' under Regulation ATS states that a subscriber shall not include a national securities exchange or national securities association. *See id.*

[674] *See* Proposal, *supra* note 2, at 81041 (discussing the relationship between the broker-dealer operator's operation of the NMS Stock ATS and its other operations).

[675] For example, third-party market participants—including, potentially, affiliates and non-affiliates of the broker-dealer operator—may enter into subscriber agreements or some other form of contract with the broker-dealer operator to connect directly to the ATS to submit or display orders. We note that a determination as to who may be a ''subscriber'' to the ATS would depend upon the facts and circumstances of the relationship between the ATS and the broker-dealer operator, so the preceding examples are not exhaustive.

[676] *See* UBS Letter at 5 (noting that market participants may maintain a commercial relationship with the broker-dealer operator for purposes other than accessing the broker-dealer operator's ATS, such as to use the broker-dealer's high touch block trading desk or to use the broker-dealer's trading algorithms); Morgan Stanley Letter at 1–2 (explaining that full service broker-dealers may provide clients with a broad, integrated electronic offering of trading services, which might include ATS services).

send its orders directly to the ATS, but rather, send its orders to some functionality external to the ATS, which could be the SOR or algorithm itself or a client service desk that submits the customer orders into the broker-dealer's SOR or trading algorithms. A SOR or trading algorithm typically has the capability to route customer orders to a number of execution venues, including the broker-dealer operator's own ATS. We note that such commercial relationships may be governed by formal or informal agreements. To the extent a person enters into a contract, written or unwritten, to use the broker-dealer operator's order routing and execution services, and those services could include routing to and executing in the broker-dealer operator's own ATS, that agreement would fall within the contractual agreements under the definition of ''subscriber'' under Regulation ATS and the person would be a subscriber to the ATS. On the other hand, a customer's order routed by the broker-dealer operator's SOR or trading algorithm to an external market for execution would not be a subscriber order because the order was not destined or entered into the ATS.[677]

Second, as noted above, a commenter believes that Regulation ATS does not adequately define the term ''subscriber'' in the case of an ATS that is part of a larger broker-dealer operation, which the commenter believes could lead to inconsistencies in the application of the requirements applicable to subscribers across ATSs.[678] While we believe that the term ''subscriber'' sufficiently captures the vast majority of market participants whose orders or trading interest are submitted to and executed in an NMS Stock ATS, we also acknowledge that business units of multi-service broker-dealer operators, in many cases, participate in the ATS of that broker-dealer operator and submit principal orders to the ATS. Despite participating in the ATS, these business units might not always meet the definition of ''subscriber'' because an ATS may not have a contractual agreement with a business unit that is part of the same entity.

Adopted Form ATS–N uses the term ''subscriber'' throughout, and, in certain Items, specifically states the type of ATS-related activities of, or information about, the broker-dealer operator that must be disclosed. For example, Part III, Item 5(b) of adopted Form ATS–N requires the NMS Stock ATS to state whether the terms and conditions to directly enter orders and trading interest into the NMS Stock ATS are the same for all subscribers and the broker-dealer operator. We believe that drafting the Form ATS–N requests in this manner will help ensure that the scope of information solicited encompasses all relevant users of the ATS services (*i.e.,* subscribers, and to the extent such users do not meet the definition of ''subscriber,'' the business units of the broker-dealer operator). We believe that adopted Form ATS–N is not designed to solicit disparate disclosures among NMS Stock ATS due to varying interpretations of the term ''subscriber'' by individual ATSs.

B. Cover Page and Part I of Form ATS–N: Identifying Information

1. Cover Page

In response to concerns from commenters that the public may be led to believe that the Commission is conducting a merit-based review of Form ATS–N disclosures filed with the Commission, we are including on the cover page of Form ATS–N a legend stating that the Commission has not passed upon the merits or accuracy of the disclosures in the filing.

On the cover page of adopted Form ATS–N, the responding entity is required to identify the type of filing[679] by marking the appropriate checkbox.[680] We are also adopting, as proposed, a requirement that NMS Stock ATSs file a notice of cessation of operations on Form ATS–N and provide the date that the NMS Stock ATS will cease to operate. We are also adopting a check box that allows a Form ATS–N filer to withdraw a previously filed Form ATS–N filing.[681] The Instructions to Form ATS–N state that an NMS Stock ATS may withdraw an initial Form ATS–N or an amendment before the end of the applicable Commission review period. Because its initial Form ATS–N supersedes and replaces a Legacy NMS Stock ATS's Form ATS for purposes of the exemption and the initial Form ATS–N can be amended, a Legacy NMS Stock ATS may not withdraw its initial Form ATS–N at any time. Once the Commission review period has expired or a Legacy NMS Stock ATS has filed its initial Form ATS–N, the Legacy NMS Stock ATS cannot withdraw the filing and must file a notice of cessation pursuant to Rule 304(a)(3) if it intends to cease to operate or file an amendment to its Form ATS–N, as appropriate. In addition, an NMS Stock ATS may withdraw a notice of cessation of operations at any time before the date that the NMS Stock ATS had indicated it intended to cease operating.

In the cover page of proposed Form ATS–N, the Commission sought a brief narrative description for Form ATS–N amendments so market participants could quickly understand the nature of the amendment.[682] We are modifying this requirement to be more specific as to what information is required in this narrative. Adopted Form ATS–N requires the NMS Stock ATS to indicate

[677] We do not intend for Form ATS–N to require disclosures about aspects of a market participant's other commercial relationships with a broker-dealer operator that do not pertain to the NMS Stock ATS. We believe that the adopted Form ATS–N disclosure requests are tailored so that operations of the broker-dealer operator not housed within the NMS Stock ATS—and that do not otherwise pertain to the functions of the ATS—would not be subject to disclosure on Form ATS–N.

[678] *See* Morgan Stanley Letter at 4.

[679] Proposed Form ATS–N would have required NMS Stock ATSs to check the ''Submission Type.'' Adopted Form ATS–N requires NMS Stock ATSs to check the ''Type of Filing.'' This is a non-substantive change.

[680] Adopted Form ATS–N's cover page provides that a filing may be an initial Form ATS–N, or a Form ATS–N material amendment, updating amendment, correcting amendment, or order display and fair access amendment. Proposed Form ATS–N included a check box above the ''Submission Type'' menu, where an NMS Stock ATS could indicate if the filing was an ''Initial Form Filing.'' In addition, in the proposed Form ATS–N ''Submission Type'' menu, an NMS Stock ATS could check whether its submission was a ''Form ATS–N.'' Adopted Form ATS–N does not include a check box to indicate whether the filing is an ''Initial Form Filing,'' and revises the proposed check box under the ''Type of Filing'' menu to state ''*Initial* Form ATS–N'' (emphasis added).

[681] Proposed Form ATS–N included a check box, above the ''Submission Type'' menu, where an NMS Stock ATS could indicate that a filing was a ''Withdrawal of Initial Form Filing.'' Adopted Form ATS–N relocates this check box to the ''Type of Filing'' menu and revises it to say ''Withdrawal of Form ATS–N filing'' so that such check box can accommodate withdrawals of different types of filings, and not just a withdrawal of an initial Form ATS–N. Adopted Form ATS–N provides a space for the EDGAR accession number for the Form ATS–N filing to be withdrawn, which will enable market participants to identify the prior filing that is being withdrawn.

[682] An NMS Stock ATS is required to attach a document marked to indicate changes for a Form ATS–N amendment to Form ATS–N Part, I, Part II, and Part III, as applicable, and to highlight changes to ''yes'' or ''no'' answers or additions or deletions from its prior Form ATS–N filing. We believe that marked documents will help market participants and the Commission review Form ATS–N amendments in an efficient manner. We have changed the marked document requirement that was proposed. In the proposal the marked document was referred to a redline. We proposed for an NMS Stock ATS to submit two redlines—Exhibit 3A to show changes to Part III of proposed Form ATS–N and Exhibit 4A to show changes to Part IV of proposed Form ATS–N. We are adopting a requirement that ATSs provide a single exhibit, Exhibit 3, that contains a marked document to indicate changes to Parts I, II, and III. We believe that only requiring a single document may reduce the filing burden on ATSs. We believe that the marked documents will be helpful for market participants to review changes to Part I. In addition, to reflect the use of ''yes'' or ''no'' questions in adopted Form ATS–N, we are specifying that the marked document would be required to indicate changes in ''yes'' or ''no'' answers.

the part and item number of the Form ATS–N that is the subject of the change, provide a brief summary of the changes, and state whether or not the changes apply to all subscribers and the broker-dealer operator.[683] In addition, the NMS Stock ATS is required to provide the EDGAR accession number for the Form ATS–N filing to be amended, which will allow market participants to identify the filing that is being amended.

Furthermore, in response to comments, we are adopting Rule 304(b)(2)(iii), which provides that it will make public the cover page of a filed Form ATS–N material amendment upon filing and then make public the entirety of the material amendment following the expiration of the review period pursuant to Rule 304(a)(2)(ii).[684] In connection with this change, we are adopting Instructions that we believe will better solicit information that will notify market participants of the general subject matter of a Form ATS–N amendment, as well as the subscribers that would be affected by the amendment. For updating and correcting amendments, which will be made public upon filing, we believe that the information in the narrative can assist market participants in understanding the general nature of the change that the NMS Stock ATS is implementing.

In addition, we are making a technical change to relocate the check box indicating whether an initial Form ATS–N is being filed by a Legacy NMS Stock ATS operating pursuant to a Form ATS.[685]

2. Part I of Form ATS–N: Identifying Information

a. Part I: Identifying Information

Part I of adopted Form ATS–N combines the requests set forth in Parts I and II of proposed Form ATS–N, which covered, among other things, the name of the NMS Stock ATS and the NMS Stock ATS's broker-dealer operator's registration and contact information.[686] We are adding to Part I, Item 1 of adopted Form ATS–N, a new requirement, which was not proposed, that the filer check a box indicating whether the filer is a registered broker-dealer with the Commission to readily notify the Commission whether the filer is eligible to operate as an NMS Stock ATS pursuant to Regulation ATS.

To assist the Commission in more easily assessing whether the NMS Stock ATS has registered as a broker-dealer pursuant to Rule 301(b)(1) of Regulation ATS, we are adopting the proposed requirement that the NMS Stock ATS provide the name of the registered broker-dealer for the NMS Stock ATS (*i.e.,* the broker-dealer operator), as it is stated on Form BD, in Part I, Item 2 of adopted Form ATS–N. To the extent that a commercial or ''DBA'' (doing business as) name or names[687] are used to identify the NMS Stock ATS to the public, the Commission, or its SRO, or if a registered broker-dealer operates multiple NMS Stock ATSs, adopted Form ATS–N would require the full name(s) of the NMS Stock ATS under which business is conducted, if different,[688] in Part I, Item 3 of adopted Form ATS–N. We are also adopting Part II, Items 2 and 3 of proposed Form ATS–N as Part I, Item 4[689] of adopted Form ATS–N to require the NMS Stock ATS to provide the broker-dealer operator's SEC File Number and Central Registration Depository (''CRD'') Number.

We are not, however, including in adopted Part I the proposed requests that the NMS Stock ATS provide the effective date of its broker-dealer operator's registration with the Commission, the broker-dealer operator's legal status (*e.g.,* sole proprietorship, corporation), information about its date and place of formation if the broker-dealer operator is other than a sole proprietor, and the mailing address of the NMS Stock ATS (if not the same as the physical address). This identifying information is disclosed on Form BD or otherwise made available to the public and the Commission.[690] We do not believe that it is necessary to require the NMS Stock ATS to provide this information on Form ATS–N because other information requests about the registration status of the broker-dealer operator will inform the Commission about whether the NMS Stock ATS has met the condition of Rule 301(b)(1) of Regulation ATS.

We are adopting Part II, Item 4 of proposed Form ATS–N as Part I, Item 5 of adopted Form ATS–N to require the NMS Stock ATS to provide the full name of the national securities association of the broker-dealer operator and the effective date of the broker-dealer operator's membership with the national securities association. We are adding to Part I, Item 4 of adopted Form ATS–N the proposed requirement for an NMS Stock ATS to provide its Market Participant Identifier (''MPID'').[691] Providing the name of the NMS Stock ATS or DBAs and its MPID would identify the ATS to the public and Commission. One commenter states that the name, identity of the broker-dealer operator, any ''doing business as'' name, and the ATS's MPID are basic information critical to market participants and should be disclosed.[692]

Also, as was proposed, adopted Form ATS–N requires the NMS Stock ATS to provide a URL address for the website of the ATS, and in the signature block in Part IV of adopted Form ATS–N, the representative of the broker-dealer operator will also be required to provide his or her business contact information, including the person's name and title, telephone number, email address, and primary street address and mailing address (if different) of the NMS Stock ATS.[693] This information will facilitate

[683] Accordingly, the adopted Instructions have been enhanced from the proposed Instructions so that they provide more guidance to an NMS Stock ATS drafting the narrative. The proposed Instructions would have asked an NMS Stock ATS to ''[p]rovide a brief narrative description of the Amendment.'' *See* Proposal, *supra* note 2, at 81138.

[684] *See supra* Section IV.E.2.c.

[685] Proposed Form ATS–N set forth this check box in Part I, Item 4, whereas adopted Form ATS–N sets forth this check box on the cover page.

[686] The subsequent sections of adopted Form ATS–N have been renumbered accordingly. The disclosures regarding the ATS-related activities of the broker-dealer operator and its affiliates on the NMS Stock ATS are contained in Part II, the manner of operations disclosures are contained in Part III, and the contact information, signature block, and consent to service are contained in Part IV of adopted Form ATS–N.

[687] In some instances, an NMS Stock ATS may have several commercial or doing-business-as names, such as a name the ATS uses in its filings to the Commission, or to FINRA pursuant to FINRA Rule 6110. Adopted Form ATS–N requires the ATS to list all names under which it conducts business in Part I, Item 2.

[688] Part I, Item 2 of proposed Form ATS–N would have required an NMS Stock ATS to disclose the full name of the NMS Stock ATS under which its business is conducted, ''if any.'' Part I, Item 3 of adopted Form ATS–N only requires this disclosure ''if different.''

[689] The requirements of Part II, Items 2 and 3 of proposed Form ATS–N are consolidated into Part I, Item 4 of adopted Form ATS–N, and divided into two subparts.

[690] The mailing address for registered broker-dealers is available to the Commission via EDGAR. The mailing address, type of entity, and date when established for each broker-dealer is available to the public through FINRA.

[691] This requirement was previously a stand-alone request and has been moved to Part I, Item 5 of adopted Form ATS–N, which asks the NMS Stock ATS to disclose its national securities association, which would issue the MPID to the ATS. An MPID, or other mechanism or mnemonic, is used to identify a market participant for the purposes of electronically accessing a national securities exchange or an ATS. *See, e.g.,* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010). ATSs are required to use a unique MPID when reporting trade information to FINRA. *See* FINRA ATS Reporting Approval, *supra* note 15.

[692] *See* HMA Letter at 10.

[693] Contact information of the broker-dealer operator's representative in Part IV of Form ATS–N will not be made public. In addition, consistent with the requirements of proposed Form ATS–N, the signature block in Part IV of adopted Form ATS–N requires the NMS Stock ATS to consent that

communication with the broker-dealer operator during the Commission review period of a Form ATS–N and later as necessary as part of the Commission's ongoing monitoring of the NMS Stock ATS.

We are modifying the proposed request for the physical street address of the NMS Stock ATS to also require the ATS to provide the physical street address, if any, of a secondary location for the ATS that may be used in the event that the primary physical location is not available. The location of an NMS Stock ATS, including its matching system, may differ from the main physical or mailing address of the broker-dealer operator. We believe that it is important for both the Commission and market participants to know where the NMS Stock ATS is located in the event of, for instance, a natural disaster that could impact market participants' ability to trade on the ATS and potential latency that could be experienced due to the location of the secondary site of the NMS Stock ATS. Also, we are concerned that market participants could be harmed from systems problems that necessitate a suspension or halt to trading at an NMS Stock ATS. Thus, we believe it is important to fully understand what, if any, trading procedures an NMS Stock ATS would follow if trading is suspended or stopped, which would be disclosed under Part III, Item 20 of adopted Form ATS–N. We believe that knowing any secondary location(s) for the NMS Stock ATS would be relevant to both the Commission's and market participants' understanding of how the ATS handles certain contingencies.

The main physical address and mailing address of the broker-dealer operator are provided on Form BD, so we do not believe it is necessary to publicly disclose this information on Form ATS–N.[694] Part II, Item 6 of proposed Form ATS–N provided that the NMS Stock ATS could indicate by check box that the broker-dealer operator is a sole proprietor and that the physical street address is a private residence, and that in such case, the private residential address would not be included in the publicly available version of the form.[695] One commenter asserts that Form ATS–N should require disclosure of all relevant addresses, and states its view that we should eliminate the proposed exception for NMS Stock ATSs out of a personal residence.[696] In light of this comment, we are not including in adopted Form ATS–N the proposed check box noting that the physical address of the matching system is at a sole proprietor's private residence. We agree that market participants should be aware of the physical addresses of the matching systems for all NMS Stock ATSs, regardless of whether they are at a sole proprietor's private residence. In addition, based on Commission experience, NMS Stock ATSs generally do not operate out of a sole proprietor's residence, and the Commission does not believe that the exception is necessary. We will therefore make the physical address of the matching system available for every Form ATS–N.[697]

Also, as was proposed, the Part I, Items 8 and 9 require an NMS Stock ATS to attach its most recently filed or amended Schedule A of the broker-dealer operator's Form BD disclosing information related to direct owners and executive officers, and its most recently filed or amended Schedule B of the broker-dealer operator's Form BD disclosing information related to indirect owners as Exhibits 1 and 2, respectively. In lieu of attaching those schedules, the NMS Stock ATS can indicate, via a checkbox, that the information under those schedules is available on its website and is accurate as of the date of the filing of the Form ATS–N. We continue to believe that these exhibits will help market participants identify the persons and entities that directly and indirectly own the broker-dealer operator and any potential associated conflicts of interest. We are requiring the NMS Stock ATS to provide this information on Form ATS–N, even though the same information is provided on Form BD, because information about ownership of the broker-dealer operator will enable market participants to better understand conflicts of interest that may arise therefrom, which is one of the central purposes of the form. As such, an NMS Stock ATS must file this information on Form ATS–N. We also continue to believe that it is appropriate for an NMS Stock ATS to provide this information using a URL address for these documents in lieu of attaching the actual documents to their Form ATS–N filings because the ATS's disclosures on Form ATS–N will provide the public with the required information. Part I, Item 10 of adopted Form ATS–N requires the NMS Stock ATS, for filings made pursuant to Rule 304(a)(2)(i) (*i.e.,* Form ATS–N amendments), to attach as Exhibit 3 a marked document to indicate changes to ''yes'' or ''no'' answers or additions or deletions from any item in Part I, Part II, Part III, as applicable.

b. Comments on Proposed Exhibit 1

We proposed to require that NMS Stock ATSs provide, in Exhibit 1 to Form ATS–N, a copy of any materials currently provided to subscribers or other person related to the operations of the NMS Stock ATS or the disclosures on Form ATS–N (*e.g.,* FIX protocol procedures, rules of engagement/manuals, frequently asked questions, marketing materials). We received several comments regarding Exhibit 1.[698] We are not adopting the proposed Exhibit 1 requirements to Form ATS–N.

Commenters express concerns that the requirements of Exhibit 1 are broad,[699] not relevant for purposes of facilitating ATS comparisons by market participants,[700] and would require unnecessarily cumbersome amount of disclosure.[701] Three commenters express concern about the requirement to make subscriber materials attached to Form ATS–N as exhibits public on the grounds that such documents may include confidential information.[702] Commenters propose that as an alternatives to the Exhibit 1 requirements, the Commission could make exhibits public only when they are responsive to certain categories of documents made available to users (such as FIX protocol procedures, rules of engagement, user manuals, frequently asked questions, and marketing materials) or are required to accurately respond to the questions on Form ATS–N,[703] or not make public certain

service of any civil action brought by, or notice of any proceeding before, the Commission or a SRO in connection with the ATS's activities may be given by registered or certified mail to the contact employee at the primary street address or mailing address, if different, of the NMS Stock ATS, or via email, at the addresses provided on this Form ATS–N.

[694] Part IV of adopted Form ATS–N, which will not be made public, requires the primary street address and mailing address of the NMS Stock ATS in order to facilitate the Commission contacting the NMS Stock ATS. *See supra* note 693.

[695] *See* Part II, Item 6 of proposed Form ATS–N.

[696] *See* HMA Letter at 11.

[697] Part I, Item 7 of adopted Form ATS–N.

[698] *See* SIFMA Letter at 7; Liquidnet Letter at 8; KCG Letter at 6; HMA Letter at 11; STANY Letter at 3; UBS Letter at 3; Level ATS Letter at 5.

[699] *See* SIFMA Letter at 7; Liquidnet Letter at 8; KCG Letter at 6.

[700] *See* KCG Letter at 6.

[701] *See* SIFMA Letter at 7.

[702] *See* Liquidnet Letter at 8; KCG Letter at 6; Level ATS Letter at 5. One of these commenters also expresses concern that the proposed requirement would require disclosure of subscriber agreements, which are individually negotiated and confidential. *See* Level ATS Letter at 5–6. Another one of these commenters is concerned that NMS Stock ATS operators would limit the amount of information shared with subscribers in order to avoid sharing that information with the public and its competitors. *See* Liquidnet Letter at 8.

[703] *See* Liquidnet Letter at 8.

information (such as electronic trading protocols or other customer agreements) and provide other ''proprietary'' information only to regulators upon request.[704] Another commenter suggests that rather than requiring formal amendments to Form ATS–N every time an ATS wishes to change or enhance marketing materials and similar disclosures, the Commission should allow an NMS Stock ATS to post the most recent versions of its marketing materials on its website.[705]

We are not adopting the proposed requirement that NMS Stock ATSs provide a copy of any materials currently provided to subscribers or other persons related to the operations of the NMS Stock ATS or the disclosures on Form ATS–N. We recognize that some of such materials could contain proprietary or other information that NMS Stock ATSs would not wish to make public due to confidentiality or competitive concerns. With respect to the comments in support of requiring subscriber materials to be made public,[706] or in support of a limited version of the Exhibit 1 requirements,[707] we believe that Form ATS–N is designed to elicit meaningful disclosures about how the NMS Stock ATS operates and the ATS-related activities of the broker-dealer operator and its affiliate. We believe that the vast amount of information that would have been contained in the Exhibit 1 materials will be disclosed in response to the request in Form ATS–N and that no longer requiring NMS Stock ATSs to produce these materials will reduce their burden and the potential disclosure of redundant information to the public.

One commenter states that while it does not support a requirement for public filing of exhibits, it supports requiring these exhibits to be filed with the Commission.[708] We are not adopting this suggestion. As discussed above, the purpose of this rulemaking is to expand the public transparency of NMS Stock ATSs; providing the proposed Exhibit 1 information to only the Commission would not serve this purpose.

Another commenter states that to the extent that ATSs would disclose statistics or data that had been requested by firms to help with their cost and best execution analysis, such an approach would be less helpful than a greatly enhanced, comprehensive disclosure for this information.[709] The commenter states that this information is essential. However, this commenter expresses concern that as a consequence of the Exhibit 1 requirements, NMS Stock ATSs may cease to provide subscribers with information and statistics to avoid having to make such information public. This commenter suggests that Exhibit 1 be revised to include all marketing materials, manuals, and fee information, but not customized statistics and information, provided that such statistics and information are otherwise publicly disclosed. We are not expanding market statistics that NMS Stock ATSs are currently required to disclose as part of this rulemaking.

c. ATS Governance Structure and Compliance Programs and Controls

In the Proposal, we asked if NMS Stock ATSs should be required to provide disclosure about their governance structure and compliance programs and controls to comply with Regulation ATS.[710] In response, we received one comment, which states that governance structures are likely to vary materially among ATSs, and that the Commission's goals in this area would best be served through the Commission's Office of Compliance Inspections and Examination's regular examination efforts.[711] We did not receive comments supporting a request for such information. We believe that it is appropriate to take an incremental approach to this topic and intends to monitor the effectiveness of the disclosures on adopted Form ATS–N. Should the Commission decide to take further action with regard to Form ATS–N's disclosure requirements, including adding requests about NMS Stock ATS governance structure and compliance programs and controls, the Commission would do so in a separate rulemaking in the future.

C. Part II of Form ATS–N: ATS-Related Activities of the Broker-Dealer Operator and Affiliates

We believe that the interests of the broker-dealer operator or its affiliates sometimes compete against the interest of those that use the ATS's services. These competing interests, at times, may give rise to conflicts of interests for the broker-dealer operator and its affiliates or the potential for information leakage of subscribers' confidential trading information. As such, Part II of Form ATS–N is designed to provide subscribers and market participants with information about these competing interests, and in doing so, inform them about: (1) The operation of the NMS Stock ATS—regardless of the corporate structure of the NMS Stock ATS—and of its broker-dealer operator, or any arrangements the broker-dealer operator may have made, whether contractual or otherwise, pertaining to the operation of its NMS Stock ATS; and (2) ATS-related activities of the broker-dealer operator and its affiliates that may give rise to conflicts of interest for the broker-dealer operator and its affiliates or the potential for information leakage of subscribers' confidential trading information.

Commenters generally support disclosing information about potential conflicts of interest and information leakage, and we did not receive any comments opposing the principle that information related to conflicts of interest or information leakage on an NMS Stock ATS should be publicly disclosed.[712] Several commenters, however, state general concerns that the scope of the requests in Part III of proposed Form ATS–N is too broad.[713] A number of commenters believe that the requests regarding affiliates should be limited to descriptions of how the broker-dealer operator and its affiliates or business units directly interact with or affect the operations of the NMS Stock ATS.[714] For example, one commenter argues that proposed Form ATS–N would have required disclosures that are not meaningful to market participants and could possibly inhibit useful comparison of NMS Stock ATSs.[715]

Furthermore, a commenter argues that the proposed conflicts of interest requests regarding affiliates of the broker-dealer operator would have placed a significant burden on multi-service broker-dealers with a large number of affiliates, sometimes numbering in the hundreds.[716] Similarly, another commenter states that an NMS Stock ATS's broker-dealer operator may not be privy to certain

[704] *See* SIFMA Letter at 7–8.

[705] *See* UBS Letter at 3.

[706] *See* HMA Letter at 12 (supporting the adoption of a revised Exhibit 1 because it would enhance consistency of information to subscribers and the public and would be valuable to those seeking to evaluate NMS Stock ATSs). *See infra* note 709.

[707] *See* KCG Letter at 5–6 (supporting a requirement that information be made available to all market participants, and not selectively disclosed, but asserting that as drafted, Exhibit 1 is overly broad).

[708] *See* Liquidnet Letter at 9.

[709] *See* HMA Letter at 12.

[710] *See* Proposal, *supra* note 2, at 81041.

[711] *See* UBS Letter at 4.

[712] As discussed further below, several commenters suggest how to refine the specific requests proposed for Part III of Form ATS–N.

[713] *See, e.g.,* STA Letter at 4; KCG Letter at 8–9; SIFMA Letter at 4–8; Luminex Letter at 2–3; Fidelity Letter at 5; STANY Letter at 5; UBS Letter at 6; Morgan Stanley Letter at 5.

[714] *See* Fidelity Letter at 2 and 4; UBS Letter at 2–4; SIFMA Letter at 4, 8; Luminex Letter at 3; Markit Letter at 7–8.

[715] *See* Morgan Stanley Letter at 5.

[716] *See* UBS Letter at 2–5.

information about its affiliates for valid compliance reasons.[717]

As outlined below in more detail—and in response to both these general commenter concerns and commenter concerns that are more specific to particular disclosure requests, which are explained below—we are modifying the conflicts of interest requests to focus on: (1) The ability of business units or affiliates of the broker-dealer operator to enter, or direct the entry of, orders into the NMS Stock ATS and whether such business units or affiliates actually trade on the NMS Stock ATS; and (2) whether those business units and affiliates that do trade on the NMS Stock ATS receive any preferential treatment with respect to the services offered by the NMS Stock ATS.

We continue to believe that disclosures regarding the ATS-related activities of the broker-dealer operator and its affiliates will help enable market participants to assess potential conflicts of interest that may impact their trading on the ATS and assess the potential for information leakage. At the same time, we also believe that Form ATS–N should not require public disclosure of activities or affiliate relationships of the broker-dealer operator that do not relate to the NMS Stock ATS and thus, do not present a potential conflict of interest. We believe that the revisions to the proposed disclosure requests are responsive to commenters' concerns about the scope of the form's affiliate disclosures.

Furthermore, the burden of responding to the affiliate requests has been reduced from that which was proposed. First, the adopted affiliate disclosure requests focus on substantive information about how affiliated entities interact with the ATS and differences in how the ATS treats affiliates' orders. As such, frequent updates to Part II for ministerial or minor administrative changes by the ATS would not normally be necessary.[718] To the extent a ministerial or administrative change affects a disclosure on Form ATS–N in a non-material way, the NMS Stock ATS would, in most instances, only be required to file a quarterly updating amendment. Additionally, an NMS Stock ATS likely already has the necessary information about the services that it offers affiliates that trade on the ATS because of its current recordkeeping requirements,[719] and we believe that maintaining up-to-date Part II disclosures is justified by the benefit to market participants from public disclosure of conflicts of interest information.

Another commenter expresses concern that the proposed conflicts of interest requests would seek public disclosure of proprietary or confidential information that would pose unintended consequences or security risks to ATS operators.[720] We are sensitive to concerns about the burden of providing disclosures of potentially commercially sensitive information. In response to these commenter concerns, we have revised the wording of relevant requests to mitigate such concerns or provided guidance regarding the scope of certain disclosure requests, as further explained below.[721] We believe that in the vast majority of cases, the level of detail required by Form ATS–N should not require the public disclosure of commercially sensitive information. In the Proposal, we did not intend to require NMS Stock ATSs to publicly disclose such information.

We also note that the disclosure requests on Form ATS–N seek information that the Commission and some commenters believe to be important to market participants when evaluating an NMS Stock ATS as a potential trading venue. We believe that the disclosures on adopted Form ATS–N will provide market participants with information necessary to evaluate potential conflicts of interest and information leakage while not requiring NMS Stock ATSs to provide granular details about aspects of the ATS that it might consider to be commercially sensitive. Accordingly, to the extent an NMS Stock ATS believes that Form ATS–N requires the disclosure of what it believes to be commercially sensitive information, we believe that such disclosure is justified by the public benefit of the information required on Form ATS–N becoming publicly available.

On the other hand, one commenter expresses a specific concern that narrowing the universe of affiliates subject to disclosure could result in less relevant information being provided to the Commission and the public, as NMS Stock ATSs could structure their legal affiliations and operations to take advantage of unanticipated gaps in the rule.[722] This commenter states that the Commission should draw exemptions for certain affiliate relationships very narrowly and provide ''bright lines'' to help ensure that the requirements are clear and unambiguous, so that ATSs would not be permitted to determine whether to disclose an affiliate. This commenter also states that it recognizes that information on certain affiliates required by Form ATS–N may have little relevance to the Commission's review of the broker-dealer operator's Form ATS–N.[723] This commenter believes that rather than modifying the Proposal, this issue could be addressed by an NMS Stock ATS seeking relief tailored to its unique facts and circumstances pursuant to Section 36(a)(1) of the Exchange Act,[724] which permits the Commission to grant exemptions from any provision of a rule, to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors.[725]

We agree with this commenter that Form ATS–N requests regarding the ATS-related activities of the broker-dealer operator and its affiliates should provide clear and unambiguous requirements for NMS Stock ATSs. We also agree that Form ATS–N should be comprehensive enough to preclude an NMS Stock ATS from finding ''unanticipated gaps'' in the language to avoid disclosing critical aspects of its operations. We believe that the refinements to adopted Form ATS–N, as outlined above and further explained below, strike the appropriate balance between providing market participants with relevant information about potential conflicts of interest information and information leakage and the burden that Form ATS–N will place on NMS Stock ATSs. We do not believe that it is necessary to adopt all of the conflicts of interest requests as proposed and require NMS Stock ATSs to seek exemptive relief from certain disclosure requirements. Furthermore, the adopted definitions of ''affiliate'' and ''control'' are intended to encompass all relevant affiliate relationships between the broker-dealer operator and other entities that we believe would help market participants' evaluation of potential conflicts of interest.

1. Broker-Dealer Operator and its Affiliate Trading Activities on the NMS Stock ATS

a. Proposed Requests and Response to Comments

Part III, Item 1 of proposed Form ATS–N would have required disclosures

[717] *See* Fidelity Letter at 4.

[718] Updating amendments for non-material changes may be required, as appropriate.

[719] *See* 17 CFR 242.302.

[720] *See* SIFMA Letter at 6, 9.

[721] For example, in the request under Part II, Item 5 of adopted Form ATS–N, an NMS Stock ATS is only required to provide a summary of the terms and conditions for the use of products or services offered by the ATS.

[722] *See* Investor Advocate Letter at 8.

[723] *See id.* at 9.

[724] *See* 15 U.S.C. 78mm(a)(1).

[725] *See* Investor Advocate Letter at 9.

regarding non-ATS trading centers operated or controlled by the NMS Stock ATS's broker-dealer operator or any of its affiliates. Part III, Item 2 of proposed Form ATS–N would have required disclosures about the operation of any other NMS Stock ATSs operated by the broker-dealer operator or any of its affiliates. Part III, Item 5 of proposed Form ATS–N would have required disclosures regarding the broker-dealer operator's and its affiliates' trading activity on the NMS Stock ATS.

As discussed above, we received general comments on Part III of proposed Form ATS–N.[726] Additionally, we received comments specifically addressing the requests in Part III, Items 1, 2, and 5, of proposed Form ATS–N. In this section, we outline and address these more specific comments not previously outlined above. In Section V.C.1.b., we outline how we have consolidated much of the subject matter set forth in in Part III, Items 1, 2, and 5 of proposed Form ATS–N into Part II, Items 1 and 2 of adopted Form ATS–N.[727]

First, in addition to the general comments regarding the scope of the affiliate disclosure requests that are explained above, some commenters provide comments specific to proposed Part III, Item 1 and Part III, Item 5.[728] One of these commenters states that the scope of the proposed requests in Part III, Item 1 with regard to non-ATS trading centers of the broker-dealer operator or its affiliates could have prejudiced commercial strategy.[729] We believe that a list containing business units or affiliates of the broker-dealer operator that do not use the trading services of the NMS Stock ATS would not be as helpful to market participants as would a list of only those that trade on, or otherwise use the trading services of, the ATS.[730] Accordingly, we have revised these disclosures so that Part II, Items 1(a) and 2(a) of adopted Form ATS–N ask whether business units of the broker-dealer operator or its affiliates, respectively, are permitted to enter or direct the entry of orders into the ATS. This disclosure is designed to inform market participants about whether the ATS permits the broker-dealer operator or its affiliates to trade on the NMS Stock ATS. If the ATS permits the broker-dealer operator or its affiliates to trade on the ATS, the NMS Stock ATS will be required to only list the business units or affiliates that actually enter or direct the entry of orders into the NMS Stock ATS.

Furthermore, with regard to Part III, Item 5 of proposed Form ATS–N, one commenter states that affiliates or business units that indirectly send orders to an NMS Stock ATS through another entity or through services provided by another entity are not 'enter[ing]' orders ''on the NMS Stock ATS.''[731] We believe that if a business unit or affiliate of the broker-dealer operator enters or directs the entry of orders into the ATS, market participants would find it useful to know that they may be trading against those business units, affiliates, or client orders entered by those entities. For example, if a principal trading desk of the broker-dealer operator or an affiliate uses a direct connection to the NMS Stock ATS or the broker-dealer operator's SOR to submit orders or trading interest into the ATS, the NMS Stock ATS must list that desk or affiliate on adopted Form ATS–N under Part II, Item 1(a) or 2(a), respectively. Likewise, if an affiliated asset manager of the broker-dealer operator uses the services of a third-party broker-dealer to route directed orders to the NMS Stock ATS (*i.e.,* the asset manager instructs the third-party broker-dealer to send its orders to the NMS Stock ATS), the NMS Stock ATS would be required to list that affiliated asset manager under Item 2(a). However, if that affiliated asset manager submits orders to a third-party broker-dealer, and that third-party broker-dealer using its own discretion, routes the orders of the asset manager into the affiliated NMS Stock ATS (*e.g.,* the third-party broker-dealer's SOR decides where to route the affiliated asset manager's orders using its routing table), the NMS Stock ATS would not be required to list the affiliated asset manager under Item 2(a); under such circumstances, the affiliate would not be ''directing'' orders to the ATS because the third-party broker-dealer is using its discretion to route the affiliate's orders and thus, not required to be listed under Item 2(a).

The adopted requests also specify the type of information that must be provided with regard to business units or affiliates of the broker-dealer operator. Specifically, Item 1(a) requires the NMS Stock ATS to name and describe each type of business unit of the broker-dealer operator that enters or directs the entry of orders and trading interest into the ATS (*e.g.,* NMS Stock ATS, type of trading desks, market maker, sales or client desk) and, for each business unit, to provide the applicable MPID and list the capacity of its orders and trading interest (*e.g.,* principal, agency, riskless principal). Item 2(a) requires the NMS Stock ATS to name and describe each type of affiliate that enters or directs the entry of orders and trading interest into the ATS (*e.g.,* broker-dealers, NMS Stock ATS, investment company, hedge fund, market maker, principal trading firm) and, for each of those affiliates, provide the applicable MPID and list the capacity of its orders and trading interest (*e.g.,* principal, agency, riskless principal). We believe that market participants will find it more relevant to know both the types of broker-dealer operator business units and affiliates that can trade in the NMS Stock ATS, and their trading activities, rather than, as proposed, having a potentially voluminous list of entities that might include some that cannot send or direct orders or trading interest to the ATS.

We also believe that the revised requests will reduce the burden on NMS Stock ATSs when completing the form because they will only require the NMS Stock ATS to list entities that trade on the ATS. The narrative responses to Items 1(a) and 2(a) could typically be kept up-to-date via Updating Amendments to Form ATS–N, which the ATS could file on a quarterly basis. However, we also note that in most cases, if the ''yes'' or ''no'' response to Items 1(a) or 2(a) changes (*e.g.,* the NMS Stock ATS changes its operations to allow affiliates to trade whereas they could not do so prior, or vice versa), the NMS Stock ATS would be required to file a material amendment. Accordingly, we believe that the scope of the requests in Part II, Items 1(a) and 2(a) of adopted Form ATS–N present a reasonable disclosure requirement for NMS Stock ATSs, particularly multi-service broker-dealers with many affiliates, without eliminating the requirements for the NMS Stock ATS to provide information about the NMS Stock ATS-related trading activities of broker-dealer operator and its affiliates, which we believe will be helpful for market participants.

Another commenter recommends that the Commission take a progressive approach of ''yes'' or ''no'' questioning for disclosures concerning affiliates of the broker-dealer operators that initially targets whether the affiliate directly

[726] *See supra* notes 712–715 and accompanying text.

[727] We also note that because Parts I and II of proposed Form ATS–N have been consolidated into a single section of adopted Form ATS–N, the disclosure requests about the ATS-related activities of the broker-dealer operator and its affiliates on the NMS Stock ATS are set forth in Part II of adopted Form ATS–N.

[728] *See* STA Letter at 4–5; UBS Letter at 5; SIFMA Letter at 10; LeveL ATS Letter at 4.

[729] *See* UBS Letter at 5.

[730] In the Proposal, the term ''non-ATS trading center'' was a defined term, but as explained above, adopted Form ATS–N will not use the term ''non-ATS trading center.'' *See supra* Section V.A.2.a.

[731] *See* UBS Letter at 6.

routes orders to the NMS Stock ATS.[732] The commenter recommends that the Commission require NMS Stock ATSs to state whether the ATS directly receives any order flow from an affiliated party, and if so, if the affiliated party is treated exactly the same as every other party with access to the ATS.[733] If the ATS answers in the affirmative, the commenter suggests that the ATS be required to identify the affiliated parties with access and the procedure for treatment of their orders, and if the ATS answers in the negative, the ATS would be required to identify parties with access and specifically articulate differences in treatment. The disclosure requests in Part II of adopted Form ATS–N are all structured in a ''yes'' or ''no'' format with follow-on narrative (as necessary), and we believe that the information this commenter recommends to be included in Form ATS–N is presented in a format that resembles that recommendation.[734]

Several commenters also opine that terms such as ''describe,'' ''any interaction or coordination,'' ''circumstances,'' and ''otherwise made known'' in the conflicts of interest requests might result in overbroad or lengthy responses that contain information which would not be helpful for market participants.[735] Another commenter cites Part III, Item 5 of proposed Form ATS–N as an example of a request that should be tailored to elicit information based on which ATS users can make informed decisions.[736] This commenter states that full-service broker-dealers often have hundreds of affiliates and business units that meet the definition of entities that may trade on the subject ATS, and that keeping such information current and accurate on an ongoing basis would bring additional burden with very little, if any, benefit to ATS users; the commenter believes that the request regarding trading on the ATS by the broker-dealer operator or its affiliates should be focused on whether they receive any preferential or differentiated treatment.

In response to these comments, we are eliminating the terms ''interaction and coordination,'' ''circumstances,'' and ''otherwise made known'' from these requests to reduce any potential ambiguity.[737] The adopted requests are closely tailored to solicit information that market participants find relevant to evaluating potential conflicts of interest on an NMS Stock ATS.[738] Further, both Part II, Items 1(a) and 2(a) of adopted Form ATS–N enumerate the type of information that an NMS Stock ATS must provide if it answers in the affirmative that the broker-dealer operator or its affiliates, respectively, is permitted to trade on the NMS Stock ATS.[739]

Furthermore, while the term ''describe'' is still used in Items 1(a) and 2(a), we are adding specific examples to each respective request to better explain the type of description that would necessary, such as ''NMS Stock ATS,'' ''trading desks,'' ''market maker,'' ''sales'' or ''client desk.'' Also, Items 1(b)–(d) and 2(b)–(d) specifically state that the NMS Stock ATS must explain (1) any differences between the treatment of those business units or affiliates of the broker-dealer operator and other subscribers regarding services offered and provided by the NMS Stock ATS; (2) whether any of those business units or affiliates of the broker-dealer operator have formal or informal arrangements with the NMS Stock ATS to provide liquidity to the NMS Stock ATS; and (3) how orders and trading interest in the NMS Stock ATS can be routed to a trading center of the broker-dealer operator or affiliate.[740]

Additionally, a commenter expresses concern that it may not be privy to some the information that proposed Form ATS–N would have required.[741] We note that ATSs are currently obligated to make and keep records of, among other things, subscribers to the ATS and daily summaries of trading, including the identity of the parties to the transactions.[742] We believe that the specific information sought in these requests with regard to affiliate trading activity on the ATS in adopted Form ATS–N should be maintained as part of the ATS's recordkeeping obligation without the ATS having to breach any information barriers or other compliance protections. To the extent that a business unit or affiliate of the broker-dealer operator triggers a disclosure obligation on Form ATS–N by directing the entry of orders into the NMS Stock ATS through a third-party broker-dealer, we believe that the broker-dealer operator should have—or be able to obtain—such information through appropriate internal compliance procedures to be responsive to Form ATS–N.

[732] *See* Fidelity Letter at 5.

[733] *See id.* at 5–6.

[734] Specifically, Item 2(a) requires the NMS Stock ATS to answer ''yes'' or ''no'' as to whether affiliates of the broker-dealer operator are permitted to enter or direct the entry of orders and trading interest into the NMS Stock ATS, and if the answer is ''yes'', the ATS must provide specific information about those affiliates and the capacity of the orders and trading interest that the affiliates enter onto the ATS. Item 2(b) then requires the NMS Stock ATS to answer ''yes'' or ''no'' as to whether the services that the NMS Stock ATS offers and provides to the affiliates identified in Item 2(a) are the same for all subscribers, and if the NMS Stock ATS answers no, it must explain any differences. We also note that the requests in Item 1(a) of adopted Form ATS–N with regard to trading activity of the broker-dealer operator on the NMS Stock ATS follow the same format as that in Item 2 of adopted Form ATS–N.

[735] *See* KCG Letter at 8–9; STA Letter at 4; SIFMA Letter at 10–11; 14. *See also* SIFMA Letter at 4, 8.

[736] *See* Morgan Stanley Letter at 5.

[737] While the terms ''interaction and coordination'' are no longer used in this disclosure request, many, if not all, Form ATS–N requests are designed to provide insight into how the broker-dealer operator, its affiliates, or third-parties interact or coordinate their activities with the NMS Stock ATS. Two examples of this include Part II, Items 3 and 5 of adopted Form ATS–N. Part II, Item 3 of adopted Form ATS–N requests specific information about how subscribers can opt out from interacting with orders of the broker-dealer operator or its affiliates. Likewise, Item 5 of adopted Form ATS–N requests specific information about how the ATS interacts with affiliates by requiring certain disclosures about products and services offered by the broker-dealer operator.

[738] Because we are replacing the term ''interaction and coordination'' with these enumerated points of information, aspects of the requests set forth in Part III, Items 1(b)(ii)–(iii) and 2(b)(i), (iii) of proposed Form ATS–N—which addressed the transmission of subscriber orders to other trading centers operated by the broker-dealer operator or its affiliates—are being either narrowed or eliminated from adopted Part II, Items 1 and 2. As explained further below, to the extent information that would have been required by Part III, Items 1(b)(ii)–(iii) and 2(b)(i), (iii) of proposed Form ATS–N is responsive to Part II, Item 4 of adopted Form ATS–N—which requests information about the NMS Stock ATS's arrangements with unaffiliated or affiliated trading centers—the NMS Stock ATS is required to provide that information in response to Item 4. *See infra* Section V.C.3.

[739] Another commenter suggests that the Commission's goals would be served more simply by requiring ATSs to categorize and disclose to their subscribers the nature of a counterparty (*i.e.,* agent, principal (including affiliates of the broker-dealer operator)) rather than using the term ''proprietary'' in the disclosures regarding trading activities of the broker-dealer operator and its affiliates. *See* UBS Letter at 6. The commenter believes that this type of disclosure would succinctly inform a subscriber about what type of counterparty was on the other side of a trade. *See id.* This commenter also notes that in the Proposal, the Commission discussed disclosures and potential additional regulations related to ''proprietary trading.'' *See id.* The commenter states that federal regulators have encountered challenges in defining this term as part of the ''Volcker Rule'' under the Dodd Frank Act. *See id.* In response to this comment, the Commission has, in the language of Part II, Items 1 and 2, listed several examples of the capacity in which the broker-dealer operator and its affiliates enter or direct the entry of orders (principal, agency, or riskless principal) to provide more guidance about the type of information sought by Form ATS–N. The Commission has also removed references to ''proprietary trading'' from Form ATS–N, and the adopted form's disclosure requirements refer to, when applicable, ''principal trading'' of the broker-dealer operator and its affiliates.

[740] With regard to the latter two of these items, adopted Form ATS–N requests that the description be provided in the applicable Part III item to reduce redundancy on the Form ATS–N, as further explained below.

[741] *See supra* note 717 and accompanying text.

[742] *See* 17 CFR 242.302.

We have also revised the requests in proposed Form ATS–N to reduce redundant disclosure requirements. First, Part II, Items 1 and 2 of adopted Form ATS–N now require the NMS Stock ATS to provide any narratives about differences in treatment between the broker-dealer operator, its affiliates, and other subscribers in Part III of the adopted form, and only cross reference those narratives in Part II (as opposed to providing a separate, likely redundant narrative in Part II). Second, Part II, Items 1 and 2 of adopted Form ATS do not require the NMS Stock ATS to disclose whether subscriber orders or other trading interest sent to the NMS Stock ATS are displayed or otherwise made known to a non-ATS trading center or another NMS Stock ATS operated by the broker-dealer operator or an affiliate.[743] Rather, any narrative with regard to order display (including a description about differences in services) is only required to be set forth in Part III, Item 15 of adopted Form ATS–N, which contains the order display requests of adopted Form ATS–N.

Finally, Part II, Items 1 and 2 of adopted Form ATS–N do not require the NMS Stock ATS to disclose how the business units and affiliates of the broker-dealer operator connect to the ATS, such as through a Financial Information Exchange (''FIX'') protocol.[744] Rather, any narrative about order entry in the NMS Stock ATS (including a description about differences in services) is only required by Part III, Item 5 of adopted Form ATS–N (Means of Entry). Accordingly, Part II of adopted Form ATS–N is designed to provide market participants with information about how the NMS Stock ATS interacts with the business units and affiliates of the broker-dealer operator so they can assess potential conflicts of interest, while minimizing disclosure requests that would be redundant with those contained in Part III.[745]

Another commenter believes that the information requested under proposed Part III, Item 5 of proposed Form ATS–N was too granular, duplicative of information required by Form BD, and that some of the prompts (*e.g.,* ''business unit,'' ''describe the circumstances'') were too open-ended, which could lead to non-standardized responses that would not be helpful to market participants.[746] This commenter recommends: (i) Eliminating proposed Item 5 and replacing the proposed disclosure requirements with yes/no prompts or short-answer responses that are more focused or narrowly tailored and (ii) eliminating or further clarifying and limiting the request for information of affiliates and business units.

As explained above, Part II, Items 1(a) and 2(a) of adopted Form ATS–N provide more specificity about the information requested about the ATS-related activities of business units and affiliates of the broker-dealer operator by providing examples of what we intend to solicit from these requests. To the degree that some information solicited by adopted Form ATS–N is duplicative of information sought on Form BD, the duplicative information is straightforward for the broker-dealer to reproduce on Form ATS–N, and we believe that market participants will derive greater benefit from this information being disclosed on a single form (Form ATS–N) as opposed to being spread across multiple forms filed with the Commission.

Similarly, another commenter cites the proposed requirement to provide the names of specific business units and algorithms that trade in NMS Stock ATS as an example of requested information that it believes is unnecessary to risk assessment.[747] We believe that some market participants may find it very helpful to know the identities and number of the broker-dealer operator's business units or affiliates that trade on the NMS Stock ATS. As indicated by commenters, some market participants may, for example, view trading on an ATS by a principal trading desk of the broker-dealer operator as presenting a potential conflict of interest for the broker-dealer operator, even if the ATS does not give any preference to the orders from that desk.[748]

We also received comments supporting the original requests under Part III, Items 1, 2, and 5 of proposed Form ATS–N. One commenter believes that these proposed disclosure requests are essential to alerting market participants about potentially significant advantages of the broker-dealer operator and its affiliates and to allow market participants to obtain a reasonable understanding of the conflicts of interest posed by the broker-dealer operator's or its affiliates' trading activities on the ATS.[749] In addition, a commenter states that the requests under Part III, Item 5 of proposed Form ATS–N would help investors better understand the relationship between the NMS Stock ATS, its broker-dealer operator, and any affiliates.[750] One commenter asserts that market participants would want to know the specific advantages afforded to the ATS operator or its affiliate, and urges the Commission to adopt proposed Part III, Item 5.[751] While we have refined the scope of certain subject matter in response to comment, we still believe that the disclosure requests in adopted Form ATS–N about the trading activities of the broker-dealer operator and its affiliates will allow for a high degree of transparency by capturing information that these commenters believe is important to market participants.

In addition, one commenter states that it supports the disclosure of potential trading activity on the NMS Stock ATS by the broker-dealer operator and its affiliates, but asserts that the disclosure requirement should be revised to allow for a series of progressive ''yes'' or ''no'' responses.[752] The commenter also notes that as proposed, it would be difficult for NMS Stock ATSs to maintain this disclosure on an on-going basis. As is

[743] This information would have been required under Part III, Item 1(b)(i) and 2(b)(ii) of proposed Form ATS–N.

[744] This information would have been required under Part III, Item 5(c) of proposed Form ATS–N.

[745] One commenter also recommends limiting the requests related to order routing from proposed Part III, Item 2 (Multiple NMS Stock ATS Operations) to the functions of ATS operation, as distinguished from other algorithmic or routing functions housed within the broker-dealer operator or an affiliate, which the commenter states appear to be addressed in Part III, Item 3 of proposed Form ATS–N, as well as asking what it means to ''remove'' an order. *See* SIFMA Letter at 11. *See infra* Section V.D.7. for a discussion of the required disclosures related to the removal of trading interest. Furthermore, this commenter recommends that Commission state whether the ATS operator should distinguish between parent and child orders for the disclosures related to Part III, Item 2 of proposed Form ATS–N. *See id.* Adopted Part III, Item 16(b) requires the NMS Stock ATS to either describe the affirmative instructions from a subscriber that must be obtained to route outside of the NMS Stock ATS or, if no instructions are required, the ATS must explain when orders in the ATS can be routed from the NMS Stock ATS. If the NMS Stock ATS breaks up a parent order into child orders or otherwise uses the fact that an order is a parent order or child order to make routing decisions, such information must be disclosed under Item 16(b).

[746] *See* SIFMA Letter at 14.

[747] *See* STANY Letter at 5.

[748] *See* Consumer Federation of America Letter at 7–8; HMA Letter at 13.

[749] *See* HMA Letter at 15–18. Another commenter states its support for the goal of a fulsome disclosure of circumstances where subscriber orders or other trading interest could leave an NMS Stock ATS and be made available to other areas of the broker-dealer operator. *See* UBS Letter at 5. The commenter states that market participants are entitled to know such information, but also states that the Commission's goal could be achieved through simplified disclosures. The commenter states that the proposed requirement to list the non-ATS trading centers controlled by the broker-dealer operator or its affiliates should only be required if orders are routed to the NMS Stock ATS from such trading centers or from the NMS Stock ATS to those trading centers.

[750] *See* MFA/AIMA Letter at 5.

[751] *See* HMA Letter at 16.

[752] *See* KCG Letter at 10.

explained above, we do not believe that maintaining up-to-date disclosures regarding the ATS-related trading activities of the broker-dealer operator and its affiliates will impose an unreasonable administrative burden on the NMS Stock ATS.

b. Adopted Part II, Item 1 and 2 of Form ATS–N; ATS-Related Trading Activities of the Broker-Dealer Operator and its Affiliates

As noted above, we reorganized and relocated the subject matter requested in Part III, Items 1, 2, and 5 of proposed Form ATS–N to Part II, Items 1 (''Broker-Dealer Operator ATS Trading Activities'') and 2 (''Affiliates ATS Trading Activities'') of adopted Form ATS–N. We have also revised the content of the proposed disclosure requests in response to public comment.[753]

Part II, Item 1(a) of adopted Form ATS–N requires the NMS Stock ATS to disclose whether business units of the Broker-Dealer Operator are permitted to enter or direct the entry of orders and trading interest (*e.g.,* quotes, conditional orders, or indications of interest) into the NMS Stock ATS. This request will be in the form of a ''yes'' or ''no'' question, and if the NMS Stock ATS answers ''yes,'' it will be required to name and describe each type of business unit of the Broker-Dealer Operator that enters or directs the entry of orders and trading interest into the ATS (*e.g.,* NMS Stock ATS, type of trading desks, market maker, sales or client desk) and, for each type of business unit, it must provide the applicable MPID and list the capacity of its orders or trading interest (*e.g.,* principal, agency, riskless principal). This request is designed to encompass the information request in Part III, Items 5(a) and (b) of proposed Form ATS–N and capture elements of Part III Items 1(a) and (b) and Items 2(a) and (b) of proposed Form ATS–N.

The subject matter covered by Part III, Item 1(b)(i) and (ii) is no longer included in the disclosure request contained in Part II, Item 1 of adopted Form ATS–N.[754] Likewise, the subject matter covered by Part III, Item 2(b)(i) and (ii) is no longer included in the disclosure request contained in Part II, Item 1 of adopted Form ATS–N.[755] Part II, Item 1 of adopted Form ATS–N focuses on the trading activity of the broker-dealer operator in the NMS Stock ATS, so those proposed disclosure requests are outside the scope of adopted Part II, Item 1. However, to the extent that information about the subjects in those proposed disclosure requests are responsive to other disclosure requests in adopted Form ATS–N—such as Part II, Item 3 (''Arrangements With Trading Centers) and Part III, Item 15 (''Display'')—the NMS Stock ATS must respond to those items accordingly.

Next, Part II, Item 1(b) of adopted Form ATS–N requires an NMS Stock ATS to disclose whether the services that the NMS Stock ATS offers and provides to the business units required to be identified in Item 1(a) are the same for all subscribers. This request will be in the form of a ''yes'' or ''no'' question, and if the NMS Stock ATS answers ''no,'' it will be required to explain any differences in response to the applicable Item number(s) in Part III of adopted Form ATS–N and list the applicable Item number(s). If there are differences that are not applicable to Part III of adopted Form ATS–N, the NMS Stock ATS must explain those differences in detail under Part II, Item 1.

Next, Part II, Item 1(c) of adopted Form ATS–N requires NMS Stock ATSs to disclose the broker-dealer operator's role as a liquidity provider on the NMS Stock ATS, if applicable.[756] This item requires the NMS Stock ATS to disclose—in the form of a ''yes'' or ''no'' question—whether there are any formal or informal arrangements with any of the sources of orders or trading interest of the broker-dealer operator identified in Item 1(a) to provide orders or other trading interest to the NMS Stock ATS (*e.g.,* undertaking to buy or sell continuously, or to meet specified thresholds of trading or quoting activity). If the NMS Stock ATS answers ''yes,'' it must identify the business unit(s) and respond to the request in Part III, Item 12, which sets forth the requests for liquidity providers on the NMS Stock ATS.[757] We believe that highlighting, in Part II of adopted Form ATS–N, whether the broker-dealer operator acts as a liquidity provider on the NMS Stock ATS will be helpful to market participants when evaluating the potential for conflicts of interest or information leakage on the trading platform. However, to reduce duplicative requests on adopted Form ATS–N, we are not requiring the NMS Stock ATS to provide a narrative in Part II of adopted Form ATS–N regarding the broker-dealer operator's liquidity provider activities because that information will be disclosed under Part III, Item 12 of adopted Form ATS–N.

Finally, Part II, Item 1(d) of adopted Form ATS–N requires the NMS Stock ATSs to disclose information about the routing of orders and trading interest to trading centers operated or controlled by the broker-dealer operator. This Item will require the NMS Stock ATS to disclose—in the form of a ''yes'' or ''no'' question—whether orders and trading interest in the NMS Stock ATS can be routed to a trading center of the broker-dealer operator. If the NMS Stock ATS answers ''yes,'' it must respond to the requests in Part III, Item 16 of adopted Form ATS–N, which sets forth the requests for disclosures about routing orders and trading interest out of the NMS Stock ATS. We continue to believe that disclosures regarding the routing of orders will provide subscribers with information about how their orders would be handled if they are not executed on the ATS and allow them to assess whether such routing could result in the leakage of confidential information, particularly if those orders are being routed to a trading center of the broker-dealer operator. Similar to Part II, Item 1(c) of adopted Form ATS–N, the request in Part II, Item 1(d) will not require a narrative because Part IV, Item 16 of adopted Form ATS–N requires disclosures about routing.[758]

Part II, Item 2(a) of adopted Form ATS–N requires an NMS Stock ATS to disclose whether affiliates of the broker-dealer operator are permitted to enter or direct the entry of orders and trading interest into the NMS Stock ATS. This request will be in the form of a ''yes'' or ''no'' question, and if the NMS Stock ATS answers ''yes,'' it must name and describe each type of affiliate that enters or directs the entry of orders and trading interest in the ATS (*e.g.,* broker-dealers, NMS Stock ATS, mutual fund, hedge fund, market maker) and, for each affiliate that trades on the NMS Stock ATS, the NMS Stock ATS must provide the applicable MPID and list the capacity(ies) of its orders and trading interest (*e.g.,* principal, agency, riskless

[753] The subject matter covered in Part III, Item 5.d of proposed Form ATS is now addressed in Part II Item 3 of adopted Form ATS–N. *See infra* Section V.C.2.

[754] These proposed requests would have required disclosures regarding the display of subscriber orders to a non-ATS trading center operated by the broker-dealer operator (proposed Part III, Item 1(b)(i)) and the execution of subscriber orders in a non-ATS trading center operated by the broker-dealer operator (proposed Part III, Item 1(b)(ii)), respectively.

[755] These proposed requests would have required disclosures about sending subscriber orders to another NMS Stock ATS operated by the broker-dealer operator in lieu of the NMS Stock ATS filing the form (proposed Part III, Item 2(b)(i)) and the display of subscriber orders to another NMS Stock ATS operated by the broker-dealer operator (proposed Part III, Item 2(b)(ii)), respectively.

[756] The requirement to disclose liquidity providers and the terms and condition of any arrangements with liquidity providers was set forth under Part IV, Item 1(d) of proposed Form ATS–N.

[757] *See infra* Section V.D.12.

[758] *See id.*

principal). As with Item 1, these requests are designed to encompass the information that would have been required under Part III, Items 5(a) and (b) of proposed Form ATS–N and is designed to capture elements of Part III Item 1(a) and Item 2(a) of proposed Form ATS–N.[759]

Next, Part II, Item 2(b) of adopted Form ATS–N requires an NMS Stock ATS to disclose whether the services that the NMS Stock ATS offers and provides to the affiliates required to be identified in Item 2(a) are the same for all subscribers. This request is in the form of a ''yes'' or ''no'' question, and if the NMS Stock ATS answers ''no,'' it will be required to explain any differences in response to the applicable Item number(s) in Part III of adopted Form ATS–N, as required, and list the applicable Item number(s). If there are differences that are not applicable to Part III of adopted Form ATS–N, the NMS Stock ATS must explain those differences in detail under Part II, Item 2.[760]

Part II, Item 2(c) of adopted Form ATS–N requests information about the role of the broker-dealer operator's affiliates as liquidity providers on the NMS Stock ATS, if applicable. This item requires the NMS Stock ATS to disclose—in the form of a ''yes'' or ''no'' question—whether there are there any formal or informal arrangements with affiliates of the broker-dealer operator identified in Item 2(a) to provide orders or other trading interest to the NMS Stock ATS (*e.g.,* undertaking to buy or sell continuously, or to meet specified thresholds of trading or quoting activity). If the NMS Stock ATS answers ''yes,'' it must identify the affiliates and respond to the request in Part III, Item 12, which sets forth the required disclosures for liquidity providers on the NMS Stock ATS.

Finally, Part II, Item 2(d) of adopted Form ATS–N requires an NMS Stock ATS to disclose information about routing orders and trading interest out of the NMS Stock ATS to a trading center operated and controlled by affiliates of the broker-dealer operator. This item will require the NMS Stock ATS to disclose—in the form of a ''yes'' or ''no'' question—whether orders and trading interest in the NMS Stock ATS can be routed to a trading center operated or controlled by an affiliate of the broker-dealer operator. If the NMS Stock ATS answers ''yes,'' it must respond to request in Part III, Item 16, which sets forth the required disclosures for routing orders and trading interest out of the NMS Stock ATS.

2. Order Interaction With Broker-Dealer Operator; Affiliates

Part II, Item 3 of adopted Form ATS–N requests information about the interaction of orders of between unaffiliated subscribers to the ATS and orders of the broker-dealer operator and its affiliates in the NMS Stock ATS. Part II, Item 3(a) of adopted Form ATS–N requires an NMS Stock ATS to disclose whether a subscriber can opt out of interacting with orders and trading interest of the broker-dealer operator in the NMS Stock ATS, and Part II, Item 3(b) requires an NMS Stock ATS to disclose whether a subscriber can opt out of interacting with the orders and trading interest of an affiliate of the broker-dealer operator in the NMS Stock ATS.[761] Part II, Item 3(c) of adopted Form ATS–N requires the NMS Stock ATS to disclose whether the terms and conditions of the opt-out processes for the broker-dealer operator and affiliates required to be identified in Items 3(a) and (b) are the same for all subscribers. The content of these requests are intended to cover the subject matter contained in Part III, Item 5(d) of proposed Form ATS–N.[762]

We believe that is helpful to market participants for the subject matter covered by proposed Part III, Item 5(d) to be a stand-alone question in adopted Form ATS–N. Such information is important to unaffiliated market participants trading on an ATS because some unaffiliated subscribers may not wish to interact with the order flow of the broker-dealer operator or its affiliates. This disclosure will help market participants understand whether and how they may avoid trading with the broker-dealer operator and its affiliates should they elect to use the services of the NMS Stock ATS.

As explained above, we received several comments about the proposed requests addressing ATS-related activities of the broker-dealer operator and its affiliates, including the request set forth in Part III, Item 5. In addition to these comments, one commenter opines that if a subscriber desires to opt out of trading with the broker-dealer operator's principal orders, the broker-dealer operator should be obliged to follow and implement the stated instruction.[763] This rulemaking addresses enhanced disclosure requirements for NMS Stock ATSs, and not regulations to require certain actions by NMS Stock ATSs outside of the disclosures and other requirements specifically enumerated herein.

3. Arrangements With Trading Centers

Part III, Item 4 of proposed Form ATS–N requested disclosures about arrangements the broker-dealer operator, or any of its affiliates, has with unaffiliated trading centers. The subject matter covered in Part III, Item 4 of proposed Form ATS–N is under Part II, Item 4 of adopted Form ATS–N.

The Commission received several comments regarding disclosure requests about arrangements with unaffiliated trading centers. Three commenters support the public disclosure of preferential arrangements with third parties.[764] One of these commenters, while supporting the disclosure of preferential arrangements in principle, believes the requests in Part III, Item 4 of proposed Form ATS–N could be too exhaustive and should be narrowed to focus on preferential arrangements.[765] Similarly, another commenter believes the central concern around affiliate relationships should focus on whether a third-party entity has differentiated or unique access to an ATS.[766] Another commenter believes that the broker-dealer operators of NMS Stock ATSs should not be required to provide proprietary information to the public under this disclosure, stating that in instances where SORs operate outside of the NMS Stock ATS and make routing decisions independent of the NMS Stock ATS, the appropriate source of information sought by the Commission

[759] Also like Part II, Item 1(a) of adopted Form ATS–N, Item 2(a) does not contain the subject matter covered by Part III, Item 1(b)(i) and (ii) and Part III, Item 2(b)(i) and (ii) of proposed Form ATS–N, but to the extent that information about the subjects in those proposed requests are responsive to other requests in adopted Form ATS–N, the NMS Stock ATS must respond to those items accordingly.

[760] We have incorporated the requests of proposed Part III, Item 9 of proposed Form ATS–N into individual Part II requests in adopted Form ATS–N, and thus, there is no longer a stand-alone question addressing differences among the services provided to the broker-dealer operator or its affiliates and other subscribers. *See supra* Section V.C.7.

[761] For example, if a broker-dealer operator uses its SOR or algorithms to submit subscriber orders into the ATS, any steps that either the broker-dealer operator or the subscriber would have to take so that those orders are opted-out of trading with the broker-dealer operator or its affiliates would be required disclosures under Items 3(a) and 3(b), respectively.

[762] Part III, Item 5(d) of proposed Form ATS–N would have required the NMS Stock ATS to describe any means by which a subscriber can be excluded from interacting or trading with orders or other trading interest of the broker-dealer operator or its affiliates on the NMS Stock ATS.

[763] *See* UBS Letter at 6.

[764] *See* HMA Letter at 16; UBS Letter at 5; SIFMA Letter at 13.

[765] *See* SIFMA Letter at 13.

[766] *See* UBS Letter at 5.

is the operator of the SOR, not the operator of the NMS Stock ATS.[767]

We have not limited the disclosures required under adopted Part II, Item 4 of adopted Form ATS–N to preferential arrangements or other unique access given to unaffiliated third parties, as suggested by these commenters. We believe that some market participants may consider other arrangements with third parties relevant to their evaluations of an NMS Stock ATS as a potential trading venue. For example, if an NMS Stock ATS has a mutual access agreement with another ATS, a market participant may take into account the fact that its order may eventually route to another ATS, even if orders from the other ATS do not receive preferential treatment on the ATS.

The disclosure requests in Part II, Item 4 of adopted Form ATS–N will provide market participants with information necessary to evaluate potential conflicts of interest or sources of information leakage. For example, Part II, Item 4 of adopted Form ATS–N requires the disclosure of an arrangement between the NMS Stock ATS and an unaffiliated NMS Stock ATS under which the NMS Stock ATS would route orders or other trading interest to the unaffiliated NMS Stock ATS for possible execution before routing to any other destination. By way of further example, Item 4 also requires disclosure of an arrangement pursuant to which any subscriber orders routed out of the unaffiliated NMS Stock ATS would be routed first to the NMS Stock ATS before any other trading center; it also requires a summary of the terms and conditions of the arrangement such as, for example, whether the NMS Stock ATS is providing monetary compensation or some other brokerage service to the unaffiliated NMS Stock ATS.

In response to the above commenter concerns, however, Part II, Item 4 of adopted Form ATS–N includes some modifications. First, the adopted disclosure request in Part II, Item 4 replaces the proposed phrase ''describe the terms of the arrangement'' with the phrase ''provide a summary of the terms and conditions of the arrangement.'' We believe that replacing the term ''describe'' with a requirement to ''provide a summary'' will make it clear that the scope of the adopted request should not typically require the NMS Stock ATS to provide granular details about its arrangements that the ATS might consider to be commercially sensitive.

Second, Part II, Item 4 of adopted Form ATS–N does not use the phrase ''*person(s), or affiliate(s) of such person(s)* that operates a trading center'' when establishing the scope of the request, as was proposed. Rather, the adopted request focuses on arrangements with trading centers themselves. One commenter argues that to the extent a third-party entity solely has access to functionality disclosed elsewhere in proposed Form ATS–N, proposed Part III, Item 4 would not be necessary.[768] We did not intend for the proposed request to encompass, for example, a subscriber agreement between a third-party broker-dealer, who happens to also operate a trading center, and the NMS Stock ATS under which the third-party broker-dealer submits orders to the ATS in the same manner as all other subscribers. Rather, the purpose of the request in Part II, Item 4 is to publicly disclose any arrangement with another trading center that may be relevant to a conflicts of interest analysis, such as one under which the NMS Stock ATS and a third-party NMS Stock ATS send their respective subscriber orders to one another.

Additionally, we are including in Part II, Item 4 of adopted Form ATS–N examples of the types of arrangements that would be responsive to the disclosure request, such as mutual or reciprocal access arrangements[769] and preferential access arrangements[770] to clarify that the disclosures required by Part II, Item 4 of adopted Form ATS are not so broad as to require the NMS Stock ATS to list each unaffiliated subscriber that accesses its system. We are also revising the request in Part III, Item 4 of proposed Form ATS–N to only require disclosures about arrangements with trading centers to access the NMS Stock ATS's services in adopted Form ATS–N. For example, an NMS Stock ATS must provide details about how it disseminates orders or trading interest submitted by a trading center under a unique arrangement with that trading center such a reciprocal access agreement; these types of arrangements would typically be different than the ATS's standard contract with subscribers to access the services of the ATS. We believe that this change will better define the scope of information responsive to the Part II, Item 4 of adopted Form ATS–N while not removing any proposed disclosure requirements.

Likewise, the Commission is modifying the wording of the proposed disclosure requests to require the NMS Stock ATS to disclose formal or informal arrangements for a trading center ''to access the NMS Stock ATS services.'' Adding the word ''services'' clarifies that the disclosure must explain the services provided to the unaffiliated trading center after it connects to the ATS. An NMS Stock ATS can provide various types of services to subscribers and the request, as revised, is tailored for those ATSs services that a subscriber may use.

Next, the scope of Part III, Item 4 of proposed Form ATS–N only encompassed arrangements with unaffiliated trading centers, but Part II, Item 4 of adopted Form ATS–N encompasses arrangements with both unaffiliated and affiliated trading centers. As explained above, the requests set forth in Part III, Items 1(b)(ii)–(iii) and 2(b)(i), (iii) of proposed Form ATS–N—which addressed the transmission of subscriber orders to other trading centers operator by the broker-dealer operator or its affiliates—have either been narrowed or eliminated from Part II, Items 1 and 2 of adopted Form ATS–N. However, to the extent that an NMS Stock ATS has an arrangement with a trading center operated by the broker-dealer operator or an affiliate, we believe that market participants are still likely to consider information about such arrangements relevant to their evaluation of an NMS Stock ATS as a potential trading venue and such an arrangement may raise concerns about conflicts of interest or information leakage.[771]

Additionally, Part III, Item 4 of proposed Form ATS–N would also have required the disclosure of mutual access arrangements between an NMS Stock

[767] *See* STANY Letter at 4.

[768] *See* UBS Letter at 5.

[769] Mutual or reciprocal access arrangements may be, for example, an NMS Stock ATS that allows another broker-dealer operator to access its ATS for liquidity in return for the ability to access the liquidity of the other broker-dealer's ATS.

[770] Preferential routing arrangements may be, for example, an NMS Stock ATS being the first routing destination on the routing table of a third party's algorithm.

[771] For example, a potential conflict of interest could arise where an NMS Stock ATS has a preferred routing arrangement with an affiliated, non-ATS trading center wherein all orders sent to the NMS Stock ATS would first be routed to the affiliated, non-ATS trading center before entering the NMS Stock ATS in exchange for monetary compensation. Such an arrangement could also pose a risk of information leakage because the non-ATS trading center would know that any unexecuted orders would then be routed to the NMS Stock ATS. Alternatively, if an arrangement between the NMS Stock ATS and affiliated trading center provides that any subscriber orders routed out of the NMS Stock ATS would be first routed to the affiliated, non-ATS trading center, the NMS Stock ATS may have an incentive to remove subscribers' orders from the NMS Stock ATS and allow the affiliated non-ATS trading center the opportunity to execute those orders.

ATS and other trading centers whereby, for example, a broker-dealer operator, or its affiliate, may offer access to the broker-dealer operator's NMS Stock ATS in exchange for access to another NMS Stock ATS of operated by another broker-dealer. Accordingly, Part II, Item 4 of adopted Form ATS–N is designed to inform subscribers about these arrangements as such information may impact a subscriber's experience on the NMS Stock ATS and allow them to evaluate potential conflicts of interest of the broker-dealer operator and its affiliates.[772]

Finally, in Part II, Item 4 of adopted Form ATS–N, the Commission has divided the request into two subparts—one subpart addressing the broker-dealer operator's arrangements, and another subpart addressing its affiliates' arrangements. This is a technical edit so that the format of Part II, Item 4 of Form ATS–N is consistent with the format of Part II, Items 1–3 above.

4. Other Products and Services

Part III, Item 3 of proposed Form ATS–N would have required disclosures about products and services offered to subscribers used in connection with trading on the NMS Stock ATS. We are adopting Part III, Item 3 of proposed Form ATS–N as Part II, Item 5 of adopted Form ATS–N; however, we are modifying the proposed disclosure request in response to commenter concerns.

One commenter states that the proposed requests would have helped investment funds assess an NMS Stock ATS as a potential execution venue by improving their ability to understand all functionality offered by the broker-dealer operator and whether the broker-dealer operator makes all services available in a fair and impartial manner.[773] Some commenters, while not opposing the general category of disclosure requested in proposed Part III, Item 3, believe the scope of the requests regarding products and services should be narrowed.[774] One commenter agrees with the Commission's approach, but states that the disclosure requirement should be refined to cover products or services used in connection with trading NMS stocks, not just trading on the NMS Stock ATS.[775] Another commenter believes that distinct products and services provided by an affiliate of the broker-dealer operator to a client—who happens to be an ATS subscriber—but which are not directly linked to the ATS subscription should not be captured by this requirement, particularly, when the client/subscriber ultimately may or may not use those services to trade on the ATS.[776] Another commenter suggests only requiring an ATS to list or outline broad categories of products or services rather than requiring the NMS Stock ATS to ''describe'' its products or services.[777] Another commenter states that each relationship and customer experience is different and free-standing in certain respects, and believes that the proposed request would potentially require the disclosure of a whole array of products or services, the enumeration of which would add little value and be burdensome to maintain/update.[778]

Broker-dealer operators of NMS Stock ATSs may, directly or indirectly through an affiliate, offer products or services to subscribers for the purpose of, for example, submitting orders, or receiving information about displayed interest, in the ATS.[779] We continue to believe that subscribers would want to know the products or services that the broker-dealer operator or its affiliates may offer for the purpose of effecting transactions, or submitting, disseminating, or displaying orders and trading interest on the NMS Stock ATS because such products or services may impact the subscribers' access to, or trading on, the ATS.

We note that many broker-dealer operators are multi-service broker-dealers and provide routing and execution services in NMS stocks separate from their ATS services. We further note that customers of a broker-dealer operator could be both subscribers to its ATS and customers of the broker-dealer operator that use trading products and services outside of the ATS. To the extent that a customer is a subscriber to the NMS Stock ATS and is offered use of products and services by the broker-dealer operator or its affiliate for the purpose of effecting transactions or submitting, disseminating, or displaying orders and trading interest in the NMS Stock ATS, Part II, Item 5 of adopted Form ATS–N would require disclosures about those products or services. However, the adopted requests in Part II, Item 5 would not encompass trading products or services offered by the broker-dealer operator to customers that are not for the purpose of effecting transactions or submitting, disseminating, or displaying orders and trading interest in the NMS Stock ATS.

Two commenters express opinions about how the scope of the proposed requests relate to the scope of an NMS Stock ATS's operations. One commenter states that the Proposal does not draw sufficient distinction between the operations of the NMS Stock ATS and other products and services of the broker-dealer operator, including agency execution services, market making and algorithms.[780] Another commenter states that the Commission should clarify the terminology used in this item because it appears to conflate the NMS Stock ATS itself with routing and algorithmic functions.[781] Whether a product or service is part of the ATS requires a facts and circumstances analysis. Based on Commission experience, broker-dealers generally offer various products and services to customers, which include execution and routing services, such as a SOR. These products and services are generally independent of each other, and how such products and services may be used by a subscriber to an NMS Stock ATS varies. However, to the extent that a SOR (or similar functionality) or algorithm performs a function of the ATS by bringing together the orders for securities of multiple buyers and sellers using established nondiscretionary methods, the SOR (or similar functionality) or algorithm may be part of the NMS Stock ATS.[782]

Another commenter states that Form ATS–N should only require disclosure

[772] *See* Proposal, supra note 2, at 81049. Furthermore, as discussed in the Proposal, an NMS Stock ATS would not be prohibited from establishing arrangements with other trading centers, provided that such arrangements comply with other applicable laws and rules, including applicable federal securities laws and Regulation ATS. A broker-dealer operator may have valid business reasons for it or its affiliates to have formal or informal arrangements with an unaffiliated person(s), or affiliate(s) of such person that operates a trading center regarding access to the NMS Stock ATS. *See id.* at 81049, n.401.

[773] *See* ICI Letter at 7.

[774] *See* HMA Letter at 16; KCG Letter at 9; SIFMA Letter at 11–13; UBS Letter at 5; STANY Letter at 4.

[775] *See* HMA Letter at 16.

[776] *See* KCG Letter at 9. The commenter states that, in many cases, an ATS operator may be unaware of products and services separately provided by an affiliate to a customer that are entirely independent from and may pre-exist the client's ATS subscription. *See id.*

[777] *See* SIFMA Letter at 12.

[778] *See* UBS Letter at 5. The commenter also states that a forced public listing of a broker-dealer's products and services may be inconsistent with the broker-dealer's traditional approach and preferences for marketing. *See id.*

[779] *See* Proposal, *supra* note 2 at 81048. For example, if a subscriber purchases a service offered by the broker-dealer operator of an NMS Stock ATS, the broker-dealer operator might also provide that subscriber more favorable terms for its use of the NMS Stock ATS than other subscribers who do not purchase the service. Such favorable terms could include fee discounts or access to a faster connection to the NMS Stock ATS.

[780] *See* STANY Letter at 4.

[781] *See* SIFMA Letter at 12–13.

[782] For a further discussion about when a broker-dealer operator's SOR (or similar functionality) or algorithm may operate as part of its NMS Stock ATS, see Section V.D.5 below.

of products or services at a high level and that commercially sensitive or proprietary information should not be required to be publicly disclosed.[783] As noted above, we are sensitive to concerns about the potential disclosure of commercially sensitive information. The proposed request stated that NMS Stock ATSs must ''[d]escribe the products or services.'' To address commenter concerns regarding the potential disclosure of commercially sensitive information in this disclosure request, the adopted disclosure request requires the NMS Stock ATS to provide only a summary of the terms and conditions for the products and services disclosed and to explain how the product or service is used with the ATS in the applicable Item number in Part III of adopted Form ATS–N. As explained above, we believe that requiring only a summary narrative would normally not require the broker-dealer operator to disclose commercially sensitive information.[784]

To reduce redundancy and streamline disclosures, we are requiring NMS Stock ATSs to provide a narrative explaining the use of the product or service required to be disclosed in Part II, Item 5 in the relevant item in Part III of adopted Form ATS–N. We are also adding to Part II, Item 5 of adopted Form ATS–N the language ''for the purpose of'' before effecting transactions, or submitting, disseminating, or displaying orders and trading interest on the NMS Stock ATS to make clear that this Item requests information about those products or services offered by the broker-dealer operator or its affiliate that have a nexus to the ATS services. We believe that the disclosure requests in Part III of adopted Form ATS–N are limited to information that we believe is necessary for market participants to understand the operation of the ATS, without requiring a level of detail that would normally require the disclosure of commercially sensitive information.

In summary, we are modifying the proposed requests being adopted as Part II, Item 5 of Form ATS–N to clarify that the NMS Stock ATS is only required to provide information about products and services offered to subscribers for the purpose of effecting transactions, or submitting, disseminating, or displaying orders and trading interest on the NMS Stock ATS. Specifically, we have modified the proposed language to state that the broker-dealer operator must disclose any products or services offered to subscribers for the purpose of effecting transactions or for submitting, disseminating, or displaying orders and trading interest in the NMS Stock ATS (*e.g.,* algorithmic trading products that send orders to the ATS, order management or order execution systems and market data feeds). We believe that this language makes a sufficient distinction between products and services that relate to the functions of the ATS and those that do not; disclosures about the latter would not be required.[785]

In addition, we have divided the disclosure requests into four subparts: (i) One subpart addresses the products or services that the broker-dealer operator offers to subscribers for the purpose of effecting transactions or for submitting, disseminating, or displaying orders and trading interest in the NMS Stock ATS; (ii) another subpart addresses products or services that the broker-dealer operator's affiliates offer to subscribers for the purpose of effecting transactions or for submitting, disseminating, or displaying orders and trading interest in the NMS Stock ATS; and (iii) the other two subparts address any differences between the terms and conditions of the services or products required to be identified in Item 5 among the broker-dealer operator, affiliates, and unaffiliated subscribers.[786] This is a technical edit to the proposed disclosures so that the format of Part II, Item 5 is consistent with the format of Part II, Items 1–4 above.

5. Activities of Service Providers

a. Shared Employees

Part III, Item 7 of proposed Form ATS–N would have required disclosures about employees of the broker-dealer operator that service the operations of the NMS Stock ATS and also service other business units of the broker-dealer operator or any of its affiliates (''shared employees''). We received several comments on Part III, Item 7 of proposed Form ATS–N. We are adopting Part III, Item 7 of proposed Form ATS–N with modifications in response to commenters' concerns, as further explained below, and we are also renumbering Part III, Items 7 of proposed Form ATS–N as Part II, Item 6(a) of adopted Form ATS–N.

One commenter recommends eliminating the requests related to shared employees because the commenter believes that keeping the item up-to-date would be too burdensome and unnecessary as employee roles and responsibility shift periodically.[787] Similarly, another commenter believes that while accountability for the safeguarding of customer information is essential, the commenter is uncertain as to why the disclosures regarding shared employees under Part III, Item 7 of proposed Form ATS–N need to be public, particularly in light of the proposal's other reforms regarding the safeguarding of customers' confidential information.[788] We continue to believe that disclosures about shared employees with access to confidential trading information from the NMS Stock ATS would help market participants evaluate circumstances under which a conflict of interest may arise for the NMS Stock ATS or when there is the potential for information leakage involving shared employees. For example, we believe that market participants would likely want to know if an employee of the broker-dealer operator that is responsible for the operations of a system containing confidential subscriber trading information from the NMS Stock ATS is also responsible for supporting the principal trading activity of the broker-dealer operator. As discussed further below, however, we are modifying the proposed request about shared employees on Form ATS–N to more narrowly tailor the request in response to comments, which should reduce the proposed reporting burden.

Some commenters believe that the Commission should narrow the scope of the shared employee request to shared employees who may have access to or knowledge of confidential subscriber information or orders.[789] One commenter states that market participants would need to dedicate resources to determine which employees actually could pose risks of information leakage without limiting the disclosure in this manner.[790] Another commenter also opines that it would be more useful to limit the information

[783] *See* STANY Letter at 4.

[784] We note that, as part of our review of Form ATS–N responses, we intend to monitor the level of summary information provided on the form for completeness to help ensure that such information is responsive to the form and is not designed to avoid meaningful disclosure.

[785] The revised wording for this request also provides examples of the types of services that would be encompassed by this question, such as algorithmic trading products that send orders to the ATS, order management or order execution systems, and market data feeds.

[786] For example, if a broker-dealer operator offers subscribers alternative algorithms to handle orders, including sending such order to the NMS Stock ATS, and there is a difference in the speed or latency in which each of the alternatives transmits information, such differences in speed or latency would need to be disclosed in Part II, Item 5 of adopted Form ATS–N.

[787] *See* SIFMA Letter at 16.

[788] *See* HMA Letter at 17.

[789] *See* ICI Letter at 5–6; STANY Letter at 4.

[790] *See* ICI Letter at 5–6.

about shared employees to those with access to confidential information.[791] We acknowledge that for some broker-dealer operators—particularly multi-service broker-dealers for which the NMS Stock ATS is one of many business units—some employees provide purely administrative services or other support services to multiple business units that would not make them privy to confidential subscriber trading information of the NMS Stock ATS. In response to these comments, the adopted request requires disclosures only about shared employees with access to confidential trading information on the ATS.

Furthermore, some commenters state that information about shared employees should not contain certain personal information about the employee, such as the employees name, title, or position.[792] Several of these commenters believe that such public disclosures would provide little benefit to market participants because, for example, titles change frequently, lack standard meaning across firms and businesses, and do not provide meaningful information about potential information leakage on the ATS.[793] In response to these comments, we have eliminated the requirement that the NMS Stock ATS identify the name and position or title of shared employees because we agree that any benefit to providing personally identifiable information about shared employees would not be justified by the potential negative effects to the individual whose personally identifiable information has been posted. We also agree that such information could become stale or change frequently, resulting in an increased burden on NMS Stock ATSs to keep that information up-to-date.

One of the above commenters also states that, while it supports disclosure to the Commission of relevant information concerning individuals responsible for ATS functions, it believes that the request concerning shared employees should be limited to ''categories of service'' as opposed to individual positions and titles.[794] As explained above, we have removed the proposed requirement that the disclosures regarding shared employees contain the name and position or title of all shared employees, and Form ATS–N only requires a summary of the role and responsibilities of a shared employee that has access to confidential trading information.[795] While these changes reduce the proposed burden on filers, disclosures responsive to Part II, Item 6(a) of adopted Form ATS–N should also provide market participants with sufficient information to evaluate whether a shared employee's role with the NMS Stock ATS may create a potential for information leakage. We do not believe that market participants would benefit from even broader, or more general, disclosures, such as ''categories of service'' for shared employees because such information would likely not provide market participants with relevant information to assess the potential for information leakage.

Two commenters express support for Part III, Item 7 of proposed Form ATS–N by noting that current Form ATS Exhibit E calls for the disclosure of other entities relevant to the operation of the ATS, which the commenters believe would be helpful in determining whether there are apparent conflicts of interest that could come into play in terms of how orders are executed in the ATS.[796]

Another commenter recommends that the Commission ensure that the requests provide meaningful narrative information about the role and duties of each shared employee, both at the NMS Stock ATS and the other business unit or affiliate of the broker-dealer operator.[797] This commenter states that, to better equip funds and other market participants to assess the roles and expertise of shared employees, an NMS Stock ATS should also disclose whether any shared employees are registered with the Commission or the Financial Industry Regulatory Authority and whether they hold one or more securities licenses.[798] Because we have amended the proposed requests to reduce the potential for the public disclosure of personally identifiable information, we will not incorporate this commenter's recommendation to require an NMS Stock ATS to disclose whether any shared employees are registered with the Commission or FINRA and whether they hold one or more securities licenses. The details solicited in Part II, Item 6(a) of adopted Form ATS–N are designed to provide market participants with information to assess whether an NMS Stock ATS's use of shared employees poses a risk of information leakage or other conflicts of interest that could affect a market participant's decision of whether or not to trade on the ATS. Requiring an NMS Stock ATS to disclose information about a shared employee's credentials would be contrary to the Commission's intent to limit the amount of personally identifiable information that is required by Form ATS–N.

b. Third-Party Service Providers

Part III, Item 8 of proposed Form ATS–N would have required disclosures about third-party service providers to the NMS Stock ATS. The Commission received several comments on Part III, Item 8 of proposed Form ATS–N. The Commission is adopting Part III, Item 8 of proposed Form ATS–N with modifications in response to commenters' concerns, as further explained below, and is renumbering Part III, Item 8 of proposed Form ATS–N as Part II, Items 6(b), 6(c), and 6(d) of adopted Form ATS–N.

Two commenters support the Commission's proposal to require the disclosure of information related to third-party service providers because such disclosures would provide information related to potential information leakage on the NMS Stock ATS.[799] One of those commenters further opines that while shared employees are likely subject to increased oversight and it supports the proposed requests related to shared employees, the oversight of third-parties is significantly less formidable and may result in greater risk for information leakage.[800] As they did for Part III, Item 7 of proposed Form ATS–N, two other commenters express support for Part III, Item 8 of proposed Form ATS–N by noting that current Form ATS Exhibit E calls for the disclosure of other entities relevant to the operation of the ATS, which the commenters believe would be helpful in determining whether there are apparent conflicts of interest that could come into play in terms of how orders are executed in the ATS.[801]

Several commenters believe that aspects of the request under Part III, Item 8 of proposed Form ATS–N related to third-party service providers are unnecessary to evaluating an NMS

[791] *See* STANY Letter at 4.

[792] *See* ICI Letter at 5–6; STANY Letter at 4–5; Liquidnet Letter at 9; STANY Letter at 4–5; UBS Letter at 6.

[793] *See* ICI Letter at 5–6; STANY Letter at 4–5; UBS Letter at 6–7.

[794] *See* UBS Letter at 6.

[795] As guidance for this request, the summary of the shared employees' role and responsibilities generally should include sufficient detail to provide market participants with a comprehensive understanding of the full range of the shared employee's responsibilities with the NMS Stock ATS and each relevant entity, including responsibilities that could enable the employee to view confidential trading information of the NMS Stock ATS.

[796] *See* Luminex Letter at 2; *see also* PDQ Letter at 1 (agreeing with Luminex's letter).

[797] *See* ICI Letter at 5–6.

[798] *See id.*

[799] *See* HMA Letter at 17; ICI Letter at 5.

[800] *See* HMA Letter at 17.

[801] *See* Luminex Letter at 2; *see also* PDQ Letter at 1 (agreeing with Luminex's letter).

Stock ATS as a potential trading venue. Two commenters state that information about certain shared personnel for vendors or certain support functions, such as back-office or technology resources, are not necessary for risk assessment of an ATS.[802] Similarly, another commenter believes that the disclosures could, in fact, inhibit useful comparison of ATSs and create unnecessary and burdensome disclosure obligations.[803] Specifically, this commenter cites the proposed requirements to provide detailed information regarding persons, including natural persons, providing services for the ATS, but who are unaffiliated with the broker-dealer.

We disagree that the proposed request regarding third party service providers to the NMS Stock ATS is unnecessary, would not be meaningful to market participants, or, when compared to the current requirements on Form ATS, would be overly burdensome. As noted in the Proposal,[804] the request related to service providers is intended to expand on the current disclosure requirement of Exhibit E of Form ATS, which requires ATSs to disclose the name of any entity other than the ATS that will be involved in the operation of the ATS, including the execution, trading, clearing, and settling of transactions on behalf of the ATS; and to provide a description of the role and responsibilities of each entity.[805] We continue to believe that subscribers and market participants would be interested in whether services performed by a third-party may or may not be under the control of the broker-dealer operator for the purposes of evaluating the potential information leakage.

Some commenters recommend clarifying or more narrowly tailoring the scope of the requests in Part III, Item 8 of proposed Form ATS–N related to service providers so as not to capture information about vendors that only provide administrative services to the ATS or other overhead, such as utility companies.[806] We believe that the scope of the third-party service provider requests should not encompass purely administrative items—such as human resources support—or basic overhead items—such as phone services and other utilities. The information solicited in this disclosure is meant to provide information about the extent to which a third-party may be able to influence or control the operations of the ATS through involvement with its operations (such as operating the ATS's proprietary data feeds sent to subscribers). As indicated by commenters, information about the roles and responsibilities of service providers to the ATS is important because it could inform market participants about the potential information leakage on the NMS Stock ATS.

A commenter also states that it is very difficult for a broker-dealer to know the structure of all of its vendors, much less whether the vendor has an affiliate that may enter orders in the subject ATS.[807] This commenter believes that requiring an ATS to disclose information regarding whether any such persons, or any of their affiliates, may enter orders or other trading interest on the NMS Stock ATS would be unduly burdensome. We believe that the benefit to market participants from the public disclosure of information concerning the use of ATS services by third-party service providers and their affiliates justifies the potential burden on the NMS Stock ATS to provide those disclosures in Form ATS–N. Service providers have business relationships outside of simple subscriber-ATS arrangements, which may give those service providers or their affiliates access to confidential trading information of other subscribers. As such, market participants should be aware of how those service providers utilize the ATS as a trading venue or for any other services.

Furthermore, the adopted requests under Part II, Items 6(c)–(d) require the NMS Stock ATS to disclose whether any service providers or their affiliates use the services of the NMS Stock ATS and if they do, the ATS is required to identify the service providers, the service(s) used, and whether there is any disparate treatment between those service providers and other subscribers. Thus, an NMS Stock ATS would only be required to obtain and disclose information about third-party vendors and their affiliates that actively use the services of the ATS; the ATS should be aware of all parties the use its services under its current recordkeeping obligations.[808] Additionally, because the ATS has already established a relationship with its service providers, we do not believe that it would impose a significant burden on ATSs to require its service providers to inform them about any affiliates that use the services of the ATS. Accordingly, to the extent that an affiliate of a service provider uses the services of the ATS, we believe that the burden to obtain the information required by Form ATS–N is justified by the above-explained benefits to market participants from these disclosures.

This commenter also states that if the Commission's concern is whether a service provider is receiving preferential treatment from an ATS, the Proposal should have mandated disclosure of whether there is any preferential and/or differentiated treatment.[809] We believe market participants would find it very useful to understand whether potential counterparties with whom they are trading, and who also service the operation of the NMS Stock ATS, have access to different or unique ATS-related services when analyzing potential conflicts of interest or information leakage on the venue. We have added a request to Part II, Item 6 of adopted Form ATS–N to expressly require the ATS to identify and explain any differences in ATS services to a service provider and all other subscribers.

One commenter questions the feasibility of providing ''a detailed description of information technology services, including both hardware and software'' in Part III, Item 8 of proposed Form ATS–N, which the commenter opines can be taken to the extreme of requiring an ATS operator to disassemble a server to enumerate the manufacturer of various components. The commenter believes that a general—but thorough—description of the information technology services would be more practical.[810] We did not intend for the adopted disclosures to require the level of granular detail to which this commenter cites in its comment letter. To clarify the scope of the required disclosure about services provided by third parties, adopted Form ATS–N no longer requires the NMS Stock ATS to ''describe'' the operation, service, or function provided by the third party service provider. Instead, it requires an NMS Stock ATS to provide a ''summary'' of the service provider's role and responsibilities.[811]

[802] *See* Luminex Letter at 4; STANY Letter at 5.

[803] *See* Morgan Stanley Letter at 5.

[804] *See* Proposal, *supra* note 2, at 81055.

[805] *See* Item 7 of Form ATS (describing the requirements for Exhibit E of Form ATS).

[806] *See* ICI Letter at 6; UBS Letter at 6; SIFMA Letter at 16.

[807] *See* Morgan Stanley Letter at 5.

[808] *See supra* note 742 and accompanying text.

[809] *See* Morgan Stanley Letter at 5.

[810] *See* UBS Letter at 7.

[811] As guidance for this request, the Commission would view, for example, an NMS Stock ATS simply stating that a third-party provides technology or hardware to the ATS as insufficient. *See* Proposal, *supra* note 2, at 81055. In this example, the summary generally should provide market participants with an understanding of the types of technology or hardware provided, and how that hardware or technology is used by the NMS Stock ATS. This information is meant to provide market participants with a better understanding about whether the service provider could access confidential trading information.

As guidance for this request, we would view, for example, an NMS Stock ATS simply stating that a third-party provides technology or hardware to the ATS as not responsive to the required summary of the service provider's role. But we would not expect the ATS to provide information about the manufacturer of certain components of its hardware. This request for summary information is designed to provide market participants with a general understanding of the types of technology or hardware provided by the service provider as part of its responsibilities, and how that hardware or technology is used by the NMS Stock ATS. The purpose of this disclosure is to provide market participants with information to better understand whether the service provider might be able to access confidential trading information, so NMS Stock ATSs should draft its disclosure with the goal of conveying such information.

Furthermore, to reduce redundant disclosures on Form ATS–N, adopted Form ATS–N will only require this in Part III, unless there are no disclosure requests in Part III that would encompass these types of services. The disclosure requests in Part III will likely require the NMS Stock ATS to describe the services provided by third-parties, and we believe that a summary narrative about the roles and responsibilities of third-party service providers will likely be included in that description of the services. We do not believe that it is not necessary to also provide a redundant summary narrative of the roles and responsibilities of service providers in Part II.

A commenter also recommends eliminating the disclosures of third-party service providers from the publicly available Form ATS–N and requiring that the information requested be made available only to the Commission on a confidential basis.[812] We are not changing the nature of the third-party service provider request to require the disclosures to be filed on a confidential basis with the Commission. We have narrowed the scope of the request so that the information provided is tailored to address the concerns of market participants and NMS Stock ATSs clarify the level of detail required by these disclosures. We believe that requiring only a summary description of the roles and responsibilities of third-party service providers would not require the type of details that could be subject to confidentiality concerns or otherwise put either the NMS Stock ATS or the service provider at a competitive disadvantage.

Finally, we are replacing the proposed word ''person'' with the word ''entity'' in Part II, Item 6(b) of adopted Form ATS–N. The Commission does not believe that an NMS Stock ATS is likely to contract with a natural person who is not associated with a legal entity (*e.g.,* a corporation or an LLC) to provide services to the ATS. Furthermore, the Commission does not intend for the service provider request to disclose details about natural persons providing services to the ATS when those natural persons are employees of, or independent contractors hired by, a third party.

6. Protection of Confidential Trading Information

Part III, Item 10 of proposed Form ATS–N would have required an NMS Stock ATS to provide disclosures about its confidential treatment of trading information. One commenter states its belief that the proposed requests under Part III, Item 10 of proposed Form ATS–N seemed appropriate given the risk of misuse of confidential information.[813] This commenter believes the requests fit well within the framework of the new requirement that all ATSs maintain written safeguards and procedures to protect confidential trading information. We are adopting Part III, Item 10 of proposed Form ATS–N with modifications in response to commenter concerns, as further explained below, and renumbering the proposed request as Part II, Item 7 of adopted Form ATS–N.

Part II, Item 7(a) of adopted Form ATS–N requires an NMS Stock ATS to describe its written safeguards and written procedures to protect the confidential trading information of subscribers to the NMS Stock ATS, including: (i) Written standards controlling employees of the ATS that trade for employees' accounts; and (ii) written oversight procedures to ensure that the safeguards and procedures described above are implemented and followed. The protection of confidential trading information is a bedrock component of the regulation of ATSs and is essential to ensuring the integrity of ATSs as an execution venue. If such information is not protected, many of the advantages or purposes for which a subscriber may choose to send its orders to an ATS (*e.g.,* trade anonymously and/or to mitigate the impact of trading in large positions) are eliminated. In cases where the confidential trading information of a subscriber is impermissibly shared with the personnel of the broker-dealer operator or any of its affiliates (*e.g.,* persons who are not responsible for the operation of the ATS or compliance with applicable rules), such an abuse is also compounded by the conflicting interests of the broker-dealer operator. That is, in such a case, the broker-dealer operator has invited subscribers to trade on its ATS and may have abused that relationship to provide itself or its affiliates with a direct competitive advantage over that subscriber. Accordingly, we believe that disclosures informing market participants about broker-dealer operators' written safeguards and procedures to protect confidential trading information are necessary so market participants can independently evaluate the robustness of the safeguards and procedures that are employed by the NMS Stock ATS to protect subscriber confidential trading information and decide for themselves whether they wish to do business with a particular NMS Stock ATS.[814]

We are adopting Part II, Items 7(b) and (c) to require an NMS Stock ATS to disclose whether a subscriber can consent and withdraw consent, respectively, to the disclosure of its confidential trading information to any person (not including those employees of the NMS Stock ATS who are operating the system or responsible for its compliance with applicable rules). Subscribers should be able to give consent if they so choose to share their confidential trading information.[815] ATSs that transact in NMS stocks vary in terms of what types of orders, indications of interests, or other forms of trading interest are confidential on their systems and what information about such trading interest may be shared. For example, an ATS might provide that no IOIs submitted by subscribers will be considered confidential, but may provide subscribers with the option to restrict the information in the IOI message to just the symbol and side (*i.e.,* buy or sell).[816] For this example, Part II, Items 7(b) and 7(c) of adopted Form ATS–N

[812] *See* SIFMA Letter at 16.

[813] *See* HMA Letter at 18.

[814] If an NMS Stock ATS has disclosed information on its Form ATS–N about the written safeguards and procedures that it has established to protect the confidential trading information of subscribers, including oversight procedures to ensure that such safeguards and procedures are followed, but those disclosures materially differ from the actual means by which the NMS Stock ATS protected the confidential trading information of subscribers, the ATS would be required to file an amendment pursuant to Rule 304(a)(2) to revise its Form ATS–N to accurately describe such safeguards and procedures.

[815] *See* Regulation ATS Adopting Release, *supra* note 3, at 70879.

[816] *See* Proposal, *supra* note 2, at 81058.

would require the NMS Stock ATS to describe the means by which a subscriber could control some of the information contained in the IOI message by providing consent or withdrawing such consent for the sharing of its confidential trading information.[817]

Part II, Items 7(b) and 7(c) contain requests similar to those in Part III, Item 10(a) of proposed Form ATS–N, but we are modifying the format of these requests so that they are in the form of a ''yes'' or ''no'' question, and if the NMS Stock ATS answers ''yes,'' the NMS Stock ATS must explain how and under what conditions consent can be given and withdrawn. We are also adding the phrase ''not including those employees of the NMS Stock ATS who are operating the system or responsible for its compliance with applicable rule'' to Part II, Item 7(b) of adopted Form ATS–N. This change is to clarify that the request does not cover such employees that may need access to such information in the course of their responsibilities to service the system. As noted above, Regulation ATS requires that access to confidential subscriber information be available only to those employees of the ATS that operate the ATS's system or are responsible for the ATS's compliance with applicable rules.[818]

Finally, we are adopting Part II, Item 7(d) to require an NMS Stock ATS to provide a summary of the roles and responsibilities of any persons that have access to confidential trading information, the confidential trading information that is accessible by them, and the basis for the access. Part III, Item 10(b) of proposed Form ATS–N would have required the NMS Stock ATS to identify the position or title of any person who has access to confidential trading information, describe the confidential information to which the person has access, and describe the circumstances under which the person can access confidential trading information. Some commenters express concerns regarding the potential disclosure of personally identifiable information under proposed Part III, Item 10(b).[819] We have eliminated the proposed requirement to publicly disclose the positions or titles of persons with access to confidential trading information and part II, Item 7(d) of adopted Form ATS–N requires only a summary of the roles and responsibilities of any persons that have access to confidential trading information, the confidential trading information that is accessible by them, and the basis for the access. We believe that any benefit of providing personally identifiable information is not justified by the potential negative effects of publicly posting personally identifiable information; a summary of the information required under Item 7(d) will buttress the existing obligations on ATSs to restrict access only to permitted personnel (*e.g.,* those responsible for its operation or compliance).[820]

7. Differences in Availability of Services, Functionalities, or Procedures

Part III, Item 9 of proposed Form ATS–N would have required an NMS Stock ATS to disclose information regarding the differences in the availability of services, functionalities, or procedures of the NMS Stock ATS that are available or apply to the broker-dealer operator or its affiliates that are not available or do not apply to other subscribers.

In general, several commenters support requests for information about differences between subscribers and the broker-dealer with respect to their use of the NMS Stock ATS.[821] A commenter also states that the proposed requests in Part III, Item 9 of proposed Form ATS–N are reasonable.[822] One commenter, however, expresses concern that the proposed disclosures that would have been required under Part III, Item 9 of proposed Form ATS–N were too broad and could result in the disclosure of either proprietary information or other information that could pose a cybersecurity risk.[823]

We continue to believe that the disclosure about differences in treatment are important to market participants and will better allow them to decide whether submitting order flow to that NMS Stock ATS aligns with their trading or investment objectives. To more closely tailor the Form ATS–N disclosures about differences in treatment to the subject matter covered in relevant conflicts-of-interest requests, we are removing Part III, Item 9 of proposed Form ATS–N as a stand-alone question and incorporating the request into Part II, Items 1, 2, 3, and 6 of adopted Form ATS–N. We believe that under this format, disclosures regarding the differences in the availability of services, functionalities, or procedures of the NMS Stock ATS will relate to the specific subject matter covered by each of the aforementioned disclosure requests that relate to services, functionalities, or procedures that may differ among subscribers or the broker-dealer operator and subscribers.

The requests in Part II of adopted Form ATS–N focus on the ATS-related activities of the broker-dealer operator and its affiliates and are designed to inform market participants about the competing interests between the broker-dealer operator or its affiliates and other subscribers and the potential for information leakage of subscribers' confidential trading information. In response to a commenter's concern,[824] we note that we did not intend for these requests to require descriptions of technologies or other aspects of the NMS Stock ATS that could pose a cybersecurity risk or are otherwise disclose commercially sensitive information.

8. Other Recommendations From Commenters

The Commission received comments recommending additional regulation or disclosures for NMS Stock ATSs related to conflicts of interests. In the Proposal, the Commission considered alternatives to address conflicts of interests between the broker-dealer operator and the NMS Stock ATS. One alternative the Commission considered was to eliminate any potential conflicts of interest by requiring the NMS Stock ATS to operate with a single business function—operating the NMS Stock ATS—and by eliminating any other function of the broker-dealer, such as principal trading.[825] The Commission also considered continuing to allow broker-dealer operators to act as a broker-dealer operator of an NMS Stock ATS and engage in non-ATS functions while imposing new requirements designed to limit potential conflicts of

[817] *See id.* We believe that there may be some NMS Stock ATSs that might not offer any means by which a subscriber could consent to the dissemination of its confidential trading information. An NMS Stock ATS would be required to disclose this fact pursuant to Item 7(a). *See id.,* n.437.

[818] *See* Regulation ATS Adopting Release, *supra* note 3, at 70879; 17 CFR 242.301(b)(10)(i)(A).

[819] *See* MFA/AIMA Letter at 6 (expressing concern that requiring disclosure of the positions or titles of persons who have access to confidential trading information would paint a target on such persons and could increase their security risks and risks of receiving phishing attacks); SIFMA Letter at 17–18 (stating that the public disclosure of information under Part IV, Item 10 of proposed Form ATS–N would have raised privacy, security, and proprietary information concerns).

[820] *See* Regulation ATS Adopting Release, *supra* note 3, at 70879; 17 CFR 242.301(b)(10)(i)(A).

[821] *See* SIFMA Letter at 6; Consumer Federation of America Letter at 9–10. *See also* Fidelity Letter at 5 (stating it should be disclosed when subscribers are not treated the same way); UBS Letter at 7 (suggesting the Commission request should highlight differences among subscribers).

[822] *See* HMA Letter at 17–18.

[823] *See* SIFMA Letter at 17.

[824] *See id.*

[825] *See* Proposal, *supra* note 2, at 81043.

interest.[826] In the Proposal, the Commission requested comment about whether certain conflicts of interest arising out of the broker-dealer's operation of the NMS Stock ATS should be prohibited.[827]

Several commenters recommend that the Commission prohibit conflicts of interest altogether on NMS Stock ATSs, which would include a prohibition on trading on the NMS Stock ATS by the broker-dealer operator and its affiliates, rather than simply increasing the disclosure requirements for conflicts of interest.[828] However, we continue to believe that prohibiting conflicts of interest for the broker-dealer operator related to its operation of an NMS Stock ATS would be significantly more intrusive relative to requiring additional disclosures about the operations of the broker-dealer operator and its affiliates, and therefor did not propose these alternatives.[829] We also believe that such a prohibition would substantially affect or limit the current operations of ATSs that trade NMS stocks. Part II of adopted Form ATS–N is designed to provide disclosures to market participants about ATS-related activities of a broker-dealer operator and its affiliates that might give rise of potential conflicts of interest or information leakage, and thus, should better enable market participants to evaluate whether they want to use the services of that NMS Stock ATS.

Also, one commenter recommends that, for any conflicts of interest that are permitted, at a minimum Form ATS–N should include clear disclosures of conflicts of interest under a section titled ''conflicts of interest.'' [830] We decline the commenter's request to title Part II ''conflicts of interest.'' We believe that it is more helpful to market participants for Form ATS–N to provide the information market participants need to individually evaluate whether there is a conflict of interest on a given NMS Stock ATS rather than relying on the ATS to determine when a conflict exits.

We also received a comment requesting the Commission to require NMS Stock ATSs to disclose in Part II of Form ATS–N any proceeding within the last 10 years against the NMS Stock ATS, the broker-dealer operator or officers or employees of the broker-dealer operator that relates to the handling of equity orders or the operation of the NMS Stock ATS.[831] Form ATS–N is designed to provide market participants with public disclosures about the current operations of an NMS Stock ATS and the current ATS-related activities of the broker-dealer operator and its affiliates. We believe that this information will help market participants assess the NMS Stock ATS as potential venue for their orders. We believe that disclosures about past proceedings, or other disciplinary matters, of the NMS Stock ATS, its broker-dealer operator, or officers and employees of the broker-dealer operator—even those that relate to the handling of equity orders or the operation of the NMS Stock ATS—would not provide additional transparency into the *current* operations of the NMS Stock ATS. To the extent that such information is publicly available, a market participant may review details about past and pending proceedings involving the NMS Stock ATS, its broker-dealer operator, or the officers and employees of the broker-dealer operator via, for example, public databases maintained by the Commission or FINRA.

D. Part III Form ATS–N: Manner of ATS Operations

Part III of adopted Form ATS–N is designed to provide public disclosures to help market participants understand, among other things, how subscribers' orders and trading interest are handled, matched, and executed on the NMS Stock ATS. In response to comments, we are revising the format of several requests in Part IV of proposed Form ATS–N (renumbered as Part III in the adopted Form) to help NMS Stock ATSs provide disclosures that would be useful to market participants. For example, in response to commenters that believe the Commission's use of the term ''describe'' is vague and would lead to discursive disclosures and obscure key information, we are revising requests to be more explicit, adding specificity to clarify the meaning of the requests, and providing non-exhaustive examples for NMS Stock ATSs to better understand what would be responsive to the Form ATS–N.[832] In addition, we have added ''yes'' or ''no'' questions, and converted proposed Items into ''yes'' or ''no'' questions, throughout Part III of Form ATS–N, which we believe will allow market participants to find information more efficiently and facilitate their comparisons across NMS Stock ATSs.[833] Moreover, we have separated the requests for information in Part III of adopted Form ATS–N into more items (and renumbered the items) and discrete topics to help readers more easily find information and compare that information among NMS Stock ATSs. In addition, we are combining or removing certain requests to reduce redundancy within Part III, and between Parts II and III, and separating certain requests for information into new items or subparts that focus the information required in response to commenter suggestions and concerns. Finally, we are adding a requirement to identify and explain any differences in the treatment of subscribers and the broker-dealer operator to several items that did not require this information as proposed.[834] We intended that these differences be explained for all of the subject matter covered by Form ATS–N, and several commenters support requests for information about differences between subscribers and the broker-dealer operator with respect to their use of the NMS Stock ATS.[835] Differences in the treatment among subscribers and the broker-dealer operator and its affiliates

[826] *See id.*

[827] *See id.*

[828] *See* Consumer Federation of America Letter at 7–8 (asserting that certain conflicts of interest are so acute and pernicious that they cannot be mitigated or absolved merely by disclosing them; the commenter provides principle trading by the broker-dealer operator as an example); HMA Letter at 13–18 (advocating for: (1) The Commission to prohibit what the commenter considers to be the deeply troubling conflicts of interest attendant with allowing an ATS operator or affiliate to trade in the ATS; or (2) alternatively if the Commission would not adopt such a prohibition, for the Commission to affirmatively restrict how the broker-dealer operator or its affiliates interact with the ATS); Better Markets Letter at 5–6 (advocating that the Commission ban material conflicts of interest rather than relying on disclosure alone).

[829] *See* Proposal, *supra* note 2, at 81043.

[830] *See* Better Markets Letter at 6.

[831] *See* ICI Letter at 6, n.14.

[832] The topics and examples provided on Form ATS–N are designed to help NMS Stock ATS consider the scope of the request and information potentially responsive to the form requirements. While we use the term ''including'' to denote topics responsive to an Item and have provided examples in many of the requests, these topics or examples are not an exhaustive list of what may be responsive to a Form ATS–N request. *See, e.g.,* Items 4, 6, 7, 9, 10, 11, 13, 19, 21, and 23 of Part III of adopted Form ATS–N.

[833] *See e.g.,* SSGA Letter at 2; SIFMA Letter at 9; STANY Letter at 5; LeveL ATS Letter at 6–7; KCG Letter at 10. *See also* Section V.A.1. (discussing the format of items in Part II and III of Form ATS–N).

[834] Specifically, this requirement is being added to Items 10, 14, 17, 18, and 23 of adopted Form ATS–N. In the Proposal, the Commission required a description of any differences between subscribers and persons in Part IV, Items 1(b), 1(e), 2(b), 3(b)–(d), 4, 5(a), 5(b), 6(a), 7, 8, 10(b), 12(b), and 13 of proposed Form ATS–N. *See* Proposal, *supra* note 2, at 81146–81152.

[835] *See, e.g.,* SIFMA Letter at 5–6 (stating whether all subscribers have access to the same suite of products and services is particularly appropriate and useful); Fidelity Letter at 5 (calling for disclosure when subscribers are not treated the same way); UBS Letter at 7 (suggesting the Commission request should highlight differences in subscriber access that may impact other users of the ATS). *See also* Consumer Federation of America Letter at 9–10 (discussing how to address potential advantages of the broker-dealer operator and its affiliates).

will help market participants discern any benefit or disadvantage they may receive in comparison to other market participants or the broker-dealer operator.

1. Types of ATS Subscribers

Part IV, Item 1(c) of proposed Form ATS–N would have required disclosures about types of subscribers to the NMS Stock ATS. We are adopting Part IV, Item 1(c) of proposed Form ATS–N with modifications as Part III Item 1 (''Types of Subscribers'') of adopted Form ATS–N.[836] Part III, Item 1 of adopted Form ATS–N is designed to provide market participants with information about the type of order flow in the NMS Stock ATS. NMS Stock ATSs may design their system for trading by retail, institutional, or any other type of market participant.

One commenter recommends that the Commission consider eliminating or consolidating this request because it is redundant to the request in Part IV, Item 5 of proposed Form ATS–N regarding segmentation.[837] In response to this comment, we are removing the requirement from Part IV, Item 1(c) of proposed Form ATS–N to ''describe any criteria for distinguishing among types of subscribers, classes of subscriber, or other persons.'' To the extent that an NMS Stock ATS distinguishes among ATS subscribers, the ATS will be required to discuss such information in Part III, Item 13 of adopted Form ATS–N, which relates to segmentation.

Another commenter believes that the phrase ''types of subscribers'' should be specifically defined.[838] In response to this comment, we are providing a list of market participants in Part III, Item 1 of adopted Form ATS–N that, in the Commission's experience, are commonly used. The revised list includes: Retail investors, issuers, asset managers, brokers, dealers, NMS Stock ATSs, investment companies, hedge funds, market makers, principal trading firms, and banks. The list is non-exhaustive and an NMS Stock ATS is required to list any type of subscriber that can use the NMS Stock ATS services. Also, in response to this comment, we are revising Part IV, Item 1(c) of proposed Form ATS–N, by removing the request to *describe* the type of subscribers and other persons and instead, are only requesting that the NMS Stock ATS select the checkbox for the types of subscribers that can use the NMS Stock ATS services (and identify any other types of subscribers not listed in a checkbox). We are also revising the Item to require the selection of the types of subscribers that ''can'' use the NMS Stock ATS services, rather than solely those types of subscribers that in fact use the NMS Stock ATS as was proposed.

Furthermore, in response to general comments that the Form ATS–N should be formatted to facilitate comparisons across NMS Stock ATSs,[839] we are relocating Part IV, Item 1(c) of proposed Form ATS–N into a separate Item in Part III, Item 1 of adopted Form ATS–N and naming it ''Types of ATS Subscribers.'' [840]

2. Eligibility for ATS Services

Part IV, Item 1(a) of proposed Form ATS–N would have required disclosures about eligibility requirements of the NMS Stock ATS.[841] We are adopting Part IV, Item 1(a) of proposed Form ATS–N with certain modifications described below, naming the Item ''Eligibility for ATS Services,'' and relocating the request as Part III, Item 2 of adopted Form ATS–N.[842]

We also received comment seeking modifications to the proposed Item. One commenter suggests that the term ''eligibility requirements'' under Part IV, Item 1(a) of proposed Form ATS–N is unclear and suggests using eligibility ''standards'' as a more accurate way to capture the various subscriber criteria an ATS might evaluate.[843] In response to this comment, we are replacing the reference to ''eligibility requirements'' in Part IV, Item 1(a) of proposed Form ATS–N with a reference to ''*conditions*'' the NMS Stock ATS requires a person to satisfy before accessing the ATS services. We believe that the term ''conditions'' provides the NMS Stock ATS with more flexibility to describe the relevant criteria.

Also, commenters express confusion over the difference between Part IV, Item 1(a) and 1(e) (adopted as Part III, Items 2 and 3, respectively) of proposed Form ATS–N and whether they overlapped.[844] In response to these commenters, we are clarifying the request by adding the phrase ''before accessing the ATS services'' in Part III, Item 2(b) of adopted Form ATS–N. On the other hand, Part III, Item 3 of adopted Form ATS–N, as discussed *infra,* requires disclosures about any conditions that would exclude a subscriber, in whole or in part, from using the services of the NMS Stock ATS *after* the person, as a subscriber, is permitted to use or submit orders to the NMS Stock ATS, such as for certain subscriber behavior while actively participating in the ATS.[845]

We are not imposing new requirements for NMS Stock ATSs to have certain eligibility requirements, either by implicating the fair access rule under Rule 301(b)(5) (as suggested by a commenter), or otherwise.[846] The ''yes'' or ''no'' questions of Part III, Item 2(b) of adopted Form ATS–N ask whether there are any conditions that the NMS Stock ATS requires a person to satisfy before accessing the ATS services. If an NMS Stock ATS marks ''yes,'' the ATS is indicating that it has such conditions and must list and provide a summary of the conditions. We believe that these revisions make clear that we are not requiring any eligibility requirements.

In Part III, Item 2(a) of adopted Form ATS–N, we are requiring the NMS Stock ATS to state whether it requires subscribers to be registered broker-dealers. This request is similar to the

[836] As also discussed under Section V.D.2., commenters state with regard to the entirety of Part IV, Item 1 of proposed Form ATS–N that the Commission should adopt a ''yes'' or ''no'' format for the item instead of requests for descriptions. *See* SIFMA Letter at 19; KCG Letter at 11.

[837] *See* SIFMA Letter at 20.

[838] *See* KCG Letter at 12. The proposed Item required the NMS Stock ATS to describe the types of subscribers and other persons that use the services of the NMS Stock ATS.

[839] *See e.g.,* SSGA Letter at 2; SIFMA Letter at 9; STANY Letter at 5; LeveL ATS Letter at 6–7; KCG Letter at 10.

[840] *See* Section V.D.2 for a discussion of changes to the requirement under Part IV, Item 1(c) of proposed Form ATS–N that NMS Stock ATSs state whether they accept non-broker-dealers as subscribers to the NMS Stock ATS.

[841] As discussed in the Proposal, the eligibility process and requirements to access an NMS Stock ATS may vary, and the requirements may differ depending on whether a potential subscriber is a customer of the broker-dealer operator of the ATS. For instance, some ATSs may require that a potential subscriber be a broker-dealer to submit orders in the ATS, while other ATSs may not. Some NMS Stock ATSs may require potential subscribers to submit financial information as a pre-requisite to subscribing to, or maintaining their subscriber status on, the NMS Stock ATS. *See* Proposal, *supra* note 2, at 81060.

[842] One commenter supports the proposed disclosures stating that funds and other market participants would find this information valuable because it would facilitate the efficient comparison of eligibility processes and requirements across all NMS Stock ATSs and describe the types of participants that may dominate order flow on a particular NMS Stock ATS. *See* ICI Letter at 8.

[843] *See* SIFMA Letter at 19.

[844] *Id.* at 20 (stating it cannot distinguish between the requested information in proposed Items 1(a) and 1(e)); KCG Letter at 11–12 (noting an apparent overlap between the information requested under proposed Item 1(a) and proposed Item 1(e) and recommending that the Commission revisit and clarify the request).

[845] For example, if an NMS Stock ATS has a practice of excluding subscribers that do meet certain percentage thresholds for submitting firm-up orders in response to receiving a conditional order sent to them by the NMS Stock ATS, then this practice would be subject to disclosure under Part III, Item 3 of adopted Form ATS–N (''Exclusion from Services'') and not Part III, Item 2 (''Eligibility Requirements'').

[846] *See infra* notes 855–857 and accompanying text.

proposed request in Part IV, Item 1(c) of proposed Form ATS–N but asked in a ''yes'' or ''no'' format. Part III, Items 2(c) and 2(d) of adopted Form ATS–N are requirements proposed in Part IV, Item 1(a)[847] and 1(b), respectively, of proposed Form ATS–N, that the Commission is formatting as ''yes'' or ''no'' questions.

If the NMS Stock ATS indicates that it does have conditions that a person must satisfy before accessing the ATS services, the request, as modified, requires an NMS Stock ATS to list and provide a ''summary'' of those conditions. We believe a summary of those conditions would provide sufficient disclosure (in conjunction with Part III, Item 1 of adopted Form ATS–N) for market participants to discern the type of order flow that they are likely to interact with on the NMS Stock ATS, while at the same time, not impairing the ATS's ability to reasonably control the activities and quality of flow on its platform.[848] One commenter acknowledges that it already discloses the general requirements for becoming a user of its ATS,[849] which is analogous to the summary of conditions we are adopting in this Item. Moreover, we believe that requiring additional disclosures about differences in treatment among persons is important to market participants.[850]

We also received comment unfavorable to Part IV, Item 1(b) of proposed Form ATS–N.[851] The proposed Item would have required an NMS Stock ATS to describe the terms and conditions of any contractual agreements for granting access to the NMS Stock ATS for the purpose of effecting transactions in securities or for submitting, disseminating, or displaying orders on the NMS Stock ATS, and to state whether these contractual agreements are written and if the terms and conditions of any contractual agreements were not the same for all subscribers and persons, the NMS Stock ATS would be required to describe any differences.

We are not adopting the provision requiring the disclosure of the terms and conditions of any contractual agreements in Part IV, Item 1(b) of proposed Form ATS–N.[852] We believe that the Form ATS–N, as adopted, requires comprehensive disclosure on the principal aspects of the operations of NMS Stock ATSs and any differences in the treatment of subscribers and the broker-dealer operator. We believe that a description of the terms of any contractual agreements is unlikely to provide much, if any, further information about the ATS's operations that is not already required to be disclosed in the other items of Form ATS–N and would likely impose a significant burden.

3. Exclusion From ATS Services

Part IV, Item 1(e) of proposed Form ATS–N would have required disclosures about limitation and denial of ATS services. We are adopting Part IV, Item 1(e) of proposed Form ATS–N, with certain modifications discussed below, including adopting a ''yes'' or ''no'' format to questions, as Item 3 of adopted Form ATS–N, and naming the request ''Exclusion from ATS Services.''

One commenter states that requiring an NMS Stock ATS to disclose additional details about why the ATS would limit or deny ATS services could affect the ATS's ability to reasonably control the activities and quality of flow on its platform; the commenter suggests, therefore, that such disclosure remain confidential with the Commission.[853] In response to this comment, we are adopting Part III, Item 3(a) of adopted Form ATS–N, as modified, to require the NMS Stock ATS to provide a list and ''summary'' of the conditions for excluding (or limiting) a participant from using the ATS, and are removing the requirement to describe the procedures or standards of the NMS Stock ATS that are used to determine whether to exclude a subscriber. We believe that these changes would protect sensitive information and prevent participants from using the disclosures to potentially misuse or game its system while ensuring that participants have the information necessary to understand when they may be excluded.

Another commenter suggests that it is unclear whether Part IV, Item 1(e) of proposed Form ATS–N requests disclosure of instances where a subscriber requests not to interact with certain counterparties.[854] We are not requiring in Part III, Item 3 of adopted Form ATS–N that the NMS Stock ATS disclose instances where a subscriber requests not to interact with certain counterparties. Information regarding counter-party selection procedures on the NMS Stock ATS, including where a subscriber requests not to interact with certain counterparties, is required to be disclosed, as applicable, in Part III, Item 14 of adopted Form ATS–N.

This commenter also expresses concern about the implications for fair access raised by Part IV, Item 1(e) of proposed Form ATS–N.[855] The commenter assumes that the Commission intends that Part IV, Item 1(e) should apply only to entities subject to the fair access threshold, and believes that entities not subject to the fair access rule can deny access for any reason. The commenter further believes that it is important to note that unless an ATS exceeds the fair access threshold, the ATS should be able to deny access for any reason (*e.g.,* credit risk). This commenter requests clarification from the Commission if this interpretation is wrong to avoid later misunderstanding or interpretive conflicts. The commenter also suggests that Part IV, Item 1(e) of proposed Form ATS–N goes beyond the fair access requirements (to keep records of all grants, denials, and limitations of access, and to report that information), and states that if the Commission intends to replace the fair access rule with a different regulatory and disclosure regime, the Commission should address this issue directly.

We are not implicating or changing Rule 301(b)(5) of Regulation ATS, the so-called fair access rule, by requiring NMS Stock ATSs to disclose information about when the ATS can exclude, in whole or in part, a subscriber from the services of the ATSs. Pursuant to Rule 300(a)(2) of Regulation ATS, an ATS cannot set rules governing the conduct of subscribers other than the conduct of subscribers' trading on the system and cannot discipline subscribers other than by exclusion from trading.[856] NMS Stock ATSs are not required to establish rules for excluding subscribers from

[847] We are removing the reference to 'subscriber' from the Item, as proposed, because Part III, Item 2 of adopted Form ATS–N relates to eligibility requirements of persons before they become subscribers.

[848] *See* UBS Letter at 7. *See infra* note 853 and accompanying text.

[849] *See id.*

[850] *See, e.g.,* SIFMA Letter at 5–6 (stating whether all subscribers have access to the same suite of products and services is particularly appropriate and useful); Fidelity Letter at 5 (stating it should be disclosed when subscribers are not treated the same way); UBS Letter at 7 (suggesting the Commission request should highlight differences in subscriber access that may impact other users of the ATS). *See also* Consumer Federation of America Letter at 9–10 (discussing how to address potential advantages of the broker-dealer operator and its affiliates).

[851] *See* Liquidnet Letter at 12; UBS Letter at 7; SIFMA Letter at 19.

[852] We are moving the provision in Part IV, Item 1(b) of proposed Form ATS–N, which would have required that the NMS Stock ATS state whether the contractual agreements for granting access to the NMS Stock ATS were written, to Part III, Item 2(d) of adopted Form ATS–N. Part III, Item 2(d) asks a ''yes'' or ''no'' question on whether subscribers are required to enter a written agreement to use the services of the NMS Stock ATS.

[853] *See* UBS Letter at 7.

[854] *See* SIFMA Letter at 20.

[855] *Id.* at 19–20.

[856] *See* 17 CFR 242.300(a)(2).

using the ATS. Nevertheless, based on the Commission's experience, ATSs that trade NMS stocks often have rules governing subscribers' participation on the ATS, and if a subscriber fails to comply with these rules, the ATS may limit or deny access to the ATS.[857] Part III, Item 3 of adopted Form ATS–N is designed to provide subscribers with information about when the NMS Stock ATS can exclude, in whole or in part, a subscriber from the services of the ATSs and help them reasonably expect the types of activities that may cause them to be excluded (or limited) from using the services of the NMS Stock ATS.

One commenter requests guidance about the ability of an ATS to deny access pursuant to Rule 301(b)(5) of Regulation ATS when such ATS has not exceeded the fair access threshold requirements under Rule 301(b)(5)(i).[858] This commenter expresses concern that Part IV, Item 1(a) (''Eligibility'') and Item 1(e) (''Limitations and Denial of Services'') of proposed Form ATS–N raises the specter of fair access and that if the Commission is seeking to change regulatory expectations relating to fair access, the Commission should do so in a straight forward manner and not by way of requiring disclosures around ''eligibility requirements.'' We did not propose and are not adopting any change to the fair access rule under Rule 301(b)(5) of Regulation ATS. The commenter appears to misconstrue the requirements and application of the fair access rule in the context of the proposed disclosure requirements of Part IV, Item 1 of proposed Form ATS–N, and we believe it is important, in response to the commenter's request for clarification if its interpretation is wrong, to further explain the operation of the fair access rule ''to avoid later misunderstanding or interpretive conflicts.''[859] In the Proposal, we discussed that a significant difference between national securities exchanges and NMS Stock ATSs is the extent to which each trading center allows access to its services by its users.[860] Section 6(b)(2) of the Exchange Act generally requires national securities exchanges to allow any qualified and registered broker-dealer to become a member of the national securities exchange—a key element in assuring fair access to national securities exchange services.[861] In contrast, the access requirements that apply to ATSs are much more limited. Because NMS Stock ATSs are exempt from the definition of an ''exchange'' so long as they comply with Regulation ATS, and thus, are not required to register as a national securities exchange pursuant to Section 6 of the Exchange Act, NMS Stock ATSs are not required to provide fair access unless they reach a 5% trading volume threshold in a stock, which almost all NMS Stock ATSs currently do not.[862] As a result, ATSs may treat subscribers differently with respect to the services offered by the ATS unless prohibited by applicable federal securities laws or the rules and regulations thereunder. Furthermore, even if an ATS is not subject to the fair access requirements, inaccurate or misleading disclosures about an ATS's operations could result in violations of the antifraud provisions of the federal securities laws.[863]

In this rulemaking, we are requiring NMS Stock ATSs to identify and explain on Form ATS–N any instances where the ATS differs in how it treats subscribers and the broker-dealer operator so market participants can have additional information to consider when evaluating an ATS. More favorable service or pricing for certain ATS subscribers necessarily implies less favorable service or pricing for others.[864] We believe that it is consistent with the goals of operational transparency for subscribers that receive less favorable service or pricing than other subscribers to know that fact. These subscribers will thus have better information to assess whether they should continue to trade on the ATS despite their different treatment or, if they do continue to trade on the ATS, whether they should alter their behavior in any way to better protect their interests. Part III, Items 2 and 3 of adopted Form ATS–N do not limit an NMS Stock ATS's ability to discriminate among different subscribers. To the extent that an NMS Stock ATS is subject to the fair access rule under Rule 301(b)(5) and treats subscribers differently, the NMS Stock ATS must comply with the requirements of Rule 301(b)(5) with respect to its treatment of subscribers. If an NMS Stock ATS elects to treat subscribers differently by creating types or levels of eligibility and exclusion requirements, Part III, Items 2 and 3 of adopted Form ATS–N require an NMS Stock ATS to ''identify and explain any differences,'' which is similar to the vast majority of items on Form ATS–N.

We are adopting Part III, Item 3 of Form ATS–N with certain language to reduce potential confusion with the application of Rule 301(b)(5) of Regulation ATS. As indicated above, to meet the definition of an ATS, a system

[857] *See* Proposal, *supra* note 2, at 81063. These limitations can result in some subscribers having different levels of functionality or more favorable terms of access than others. For example, in the Commission's experience, some ATSs exclude subscribers that have a high percentage of not responding with firm-up orders after receiving an IOI or conditional order.

[858] *See* SIFMA Letter at 19–20.

[859] *Id.*

[860] *See* Proposal, *supra* note 2, at 81057.

[861] 15 U.S.C. 78f(b)(2).

[862] *See* 17 CFR 242.301(b)(5). *See also supra* notes 72–75 and accompanying text (discussing the fair access requirements of Regulation ATS). For example, an ATS with at least 5% of the average daily volume for any covered security during four of the preceding six months is required to comply with fair access requirements under Rule 301(b)(5) of Regulation ATS, which, among other things, require an ATS to establish written standards for granting access to trading on its system and not unreasonably prohibit or limit any person with respect to access to services offered by the ATS by applying the written standards in an unfair or discriminatory manner. Thus, for example, an ATS that discloses a service to one class of subscribers (or makes the associated functionality available to only one class of subscribers) could not, if it were subject to the fair access requirements, discriminate in this manner unless it adopted written standards and applied them in a fair and non-discriminatory manner.

[863] *See, e.g., In the Matter of ITG Inc. and Alternet Securities Inc.,* Securities Exchange Act Release No. 75672 (Aug. 12, 2015), *https://www.sec.gov/litigation/admin/2015/33-9887.pdf* (order instituting administrative and cease-and-desist proceedings, making findings, and imposing remedial sanctions and a cease-and-desist order); *In the Matter of UBS Securities LLC,* Securities Exchange Act Release No. 74060 (Jan. 15, 2015), *http://www.sec.gov/litigation/admin/2015/33-9697.pdf* (order instituting administrative and cease-and-desist proceedings, making findings, and imposing remedial sanctions and a cease-and-desist order) (''UBS Settlement''); *In the Matter of Liquidnet, Inc.,* Securities Exchange Act Release No. 72339 (Jun. 6, 2014), *http://www.sec.gov/litigation/admin/2014/33-9596.pdf* (order instituting administrative and cease-and-desist proceedings, making findings, and imposing remedial sanctions and a cease-and-desist order); *In the Matter of Pipeline Trading Systems LLC, Fred J. Federspiel, and Alfred R. Berkeley III,* Securities Exchange Act Release No. 9271 (Oct. 24, 2011) (order instituting administrative and cease-and-desist proceedings, making findings, and imposing remedial sanctions and a cease-and-desist order), *https://www.sec.gov/litigation/admin/2011/33-9271.pdf;* 48718 (Oct. 30, 2003), *http://www.sec.gov/litigation/admin/34-48718.htm* (all settling violations of Section 17(a)(2) of the Securities Act, which prohibits, directly or indirectly, in the offer or sale of securities, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.) 15 U.S.C. 77q(a)(2).

[864] *See, e.g.,* UBS Settlement, *supra* note 864 (noting that UBS did not disclose the existence of a sub-penny order type to all ATS subscribers and that ''nearly all of the subscribers'' who received notice of the order type ''were market makers and/or HFT firms'') and at 10 (noting that certain orders—those entered on behalf of UBS clients that paid to use UBS-developed order-routing algorithms—had the ability to avoid executing in the ATS against orders entered by subscribers that UBS had deemed ''non-natural'' and no other subscribers had the ability to use this natural-only crossing restriction) *and* Crossfinder Settlement *supra* note 96 (noting the ATS did not permit all subscribers to receive IOIs from the IOI server).

must not discipline subscribers other than by *exclusion* from trading. [865] The language in Part III, Item 3 of adopted Form ATS–N now uses ''exclude, in whole or in part,'' which is similar to language used in the definition of ATS in Rule 300(a)(2), rather than using the term ''limitations and denials of services,'' as used in Part IV, Item 1(e) of proposed Form ATS–N. We recognize that exclusions from services, in whole or in part, are functionally equivalent to limitations and denials of services; however, we believe that the elimination of these terms from Part III, Item 3 of adopted Form ATS–N should mitigate any potential confusion that we are implicating Rule 301(b)(5) in the request.[866]

4. Hours of Operations

Part IV, Item 2 of proposed Form ATS–N would have required disclosures about the hours of operations. We did not receive comment on Part IV, Item 2 of proposed Form ATS–N. We are adopting the Item with modifications as Part III, Item 4 (''Hours of Operations'') of adopted Form ATS–N, as discussed below. We continue to believe that it is important for market participants and the Commission to understand when an NMS Stock ATS operates and when orders can be entered, including when an NMS Stock ATS will accept orders outside of regular trading hours. Making such information publicly available would enable market participants to more easily compare when trading interest can be entered on NMS stock trading centers. We are modifying the example provided in this Item by replacing references in the Proposal to hours when ''pre-opening or after-hours *trading* occurs'' (emphasis added) with ''hours of operation outside of regular trading hours.'' Our intent is to provide market participants with information about when the NMS Stock ATS is operating, whether trading or performing another function, such as accepting orders, and not simply when *trading* is occurring.[867]

5. Means of Entry

In Part III, Item 6 of proposed Form ATS–N we proposed a similar request to Part IV, Item 4(a) of proposed Form ATS–N that focused on the activities of the broker-dealer operator and its affiliates. Part III, Item 6 of proposed Form ATS–N would have required disclosures about the broker-dealer operator's, or any of its affiliates', use of a SOR(s) (or similar functionality) or an algorithm. Part IV, Item 4(a) of proposed Form ATS–N would have required disclosures about connectivity and order entry to the NMS Stock ATS. We are adopting both requests with modifications and combining them into Part III, Item 5 (''Means of Entry'') of adopted Form ATS–N.

One commenter asserts that the information sought in Part III, Item 6 of proposed Form ATS–N is generally duplicative of the requests in Part III, Item 3 (''Products or Services Offered to Subscribers'') and Part III, Item 5 (''Trading Activities on the NMS Stock ATS'') of proposed Form ATS–N and that the requests in Part III, Item 6 of proposed Form ATS–N (''Smart Order Router ('SOR') (or Similar Functionality of Algorithm)'') should be either consolidated into those requests or eliminated altogether.[868] To reduce redundancy, we are combining the proposed requests for information as explained above.

With regard to Part IV, Item 4(a) of proposed Form ATS–N, one commenter states that the requirement to ''describe'' the means of connectivity by ''other persons'' is potentially overbroad—particularly for ATSs with affiliated broker-dealers or other business units that may connect directly or indirectly to the ATS.[869] This commenter suggests that Part IV, Item 4(a) conflates the identities of market participants (subscribers and other persons) with the means of connectivity. The commenter submits that end users would be better served by a table identifying the various means of connectivity without respect to the identities of who connects and in which fashion.

In response to this comment, Part III, Item 5 of adopted Form ATS–N first requires an NMS Stock ATS to identify and explain the protocol that can be used to directly enter orders and trading interest into the ATS. In a separate subpart to Part III, Item 5 of adopted Form ATS–N, the NMS Stock ATS must identify and explain any other means for entering orders and trading interest into the NMS Stock ATS (*e.g.,* smart order router, algorithm, order management system, sales desk) and indicate whether these means are provided by the broker-dealer operator, either by itself or through a third-party contracting with the broker-dealer operator, or any affiliate of the broker-dealer operator. Both of these subparts are followed, respectively, by a request to identify and explain any differences in the terms and conditions for these means of entry among subscribers and the broker-dealer operator. We believe that these changes will better distinguish subject matter regarding means of entry from subject matter regarding the identity of any party offering access to such means of entry.

We note that subscribers may submit orders or trading interest to the NMS Stock ATS both directly and indirectly.[870] A direct method of sending orders or trading interest to an ATS that trades NMS stocks, for example, may include the use of the FIX Protocol. The FIX Protocol allows subscribers to enter orders or trading interest into the ATS without an intermediary. An example of an indirect method of submitting orders or trading interest to an NMS Stock ATS would include the use of the broker-dealer operator's SOR (or similar functionality) or algorithm. SORs (or similar functionalities) and algorithms are discussed further below. The means of order entry into an ATS (*e.g.,* direct or indirect) could impact the speed in which a subscriber's order is handled and potentially executed and potentially increases the risk of information leakage.[871] We believe that the disclosures regarding the direct or indirect means of order entry would inform subscribers and market participants about the functionalities that its orders and trading interest pass through on their way to the ATS and help them assess any potential advantages that orders sent through the broker-dealer operator may have with respect to other subscribers on the NMS Stock ATS.

We also received several other comments on the request for information in Part III, Item 6 of proposed Form ATS–N, which as

[865] *See* 17 CFR 242.300(a).

[866] *See supra* note 855 and accompanying text. Part III, Item 25 of adopted Form ATS–N (''Fair Access'') is specifically designed to require an NMS Stock ATS, as applicable, to provide information in connection with Rule 301(b)(5) of Regulation ATS. *See also* Section V.D.25.

[867] We are also modifying this request to require the times when trading interest *can be* entered on the ATS, as opposed to identifying the times trading interest *is* entered, so as to more precisely indicate when the ATS is available for the entry of trading interest. We are replacing references to pre-opening and after-hours with the more general reference to hours of operation ''outside of regular trading hours.''

[868] *See* SIFMA Letter at 15.

[869] *See id.* at 22.

[870] *See* Proposal, *supra* note 2, at 81068.

[871] To the extent that a subscriber connects to the NMS Stock ATS by way of a FIX connection and an order sent by that subscriber passes through an intermediate application or functionality on its way to the ATS, the ATS must identify the application or functionality and provide a description of its purpose. In this example, given that the intermediate application or functionality has access to a subscriber's order information, the NMS Stock ATS must take appropriate measures to protect the confidentiality of such information pursuant to Rule 301(b)(10) of Regulation ATS.

explained above, have been incorporated into Part III, Item 5 of adopted Form ATS–N. Many commenters express general support for public disclosures about an NMS Stock ATS's use of the broker-dealer operator's or its affiliates' SORs or algorithms.[872]

Some commenters, however, express concern that Part III, Item 6 of proposed Form ATS–N would require the NMS Stock ATS to publicly disclose proprietary information about its SOR and/or algorithms.[873] Two commenters believe that disclosing the information required under proposed Part III, Item 6 would harm broker-dealers that operate an NMS Stock ATS to the benefit of broker-dealers that do not, who would not be required to disclose what the commenter considers to be proprietary information.[874] Similarly, another commenter believes that it is not necessary to require disclosure of how the SOR or algorithm interacts with any ATS operated by third-party operators; the commenter states that requiring that type of disclosure would impose a disclosure obligation on ATS operators that is not imposed on competing broker-dealers that do not operate an ATS.[875]

We did not intend for the proposed requests regarding SORs (or other functionalities) and algorithms used by the broker-dealer operator or its affiliates to enter orders or trading interest into an NMS Stock ATS to mandate the public disclosure of information that could place the broker-dealer operator or its affiliates at a competitive disadvantage with other broker-dealers. To clarify the scope of the adopted disclosure requirements, Part III, Item 5(c) of adopted Form ATS–N no longer contains the proposed language ''[d]escribe the interaction and coordination.'' Rather, Part III, Item 5(c) only requires the NMS Stock ATS to ''list and explain'' sources of order flow other than those used for direct entry into the ATS, which could include SORs or algorithms offered by the broker-dealer operator. Furthermore, the adopted disclosure requirements only require the NMS Stock ATS to ''list and provide a summary description of the terms and conditions for entering orders or trading interest into the ATS'' through these sources. This revised language is intended to clarify that the NMS Stock ATS need not provide a detailed description of the programming for its SOR (or other similar functionality), algorithms, or other non-direct means for entering order and trading interests that could put the ATS at a competitive disadvantage with competitors. For example, NMS Stock ATSs need not disclose their SORs' routing tables or other information about how the SOR may route orders.[876]

Another commenter states that there are numerous questions in the proposed Form ATS–N that would require ATS operators ''to act as de facto agents of the SEC'' by asking the ATS operators to seek information relating to the operations of certain trading algorithms or SORs that the ATS operators have nothing to do with and may be blocked via firm information barriers from knowing anything about.[877] This commenter opines that ATS operators should properly be asked about how their ATSs work, and that information should be made available to all market participants, but if the Commission wants ATS operators to disclose whether they give preferential treatment to orders from affiliates at the expense of other ATS customers, or if they give preferential treatment to anyone else that isn't an affiliate over other ATS customers, then the Commission should pose that specific question and require a specific answer.[878] This commenter continues to state that anything beyond that which is of regulatory interest to the Commission with respect to how trading algorithms or smart order routers interact with ATSs generally or with other market centers should be asked of the firms that own or operate those algorithms or smart order routers.

We agree that it is outside of the scope of this rulemaking for us to require NMS Stock ATSs to obtain detailed information about how the SORs and algorithms of third parties operate when such information does not pertain to the operation of the ATS. However, if an affiliate of the broker-dealer operator provides a means of entry into the ATS for its customers or its principal orders, we believe that market participants should understand certain details about the interaction between that affiliate and the ATS, which are solicited in Part III, Item 6, to properly evaluate potential conflicts of interest and information leakage on the ATS.

For example, among the advantages and disadvantages that market participants should be able to discern from the disclosure of Part III, Item 5(b) is any differences in the latency of the alternative means for entering orders and trading interest into the NMS Stock ATS. We understand that alternative means of entering orders and trading interest may have different latencies associated with each alternative. For instance, in some cases, a direct connection to the NMS Stock ATS may have reduced latencies as compared to indirect means where orders and trading interest pass through an intermediate functionality. Alternatively, a broker-dealer operator could, for example, configure the NMS Stock ATS to provide reduced latencies for certain means of order entry used by itself or its affiliates, such as through a SOR or algorithm.[879]

We also believe that it is important for subscribers and market participants to understand a means of entry provided by an affiliate, such as the use of an affiliate's SOR, even if it does not provide an advantage to a particular entity. Specifically, we continue to believe that disclosures about a broker-dealer operator's use of its or an affiliate's SOR (or similar functionality) or algorithms to enter orders into the NMS Stock ATS are important to market participants when evaluating NMS Stock ATSs.[880] Today, most broker-dealers that operate an NMS Stock ATS use some form of SOR (or similar functionality) in connection with the NMS Stock ATS.[881] A SOR (or similar functionality) can generally be understood as an automated system used to route orders or trading interest among trading centers, including trading centers other than the NMS Stock ATS operated by the broker-dealer operator, to carry out certain trading instructions or strategies of a broker-dealer.[882] SORs (or similar

[872] *See* Schneiderman Letter at 1; HMA Letter at 17; STA Letter at 5; Liquidnet Letter at 9; KCG Letter at 10.

[873] *See* STA Letter at 5; Liquidnet Letter at 9; STANY Letter at 4; SIFMA Letter at 15.

[874] *See* STA Letter at 5; STANY Letter at 4.

[875] *See* Liquidnet Letter at 9.

[876] For example, a broker-dealer operator that uses its SOR to both enter customer orders into its ATS and send customer orders to external trading venues would not be required to disclose how its SOR is programmed to decide how to route those orders. The NMS Stock ATS would be required to disclose whether the broker-dealer operator's SOR is a means for entering client orders and, if so, indicate whether these means are provided by the broker-dealer operator, either by itself or through a third-party contracting with the broker-dealer operator, or through an affiliate of the broker-dealer operator, and list and provide a summary of the terms and conditions for entering orders or trading interest into the ATS through these means.

[877] *See* Luminex Letter at 3.

[878] *See id.* at 4.

[879] The Commission is not requiring a reporting regime with precise latencies calculated for each means of entry. *But see* Healthy Markets Letter at 19–20 (requesting that the Commission adopt annual reporting requirements regarding the latency of certain data on ATSs). Rather, the response to Item 5(b) would provide market participants with an appreciation of relative differences in the speed of order entry through the alternative means offered.

[880] *See* Proposal, *supra* note 2 at 81052.

[881] *See id.*

[882] *See id.*

functionalities) have become an integral part of the business of many multi-service broker-dealers, given the increase in the speed of trading in today's equity markets and the large number of trading centers, including national securities exchanges, ATSs, and non-ATS trading centers, that have emerged since the adoption of Regulation ATS [883] In addition to the SOR (or similar functionality), orders or trading interest may be entered on an NMS Stock ATS through the use of a trading algorithm, which is a computer assisted trading tool that, for instance, may be used by or on behalf of institutional investors to execute orders that are typically too large to be executed all at once without excessive price impact, and divide the orders into many small orders that are fed into the marketplace over time.[884]

As discussed in the Proposal, we believe that market participants would benefit from increased disclosures about the use of a SOR(s) (or similar functionality) or algorithm(s) by the broker-dealer operator or its affiliates in connection with the NMS Stock ATS because of the potential for information leakage.[885] As also discussed in the Proposal, broker-dealer operators of NMS Stock ATSs or their affiliates may use SORs (or similar functionality) or algorithms in a variety of ways.[886] For example, the broker-dealer operator may use the SOR (or similar functionality) to route their agency and principal orders to different trading venues, or the broker-dealer operator may use the SOR as the primary means of routing subscriber orders or trading interest to or from the NMS Stock ATS. We understand that for some ATSs that currently transact in NMS stocks, the SOR (or similar functionality) or algorithm of the broker-dealer operator or its affiliates is the only means of access (*i.e.,* all orders or trading interest entered on, or removed from, the ATS, must pass through the SOR (or similar functionality) or algorithm). A broker-dealer operator may also use a SOR (or similar functionality) or algorithm to handle all order flow received by the broker-dealer operator (or its affiliates), including both orders that a subscriber has specifically directed to the NMS Stock ATS and orders that may not be sent to the NMS Stock ATS, as well as the broker-dealer's own principal orders and those of its affiliates. For many orders, the SOR (or similar functionality) or algorithm determines whether to route the order to the NMS Stock ATS, another ATS or a non-ATS trading center operated by the broker-dealer operator, another broker-dealer, an unaffiliated NMS Stock ATS, or a national securities exchange. The SOR (or similar functionality) may obtain knowledge of subscriber orders or trading interest that have been routed to the NMS Stock ATS (and may now be resting on the NMS Stock ATS) and subscriber orders that have been routed out of the NMS Stock ATS. Similarly, the system operating an algorithm used by the broker-dealer operator to enter subscriber orders based on the algorithm's trading strategy may obtain information about subscriber orders sent to the NMS Stock ATS. The broker-dealer operator (or its affiliates) programs and operates the SOR (or similar functionality) and/or algorithm(s), unless the broker-dealer operator contracts such functions to a third-party vendor, in which case the broker-dealer operator or third-party vendor may have access to information that passes through the SOR(s) (or similar functionality), algorithm(s) or both. We continue to believe that the high likelihood that a SOR (or similar functionality) or algorithm could access subscribers' confidential trading information necessitates disclosure of certain information to subscribers about the use of a SOR (or similar functionality) or algorithm by the broker-dealer operator or its affiliates to route subscriber orders to or out of the NMS Stock ATS.

A system may consist of various functionalities, mechanisms, or protocols that operate collectively to bring together the orders for securities of multiple buyers and sellers using non-discretionary methods under the criteria of Rule 3b–16(a). In some circumstances, the various functionalities, mechanisms, or protocols may be offered or performed by another business unit of the broker-dealer operator or by a separate entity.[887] As discussed in the Proposal, broker-dealer operators that use a SOR (or similar functionality) or algorithm may operate the SOR (or similar functionality) or algorithm separate and apart from their ATS.[888] However, to the extent that a SOR (or similar functionality) or algorithm performs a function of the NMS Stock ATS to bring together the orders for securities of multiple buyers and sellers using established nondiscretionary methods, the SOR (or similar functionality) or algorithm may be considered part of the NMS Stock ATS.[889] We believe that information provided on Form ATS–N about the use of a SOR (or similar functionality) or algorithm in Part III, Item 5 of adopted Form ATS–N will allow the Commission to better understand the operations and scope of the NMS Stock ATS. That is, the disclosures would assist the Commission in determining if a SOR (or similar functionality) or algorithm is performing a function of the NMS Stock ATS to bring together the orders for securities of multiple buyers and sellers using established nondiscretionary methods, and would consequently be part of the NMS Stock ATS for the purposes of Regulation ATS.

Finally, some commenters suggest reducing the level of detail solicited in the proposed disclosures about the use of SORs (or other functionalities) or algorithms. One commenter suggests reframing the proposed requests regarding the use of SORs (or other functionality) or algorithms to ''yes'' or ''no'' questions or attestations of ''no advantage,'' and in situations where the broker-dealer operators or its affiliates does have an advantage, the NMS Stock ATS should disclose that advantage publicly and in similar detail to what was proposed in Part III, Item 6.[890] Another commenter states that if the Commission does not eliminate or consolidate Part III, Item 6 of proposed Form ATS–N, the commenter

[883] *See id.*

[884] *See id. See also* Staff of the Division of Trading and Markets, Commission, ''Equity Market Structure Literature Review, Part II: High Frequency Trading,'' at 5 (March 18, 2014), *http://www.sec.gov/marketstructure/research/hft_lit_review_march_2014.pdf.*

[885] *See* Proposal, *supra* note 1, at 81052.

[886] *See id.* Broker-dealer operators are likely to vary in their organizational structures. Accordingly, Part III, Item 5 of adopted Form ATS–N will include third parties that contract with the broker-dealer operator and affiliates of the broker-dealer operator that may operate a SOR(s) (or similar functionality) or algorithm to help ensure that SORs (or similar functionalities) or algorithms used with the NMS Stock ATSs are disclosed regardless of whether the SOR(s) (or similar functionality) or algorithm(s) is operated by a third-party contracting with the broker-dealer operator or an affiliate of the broker-dealer operator.

[887] We stated in adopting Regulation ATS that we ''will attribute the activities of a trading facility to a system if that facility is offered by the system directly or indirectly'' and ''if an organization arranges for separate entities to provide different pieces of a trading system, which together meet the definition contained in paragraph (a) of Rule 3b–16, the organization responsible for arranging the collective efforts will be deemed to have established a trading facility.'' *See* Regulation ATS Adopting Release, *supra* note 3, at 70852.

[888] *See* Proposal, *supra* note 2, at 81053.

[889] In this example, if the SOR(s) (or similar functionality) or algorithm(s) were operated by an affiliate of the NMS Stock ATS or an entity unaffiliated with the NMS Stock ATS, the SOR(s) (or similar functionality) or algorithm(s) could still be considered a part of the NMS Stock ATS depending on the facts and circumstances.

[890] *See* STA Letter at 5.

recommends focusing the requests on the controls within the ATS (as opposed to the attributes of the algorithm or SOR) and asking whether the algorithm or SOR possesses information about the ATS by virtue of its affiliation with the ATS that other algorithms or SORs do not possess.[891] Likewise, a commenter states that a more granular requirement than progressive ''yes'' or ''no'' answers for Part III, Item 6 of proposed Form ATS would pose challenges to maintain up-to-date disclosures.[892] This commenter recommends that Form ATS–N disclosures about potential trading activity on the ATS should be formatted as progressive ''yes'' or ''no'' questions and that certain Form ATS–N disclosures may be subject to immediate change without notice.[893]

We do not believe that the requests about the means for entering orders and trading interests on the NMS Stock ATS will be overly burdensome to keep up-to-date on Form ATS–N because the requests do not require a level of detail that would mandate an amendment for every programming change to these services, such as an update to the routing table. Furthermore, to the extent that an NMS Stock ATS is unable to use a means for entering order and trading interests due to unexpected circumstances, such as a power failure or act of nature, the NMS Stock ATS could state in its Form ATS–N information about the alternative procedures that the ATS would use for the entry of orders and trading interests into the NMS Stock ATS under such exigent circumstances; this would obviate the need for an amendment when such alternative procedures are used. Finally, as explained in detail above, we believe that the information solicited in adopted Form ATS–N about the use of SORs (or similar functionalities) or algorithms by the ATS is very important for market participants when evaluating potential conflicts of interest on the ATS, so we do not think it would be helpful to reduce the level of detail required by the adopted form as suggested by these commenters.

6. Connectivity and Co-Location

Part IV, Item 4(b) of proposed Form ATS–N would have required disclosures about co-location. We are adopting Part IV, Item 4(b) of proposed Form ATS–N, with modifications, and renumbering the request as Part III, Item 6 (''Connectivity and Co-location'') of adopted Form ATS–N.

A commenter recommends that the Part IV, Item 4(b) co-location request could be reworded as two ''yes'' or ''no'' questions, provides recommended questions, and states that any further information requested should be as simple and direct as possible without requiring detailed, idiosyncratic information in the form.[894] In response to this comment, we have circumscribed the description of terms and conditions of co-location services and are requiring ''a summary'' of the terms and conditions for co-location and related services, including the speed and connection (*e.g.,* fiber, copper) options offered. We believe a summary would provide market participants with the necessary information to consider and evaluate the co-location and related services the NMS Stock ATS is offering without requiring overly burdensome disclosure. We do not believe that solely asking ''yes'' or ''no'' questions (with no obligation to provide additional detail) would provide market participants with sufficient information to evaluate the co-location services the NMS Stock ATS is offering. For example, a price-sensitive market participant may not want to participate on an ATS that offers co-located subscribers certain, more expensive, high-speed connectivity options that the market participant may perceive as providing an advantage to other subscribers that are willing to pay for the service. Such information would not be disclosed by ''yes'' or ''no'' questions.

We are reformatting the question regarding connectivity and co-location in Part III, Item 6 of adopted Form ATS–N to provide two sub-items that relate to speed of communication with the ATS, which were requested in Part IV, Item 4(b) of proposed Form ATS–N. As adopted, Part III, Item 6(c) of Form ATS–N requires an NMS Stock ATS to indicate whether it provides any other means besides co-location and related services described in the Item to increase the speed of communication with the ATS, and if so, to explain the means and offer a summary of the terms and conditions for its use.[895] We separated the proposed request for information related to means to increase the speed of communication with the ATS into its own separate sub-item (*i.e.,* Part III, Item 6(c)) to improve readability, make the information easier to locate, and facilitate comparisons across NMS Stock ATSs.[896] We believe the request is necessary to account for advances in technology.

We also are adopting a request in Part III, Item 6(e) for the NMS Stock ATS to indicate whether it offers any means to reduce the speed of communication with the ATS and provide a summary of the terms and conditions for its use. As indicated by commenters,[897] latency is an important feature of equity market trading, and market participants are interested in understanding the functionalities employed by NMS Stock ATSs to influence it. There have been recent developments in equity market structure for trading centers to employ mechanisms to increase the latency or the length of time for orders, trading interest, or other information to travel from a user to the system.[898] Part IV, Item 7(a) of proposed Form ATS–N required an NMS Stock ATS to disclose information about the means or facilities used by the ATS to bring together the orders of multiple buyers and sellers, as well as the established, non-discretionary methods that dictate the terms of trading on the ATS. To the extent that an NMS Stock ATS applied a functionality or means for the ATS or a subscriber to decrease speed of communications with the NMS Stock ATS, the ATS would have been required to disclose that functionality in response to Part IV, Item 7(a) of proposed Form ATS–N. In adopted

[891] *See* SIFMA Letter at 15. The commenter also states that it would like the Commission to define ''Person'' as used in proposed Part III, Item 6(b). *See id.* The term ''Person'' is defined in Form ATS–N. *See supra* Section V.A.2.

[892] *See* KCG Letter at 10.

[893] *See id.*

[894] The commenter suggests the following two questions in place of proposed Item 4(b): (i) Do you offer co-location to the ATS matching engine, and (ii) do all clients have the same access to co-location services? *See* SIFMA Letter at 22.

[895] Question 347 of the Proposal asks if Part IV, Item 4(b) of Form ATS–N captures the information that is most relevant to understanding the operations of the NMS Stock ATS related to co-location services or any other means by which any subscriber or other persons may enhance the speed by which to send or receive orders, trading interest, or messages to or from the NMS Stock ATS. *See* Proposal, *supra* note 2, at 81069.

[896] *See supra* note 839. Part IV, Item 4(b) of proposed Form ATS–N would have required an NMS Stock ATS to describe ''any other means by which any subscriber or other persons may enhance the speed by which to send or receive orders, trading interest, or messages to or from the NMS Stock ATS.'' Part III, 6(c) of adopted Form ATS–N would require similar information as Part IV, Item 4(b) of proposed Form ATS–N. The language revisions are intended to simplify and improve readability of the request.

[897] *See infra* note 1037 and accompanying text.

[898] *See* In the Matter of the Application of Investors' Exchange, LLC for Registration as a National Securities Exchange, 81 FR 41142, 41154 (June 23, 2016) (explaining the use of the IEX coil and an additional distance to the IEX trading system that results in an equivalent 350 microseconds of latency) (''IEX Exchange Registration''); Securities Exchange Act Release No. Release No. 80700 (May 16, 2017), 82 FR 23381 (May 22, 2017) (Order Approving Proposed Rule Change Amending Rules 7.29E and 1.1E to Provide for a Delay Mechanism) (approving rule change on NYSE MKT LLC to provide for an intentional delay of 350 microseconds of latency to inbound and outbound order messages).

Form ATS–N, because of commenters' concerns regarding communication latencies with NMS Stock ATSs and the impact they may have on how the subscriber's orders and trading interest are executed on the NMS Stock ATS, we are making this request a separate subpart for market participants to more readily find information related to how a subscriber communicates with the NMS Stock ATS. For Part III, Items 6(c) and 6(e), the Item requires a summary of the terms and conditions of the services offered if applicable. We believe a summary would provide subscribers and market participants with relevant information about the NMS Stock ATS to consider and evaluate its services without requiring overly burdensome disclosure.

We are also providing examples in Part III, Item 6 of adopted Form ATS–N to clarify the types of services and connection options related to co-location that an NMS Stock ATS may offer. We believe that providing these examples will help NMS Stock ATSs better understand the type of information that would be responsive to the Form ATS–N requests.

We are providing further guidance as to what is required of NMS Stock ATSs when disclosing any differences in the terms and conditions among subscribers and the broker-dealer operator related to co-location and related services. Subscribers of co-location services can experience faster or slower connection speeds to an NMS Stock ATS depending on factors such as the distance of the customer servers from the matching engine, or the use or non-use of ''coiling'' to its matching engine to equal connection speeds among subscribers, among others. Such differences in connection speed or latency would be required to be disclosed under Part III, Item 6(a).

7. Order Types and Attributes

Part IV, Item 3(a) of proposed Form ATS–N would have required disclosures about order types and modifiers.[899] We received comments on Part IV, Item 3 of proposed Form ATS–N expressing general support for the Commission's aim to provide disclosure for order types that could benefit market participants' understanding how their orders may be handled by the NMS Stock ATS and that could help optimize order routing practices by market participants.[900]

We continue to believe that all market participants should have full information about the operations of order types available on an NMS Stock ATS for market participants to comprehensively understand how their orders and trading interest will be handled and executed on the ATS. Accordingly, we are adopting Part IV, Item 3(a) of proposed Form ATS–N with certain modifications described below, naming the Item ''Order Types and Attributes,'' and relocating the request as Part III, Item 7 of adopted Form ATS–N. Order types are a primary means by which users of an NMS Stock ATS communicate their instructions for handling their trading interest to the NMS Stock ATS. Moreover, order types can be complex and operate in various ways. Given the importance of order types and their complex nature, we are requiring NMS Stock ATSs to disclose the information called for by Part III, Item 7 on adopted Form ATS–N.

One commenter suggests that Part IV, Item 3 of proposed Form ATS–N would require excessive information that would be unnecessarily burdensome and duplicative, and offers several suggestions on how to streamline the Item, including defining a set of order type terminology for completing the form, allowing a table template for responses, and suggested ''yes'' or ''no'' questions.[901]

We do not believe that it would be practical to define or standardize order types because the operation and naming of order types is not consistent across NMS Stock ATSs or trading centers, and broadly similar order types can have many permutations.[902] We believe that Part III, Item 7 of adopted Form ATS–N provides NMS Stock ATSs with necessary flexibility to describe the order types that the ATS offers subscribers while still providing the necessary information for market participants to understand how an order type will function.

For similar reasons, we are declining to adopt the commenter's suggestions that Part IV, Item 3(a)(vi) of proposed Form ATS–N could be simplified to a ''yes'' or ''no'' question asking whether each order type is available to all subscribers. This Item specifically relates to whether every order type is available across all forms of connectivity, not to all subscribers.[903] A ''yes'' or ''no'' format would not allow an NMS Stock ATS to explain any differences in order types available across all forms of connectivity, if any.

An NMS Stock ATS can choose a format that it finds best to provide market participants with complete and comprehensible information, such as, for instance, a table with the relevant characteristics of each order type.

We have made several edits to remove duplicative requirements, improve readability and specificity, and remove unnecessary language.[904] We are removing references to the ranking of order types and time in force instructions to avoid duplication. We are revising the language of the Item to require information on order types that ''can be'' entered on the NMS Stock ATS, because we intended for NMS Stock ATSs to disclose to market participants the services that the ATS offers. We are also removing superfluous language that is already captured by the instruction to ''identify and explain.''[905] We are also removing the language from proposed Part IV, Item 3(b) requiring the NMS Stock ATS to describe any differences among subscribers in the ''availability of order types'' because the request to describe any differences in the terms and conditions of order types among subscribers and the broker-dealer operator in Part III, Item 7(b) encompasses any differences in availability.

We are adding in Part III, Item 7(a)(i) of adopted Form ATS–N that the NMS Stock ATS provide not only whether an order type can receive a new time stamp, but also, when, so that market

[899] Part IV, Item 3(c) of proposed Form ATS–N would have required an NMS Stock ATS to describe any requirements and handling procedures for minimum order sizes, odd-lot orders, or mixed-lot orders. The NMS Stock ATS would also have been required to describe any differences if the requirements and handling procedures for minimum order sizes, odd-lot orders, or mixed-lot orders were not the same for all subscribers and persons. As discussed further below, minimum order sizes, odd-lot orders, and mixed-lot orders are addressed in Part III, Item 8 of adopted Form ATS–N.

[900] *See* ICI Letter at 7 (stating that disclosure would end the practice of some ATSs of disclosing the existence of certain order types to only favored subscribers and provide long term benefits by allowing funds to optimize their order routing practices); SIFMA Letter at 6 (suggesting the proposed Item requires useful information for market participants, whose investments may be traded indirectly on ATSs via their third-party broker-dealers). *See also* Citadel Letter at 1; Better Markets Letter at 5; Morgan Stanley Letter at 1; Markit Letter at 4; KCG Letter at 7.

[901] *See* SIFMA Letter at 20–21.

[902] *See also* Consolidated Audit Trail, Final Rule, Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45742 (August 1, 2012) (declining under Rule 613 to enumerate specific order types or prescribing the format or nature of how this information would be represented to allow flexibility for the future when new order types may be introduced and added).

[903] *See supra* note 901.

[904] *See* SIFMA Letter at 20–21.

[905] Specifically, we are removing language that NMS Stock ATS describe the ''characteristics, operations, and how [order types] are handled on the NMS Stock ATS.'' As indicated in the text, we do not view this as a substantive change, and the information requested using the deleted language is captured by the instruction to identify and explain each order type.

participants can better understand how their orders or trading interest will be handled by the NMS Stock ATS. We are also removing the prompt in the proposed Item that would have required information on whether an order type can be used with any routing services offered because these services are usually provided by the broker-dealer operator.

Finally, the Commission is providing further guidance with regard to the prompt in Item 7(a)(vii) that the NMS Stock ATS describe the circumstances under which orders types may be removed from the NMS Stock ATS as the information required relates to the disclosures required under Part III, Item 16 (Routing). While we are not requiring broker-dealers to disclose information about their handling of customer orders when such orders are not routed to the NMS Stock ATS, we believe that market participants should be aware of how a subscriber order or trading interest that has been received by and rests in the NMS Stock ATS can be subsequently removed from the ATS. Such circumstances may be as simple as the broker-dealer cancelling a customer order that it is handling from the ATS, or such circumstances could include the broker-dealer operator removing a third-party subscriber's order at its own discretion. To the extent that this information about removal of orders overlaps with the disclosures regarding routing of orders under Part III, Item 16, the NMS Stock ATS need only provide the information in Part III, Item 7 of adopted Form ATS–N. Additionally, the Part III, Item 7 requests regarding removal of orders and trading interest from the ATS will not require the broker-dealer operator to publicly disclose its routing table or other information about where the order is sent once it is removed from the NMS Stock ATS.

8. Order Sizes

Part IV, Item 3(c) of proposed Form ATS–N would have required disclosures about order size requirements and odd-lot orders. We did not receive any comments directed at Part IV, Item 3(c) of proposed Form ATS–N; however, in response to commenters' general request for the Commission to use more ''yes'' or ''no'' questions to navigate information and facilitate comparisons, we are relocating Part IV, Item 3(c) of proposed Form ATS–N to Part III, Item 8 (''Order Sizes'') of adopted Form ATS–N and adopting a ''yes'' or ''no'' format.[906] In addition, we are requiring that the NMS Stock ATS identify and explain any differences in the treatment of subscribers and the broker-dealer operator, as applicable, in separate sub-items 8(b), 8(d), and 8(f), respectively.

In addition, we are adding to Part III, Item 8(a) of adopted Form ATS–N a request for the NMS Stock ATS to provide information about any maximum order or trading interest size requirements.[907] Adding a request regarding a cap or maximum limit on an order size in the Part III, Item 8 of adopted Form ATS–N would help streamline an NMS Stock ATS's response to Form ATS–N and help market participants understand, the size requirements for trading on the ATS.

Furthermore, we are providing examples in a parenthetical indicating that ATSs state whether or not odd-lot and mix-lot orders and trading interest are treated the same as round lot orders and trading interest. Information regarding the treatment of odd-lot and mixed-lot orders and trading interest compared to round lot orders and trading interest could influence whether market participants submit odd-lot or mixed-lot orders to the NMS Stock ATS.

9. Conditional Order and Indications of Interest

Part IV, Item 3(d) of proposed Form ATS–N would have required disclosures about conditional orders and indications of interest. We received one comment regarding Part IV, Item 3(d) of proposed Form ATS–N contending that providing additional disclosure regarding order types and handling (including the use of IOIs) is useful information for subscribers and the investing public, whose investments may be traded indirectly on ATS platforms via their third-party broker-dealers.[908]

We are adopting Part IV, Item 3(d) of proposed Form ATS–N with modification and relocating the request to Part III, Item 9 (''Conditional Orders and Indications of Interest'') of adopted Form ATS–N. Part III, Item 9 of adopted Form ATS–N is designed to provide specific information about the use of messages on the NMS Stock ATS, in particular, IOIs, actionable IOIs, conditional orders, and similar functionalities.[909] As stated in the Proposal,[910] NMS Stock ATSs use IOIs to convey trading interest available on those trading centers. Some NMS Stock ATSs also transmit ''actionable'' IOIs to selected market participants for the purpose of attracting contra-side order flow to the ATS. In general, an actionable IOI is an IOI containing enough information to effectively alert the recipient about the details of the NMS Stock ATS's trading interest in a security.[911] While an actionable IOI may not specify the price and/or size of the trading interest, the practical context in which it is submitted implicitly or explicitly conveys information about the symbol, side (buy or sell), size (minimum of a round lot of trading interest), and price (at or better than the NBBO, depending on the side of the order).[912]

Conditional orders are also messages indicating trading interest on a trading venue, and conditional orders generally function in a similar manner to IOIs. A conditional order may contain the same attributes as other order types when a subscriber enters it onto the trading venue (*e.g.,* side, price, and size), but NMS Stock ATSs will generally not transmit those details to other subscribers or market participants.[913] Rather, the NMS Stock ATS will tentatively match the conditional order with contra side interest and then alert the subscriber that entered the conditional order of the potential match. That subscriber may then either accept or decline the execution (*i.e.,* ''firm up'' the conditional order).[914] As discussed in the Proposal, NMS Stock ATSs may only permit conditional orders to execute against other conditional orders, but some ATSs allow conditional orders to interact with other order types.[915] Understanding the manner in which NMS Stock ATSs use messages that convey trading interest, such as IOIs, actionable IOIs, conditional orders, and similar functionalities could be useful to market participants in analyzing the potential execution of a subscriber's trading interest.

In response to comment,[916] we are removing the word ''circumstances''

[906] *See supra* note 839.

[907] As proposed, Part IV, Item 3(b) requested information about minimum order size requirements. Also, Part IV, Item 7(b) of proposed Form ATS–N would have required NMS Stock ATS to disclose information about the ''established, non-discretionary methods that dictate the terms of trading . . . on the NMS Stock ATS.'' To the extent that an NMS Stock ATS established a cap or a limit on the size of orders or trading interest that the ATS would accept from subscribers, this cap or limit would be a procedure governing the trading on the ATS and would have been responsive to proposed Form ATS–N (specifically, proposed Part IV, Item 7(b)).

[908] *See* SIFMA Letter at 6.

[909] *See* Proposal, *supra* note 1, at 81067 for additional discussion of IOIs, actionable IOIs, conditional orders, and similar functionalities.

[910] *See* Proposal, *supra* note 2, at 81067.

[911] *See id.*

[912] *See id.*

[913] *See id.*

[914] *See id.*

[915] *See id.*

[916] *See, e.g.,* SIFMA Letter at 9; BIDS Letter at 4; STA Letter at 4.

from the request and adding more detail to the request to aid NMS Stock ATSs in responding.[917] The Commission is adding ''price or size minimums'' as examples of information that could be contained in the messages and ''order management system, smart order router and FIX'' to illustrate the types of mechanisms that could transmit messages, such as IOIs and conditional orders. In the Commission's experience, the information that NMS Stock ATS include in IOIs and conditional orders can vary, including different combinations of symbol, size and/or price, and we believe that this information would be relevant to market participants when understanding what information about their orders are communicated to others and assessing potential information leakage. Second, we are adding a requirement that the NMS Stock ATS identify the type of persons that receive the message[918] (*e.g.,* subscriber, trading center), and the possible responses to conditional orders or IOIs (*e.g.,* submission to firm-up conditional orders). These two factors could help market participants understand when a message, such as a conditional order or IOI, would result in an execution and provide market participants important information to understand how the market participant can use the ATS, who will see its trading interest, how its trading interest will be executed, and the potential for information leakage.[919] Finally, we are including ''response time parameters, interaction and matching'' as examples of topics to discuss when disclosing the conditions under which the conditional order or IOI might result in an execution in the ATS.

10. Opening and Reopening

Part IV, Item 9(a) of proposed Form ATS–N would have required disclosures about opening and reopening processes. We received one comment on Part IV, Item 9(a) of proposed Form ATS–N stating that Part IV of proposed Form ATS–N, including requests relating to the opening and reopening procedures, is essential for investors or routing brokers who are seeking to understand how the ATS works.[920] We are adopting Part IV, Item 9(a) of proposed Form ATS–N with certain modifications, as described below in this section, and relocating the request as Part III, Item 10 (''Opening and Reopening'') of adopted Form ATS–N. The Commission is separating proposed Part IV, Items 9(b) (''Closing Process'') and 9(c) (''After-Hours Trading'') of proposed Form ATS–N, which were previously part of the same Item as Opening and Reopening Processes (Part IV, Item 9(a)), into separate items on the adopted Form ATS–N to facilitate locating information and making comparisons across NMS Stock ATSs.[921]

As stated in the Proposal,[922] Part III, Item 10 of adopted Form ATS–N is designed to inform market participants about whether an NMS Stock ATS uses any special procedures to match orders at the opening, or to set a single opening or reopening price to, for example, maximize liquidity and accurately reflect market conditions at the opening or reopening of trading. The disclosures under this Item would allow for comparisons between NMS Stock ATSs and national securities exchanges, which conduct opening and closing auctions and permit members to enter orders specially designated to execute on the opening. We continue to believe that market participants would likely want to know about any special opening or reopening processes employed by an NMS Stock ATS, including if any order types participate in an NMS Stock ATS's opening or reopening processes.

Furthermore, to provide additional guidance about what needs to be included in the description of the opening and reopening process, we are adding to Part III, Item 10 of adopted Form ATS–N that the ATS describe: When and how such orders and trading interest are ''priced [and] prioritized'' and ''any order types allowed'' during the opening and reopening processes. Specifically requesting information about when orders and trading interest will be priced and prioritized during the opening or reopening of the ATS will provide market participants with the information they need to plan and execute their trading strategies during these periods. The Item would also, for example, require disclosure of any procedures to match orders to set a single opening or reopening price to maximize liquidity and accurately reflect market conditions at the opening or reopening of trading.[923] We believe most participants consider important the rules and procedures surrounding the pricing and priority of orders and trading interest, and the order types allowed because these rules and procedures can directly impact their execution price.

In the Proposal, we would have required the information related to the pricing and priority of orders during the opening and reopening processes and any order types allowed during that time period under Part IV, Items 9(a) (''Opening and Reopening Process''), 7(b) (''Order Interaction Rules'') and Item 3 (''Types of Orders''). Part IV, Item 9(a) of proposed Form ATS–N required, in part, a description of ''how orders or other trading interest are matched and executed'' during an opening or reopening. In order to fully describe the matching and execution of orders during an opening or reopening in response to the Item, the NMS Stock ATS would necessarily have needed to disclose the pricing, priority, and order types allowed. Moreover, Part IV, Item 7(b) of proposed Form ATS requested information about the established non-discretionary methods that dictate terms of trading among multiple buyers and sellers, which included rules and procedures for priority and pricing. In addition, Part IV, Item 3 of proposed Form ATS–N would have required disclosure of ''any types of orders that are entered on the NMS Stock,'' which would have included any order types during an opening or reopening.

We are adding a specific question about the rules and procedures for the opening and reopening process in Part III, Item 10 of adopted Form ATS–N to help streamline responses to Form ATS–N requests and help market participants locate and understand information about the opening and reopening process on the ATS.[924] In Part III, Item 10, we are formatting the information requested, which parallels the Item in the Proposal, into three subparts (adopted Items 10(a), 10(c) and 10(e)) and adding a ''yes'' or ''no'' question to Item 10(e).

11. Trading Services, Facilities and Rules

Part IV, Item 7 of proposed Form ATS–N would have required disclosures regarding the trading services of the

[917] We also believe the more explicit requests address commenters' concerns that prompts like ''describe the circumstances'' would not allow NMS Stock ATSs to know whether the disclosure ''meets the Commission's expectation until after the Form ATS–N itself or an amendment is filed.'' *See, e.g.,* SIFMA Letter at 19.

[918] We are requiring the ''type of Persons'' that receives the message in this Item and are not requesting the names of individual recipients in the case of natural persons.

[919] The information required by the prompts to disclose the type of recipient and possible responses to conditional orders or IOIs would have been required in Part III, Item 3(d) of proposed Form ATS–N in response to the request for ''circumstances in which [the messages] may result in an execution on the NMS Stock ATS.'' Because commenters requested more specificity, we are making more explicit the information required in Part III, Item 9(a) of adopted Form ATS–N. *See supra* note 917.

[920] *See* HMA Letter at 18.

[921] *See supra* note 839.

[922] *See* Proposal, *supra* note 2, at 81077.

[923] *See* Proposal, *supra* note 2, at 81077 n. 485, 486 and accompanying text.

[924] *See supra* note 839.

NMS Stock ATS, including matching methodology, order interaction rules, and other trading procedures. We are adopting Part IV, Item 7, with modifications, as Part III, Item 11 of adopted Form ATS–N and renaming it ''Trading Services, Facilities, and Rules.'' Part III, Item 11 is designed to inform market participants and the Commission about the type of marketplace the NMS Stock ATS operates (*e.g.,* crossing system, auction market, limit order matching book). In addition, Part III, Item 11 is designed to solicit disclosures about the facilities, functionalities, and mechanisms that the NMS Stock ATS uses to match the orders and trading interest of counterparties and facilitate transactions on the ATS. As discussed in the Regulation ATS Adopting Release and restated in the Proposal,[925] we explained that an ATS brings together orders when orders entered into the system for a given security have the opportunity to interact with other orders entered into the system for the same security.[926] An ATS can bring together orders through various methods. For instance, a system brings together orders if it displays, or otherwise represents, trading interests entered on the system, such as a consolidated quote screen, to system users.[927] A system also brings together orders if it receives subscribers' orders centrally for future processing and execution, such as part of a limit order matching book that allows subscribers to display buy and sell orders in particular securities and to obtain execution against matching orders contemporaneously entered or stored in the system.[928] As explained above, to qualify for the Rule 3a1–1(a)(2) exemption from the statutory definition of ''exchange,'' an ATS must, among other things, bring together the orders of *multiple buyers and sellers.*[929]

As discussed in the Proposal, ATSs that trade NMS stocks may offer subscribers various types of trading mechanisms.[930] For example, many ATSs bring together multiple buyers and sellers using limit order matching systems. Other ATSs use crossing mechanisms that allow participants to enter unpriced orders to buy and sell securities, with the ATS's system crossing orders at specified times at a price derived from another market.[931] Some ATSs use an auction mechanism that matches multiple buyers and sellers by first pausing execution in a certain security for a set amount of time, during which the ATS's system seeks out and/or concentrates liquidity for the auction; after the trading pause, orders will execute at either a single auction price or according to the priority rules for the auction's execution. Furthermore, some ATSs use a blotter scraping functionality, which may inform the ATS's system about the orders placed on a participant's order management system, but not yet entered into the ATS; the ATS or broker-dealer operator oftentimes can automatically generate those orders and enter them into the ATS on behalf of the subscriber, in accordance with the relevant terms and conditions, when certain contra-side trading interest exists in the ATS.

We continue to believe that it would be useful to market participants to be availed information about the trading facilities, functionalities, and mechanisms offered by an NMS Stock ATS to evaluate whether the operations of the NMS Stock ATS comports with their trading and investment strategies. Part III, Item 11(a) of adopted Form ATS–N is consistent with Part IV, Item 7(a) of proposed Form ATS–N; however, we are limiting the request to require NMS Stock ATSs to provide only a summary of the structure of the NMS Stock ATS marketplace.[932] The summary is designed to provide market participants with a brief overview of the type of market the ATS operates, such as a limit order book, auction market, or crossing system, in a more concise manner. This Item requires more detailed responses when explaining the means and facilities for bringing together the orders of multiple buyers and sellers on the NMS Stock ATS. We also separated the requested information on whether the means and facilities are the same for all subscribers and the broker-dealer operator into subpart Part III, 11(b) and formatted the subpart request as a ''yes'' or ''no'' question in response to comment.[933]

Part III, Item 11(c) is designed to inform market participants about the rules and procedures used to determine how orders and trading interest may interact on an NMS Stock ATS upon being entered into the system.[934] We previously explained in the Regulation ATS Adopting Release that use of established, non-discretionary methods could include operation of a trading facility or the setting of rules governing subscribers' trading.[935] For example, we consider the use of an algorithm by an electronic trading system, which sets trading procedures and priorities, to be a trading facility that uses established, non-discretionary methods.[936] Similarly, the Commission has previously stated that rules imposing execution priorities, such as time and price priority rules, would be ''established, non-discretionary methods.''[937]

As discussed in the Proposal, NMS Stocks ATSs may employ various terms and conditions under which orders interact and match.[938] Some NMS Stock ATSs may offer price-time priority to determine how to match orders (potentially with various exceptions), while other NMS Stock ATSs may offer midpoint-only matching with time priority. Some NMS Stock ATSs might also take into account other factors to determine priority. For example, an NMS Stock ATS may assign either a lower or higher priority to an order entered by a subscriber in a certain class (*e.g.,* orders of proprietary traders or retail investors) or routed from a particular source (*e.g.,* orders routed by the broker-dealer operator's SOR (or similar functionality) or algorithm) when compared to an equally priced order entered by a different subscriber or via a different source. Furthermore, in the Commission's experience, an NMS Stock ATS might elect to apply

[925] *See* Proposal, *supra* note 2, at 81073.

[926] *See* Regulation ATS Adopting Release, *supra* note 3, at 70849.

[927] *See id.*

[928] *See id.*

[929] *See id.* In the Regulation ATS Adopting Release, systems in which there is only a single seller, such as systems that permit issuers to sell their own securities to investors, would not be included within Rule 3b–16. *See* Regulation ATS Adopting Release, *supra* note 3, at 70849. The Commission emphasized in the Regulation ATS Adopting Release that the mere interpositioning of a designated counterparty as riskless principal for settlement purposes after the purchasing and selling counterparties to a trade have been matched would not, by itself, mean that the system does not have multiple buyers and sellers. *See id.*

[930] *See* Proposal, *supra* note 2, at 81073.

[931] *See* Regulation ATS Adopting Release, *supra* note 3, at 70849 n.37.

[932] In the Proposal under Part IV, Item 7(a), we proposed that the NMS Stock ATS describe the means or facilities used by the NMS Stock ATS to bring together the orders of multiple buyers and sellers, including ''the structure of the market.''

[933] *See supra* note 839.

[934] One commenter states that, when discussing electronic trading platforms for corporate bonds, ''as the Commission knows, a bond trading platform that utilizes an RFQ [request for quote] trading protocol is not an ATS.'' *See* MarketAxess Letter at 2. Whether a platform that trades securities is an ATS depends on whether that platform meets the definition of an ''exchange'' pursuant to the criteria of Exchange Act Rule 3b–16(a) which requires a facts and circumstances analysis. A platform that uses an RFQ protocol to trade securities would be subject to the Rule 3b–16(a) analysis, and depending on its design, activities, and rules, an RFQ platform may or may not meet the criteria of Rule 3b–16(a).

[935] *See* Regulation ATS Adopting Release, *supra* note 3, at 70851–52.

[936] *See id.* at 70851.

[937] *See id.* at 70852.

[938] *See* Proposal, *supra* note 2, at 81074.

different priority rules for matching conditional orders than it does for matching other order types. Part III, Item 11 of adopted Form ATS–N will allow the Commission to better evaluate whether the entity that filed a proposed Form ATS–N meets the criteria of Exchange Act Rule 3b–16 and the definition of an NMS Stock ATS.

In Part III, Item 11(c) of adopted Form ATS–N, we are combining the requests in Part IV, Items 7(b) (''Order Interaction Rules'') and 7(c) (''Other Trading Procedures'') of proposed Form ATS–N. Part IV, Items 7(b) and 7(c) of proposed Form ATS–N were intended to solicit information about the ATS's established non-discretionary methods that dictate the terms of trading among the multiple buyers and sellers entering orders and trading interest. In addition to a trading facility, non-discretionary methods include rules and procedures.[939] Adopted Part III, Item 11(c) combines the requests in Part IV, Items 7(b) and 7(c) of proposed Form ATS–N and is designed to communicate the rules and procedures that govern how their orders will be executed on the NMS Stock ATS. We are revising the language in adopted Item 11(c) to recognize this overlap by requiring the NMS Stock ATS to ''explain the established, non-discretionary rules and procedures of the NMS Stock ATS, including order interaction rules,'' which requires the same information as the proposed subparts. As another component of an NMS Stock ATS's non-discretionary methods, we are moving the trading procedures in proposed Item 7(c) into adopted Item 11(c) and including the examples of the trading procedures of an NMS Stock ATS (*e.g.,* price protection mechanisms, shorts sales, locked-cross markets) into adopted Item 11(c) as well.

A description of the ''established non-discretionary rules and procedures'' of the NMS Stock ATS is a principal requirement of Item 11(c) and we are requiring that any differences among subscribers and the broker-dealer operator related to these methods be identified and explained. This request was moved to Part III, 11(d) and formatted as a ''yes'' or ''no'' question in response to comment.[940]

We seek to provide additional guidance regarding the procedures that need to be discussed in this Item.[941] Specifically, in response to various initiatives (*e.g.,* pilot programs, national market system plans, rules and regulations), NMS Stock ATSs have designed and/or modified the design of their systems and trading procedures to comply with these initiatives, including, for example, Regulation NMS,[942] and more recently, the Tick Size Pilot.[943] To be fully informed about the trading procedures of the NMS Stock ATS, we believe that market participants would need to understand the operations and procedures that NMS Stock ATSs adopt in response to these initiatives as the responses could affect the decision of a market participant to use the NMS Stock ATS.[944] To the extent an NMS Stock ATS has designed trading procedures to operate consistently with Commission initiatives, the NMS Stock ATS would need to disclose these procedures in response to this Item (Part III, Item 11 of adopted Form ATS–N). Furthermore, this information required on trading procedures resulting from Commission initiatives was encompassed under Part IV, Items 7(b) and 7(c) of proposed Form ATS–N, which proposed requiring comprehensive information on order interaction rules and trading procedures, including all of the established non-discretionary methods that dictate the terms of trading on the NMS Stock ATS.

Another commenter suggests that disclosure of certain additional trading services should be required, specifically whether the NMS Stock ATS employs technology designed to detect and deter price manipulation and other disruptive trading practices, *i.e.,* anti-gaming technology, and if so, to include a description of this technology in the form.[945] Another commenter states that anti-gaming technology and other subscriber-related safeguards are among the core attributes of ATSs that are of particular importance to buy-side institutions.[946] We, however, are not adopting a request related to anti-gaming technology and subscriber-related safeguards because such descriptions made in a publicly available document could serve to undermine those safeguards by disclosing information that makes evading those safeguards easier.

One commenter states that Part IV, Item 7 of proposed Form ATS–N had ''the potential to become quite technical and granular'' and thus perhaps of limited use to end-readers, and suggests the Commission consider ''requesting

[939] The Commission recognized the intersection of ''established, non-discretionary methods that dictate the terms of trading'' and ''trading procedures'' in the Regulation ATS Adopting Release when it stated that the second essential element of what constitutes an exchange is that trading on the exchange takes place according to ''established, non-discretionary rules or procedures.'' *See* Regulation ATS Adopting Release, *supra* note 3, at 70900. The Commission is adopting this formulation in Part III, Item 11(c), which we believe encompasses the information proposed to be required in Part IV, Items 7(b) and 7(c) of proposed Form ATS–N.

[940] *See supra* note 839.

[941] *See* SIFMA Letter at 24 (stating item as proposed could result in discursive disclosures of limited use to market participants).

[942] For example, Rule 611 of Regulation NMS, which requires a trading center to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center, subject to certain exceptions. *See* 17 CFR 242.611.

[943] *See* Securities Exchange Act Release No. Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (File No. 4–657) (Order Approving the National Market System Plan to Implement a Tick Size Pilot Program [(''Tick Size Pilot'')] by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc., as Modified by the Commission, For a Two-Year Period) (modifying the definition of ''block-size'' for purposes of the Tick Size Pilot to an order (1) of at least 5,000 shares or (2) with a market value of at least $100,000).

[944] As discussed in the Proposal, NMS Stock ATSs apply various trading procedures to determine an execution price based on the circumstances of the match. *See* Proposal, *supra* note 2, at 81074. For example, an ATS may price an execution of a midpoint pegged order with a limit or market order at the midpoint of the NBBO. An ATS executing a match of two limit orders, or a limit and market order, might price the execution at or within the NBBO, with the possibility of offering the limit order(s) price improvement. On the other hand, an ATS that operates a block crossing network, with specialized size discovery mechanisms, might calculate a volume-weighted average price after the final size of the execution has been determined.

In the Commission's experience, NMS Stock ATSs have trading procedures for executing orders that include price protections to re-price orders or prevent their execution under certain circumstances, such as Limit Up Limit Down price bands pursuant to the National Market System Plan to Address Extraordinary Market Volatility (''LULD Plan''), or short sales to be executed on its system. Thus, an NMS Stock ATS would be required to configure its system to comply with federal securities laws related to short sales, including Regulation SHO, rules and procedures governing and/or precluding the execution of orders in a locked or crossed market, or procedures governing the handling of execution errors, such as the use of an error account by the NMS Stock ATS.

Other trading procedures include protocols for time-stamping orders and executions to ensure compliance with the Exchange Act and the rules and regulations thereunder and any execution procedures related to price improvement. For example, an NMS Stock ATS may have procedures to reprice orders under its price protection mechanisms, to reprice short sale orders to ensure compliance with Regulation SHO, or to reprice orders due to price-sliding order types (such as certain pegged order types); it would be required to explain when it creates new timestamps for such re-priced orders. Trading procedures include any functionality or mechanism available on the NMS Stock ATS that allows for price improvement.

[945] *See* ICI Letter at 9–10. *See also* Memorandum from the Office of Commissioner Kara Stein regarding a July 26, 2016 meeting with representatives of Morgan Stanley (including in a presentation that whether an ATS has anti-gaming controls is among the frequently asked questions by clients).

[946] *See* State Street Letter at 2–3.

high-level generalized descriptions or converting these prompts to a more narrow set of focused, ''yes'' or ''no'' or short-answer questions with more detail available to regulators as needed for surveillance or other purposes.'' [947] The commenter also indicates that prompts to ''describe'' require extensive disclosures that would be difficult to maintain current. Part III of adopted Form ATS–N requests information about common operational attributes of NMS Stock ATSs, which are organized by subject matter to facilitate market participants' understanding and evaluation of an NMS Stock ATS. The Commission recognizes that requests in Part III, Item 11 could be more expansive than other requests in Part III; however, Part III, Item 11 of adopted Form ATS–N is designed to solicit information about the unique rules and procedures that are tailored for the trading activities and interaction of orders of subscribers on the NMS Stock ATS. National securities exchanges make public similar information in their rule books, in detail, which are designed to provide their members with information about how they should expect their orders to be handled by the exchange. It would be impractical to posit ''yes'' or ''no'' to NMS Stock ATSs without allowing NMS Stock ATSs to explain how their trading mechanisms or trading procedures operate. We also believe that ''yes'' or ''no'' questions, in this case, have the potential to quickly become outdated as practices in the securities industry evolve and new developments emerge. As the industry and NMS Stock ATS operations change, NMS Stock ATS can better provide market participants with complete and comprehensive disclosures if they are able to describe how their system operates in their own words. We also are not discounting that certain items may only require a short answer depending on the complexity of the trading rules and procedures of the NMS Stock ATS. In addition, the commenter's suggestion that more detail could be given to regulators as needed does not address the need for market participants to have full information about the ATS's trading rules, procedures, and facilities to determine whether to route orders to the system for execution.

We do not believe, as suggested by a commenter, that Part III, Item 11 of adopted Form ATS–N will require ''discursive disclosures'' [948] that would make maintaining a current Form ATS–N challenging. Although the item requires substantial information depending on the complexity of the NMS Stock ATS, Rule 304(a)(2)(i)(A)–(C) of Regulation ATS provides a mechanism for an NMS Stock ATS to file amendments to Form ATS–N that allows for both material changes to the operations of an ATS and updating amendments. We believe that an NMS Stock ATS may keep current its Form ATS–N without the obligation to file continuous updates for non-material changes by filing an updating amendment under Rule 304(a)(2)(i)(B).

Another commenter suggests that both Part IV, Item 7 and Item 8 (relating to suspensions of trading, system disruptions or malfunctions) of proposed Form ATS–N would be better suited as a required disclosure to subscribers that could be included in contractual agreements or systematically available to subscribers on ATS operators' websites, rather than formally filed with the Commission.'' [949] We, however, believe that this information could be useful to potential subscribers to evaluate an NMS Stock ATS as a potential destination for its orders.

One commenter suggests that the Commission require NMS Stock ATSs to disclose precise, mathematically analyzable specifications of their algorithms to enable the Commission and financial firms to leverage formal verification techniques to automatically analyze the specifications for potential violations of regulations, and allow market participants to automatically test their connectivity and verify their routing algorithms (for best execution principles).[950] We believe that requiring disclosure of mathematically analyzable specifications, which would be used to conduct compliance checks by the Commission, is outside of the scope of this rulemaking.[951] While we will review Form ATS–N filings, the Commission's review is not designed to verify the accuracy of the disclosures nor designed as an independent investigation of whether all aspects of the NMS Stock ATS operations or the ATS-related activities of the broker-dealer operator are disclosed on Form ATS–N.[952] At this time, we believe that the Commission's compliance oversight of NMS Stock ATSs would best be served through the Commission's and the SRO's examination and inspection efforts.[953]

12. Liquidity Providers

Part IV, Item 1(d) of proposed Form ATS–N would have required disclosures regarding liquidity providers to the NMS Stock ATS. The Commission is adopting Part IV, Item 1(d) of proposed Form ATS–N as Part III, Item 12 (''Liquidity Providers'') of adopted Form ATS–N with certain modifications, which are discussed below. As discussed in the Proposal,[954] we believe that an NMS Stock ATS may want to ensure that there is sufficient liquidity in a particular NMS stock to incentivize market participants to send order flow in that NMS stock to the ATS. Some ATSs that trade NMS stocks may engage certain subscribers to provide liquidity to the NMS Stock ATS and perform similar functions to that of a market maker on a national securities exchange.[955] The obligations required of liquidity providers and the benefits that they provide vary across NMS Stock ATSs. We believe that information about liquidity providers would be useful to subscribers and market participants who, for example, may want their orders to only interact with agency orders (and not with those of a liquidity provider), or, conversely, may themselves want to become liquidity providers on the NMS Stock ATS.

One commenter suggests that the term ''liquidity provider'' should be specifically defined; however, the commenter did not suggest a definition.[956] While we are not adopting a specific definition of liquidity provider, the Commission is providing examples of the functions a liquidity provider could perform on the NMS Stock ATS in Part III, Item 12 of adopted Form ATS–N. We believe that such arrangement could take many forms and the function of the liquidity provider on an ATS could depend on the structure and trading protocols of the ATS. Furthermore, as explained above,[957] we

[947] *See* SIFMA Letter at 24.

[948] *See supra* note 941 and accompanying text.

[949] *See* SIFMA Letter at 24–25.

[950] *See* AI Letter at 1–3.

[951] We did not propose compliance checks for NMS Stock ATSs and the commenter's recommendation is not currently required of other trading centers, such as national securities exchanges.

[952] *See* Section IV.A.3.

[953] The commenter also suggests that we adopt a test that would only require NMS Stock ATSs to disclose information necessary to write an observationally-equivalent simulator of the venue. *See* AI Letter at 2. As we are not adopting the commenter's suggestion to require NMS Stock ATSs to disclose operational details in a mathematically-analyzable format, we do not believe that such a test would be appropriate.

[954] *See* Proposal, *supra* note 2, at 81062–63.

[955] These liquidity providers may quote in a particular NMS stock on the ATS during trading hours and may receive a benefit for performing this function, such as discounts on fees, rebates, or the opportunity to execute with a particular type of segmented order flow.

[956] *See* KCG Letter at 12.

[957] *See supra* Sections V.C.1 and V.C.2.

intend for this Item to cover, for example, arrangements or agreements between the broker-dealer operator and another party to trade on the NMS Stock ATS. We do not intend this to cover agreements with a subscriber that has no obligation to buy or sell NMS stocks on the system.

Another commenter states that the Commission should consider eliminating or consolidating Part IV, Items 1(c) and 1(d) of proposed Form ATS–N and suggests these subparts are redundant with information about segmentation sought in Part III of proposed Form ATS–N.[958] Part III, Item 12, however, requests information about subscribers or the broker-dealer operator or its affiliates that are obligated in some way to buy, sell, or both, NMS stocks on the ATS; while Part III, Item 13 pertains to disclosure about categorization of orders and trading interest submitted to the NMS Stock ATS.[959]

After considering whether Part IV, Item 1(d) of proposed Form ATS–N may overlap with any other items on the form, we require ATSs in Part II, Items 1(c) and 2(c) of adopted Form ATS–N to indicate whether there are any formal or informal arrangements with the broker-dealer operator and affiliate of the broker-dealer operator, respectively. As discussed above, if the answer is ''yes'' to any of these items, the NMS Stock ATS must identify the broker-dealer operator (*e.g.,* business unit) or the affiliate in Part II, Items 1(c) and 2(c).[960] In addition, the NMS Stock ATS would be required to complete Part III, Item 12 of adopted Form ATS–N regarding the arrangements with the broker-dealer operator or affiliate.

13. Segmentation; Notice

Part IV, Items 5(a) and 5(b) of proposed Form ATS–N would have required disclosures regarding segmentation of order flow and notice of segmentation. We are adopting Part IV, Item 5 with certain modifications. We are also renumbering the request as Part III, Item 13 of adopted Form ATS–N and renaming it ''Segmentation; Notice.'' As discussed in the Proposal, some NMS Stock ATSs elect to segment order flow entered in the NMS Stock ATS according to various categories.[961] An NMS Stock ATS could elect to segment trading interest by type of participant (*e.g.,* buy-side or sell-side firms, principal trading firms, agency-only firms, firms above or below certain assets under management thresholds). In addition, buy-side or institutional subscribers might seek to trade only against other buy-side or institutional order flow, or might seek to avoid trading against principal trading firms or so-called high frequency trading firms. When segmenting order flow in the system, an NMS Stock ATS might elect to look to the underlying source of the trading interest such as the trading interest of retail customers. Some NMS Stock ATSs segment by the nature of the trading activity, which could include segmenting by patterns of behavior, time horizons of traders, or the passivity or aggressiveness of trading strategies. NMS Stock ATSs might elect to use some combination of these criteria or other criteria altogether.

Several commenters express support for the Commission requiring information about order segmentation.[962]

The Commission also received comments recommending changes to aspects of Part IV, Item 5 of proposed Form ATS–N. One commenter suggests that the Item should be converted to a series of ''yes'' or ''no'' questions and that the Item overlaps with Part IV, Item 1 of proposed Form ATS–N.[963] The Commission is adding a ''yes'' or ''no'' question to Part III, Item 13 of adopted Form ATS–N for ATSs to convey, and so market participants can readily understand, whether the NMS Stock ATS segments orders and trading interest and whether the ATS discloses to any Person the designated segmented category, classification, tier, or level of orders and trading interest of a subscriber or person. We believe that a response to a request that includes solely ''yes'' or ''no'' questions would not provide the necessary detail for market participants to understand and evaluate how the NMS Stock ATS segments trading interest and against whose order flow their trading interest could match. Moreover, the Commission has revised Part IV, Item 1 of proposed Form ATS–N (Part III, Item 1 of adopted Form ATS–N) to eliminate overlap.[964]

Several commenters express concern that Part IV, Item 5 of proposed Form ATS–N would have required the publication of precise metrics used to segment trading interest that could result in the gaming of those metrics to the detriment of order flow on the ATS.[965] The Commission recognizes the concerns of commenters that believe describing the precise criteria used to segment trading interest could result in potential gaming of those criteria and thus, the reduction of the effectiveness of segmentation as a control. On the other hand, we believe that market participants are interested in understanding how their orders and trading interest are categorized on the ATS and the types of market participants that would interact with those orders and trading interest. We believe that Part III, Item 13 of adopted Form ATS–N appropriately balances these competing interests by soliciting a *summary* of the parameters for each segmented category and length of time each segmented category is in effect.[966] Requiring NMS Stock ATSs to provide a summary of these parameters on Form ATS–N, rather than a detailed analysis of those parameters and how they are calculated, is designed to avoid responses that could allow the gaming of segmentation criteria, as suggested by commenters.[967]

Commenters suggest that the information requested by Part IV, Item 5 of proposed Form ATS–N could be provided to the Commission confidentially,[968] or the ATS be allowed to redact classification criteria that is based upon trading characteristics from Form ATS–N prior to its release.[969] We believe that allowing NMS Stock ATSs to provide summary information in response to Part III, Item 13 on adopted Form ATS–N addresses the concerns

[958] *See* SIFMA Letter at 20. *See supra* Section V.D.1 for discussion of proposed Item 1(c) and comments thereto, and comments applicable to Part IV, Item 1 of proposed Form ATS–N as a whole.

[959] *See* Section V.D.13 (Segmentation; Notice).

[960] *See supra* Section V.C.1 (discussing the requirements of Part II, Items 1(c) and 2(c)).

[961] *See* Proposal, *supra* note 2, at 81070.

[962] *See* ICI Letter at 9 (stating it would inform funds of the possibility of order segmentation and allow funds to determine whether to avoid trading with certain types of market participants). *See also* UBS Letter at 7; Fidelity Letter at 8; SIFMA Letter at 23.

[963] *See* SIFMA Letter at 22–23.

[964] *See supra* Section V.D.1.

[965] *See* UBS Letter at 7; Fidelity Letter at 8. *See also* SIFMA Letter at 23 (stating that disclosing proprietary or sensitive information as required by this item is not necessary or appropriate).

[966] In the Commission's experience, NMS Stock ATSs can vary the lengths of time that a segmented category is in force, such as one day, week, or monthly. The NMS Stock ATS must disclose in responding to this Item if any such time period applies to its segmentation parameters. We proposed requiring this information in Part IV, Item 5 of proposed Form ATS–N by proposing to require that the NMS Stock ATS disclose any procedures for evaluating and changing segmented categories, which may be affected by the length of time a subscriber is placed in a category. We are specifying here that the length of time that a segmented category is in force is responsive to facilitate responding to the Item.

[967] We note that, as part of our review of Form ATS–N responses, we intend to monitor the level of summary information provided on the form for completeness to help ensure that such information is responsive to the form and is not designed to avoid meaningful disclosure.

[968] *See* UBS Letter at 7 (stating that if the Commission continues to believe the information is necessary, then access should be restricted solely to the Commission); SIFMA Letter at 23.

[969] *See* Fidelity Letter at 8.

underlying the commenters' suggestions.

Another commenter suggests that information barriers between the ATS and other affiliates would ''make it challenging or inappropriate for the ATS itself to seek some of this information.'' [970] The ATS has no need to seek information from affiliates to respond to this Item as it relates solely to the segmentation of orders and trading interest in the NMS Stock ATS and how such orders and trading are segmented for purposes of order interaction and execution in the NMS Stock ATS.[971]

Another commenter recommends that an NMS Stock ATS should be required to disclose whether it identifies customer orders of broker-dealers as customer orders (which it views as a form of segmentation).[972] The commenter states disclosing the origin of a particular order can contribute to information leakage and adverse selection of fund orders. We agree with the commenter's concerns and are adding a ''yes'' or ''no'' question to solicit information regarding whether the NMS Stock ATS identifies orders or trading interest entered by a customer of a broker-dealer on the NMS Stock ATS as a customer order. We agree with the commenter that disclosing the origin of a customer order of a broker-dealer is a form of segmentation because it can facilitate users restricting their trading to only certain types of market participants, and that it can contribute to information leakage and adverse selection of fund orders.[973]

Another commenter states that Part IV, Item 5 of proposed Form ATS–N would be more meaningful if there was a quantitative component, such as the percentage of orders and trades per segmented class.[974] We are not requiring that NMS Stock ATSs provide quantitative information on each segmented class at this time. We believe that providing market participants with narrative disclosures about the operations of the NMS Stock ATS, which oftentimes is not publicly available, will allow market participants to understand the nature of order flow in the ATS. Nevertheless, we intend to monitor the quality of responses and information received through Form ATS–N and will continually assess in the future whether quantitative information would facilitate operational transparency for NMS Stock ATSs.

We also are modifying certain components of Part IV, Item 5 proposed Form ATS–N (as adopted in Part III, Item 13). First, we are adding the terms ''classifications, tiers, or levels'' in addition to ''categories'' to describe the groupings into which an NMS Stock ATS elects to segment subscriber orders to better reflect the language used by commenters and in existing Form ATS disclosures. Second, we are providing two additional examples, order size and duration,[975] of criteria whereby an NMS Stock ATS might elect to segment subscribers' orders and trading interest. We are providing these examples to provide additional guidance on some of the types of segmentation that would be responsive to the Item and allow NMS Stock ATSs to focus their responses accordingly. Third, we are providing additional specificity around what ''changing segmented categories'' means by requiring NMS Stock ATSs to provide a discussion of procedures for overriding a determination of segmented category. Subscribers would likely want to know of any such procedures, which could affect the trading interest against which their orders trade.[976] Fourth, we are requiring a description of how segmentation affects order interaction in Part III, Item 13 of adopted Form ATS–N. We proposed that an NMS Stock ATS provide information about its order interaction rule in Part IV, Item 7 of proposed Form ATS–N, but believe that it would be more relevant and efficient to request that information here.

Finally, we are requiring under Part III, Item 13(d) of adopted Form ATS–N that the NMS Stock ATS describe ''whether and how [a designated segmented category] can be contested'' (if applicable). This request is generally consistent with Part IV, Item 5 of proposed Form ATS–N which would have required information on the changing or overriding of segmented categories, as well as notice provided to subscribers of their segmented category.

14. Counter-Party Selection

Part IV, Item 5(c) of proposed Form ATS–N would have required disclosures regarding order preferencing. The Commission did not receive specific comment on Part IV, Item 5(c) of proposed Form ATS–N.[977] We are adopting Part IV, Item 5(c) as Part III, Item 14 (''Counter-Party Selection'') of adopted Form ATS–N and adding examples of counter-party selection in a parenthetical in the Item. Market participants have an interest in knowing whether—and how—they may designate their orders or trading interest to interact or avoid interacting with specific orders, trading interest, or persons on an NMS Stock ATS. For instance, the disclosures required under this Item would allow a market participant to know whether it could designate an order submitted to the NMS Stock ATS to interact with specific orders resting in the NMS Stock ATS.

15. Display

Part IV, Item 6(a) of proposed Form ATS–N would have required disclosures about the display of order and trading interest, including recipients. We received several comments on Part IV, Item 6(a) of proposed Form ATS–N. We are adopting Part IV, Item 6(a) of proposed Form ATS–N with modifications, as discussed more fully below, and renumbering the request as Part III, Item 15 (''Display'') of adopted Form ATS–N. The display of subscriber orders and trading interest can occur in a number of ways. For instance, as

[970] *See* SIFMA Letter at 23.

[971] To the extent that orders or trading interest are segmented outside the NMS Stock ATS and then sent to the NMS Stock ATS for handling and execution, the functionality or entity segmenting order or trading interest could be considered part of the NMS Stock ATS, and information about its activity may be responsive to the Form ATS–N requests. *See supra* note 888 and accompanying text.

[972] *See* ICI Letter at 9.

[973] Part IV, Item 5(a) of proposed Form ATS–N would have required an NMS Stock ATS to describe any segmentation of orders and other trading interest on the ATS. In the Proposal, we provided ''classification by type of participant'' or ''source'' as examples of forms of segmentation. We consider identifying the orders of customers of broker-dealers (*i.e.,* the source or type of participant) a form of segmentation and providing a separate request on the form would facilitate market participants' understanding of the ATS's segmentation categories.

[974] *See* MFA/AIMA Letter at 5. The commenter states that a quantitative component would provide investors with information on the extent to which a broker-dealer operator or its affiliate transacts on the NMS Stock ATS. However, Part II, Items 1, 2, and 3 of adopted Form ATS are designed to provide disclosures about the nature of trading by the broker-dealer operator and its affiliates in the ATS.

[975] Duration can refer to segmenting trading interest according to how long it has rested on the book of a trading system.

[976] Thus, if an NMS Stock ATS has established automated and empirical tests for segmenting subscribers into different categories—which would require the ATS to respond ''yes'' to Item III, 13(a) of adopted Form ATS–N and to explain how the segmentation procedures are applied—but allows any kind of override of those automated and empirical tests (such as an ad hoc determination by a member of the ATS's staff), the NMS Stock ATS would have to respond ''no'' to Item III, 13(b) (''Are the segmentation procedures the same for all subscribers and the broker-dealer operator?'') and explain any differences in how its segmentation procedures are applied.

[977] One commenter states that it is unclear whether Part IV, Item 1(e) of proposed Form ATS–N requests disclosure of instances where a subscriber requests not to interact with certain counterparties. *See* SIFMA Letter at 20. As discussed in Part III, Item 3 of adopted Form ATS–N above, any procedures related to counter-party selection would be responsive to this item (Part III, Item 14 of adopted Form ATS–N).

discussed in the Proposal,[978] when an NMS Stock ATS sends electronic messages outside of the ATS that expose the presence of orders or other trading interest on the ATS, it is displaying or making known orders or other trading interest on the NMS Stock ATS. An NMS Stock ATS also might elect to display subscriber order and trading interest through a direct data feed from the NMS Stock ATS that contains real-time information about current quotes, orders, or other trading interest in the NMS Stock ATS. Also, it would be responsive to this adopted Item for the NMS Stock ATS to disclose the circumstances under which the ATS would send these messages, the types of market participants that received them, and the information contained in the messages, including the exact content of the information, such as symbol, price, size, attribution, or any other information made known.[979] In addition, an NMS Stock ATS would need to disclose arrangements, whether formal or informal (oral or written) to the extent they exist, with third parties to display the NMS Stock ATS's trading interest outside of the NMS Stock ATS, such as IOIs from the subscribers being displayed on vendor systems, or arrangements with third parties to transmit IOIs between subscribers.[980] We continue to believe that subscribers that use the services of the NMS Stock ATSs, including customers of the broker-dealer operator, have limited information about the extent to which their orders and trading interest sent to the NMS Stock ATS could be displayed outside the ATS.[981] For example, subscriber orders or trading interests directed to the NMS Stock ATS could pass through the broker-dealer operator's systems or functionality before entering the ATS. Such systems and functionalities, which could include a common gateway function, algorithm, or smart order router, could be used to support the broker-dealer operator's other business units, including any trading centers.[982]

One commenter supports this item.[983] Other comments raise certain concerns about Part IV, Item 6(a) of proposed Form ATS–N. One commenter states that the proposed Item would cover ''order information or other trading interest'' rather than ''subscriber order information or other trading interest'' and could entangle the ordinary situation where a multi-service broker-dealer that operates an ATS uses a tool to manage child orders across multiple trading venues.[984] Another commenter suggests that the Commission draw a clearer distinction between the actions and operations of an ATS operator and those of affiliated broker-dealers, technical support teams, or others external to the ATS, and instead emphasize disclosures relating to the ATS operator itself.[985]

In response to these commenters' suggestions, we are changing the request to ''subscriber orders and trading interest.'' We did not intend for the Proposal to, in the commenter's words, entangle the ordinary situation where a multi-service broker-dealer uses a tool to manage child orders across multiple trading venues.[986] Consistent with the discussion above regarding the definition of subscriber, a subscriber order directed to the ATS would be a subscriber order for purposes of display. For a subscriber order routed out of the NMS Stock ATS to a third-party trading venue, for example, that order in the third-party venue would not be considered a subscriber order for purposes of display.[987] As explained above,[988] we do not intend for Form ATS–N to require disclosures about aspects of a market participant's commercial relationships with a broker-dealer operator that do not pertain to the NMS Stock ATS.

A commenter suggests a better way of phrasing Part IV, Item 6(a) of proposed Form ATS–N would be to ask whether orders or IOIs are ever displayed in external venues, with which venues, and what information is shared.[989] However, the form of this request is broader, as just discussed, and limiting the request for information to orders and trading interest displayed in external venues would not capture all of the relevant locations where subscriber orders and trading interest can be displayed.

One commenter suggests that the Commission revise this Item to distinguish between orders or other trading interest displayed in external venues with real-time access to systems designed to take advantage of this information, such as liquidity providers and SORs, and orders or other trading interest displayed in external venues *without* real-time access to systems designed to take advantage of this information, such as vendors (where no further information is needed or possibly not required).[990] The final disclosure requirement does not draw a distinction between these orders and trading interests. Market participants can be very sensitive to precisely how and when their orders and trading interest are displayed or otherwise made known, and the Commission remains concerned that subscribers to NMS Stock ATSs might not know the full extent to which their orders and trading interest are displayed.[991] While the display of orders or trading interest at venues in real time that have systems designed to take advantage of such information may raise the most acute concerns, we believe that market participants should have a full understanding about how and when an ATS displays their orders or trading interest.

Differences in the latencies associated with the NMS Stock ATS displaying subscriber orders and trading interest due to a functionality of the ATS would be responsive to the request in Part III, Item 15(c).[992] For example, if an NMS Stock ATS transmits and displays its proprietary data feed to certain subscribers faster than other subscribers as a result of the alternative means offered by the ATS to connect, such information would be responsive.

Part IV, Item 6(b) of proposed Form ATS–N, requested the identity of any individuals in responding to whom the order and trading interest would be displayed or made known. One commenter raises confidentiality concerns with the requirement to publicly identify the position and title of the natural person to whom orders or other trading interest are displayed, because it believes that it would be relatively easy through social media to reverse engineer certain identities, and such information would require frequent updates with little market utility.[993]

[978] *See* Proposal, *supra* note 2, at 81072.

[979] *See id.*

[980] *See id.*

[981] *See id.*

[982] The broker-dealer operator typically controls the logic contained in these systems or functionality that determines where an order that the broker-dealer receives will be handled or sent.

[983] *See* HMA Letter at 18.

[984] *See* UBS Letter at 8.

[985] *See* SIFMA Letter at 23.

[986] *See* UBS Letter at 8.

[987] *See supra* Section V.A.2.b.

[988] *See id.*

[989] *See* SIFMA Letter at 23. The commenter also states the need for frequent filing of amendments and the demand for specificity will diminish the readability, comparability and ultimately the usefulness of the form for subscribers and other end readers. *See id.* at 24.

[990] *See* Fidelity Letter at 8.

[991] *See* Proposal, *supra* note 2, at 81072.

[992] *See supra* note 850. We proposed to require an NMS Stock ATS to disclose differences among subscribers regarding the display of orders and trading interest in Part IV, Item 6(a) of proposed Form ATS–N.

[993] *See* Fidelity Letter at 8. *See also* SIFMA Letter at 23 (suggesting that identifying individuals by title or more specific identifying characteristics would present security and privacy issues, as well as client confidentiality issues).

We have revised the request so that Part III, Item 15 of adopted Form ATS–N does not require the NMS Stock ATS to identify natural persons. We understand commenters' potential confidentiality concerns and had modified the request to make clear that the request does not seek the names of natural persons or their identity. Instead, it requires the NMS Stock ATS to only identify the recipient of displayed information, by functionality of the broker-dealer operator or the type of market participant, or both.[994] For example, if orders bound for the NMS Stock ATS pass through the broker-dealer operator's common gateway, SOR, or algorithm, the NMS Stock ATS would need to disclose these functionalities as the order was displayed to a functionality of the broker-dealer operator that would likely be outside the NMS Stock ATS. If orders resting in the NMS Stock ATS are displayed to certain subscribers or one or more of the broker-dealer operator business units, the NMS Stock ATS would need to identify these subscribers and business units of the broker-dealer operator by type of market participant (*e.g.,* institutional investors, principal trading firms, market makers, affiliates, trading desks at the broker-dealer operator, market data vendors, clearing entities, and potential subscribers, among others). We believe this modification addresses commenters' concerns, obviates the need for any redaction of information, and reduces the frequency of updates necessary as compared to responses identifying individual persons as proposed.

We are revising Part III, Item 15 of adopted Form ATS–N to address another commenter's concern that certain persons at the ATS in technical or quality assurance roles would need to be disclosed even though they may not be involved with trading activity.[995] Part III, Item 15 now specifies that the request does not include ''employees of the NMS Stock ATS who are operating the system.'' so that employees of the NMS Stock ATS in non-trading related roles, such as technical, quality assurance, compliance or accounting roles, among others, that support the ATS's operations would not be captured under the adopted Item.[996]

Finally, we are adding a ''yes'' or ''no'' questions in Part III, Item 15(a) that asks if the NMS Stock ATS operates as an ECN as defined in Rule 600(a)(23) of Regulation NMS. In the Proposal, the Commission noted that NMS Stock ATSs that are also ECNs may differ in how and where orders or other trading interest are displayed, and that Part IV, Item 6 of proposed Form ATS–N was designed inform market participants about how ECN display orders.[997] We believe that adding this ''yes'' or ''no'' question would allow the NMS Stock ATS to identify itself to market participants as an ECN. An ATS that indicates ''yes'' to Part III, Item 15(a) would also be required to provide information in response to Part III, Item 15(b) and 15(c).

16. Routing

Part IV, Item 10(a) of proposed Form ATS–N would have required disclosures about outbound routing. We are adopting Part IV, Item 10(a) of proposed Form ATS–N with modifications, renaming the request as ''Routing,'' and renumbering the request as Part III, Item 16 of adopted Form ATS–N.

One commenter sought to understand whether the description of outbound routing required by the Item was limited to outbound routing performed as a functionality of the ATS itself rather than routing of client orders by the broker-dealer operator to third-party execution venues.[998] The commenter believes that if this Item also applies to routing performed by the broker-dealer operator, all broker-dealers, whether or not they operate an ATS, should be required to publicly disclose routing information. Furthermore, the commenter also argues for ''required disclosure of routing by a broker-dealer to any affiliate ATS'' and of ''the method by which a broker-dealer interacts with the ATSs that it operates. ''[999]

As the commenter points out above, order handling and the routing of orders by the broker-dealer operator in its capacity as a broker-dealer may be separate from routing of orders in the ATS to other execution venues. As noted above,[1000] we did not intend to require broker-dealer operators to disclose information about their handling of customer orders when such orders are not routed to or residing in the NMS Stock ATS. In response to the commenter's concerns, the adopted Item does not request information about routing of orders and trading interest by the broker-dealer operator that are not routed to or residing in the NMS Stock ATS.

We made several changes to Part IV, Item 10(a) of proposed Form ATS–N in response to comments (and adopted as Part III, Item 16). First, we are requiring an NMS Stock ATS to indicate whether orders and trading interest in the ATS can be routed to a destination outside the ATS, and if the answer to that question is ''yes,'' whether affirmative instructions from a subscriber must be obtained before their orders or trading interest is routed from the ATS. If the NMS Stock ATS indicates that ''yes'' instructions from a subscriber must first be obtained, the NMS Stock ATS will be required to describe the affirmative instruction and how the affirmative instruction is obtained. If instructions from a subscriber need not be first obtained, the NMS Stock ATS will be required to explain when orders in the NMS Stock ATS can be routed from the NMS Stock ATS (*e.g.,* at the discretion of the broker-dealer operator).[1001]

In Part III, Item 16 of adopted Form ATS–N, we are removing the proposed requirement to ''describe the circumstances'' of outbound routing more broadly, and instead, are now requiring, as applicable, that the NMS Stock ATS ''describe the affirmative instruction'' of the subscriber and ''explain how the affirmative instruction is obtained.'' This change is consistent with the instruction in the Proposal to ''describe the circumstances,'' but provides more specific instruction. Moreover, if trading interest can be routed away from the NMS Stock ATS without the affirmative instruction of the subscriber, we are no longer limiting the alternative to be when it happens at the discretion of the broker-dealer, as proposed, but instead, are requiring an explanation of when orders can be routed from the NMS Stock ATS. We

[994] *See* Part III, Item 1 of adopted Form ATS–N (providing examples of types of market participants).

[995] *See* SIFMA Letter at 23.

[996] The NMS Stock ATS would still be subject to the requirements of Rule 301(b)(10) and required to establish adequate safeguards and procedures to protect subscribers' confidential trading information, which must include: Limiting access to the confidential trading information of subscribers to those employees of the ATS who are operating the system or responsible for its compliance with these or any other applicable rules; and implementing standards controlling employees of the ATS trading for their own accounts. *See* 17 CFR 242.301(b)(10).

[997] *See* Proposal, *supra* note 2, at 81072.

[998] *See* Liquidnet Letter at 12.

[999] *Id.* We note that adopted Form ATS–N requires disclosure on both subjects. Part II, Item 1(a) of adopted Form ATS–N solicits information about the entry of orders and trading interest by the broker-dealer operator, including its business unit(s), into the NMS Stock ATS. Part II, Item 1(d) of adopted Form ATS–N solicits information about orders and trading interest in the NMS Stock ATS that can be routed to a trading center of the broker-dealer operator, which would include affiliates of the NMS Stock ATS, and if so, the NMS Stock ATS must provide information that is required in response to Part III, Item 16 of adopted Form ATS–N.

[1000] *See supra* Section V.D.15.

[1001] We have consolidated the discussion of how orders can be removed from the NMS Stock ATS in Part III, Item 7(a)(vii) of adopted Form ATS–N.

believe that phrasing the request this way reflects that trading interest can be routed from the NMS Stock ATS in different ways and better accommodates potential future developments in the industry. We believe that the information in this Item will provide a subscriber with the necessary information to authorize routing and understand how its orders in the ATS can be routed from the ATS, and help prevent the subscriber from unknowingly agreeing to the routing of their trading interest.

We are not adopting in Part III, Item 16 of Form ATS–N the proposed requirements that the NMS Stock ATS explain the means by which routing is performed, or that the NMS Stock ATS explain any differences among subscribers in the means by which trading interest is routed, as this could expand the scope of Form ATS–N beyond ATS activity and into the other broker-dealer functions of the broker-dealer operator.

17. Closing

Part IV, Item 9(b) of proposed Form ATS–N would have required disclosures about the NMS Stock ATS's closing process. We did not receive specific comment on Part IV, Item 9(b) of proposed Form ATS–N. We are adopting Part IV, Item 9(b) with certain modifications discussed below, and renumbering the request as Part III, Item 17 (''Closing'') of adopted Form ATS–N. Part III, Item 17 is designed to inform market participants about whether an NMS Stock ATS uses any special procedures to match orders at the close of regular trading. The Item is designed to provide market participants with information about any special closing processes used by the NMS Stock ATS, particularly whether there are any order types used during the close.

The vast majority of requests in Part III of adopted Form ATS–N relate to trading during regular hours. Therefore, when discussing differences between trading during the close and during regular hours, the NMS Stock ATS must discuss differences as compared to relevant information disclosed in Part III Items, including, among others, order types (Item 7), order interaction, priority, matching, and execution procedures (Item 11), segmentation (Item 13), and display (Item 15). We believe this information will be important for market participants to understand in evaluating whether participating in the closing process is consistent with their trading objectives.[1002]

18. Trading Outside of Regular Trading Hours

Part IV, Item 9(c) of proposed Form ATS–N would have required disclosures regarding after-hours trading. The Commission did not receive any comments regarding the substance of Part IV, Item 9(c) of proposed Form ATS–N. The Commission is adopting Part IV, Item 9(c) of proposed Form ATS with certain modifications, as discussed below, and relocating the request as Part III, Item 18 (''Trading Outside of Regular Trading Hours'') of adopted Form ATS–N.

The Commission is merging requests from Part IV, Item 9(a), which requested information about pre-opening executions,[1003] and Part IV, Item 9(c), which requested information about after-hours trading. We believe that the potential for redundant disclosures, as observed by commenters,[1004] would be reduced by merging these two requests.

This Item will require NMS Stock ATSs to indicate in Part III, Items 18(a) and 18(b) whether the ATS conducts trading outside regular trading hours, and indicate whether there are any differences between trading outside of regular trading hours and trading during regular hours. To the extent that there are differences, the NMS Stock ATS must describe those differences. Similar to Item 17 (requesting differences between the closing and regular trading hours), an NMS Stock ATS must discuss differences in trading outside of regular trading hours as compared to the relevant information disclosed in Part III Items, including, among others, order types (Item 7), order interaction, priority, matching, and execution procedures (Item 11), segmentation (Item 13), and display (Item 15). Many of the disclosures discussed elsewhere in Form ATS–N will relate to regular trading hours so the ATS can simply discuss any differences between trading during regular hours and trading outside regular trading hours in Part III, Item 18(b).

19. Fees

Part IV, Item 12 of proposed Form ATS–N would have required disclosures about fees. We are adopting Part IV, Item 12 of proposed Form ATS–N with modifications, which are discussed below, and renumbering the request as Part III, Item 19 (''Fees'') of adopted Form ATS–N. Some commenters suggest that the Commission exercise restraint in the area of fees given that they are the product of negotiations between sophisticated financial institutions and leave to market competition the setting of appropriate fees.[1005] Another commenter suggests that NMS Stock ATSs be allowed to voluntarily report their fee structure.[1006]

The Commission continues to believe that disclosures regarding fees on Form ATS–N are necessary and important, and should not be voluntary for NMS Stock ATSs. Fee disclosures on Form ATS–N are designed to allow all market participants to analyze the fee structures across NMS Stock ATSs in an expedited manner and decide which ATS offers them the best pricing according to the characteristics of their order flow, the type of participant they are (if relevant), or any other aspects of an ATS's fee structure that serves to provide incentives or disincentives for specific market participants or trading behaviors. As NMS Stock ATSs have become a significant source of liquidity in NMS Stocks,[1007] we believe that disclosures about their fees are warranted as, in the Commission's experience, fees can be a primary factor for market participants in deciding where to route their orders and trading interest. Several commenters express support, on behalf of different types of market participants, for fee disclosures on Form ATS–N.[1008]

In addition, given commenters' concerns that the use of the term ''describe'' in Form ATS–N is vague and would lead to discursive disclosures and obscure key information,[1009] the

[1002] As discussed in the Proposal, the Item would, for example, require disclosure of any procedures to match orders to set a single closing price to maximize liquidity and accurately reflect market conditions at the close of trading. *See* Proposal, *supra* note 2, at 81077 (discussing closing auctions and orders designed to execute at the close of trading).

[1003] Part IV, Item 9(a) of proposed Form ATS–N requested the NMS Stock ATS describe any differences between pre-opening executions, executions following a stoppage of trading in a security during regular trading hours, and executions during regular trading hours.

[1004] *See, e.g.,* SIFMA Letter at 20.

[1005] *See* UBS Letter at 8; LeveL ATS at 6 (stating that ATS subscribers are sophisticated counterparties that have a keen sense of the market for the services provided and are not in need of the fee disclosures proposed).

[1006] *See* STA Letter at 3–4.

[1007] *See supra* Section II.A.1.

[1008] *See* ICI Letter at 10; HMA Letter at 18 (suggesting that disclosure of the details regarding fees (among other topics in part III) is essential for investors or routing brokers seeking to understand how the ATS works). *See also* SIFMA Letter at 25 (stating that a broad description of compensation mechanisms is appropriate and a description of the mechanisms and categories of fee structure would offer an appropriate level of clarity and transparency); KCG Letter at 7 (stating the Commission should require standard documents, including pricing schedules).

[1009] *See supra* note 941 and accompanying text.

Commission is providing additional specificity on the Item's requirements and more examples in the text of the Item. The Commission is adding to Part III, Item 19 requests that NMS Stock ATSs include in their descriptions: The structure of the fee, variables that impact the fee, and differentiation among types of subscribers, along with examples of responsive information included in a parenthetical in the text of each subpart.[1010] The Item also would still require a range of fees as proposed.

One commenter recommends that the Commission require that any description of a differential fee structure contain enough information for a market participant to understand exactly which, or which level, of fees/rebates/charges apply to each type of subscriber or other person and the criteria that the NMS Stock ATS uses to sort subscribers into different fee categories so that market participants can assess eligibility requirements for different fee tiers.[1011]

The Commission recognizes that the fee structures of NMS Stock ATSs can vary and that not all NMS Stock ATSs apply set tiers or categories of fees for subscribers; [1012] however, the Commission agrees with the commenter that a market participant should have sufficient information to understand the fees for using the services of the NMS Stock ATS. Recognizing the various fees that can be charged by NMS Stock ATSs, the Commission is specifying in the fee request the types of information that an NMS Stock ATS must provide in response to the Commission's proposed request to describe its fees (*e.g.,* the structure of the fees, variables that impact each fee, differentiation among types of subscribers, and the range of fees). These disclosures are designed to provide market participants with more insight regarding the fees charged so that they can better understand how fees may apply to them and assess how such fees may impact their trading strategies. This approach does not require NMS Stock ATSs to provide comprehensive fee schedules but still gives subscribers meaningful information about the fees the NMS Stock ATS charges.[1013] Although the fees charged for NMS Stock ATS services may be individually negotiated between the broker-dealer operator and the subscriber, the disclosures about the type of fees charged by the NMS Stock ATS are designed to help market participants discern how an NMS Stock ATS's fees are organized and compare that information across NMS Stock ATSs, which could reduce the search costs of market participants in deciding where to send their orders and trading interest. Relatedly, the Commission recognizes that a requirement to disclose the complete fee schedule for each subscriber may provide more information, but this would not be desirable or preferable given the fees for NMS Stock ATSs can be highly bespoke and specific to each subscriber.[1014]

One commenter suggests that a description of the mechanisms and categories of fee structures would offer an appropriate level of clarity and transparency, and that the disclosure of the existence of rebates or commission relating to volume is workable, but a high/low range of fees or more client-specific descriptions affect registrants' ability to negotiate custom agreements with subscribers.[1015] Part III, Item 19 of adopted Form ATS–N does not require or reveal customer-specific information regarding the fees or terms and conditions of fee agreements that result in the high or low in the range of fees disclosed. Part III, Item 19 of adopted Form ATS–N requests the range of fees and does not require the NMS Stock ATS to disclose the name of the customer, or even the types of subscriber, who is the highest or lowest in the range.

A commenter states that the Commission also should require an NMS Stock ATS to explain whether it discriminates among different types of subscribers in establishing fees, rebates, or other charges.[1016] In Part IV, Item 12(b) of proposed Form ATS–N, we proposed that NMS Stock ATSs describe any differences if the fees, rebates, or other charges of the NMS Stock ATS were not the same ''*for all subscribers and persons.*'' We continue to believe that NMS Stock ATSs should be required to disclose differences in the treatment of subscribers; however, the Commission is changing Part III, Item 19 to require a description of any differentiation among ''*types of subscribers*'' because the Commission did not intend to require fee differences among individual subscribers. Rather, we believe that differences in fees, rebates and other charges among ''types of subscribers'' would be more informative to market participants about the fee structure of the ATS than disclosures of individual differences between subscribers, which could result from particular negotiations with individual subscribers. This information would allow subscribers to observe whether an NMS Stock ATS is offering preferential treatment among types of subscribers with regards to fees, and therefore, the information could aid them in deciding where to route their trading interest.

Another commenter suggests that the Commission should require NMS Stock ATSs to provide complete information about their sources of revenue, including revenue arrangements the ATS may have with other trading centers.[1017] The commenter suggests funds and other market participants would use these disclosures to evaluate the potential for information leakage attendant to routing orders to a particular NMS Stock ATS or whether these arrangements may disadvantage subscribers of the ATS, including funds. We do not believe that disclosure of all of an ATS's sources of revenue would likely contribute more to subscribers' understanding of conflicts of interest than the combination of the disclosures in this Item and the disclosures in Part II of adopted the Form ATS–N, which include disclosures regarding ATS-related activities of the broker-dealer operator and its affiliates, such as Part II, Item 4.[1018]

Other commenters express various reasons for why they believe the Commission should not require some or all of the disclosures on fees of Part IV, Item 12 of proposed Form ATS–N. Commenters state that NMS Stock ATSs, and especially NMS Stock ATSs of multi-service broker-dealers, may establish fees based on a number of factors, including the depth and breadth of a client relationship, or the full suite of brokerage services made available to

[1010] We are including examples of responsive information in parentheticals in the text of the item. For instance, for descriptions of the structure of the fee, the Commission is providing as examples a fixed fee, volume-based and transaction-based fee structures. For the description of variables that may impact the fee, the Commission is providing as examples: The types of securities traded, block orders, and the form of connectivity to the ATS. For the description of the differentiation among types of subscribers for the fee, the Commission is providing as examples of the types of subscribers: Broker-dealers, institutional investors, and retail.

[1011] *See* ICI Letter at 10.

[1012] *See* Liquidnet Letter at 12 (stating it has in place over 1,500 subscriber agreements).

[1013] *See* SIFMA Letter at 25–26 (stating a description of the mechanisms and categories of fee structures would offer an appropriate level of clarity and transparency).

[1014] One commenter notes that it agrees with the Commission on this point, and states that the concept of a fixed fee schedule would not be practical or appropriate in this context. *See* Liquidnet Letter at 13.

[1015] *See* SIFMA Letter at 25–26.

[1016] *See* ICI Letter at 10 (recommending NMS Stock ATSs explain whether they discriminate among different types of subscribers in establishing fees, rebates, or other charges).

[1017] *See id.*

[1018] *See supra* Section V.C.4 (discussing any formal or informal arrangements between the Broker-Dealer Operator and a Trading Center to access the NMS Stock ATS services).

the client.[1019] The commenters believe that because fees are set taking into account these other factors, any disclosures on the range of fees on the NMS Stock ATS would be misleading.[1020] As discussed in the Proposal, the types of fees charged to use an NMS Stock ATS's services could influence whether a market participant subscribes to, or the extent to which it participates on, the NMS Stock ATS.[1021] The Commission recognizes, as indicated by commenters, that fees charged for the use of the NMS Stock ATS services can be bundled with non-ATS services that the broker-dealer operator offers to subscribers of the ATS. While Part IV, Item 12 of proposed Form ATS–N request did not explicitly identify bundled service fees, the proposed request did require a description of any fees, rebates, or other charges of the NMS Stock ATS. As a type of fee for use of the services of the NMS Stock ATS, bundled service fees would have been responsive to Part IV, Item 12 of proposed Form ATS–N.

To avoid potential confusion about fees charged by an NMS Stock ATS, and to account for bundled service fees charged to a subscribers by multi-service broker-dealer operators of NMS Stock ATSs, the Commission is adding a separate and specific request to Part III, Item 19(b) of adopted Form ATS–N. Specifically, the Commission is requiring that the NMS Stock ATS describe any bundled fees, including a summary of the bundled services and products offered by the broker-dealer operator or its affiliates, the structure of the fee, variables that impact the fee (including, for example, whether the particular broker-dealer services selected would impact the fee), differentiation among types of subscribers, and range of fees. Part III, Item 19(b) is designed to allow market participants to better evaluate fees for bundled services that include access to the NMS Stock ATS. NMS Stock ATSs will be required to provide information, including the relevant services and products offered by the broker-dealer operator and its affiliates for each bundled fee offered, that will provide context to market participants with which to assess how fees could apply to them as subscribers.

Another commenter states its understanding that the disclosures required would relate only to the fees that the ATS charges for its services, and not include brokerage services, because otherwise, it believes there would be unfair discrimination relative to broker-dealers that do not operate an ATS.[1022] To the extent that a broker-dealer operator bundles its services with its NMS Stock ATS services, and the ATS services do not have an explicit fee, then the broker-dealer operator would not be required to provide a range of fees charged for the bundled services. On the other hand, if a broker-dealer operator bundles its services with its NMS Stock ATS services and charges an explicit fee for the ATS services, then the fee for the ATS services should be taken into account for determining the range of fees under this Item. Further, if a broker-dealer operator sometimes bundles its services with its NMS Stock ATS services for certain subscribers, but charges a separate fee for ATS services, it would be required to provide the information responsive to this Item, including the range, for the separate fee for ATS services.

A commenter also suggests the Item be expressly limited to fees set by the ATS operator and not include fees from other affiliates or third parties (*e.g.,* related to co-location).[1023] Part III, Item 19(a) of adopted Form ATS–N covers charges to subscribers for their ''use of the NMS Stock ATS services.'' [1024] The fee information disclosed in Part III, Item 19 of adopted Form ATS–N must include fees resulting from a subscriber's use of the NMS Stock ATS services that are charged by the broker-dealer operator, or a third party, such as a service provider to the NMS Stock ATS. The Item's required disclosures are not limited by the entity charging the fee; rather, if the fee is for use of the NMS Stock ATS services, then the Item's requests apply regardless of the entity charging the fee. Many broker-dealer operators today outsource some or all of the operations of the NMS Stock ATS to third parties (*e.g.,* such as the matching engine). To the extent that subscribers are charged a fee by the third-party service provider of the NMS Stock ATS, the NMS Stock ATS would be required to disclose such fees in Part III, Item 19(a) of Form ATS–N.

On the other hand, Part III, Item 19(a) of adopted Form ATS–N does not request information on fees charged for non-ATS services by a third party not in contract with the broker-dealer operator. If, for example, the NMS Stock ATS is located in a facility owned by a third party, and in order to co-locate to the NMS Stock ATS a subscriber would be required to lease physical space from the third-party facility owner, a fee for the space rental would not be required to be disclosed on Form ATS–N by the NMS Stock ATS. On the other hand, if an NMS Stock ATS provides co-location services for subscribers and charges a fee to those subscribers for the co-location services, such fee would be responsive to Part III, Item 19 of Form ATS–N. In addition, to the extent that a broker-dealer operator enters into an agreement or arrangement with a third party for that third party to provide a service of the NMS Stock ATS to subscribers and charge a fee that is passed back to the broker-dealer operator in any form, the broker-dealer operator would be required to disclose that fee in response to Part III, Item 19 of Form ATS–N. In such a case, to prevent an NMS Stock ATS from circumventing disclosure otherwise responsive to Part III, Item 19(b) of adopted Form ATS–N, the pass-backed fee by the third party is a fee ''for the use of NMS Stock ATS services.''

Another commenter suggests that clients are highly interested in understanding whether an ATS offers rebates to subscribers and would support the inclusion of this question.[1025] In response to the commenter, the disclosure requests under Item 19 will contain a stand-alone Item—Item 19(c)—which requests information about rebates and discounts of fees that are identified in subparts (a) and (b) of Item 19. Item 19(c) requires information about rebates and discounts that is similar to that which is required for fees (*e.g.,* the structure of the rebate or discount, variables that impact the rebate or discount, differentiation among types of subscribers, and range of rebate or discount).

20. Suspension of Trading

Part IV, Item 8 of proposed Form ATS–N would have required disclosures regarding any procedures governing trading during a suspension of trading, disruption or malfunction. The Commission is adopting Part IV, Item 8 with certain modifications, renaming it ''Suspension of Trading,'' and renumbering the request to Part III, Item 20 in adopted Form ATS–N. Part III, Item 20 is designed to, for example, inform market participants of whether, among other things, an NMS Stock ATS

[1019] *See* UBS Letter at 8; Morgan Stanley Letter at 4; STA Letter at 3–4; LeveL ATS Letter at 6.

[1020] *See* UBS Letter at 8; STA Letter at 3–4; Morgan Stanley Letter at 4.

[1021] *See* Proposal, *supra* note 2, at 81080.

[1022] *See* Liquidnet Letter at 12.

[1023] *See* SIFMA Letter at 26.

[1024] The NMS Stock ATS services generally include those services used for the purpose of effecting transactions in NMS Stock, or for submitting, disseminating or displaying orders on the ATS. *See* 17 CFR 242.300(b).

[1025] *See* UBS Letter at 8. We proposed in Part IV, Item 12(a) of proposed Form ATS–N that the NMS Stock ATS describe ''any fees, rebates, or other charges'' of the NMS Stock ATS.

will continue to accept orders after a suspension, whether the NMS Stock ATS routes, holds, or continues to execute orders resting in the system prior to the suspension, and the type of notice provided to market participants during a suspension. Furthermore, as discussed in the Proposal,[1026] one of the primary concerns of the Commission is that given the speed and interconnected nature of the U.S. securities markets, a seemingly minor systems problem at a single entity can quickly create losses and liability for market participants, and spread rapidly across the national market system, potentially creating widespread damage and harm to market participants and investors. Accordingly, it is important to fully understand what, if any, trading procedures an NMS Stock ATS would follow when trading is suspended or stopped. Consistent with the Proposal, we are adding the phrase ''including the suspension of trading in individual NMS stocks'' to Item 20(a) to make clear that the procedures to suspend trading in an NMS stock by an NMS Stock ATS are required by this request.[1027]

We received two comments regarding Part IV, Item 8 of proposed Form ATS–N. One commenter suggests that this information would be better suited as a disclosure to subscribers rather than formally filed with the Commission and publicly disclosed.[1028] We do not agree and believe that this information would allow non-subscribers to better evaluate their brokers' order routing practices and whether the routing of their orders to an NMS Stock ATS would achieve their trading or investment strategies.

Another commenter requests that the Commission consider harmonizing any definitions used in the Item with those found in Regulation SCI.[1029] As discussed in the Proposal, the Commission does not intend to alter or amend the requirements of Regulation SCI with this Item, nor does it intend to require NMS Stock ATSs to adopt specific procedures during a system disruption as it did in Regulation SCI.[1030] Instead, we are requiring an NMS Stock ATS to disclose what procedures, if any, it follows when suspending or stopping trading so that market participants can better understand how their orders will be handled under those circumstances.

21. Trade Reporting

Part IV, Item 13(a) of proposed Form ATS–N would have required disclosures regarding trade reporting. We are adopting Part IV, Item 13(a) of proposed Form ATS–N with certain modifications discussed below, and renumbering the request as Part III, Item 21 of adopted Form ATS–N. One commenter suggests that the prompt to disclose ''any arrangements'' is broad and poses challenges to keep current and recommends it would be more useful to limit the requested arrangements to those that are material to or a core feature of the operations of the ATS.[1031] In response to this comment, we are revising the request to focus on ''material'' arrangements for reporting transactions on the NMS Stock ATS. We recognize that there could be arrangements relevant to trade reporting, such as the specific software used to report, that play a minor role in the ATS's trade reporting and need not be disclosed. We believe that this change clarifies the Form ATS–N requirement and reduces potential burdens on NMS Stock ATSs while providing market participants with sufficient information to understand how their trade information will be reported.

In addition, we are adding a phrase to the Item to make clear that the explanation of procedures or material arrangements required includes ''where an ATS reports transactions and under what circumstances.'' We believe this language will help NMS Stock ATSs better understand what would be responsive to Part III, Item 21 of adopted Form ATS–N and focus their responses accordingly, and is consistent with the request in Part IV, Item 13(a) of proposed Form ATS–N. For example, the NMS Stock ATS will be required to disclose the SRO to which it reports transactions, and any alternative trade reporting destinations, if applicable. Information about where an NMS Stock ATS reports transactions and under what circumstances would have been responsive to Part IV, Item 13(a) of proposed Form ATS–N, which required the NMS Stock ATS to ''describe any arrangements or procedures for reporting transactions on the NMS Stock ATS.'' The addition of the phrase to Item 21(a) clarifies those procedures that would be responsive to the request. Finally, we are revising the proposed Item to clarify that the NMS Stock ATS explain any ''procedures *and* material arrangements'' (emphasis added), instead of ''procedures *or* material arrangements'' (emphasis added). We intended that a description of both procedures and material arrangements would provide a complete and comprehensive disclosure of the most important aspects of the NMS Stock ATS's trade reporting.

22. Clearance and Settlement

Part IV, Item 13(b) of proposed Form ATS–N would have required disclosures regarding clearance and settlement. The Commission is adopting Part IV, Item 13(b) of proposed Form ATS–N with certain modifications discussed below, and renumbering it as Part III, Item 22 of adopted Form ATS–N. The integrity of the trading markets depends on the prompt and accurate clearance and settlement of securities transactions.[1032] Part III, Item 22 is designed to help market participants understand the measures the NMS Stock ATS takes to facilitate clearance and settlement of transactions, including the process through which an NMS Stock ATS clears a trade (*e.g.,* whether the NMS Stock ATS becomes a counterparty to a transaction, interposing itself between two counterparties to a transaction, or whether the NMS Stock ATS submits trades to a registered clearing agency for clearing) and any requirements an NMS Stock ATS places on its subscribers, or other persons whose orders are routed to an NMS Stock ATS, to have clearance and settlement systems and/or arrangements with a clearing firm.[1033]

One commenter suggests that the prompt to disclose ''any arrangements'' is broad and poses challenges to keep current and recommends it would be more useful to limit the requested arrangements to those that are material to or a core feature of the operations of the ATS.[1034] In response to this comment, and for similar reasons to those stated above for Part III, Item 21 (''Trade Reporting''), we are revising this request to focus the Item on ''material'' arrangements to facilitate the clearance and settlement of transaction on the NMS Stock ATS. For example, an arrangement under which a third party would have a role in clearance and settlement on the NMS Stock ATS may constitute a material arrangement that could trigger the disclosure requirement under Part III, Item 22. Limiting the explanation required to material arrangements will reduce the burden on

[1026] *See* Proposal, *supra* note 2, at 81076.

[1027] Based on Commission experience, an NMS Stock ATS's procedures may include the suspension of trading in an NMS stock security to not trigger the requirements of Rule 301(b)(3) or Rule 301(b)(5) of Regulation ATS. *See* Proposal, *supra* note 2, at 81104.

[1028] *See* SIFMA Letter at 24–25.

[1029] *See* UBS Letter at 8.

[1030] *See* Proposal, *supra* note 2, at 81076. We are removing references to ''system disruptions'' to mitigate any confusion with Regulation SCI. We believe this technical change does not change the substantive information required.

[1031] *See* SIFMA Letter at 26.

[1032] *See* Proposal, *supra* note 2, at 81081.

[1033] *Id.*

[1034] *See* SIFMA Letter at 26.

NMS Stock ATSs while at the same time still allowing market participants to understand and more easily compare clearing arrangements required across NMS Stock ATSs.

For similar reasons as stated above for Part III, Item 21 (''Trade Reporting''), we are revising this request to state that the NMS Stock ATS describe any ''procedures *and* material arrangements'' (emphasis added), instead of ''procedures *or* material arrangements'' (emphasis added). In addition, we are removing the phrase ''undertaken by the NMS Stock ATS'' from the proposed requirement. NMS Stock ATSs may engage a third party to facilitate the clearance and settlement of transactions on the NMS Stock ATS, and we do not intend to limit the procedures and material arrangements explained to only those specifically performed by the NMS Stock ATS.

23. Market Data

Part IV, Item 11 of proposed Form ATS–N would have required disclosures regarding market data. The Commission is adopting Part IV, Item 11 of proposed Form ATS–N with certain modifications and renumbering the request as Part III, Item 23 of adopted Form ATS–N. Market data is a critical component to understanding the operations of an NMS Stock ATS. For instance, the market data received by an NMS Stock ATS might affect the price at which orders and trading interest is prioritized and executed in the ATS, including orders that are pegged to an outside reference price. The source of an NMS Stock ATS's market data could impact the execution price received by a subscriber. Disclosures about the NMS Stock ATS's sources of market data, and how the ATS uses such data, can help to inform market participants about how their orders would be handled and executed by the NMS Stock ATS.

One commenter recommends the elimination of prompts that it suggests request proprietary, sensitive, or duplicative information. The commenter instead recommends a general, high-level description regarding the determination of NBBO and pricing.[1035] As routing is a function performed by a broker-dealer and outside the ATS, the Commission is revising the request to make clear that an NMS Stock ATS would not be required to provide information about the market data that the broker-dealer operator uses to route orders and trading interest from the NMS Stock ATS to away destinations. Part III, Item 23 would require information, however, about the ATS's use of market data to determine when resting orders and trading interest will be removed from inside the NMS Stock ATS because these orders and trading interest reside inside the ATS and the data used to act on them could impact their execution.

An NMS Stock ATS would also be required to provide information about how the ATS uses market data to provide the services it offers. Among other things, for example, the NMS Stock ATS would need to disclose in response to Part III, Item 23, of adopted Form ATS–N, its use of market data to display, price, prioritize, execute, and remove trading interest. As part of its explanation for how the NMS Stock ATS uses market data, the ATS would be required to specify, if applicable, when the ATS may change between its use of different sources of market data to provide its services.

Given commenters' concerns that the use of the term ''describe'' in Form ATS–N is vague and would lead to discursive disclosures and obscure key information,[1036] the Commission is providing additional examples in the text of the Item to give NMS Stock ATSs more guidance on the types of information that would be responsive to the request, including how the ATS determines the NBBO and protected quotes in the Item.

One commenter believes that the form should require annual disclosures of an NMS Stock ATS's approximate latency (in microseconds) to receive market data feeds, assemble the NBBO, and deliver the updated NBBO to the matching engine.[1037] As discussed elsewhere in relation to comments requesting quantitative data,[1038] the Commission is not adopting ongoing reporting requirements for NMS Stock ATSs to report performance metrics of their system and therefore not requiring NMS Stock ATS to disclose this information. The information above could be important to market participants because they could be concerned, for example, about price impacts on their trading interest if the NMS Stock ATS compiles the NBBO slower than other trading venues, or that they would trade on stale prices, as well as the potential for information leakage. To address the commenter's concern, the Commission is providing guidance to NMS Stock ATSs that, in response to Part III, Item 23, the NMS Stock ATS should explain how market data is received by the ATS, compiled, and delivered to the matching engine. For example, among other possible arrangements, the NMS Stock ATS could explain in response to the Item that market data is received by the broker-dealer operator and assembled there, and subsequently delivered to the matching engine, or that market data is sent directly to the matching engine, which normalizes the data for its use.

24. Order Display and Execution Access

Part IV, Item 14 of proposed Form ATS–N would have required disclosures regarding order display and execution access pursuant to Rule 301(b)(3). The Commission is adopting Part IV, Item 14 in proposed Form ATS–N, with certain modifications, and renumbering this Item as Part III, Item 24 in adopted Form ATS–N.

One commenter recommends eliminating this request altogether on the grounds that it is unclear how subscribers would benefit from the detailed information under this Item or how it would be used.[1039] The Commission does not agree. As noted in the Proposal, under the current regulatory regime for ATSs, there is no mechanism under which an ATS must notify the Commission, its SRO, or market participants after it has triggered the order display requirements.[1040] Thus, the commenter's suggestion that the Item is more appropriate in the context of a Commission examination would not remedy the current lack of notice to the public once the NMS Stock ATS triggers the order display requirement. This notice would inform the Commission and the public whether an NMS Stock ATS is subject to Rule 301(b)(3). Removing Part IV, Item 14 (adopted as Part III, Item 24) would forego the benefit to market participants of knowing when an NMS Stock ATS has become a significant source of liquidity in an NMS stock and how they can access applicable quotations of that ATS. The commenter maintains, but does not describe how, the required disclosure would undermine the NMS Stock ATS's subscriber access criteria, and we do not agree that the required disclosure would do so.

We recognize that an NMS Stock ATS may not be subject to Rule 301(b)(3)(ii) of Regulation ATS even if the ATS displays subscriber orders in an NMS stock to any person (other than employees of the ATS) (Rule 301(b)(3)(i)(A)), and executes 5% or

[1035] *See* SIFMA Letter at 25.

[1036] *See supra* note 941.

[1037] *See* HMA Letter at 19.

[1038] *See* Section V.D.13 (discussing why the Commission is requiring narrative responses instead of a quantitative component, such as the percentage of orders and trades per segmented class), and V.D.26 (discussing why the Commission is requiring narrative responses instead of quantitative data from NMS Stock ATSs).

[1039] *See* SIFMA Letter at 27.

[1040] *See* Proposal, *supra* note 2, at 81082.

more of the average daily trading volume in that NMS stock as reported by an effective transaction reporting plan during at least four of the preceding six calendar months (Rule 301(b)(3)(i)(B)).[1041] If an NMS Stock ATS satisfies the Rule 301(b)(3)(i) threshold, the ATS must also meet the criteria of Rule 301(b)(3)(ii) to be subject to the requirements of Rules 301(b)(3)(ii) and (iii). As proposed, Part IV, Item 14 of Form ATS–N would have required that an NMS Stock ATS that meets the threshold requirements of Rule 301(b)(3)(i), but is not subject to Rules 301(b)(3)(ii) and (iii), to provide information about how they display and provide execution access. This was not the Commission's intended result. Rather, the Commission intended for an NMS Stock ATS that is subject to Rule 301(b)(3)(ii) and (iii) to provide the information that the Commission proposed in Part IV, Item 14(a)–(c) of proposed Form ATS–N. Therefore, the Commission is modifying the disclosure requirement of this Item and relocating it to Part III, Item 24 of Form ATS–N. As adopted, Part III, Item 24(a) of Form ATS–N asks if the NMS Stock ATS meets the threshold requirements of Rule 301(b)(3)(i) of Regulation ATS, and, if so, whether the NMS Stock ATS is required to comply with Rule 301(b)(3)(ii) of Regulation ATS (*i.e.,* does the ATS display to more than one person in the system). If the NMS Stock ATS is required to comply with Rule 301(b)(3)(ii), Part III, Item 24(b) requires the NMS Stock ATS to provide the information that the Commission proposed in Part IV, Item 14(a)–(c) of proposed Form ATS–N (*i.e.,* the ticker symbol of the NMS stocks displayed, information about how the ATS displays such orders, and information about how the ATS provides access to such orders).[1042]

To ensure consistency with Rule 301(b)(3) of Regulation ATS, the Commission is making minor modifications to the request to better comport with requirements of Rule 301(b)(3), and in response to the commenter's concerns regarding proposed Form ATS–N's disclosure requirements for NMS Stock ATSs that meet the threshold requirements of Rule 301(b)(3)(i), but may not be subject to Rules 301(b)(ii) and (iii).[1043]

25. Fair Access

Part IV, Item 15 of proposed Form ATS–N would have required disclosures regarding the fair access requirement of Rule 301(b)(5). The Commission is adopting Part IV, Item 15 of proposed Form ATS–N, with certain modifications, and renumbering this Item as Part III, Item 25 in adopted Form ATS–N. The Commission received comment recommending the elimination of the request altogether on the grounds that it is unclear how subscribers would benefit from the detailed information under the Item or how it would be used.[1044]

The Commission does not agree for the same reason discussed above in connection with Part III, Item 24. As noted in the Proposal, although triggering the fair access provision requires the NMS Stock ATSs to provide certain information confidentially to the Commission under Exhibit C of Form ATS–R,[1045] there is no mechanism under which an ATS must notify market participants after it has triggered the fair access threshold under the current regulatory regime for ATSs.[1046] Removing Part IV, Item 15 of proposed Form ATS–N (adopted Part III, Item 25) as suggested by the commenter, would forego the benefit to market participants of knowing when an NMS Stock ATS has become a significant source of liquidity in an NMS stock and must comply with fair access requirements of Rule 301(b)(5). We believe that the information that an NMS Stock ATS will be required to disclose pursuant to Part III, Item 25 will allow market participants to assess whether fair access is in fact being granted by NMS Stock ATSs that meet the fair access threshold of Rule 301(b)(5), in part by making publicly available a description of the NMS Stock ATS's written standards for granting access. In addition, the commenter mentions that, but does not describe how, the required disclosure would undermine the NMS Stock ATS's subscriber access criteria.

Similar to Part IV, Item 14 of proposed Form ATS–N as discussed above,[1047] Part IV, Item 15 of proposed Form ATS–N would have applied to an NMS Stock ATS that meets the threshold requirements of Rule 301(b)(5)(i), but is not required to comply with Rule 301(b)(5)(ii). The Commission intended for an NMS Stock ATS to provide this information only if it is required to comply with Rule 301(b)(5)(ii). Therefore, the Commission is modifying the disclosure requirement of this Item and relocating it to Part III, Item 25 of adopted Form ATS–N. As adopted, Part III, Item 25(a) of Form ATS–N asks if the NMS Stock ATS meets the threshold requirements of Rule 301(b)(5)(i)(A) of Regulation ATS and if so, whether the NMS Stock ATS is required to comply with Rule 301(b)(5)(ii) of Regulation ATS (*i.e.,* the ATS does not meet the exception set forth in Rule 301(b)(5)(iii)). If the NMS Stock ATS is required to comply with Rule 301(b)(5), Part III, Item 25(b) requires the NMS Stock ATS to provide the information that the Commission proposed in Part IV, Item 15(a) and 15(b) of proposed Form ATS–N (*i.e.,* the ticker symbol of each NMS stock and a description of the ATS's written standards for granting access to trading on the ATS).[1048]

To ensure consistency with Rule 301(b)(5) of Regulation ATS, the Commission is making minor modifications to the request to better comport with requirements of Rule 301(b)(5), and for consistency with the modifications the Commission is making to Part III, Item 24 described above.

26. Aggregate Platform-Wide Data; Trading Statistics

a. Disseminated Aggregated Platform-Wide Data

Part IV, Item 16 of proposed Form ATS–N would have required disclosures regarding market quality statistics published or provided to subscribers. The disclosure requests in Part IV, Item 16 of proposed Form ATS–N are now contained in Part III, Item 26 of adopted Form ATS–N.

We received several comments on Part IV, Item 16 of proposed Form ATS–N. Some commenters express concerns about the potential effects that the public disclosure of the information under Part IV, Item 16 would have on the flow of information to

[1041] *See* Liquidnet Letter at 13–14 (stating that the ''order display requirement of [Rule 301(b)(ii)] only applies where orders are 'displayed to more than one person in the [ATS]'' such that the disclosure obligation of proposed Part IV, Item 14 would only apply where an ATS displays orders to more than one subscriber in securities where it has exceeded the applicable 5% threshold).

[1042] If the NMS Stock ATS responds ''no'' to Part III, Item 24(a) it will not be required to respond to Item 24(b), and if it responds ''yes'' to Item 24(a) but ''no'' to Item 24(b), it will not be required to provide any additional information in response to Item 24.

[1043] *See* Liquidnet Letter at 13–14.

[1044] *See* SIFMA Letter at 27.

[1045] *See* Proposal, *supra* note 2, at 81082, n.502. An ATS that meets any of the trading volume thresholds set forth in Rule 301(b)(5)(i), must comply with the requirements of Rule 301(b)(5)(ii) (including the requirement to disclose to the Commission on Form ATS–R the information required by Rule 301(b)(5)(ii)(D)), unless it meets the exception set forth in Rule 301(b)(5)(iii).

[1046] *See* Proposal, *supra* note 2, at 81082.

[1047] *See supra* Section V.D.24.

[1048] If the NMS Stock ATS responds ''no'' to Part III, Item 25(a), it will not be required to respond to Item 25(b), and if it responds ''yes'' to Item 25(a) but ''no'' to Item 25(b), it will not be required to provide any additional information in response to Item 25.

subscribers.[1049] One commenter expresses concern that the proposed requirements of Part IV, Item 16 would have made the process of providing information requested by customers more difficult, noting that it receives information requests on an ongoing basis from traders at more than 800 firms.[1050] Another commenter questions the value that the snapshot disclosed under Part IV, Item 16 would have for the general public, and states that adopting Part IV, Item 16 as proposed would cause NMS Stock ATSs to stop sharing some categories of information with clients.[1051]

We continue to believe that it is appropriate to require an NMS Stock ATS to make public aggregate, platform-wide order flow and execution statistics it already otherwise collects and publishes or provides to one or more subscribers to the NMS Stock ATS. We believe that an NMS Stock ATS may choose to create and publish or provide to one or more subscribers or persons information concerning order flow and execution quality for different reasons. Certain performance metrics and statistics may be important factors for market participants in comparing and selecting an ATS that is most appropriate for their investment objectives.

We acknowledge a commenter's point that that these disclosures might limit communication between NMS Stock ATSs and their participants to the extent that an NMS Stock ATS chooses to cease providing such statistics to subscribers due to the Form ATS–N requirements.[1052] However, we believe that only a few NMS Stock ATSs would take this type of action because such ATSs would have already chosen to distribute such statistics to outside persons, thus triggering the requirements of Item 26. Furthermore, we believe that the benefits of this disclosure—requiring that all market participants have an equal opportunity to analyze aggregate platform-wide order flow and execution data that is distributed by an NMS Stock ATS—justify the potential cost of some ATSs choosing to no longer distribute such statistics to select subscribers on their platforms.

Another commenter believes this request should not require the disclosure of ''bespoke'' statistics for a subscriber.[1053] The commenter is concerned that if an NMS Stock ATS has to amend its Form ATS–N each time it receives a subscriber's request for additional information, it will not provide investors with additional information; accordingly, the commenter suggests revising Part IV, Item 16 in a way that would not discourage an NMS Stock ATS from providing additional market quality information to investors. We share the concern that if an NMS Stock ATS is compelled to amend its Form ATS–N each time it receives a request for additional information from a market participant, it will not provide investors with this information. Item 26, however, would not require an NMS Stock ATS to amend its Form ATS every time it receives a data request. As explained in the Proposal, to comply with this request, an NMS Stock ATS would only be required to file a Form ATS–N updating amendment on a quarterly basis.[1054] We are not modifying the language or substantive requirements in adopted Form ATS–N. Rather, to provide greater clarity regarding when and how NMS Stock ATSs are required to respond to Item 26(a), we are adding an instruction to Form ATS–N to state that an NMS Stock ATS shall file a Form ATS–N amendment pursuant to Rule 304(a)(i)(2)(B) of Regulation ATS to provide information in response to Item 26(a). Furthermore, as explained above, the benefits of this disclosure justify the potential cost of some ATSs choosing to no longer distribute such statistics to select subscribers on their platforms.

In addition, one commenter believes that broker-dealer operators and their affiliated broker-dealers should be permitted to respond to individualized questions from subscribers and to continue to provide customized reports in the course of responding to those individualized questions without attendant Form ATS–N revisions or amendment requirements.[1055] This commenter states that without clarification regarding how individualized or custom reports are to be treated, this disclosure requirement could potentially introduce misleading or skewed information into the public arena, which could undermine the transparency goals of the proposed rules.[1056] Similarly, one commenter states that the Commission should clarify that Part IV, Item 16 would not apply when an NMS Stock ATS provides data to a customer relating to that customer's specific usage of the ATS.[1057] The commenter states that institutions must have access to this type of information to fulfill their best execution obligations, but making this type of information public could compromise an institution's anonymity.[1058] We note that Part III, Item 26 of adopted Form ATS–N requires only aggregate platform-wide data and, thus, would not apply when an NMS Stock ATS provides a participant with individualized or custom reports containing data relating to that participant's specific usage of the ATS.

Commenters also recommend changes and/or other clarifications to the requests under Part IV, Item 16 of proposed Form ATS–N. One of these commenters recommends that the Commission eliminate the public disclosure requirements under Item 16 and instead propose a revised report on aggregate order flow and execution that is to be filed on an annual and confidential basis with the Commission as an exhibit to Form ATS–N.[1059] As noted above, we are adopting the proposed disclosure requests, as the public disclosure of the material encompassed by Part IV, Item 16 of proposed Form ATS–N will benefit market participants.

Another commenter recommends revising Part IV, Item 16 of proposed Form ATS–N to only mandate the disclosure of the required market quality statistics when the NMS Stock ATS publishes or otherwise provides such statistics to a substantial portion of its subscribers (*e.g.,* 10% or more).[1060] As explained above, we believe that there is a strong policy objective behind ensuring that the information encompassed by Part III, Item 26 of adopted Form ATS–N is available to a wide array or market participants. We believe that setting a threshold for when these disclosure requirements are

[1049] *See* SIFMA Letter at 27; Liquidnet Letter at 15.

[1050] *See* Liquidnet Letter at 15.

[1051] *See* SIFMA Letter at 27.

[1052] *See id.*

[1053] *See* MFA/AIMA Letter at 5.

[1054] *See* Proposal, *supra* note 2, at 81084. As also explained in the Proposal, if, for example, an NMS Stock ATS publishes or provides a particular statistic on a daily basis, the NMS Stock ATS would include in Exhibit 4 of adopted Form ATS–N the statistic that was published or provided to one or more subscribers on the last trading day of the calendar quarter (*e.g.,* the statistic published or provided on June 30th or last trading day prior to June 30th). *See id.* at n.512. If an NMS Stock ATS publishes or provides a particular statistic weekly, the NMS Stock ATS would be required to include in Exhibit 4 of adopted Form ATS–N the statistic that was published or provided to one or more subscribers at the end of the week prior to the end of the calendar quarter (*e.g.,* the statistic published for the last full week of June). *See id.*

[1055] *See* SIFMA Letter at 27.

[1056] *See id.*

[1057] *See* Liquidnet Letter at 16.

[1058] *See id.*

[1059] *See* SIFMA Letter at 28.

[1060] *See* MFA/AIMA Letter at 5; *see also* 17 CFR 242.605 (requiring market centers, which include ATSs, to make available for each calendar month an electronic report on certain categories of order execution information).

triggered would not advance this policy objective because an NMS Stock ATS would be able to limit distribution of the statistics encompassed by Part II, Item 26 of adopted Form ATS–N to a select number of participants on the ATS.

As an alternative to the proposed requirements for the disclosure of aggregate platform-wide statistics on Form ATS–N, a commenter recommends that the Commission designate specific execution statistics for *all* ATSs to provide.[1061] However, if the Commission were to adopt the requests of Part IV, Item 16 as proposed, the commenter believes that the Commission should clarify that trade-specific data would not be subject to this filing requirement, including pre-trade and post-trade transaction cost analyses. The commenter also requests clarification that this disclosure request only covers execution quality statistics and that other types of statistics are not included. By way of example, the commenter believes that disclosing the percentage of customers that have used a specific product or product feature would not trigger the requirements of Part III, Item 26 because that information would not be considered a market quality statistic. Finally, the commenter believes that NMS Stock ATSs should be permitted to file the relevant statistics under Part III, Item 26 without filing any associated communication to a specific customer (such as the other contents of an email containing these statistics or a questionnaire submitted by the customer), as this could compromise customer anonymity.

We confirm that Part III, Item 26 of adopted Form ATS–N only requires the disclosure of order flow and execution statistics, and that trade-specific data that does not include aggregate, platform-wide information would not be covered by this request. We note, however, that whether or not a specific type of statistic should be categorized as an order and execution statistic or considered aggregate, platform-wide data will depend on the nature of the specific statistics being compiled by the NMS Stock ATS. An NMS Stock ATS should independently evaluate any statistics that it compiles and distributes to determine whether they are responsive to this disclosure request. We also agree that protecting customer anonymity should be a priority with any public disclosure under this Item, and thus, an ATS would not be required to publicly file customer communications associated with the responsive statistics.

While we are not changing the substance of the proposed data request being adopted in Part III, Item 26, we are making technical modifications to improve the means by which the disclosures are filed on Form ATS–N. We believe that these modifications will make it easier for market participants to review and compare the filed information. In addition to changing the proposed request into a ''yes'' or ''no'' question in adopted Form ATS–N, Part III, Item 26 requires the NMS Stock ATS to attach both the responsive statistics and its explanation of the categories or metrics of those statistics as Exhibits 4 and 5, respectively, rather than including such information as part of the form, as was proposed. We believe it will be easier for market participants to review the disclosures as stand-alone documents than it would be if they were filed and publicly posted as narratives in the form. Also, in lieu of filing Exhibits 4 and 5, the NMS Stock ATS may certify that the information requested under Exhibits 4 and 5 is available at the website provided in Part I, Item 5 of the form and is accurate as of the date of the filing.

b. Other Standardized Statistical Disclosures

In the Proposal, we solicited comment on whether other standardized statistical disclosures should be required from NMS Stock ATSs and the nature and extent of any such metrics or statistics that commenters believe should be disclosed.[1062] Several commenters believe that the Commission should add additional public statistical disclosure requirements to the ATS regulatory regime.[1063] We believe that it is appropriate to take an incremental approach to the disclosure of additional market statistics. At this time, we believe it is appropriate to only require NMS Stock ATSs to provide to all market participants—via public disclosure on Form ATS–N—aggregate, platform wide order flow and execution statistics that they already collect and distribute and that would be encompassed by adopted Item 26. Accordingly, we are not adopting rules to require NMS Stock ATSs or national securities exchanges to report quantitative data above what these trading centers are already required to report under current federal securities laws.[1064]

We also received comments advocating that this rulemaking include amendments to Rule 605 of Regulation NMS.[1065] Other commenters recommend enhancing the disclosure requirement of Rule 606 of Regulation NMS.[1066] Should we decide to take action with respect to the reporting of additional market quality data under Rule 605, we would do so in a separate rulemaking. Additionally, a separate rulemaking has been proposed to amend Rule 606 by requiring additional disclosures by broker-dealers to customers about the routing of their institutional orders.[1067] We are currently considering the proposal and comments received.

VI. Amendments to Rule 301(b)(10) and Rule 303(a)(1) for Written Safeguards and Written Procedures To Protect Confidential Trading Information

Current Rule 301(b)(10) of Regulation ATS [1068] requires every ATS to have in place safeguards and procedures to protect subscribers' confidential trading information and to separate ATS functions from other broker-dealer functions, including proprietary and customer trading.[1069] Rule 301(b)(10), however, does not currently require that the safeguards and procedures

[1061] *See* Liquidnet Letter at 15. We are not expanding the regulatory regime of Regulation ATS to require the public disclosure of specific, standardized statistics for ATSs. *See also infra* Section V.D.26.b.

[1062] *See* Proposal, *supra* note 2, at 81084–85.

[1063] *See, e.g.,* T. Rowe Price Letter at 1 (recommending that ATSs be required to collect and disclose statistics about the percentage of volume executed in block and demi-block sizes, percentage of volume executed relative to national best bid/offer (*i.e.,* near, far, midpoint, and intra-spread), trade size and market cap distribution, and aggregate statistics regarding counterparties); Citadel Letter at 4 (advocating for the Commission to require the reporting of end-of-day trade information that the commenter believes would bring greater transparency to market participants); HMA Letter at 22 (recommending that ATSs be required to collect and disclose statistics about Order Trading and Descriptive Statistics, Subscriber Characteristics, and ATS Relationship and Trading Statistics); Anonymous at 1 (stating that the same data produced by national securities exchanges should also be provided by ATSs, including transactional short sale data); and Liquidnet Letter at 16 (recommending that ATSs be required to publicly report all individual ATS executions on an attributed basis, which could be subject to a suitable delay period, such as 30 days).

[1064] *See* 17 CFR 242.605 and 17 CFR 242.606.

[1065] *See* 17 CFR 242.605. Rule 605 generally requires a market center that trades NMS stocks to make available to the public monthly electronic execution reports that include uniform statistical measures of execution quality. *See* HMA Letter at 20; Consumer Federation of America Letter at 7; Markit Letter at 5–6.

[1066] 17 CFR 242.606. Rule 606 of Regulation NMS requires every broker or dealer to make publicly available for each calendar quarter a report on its routing of non-directed orders in NMS securities during that quarter. *See* Markit Letter at 6–7; ICI Letter at 8.

[1067] *See* Securities Exchange Act Release No. 78309 (July 13, 2016), 81 FR 49432 (July 27, 2016).

[1068] *See* 17 CFR 242.301(b)(10).

[1069] *See* Regulation ATS Adopting Release, *supra* note 3, at 70879.

mandated under Rule 301(b)(10) be memorialized in writing.

We proposed to amend Rule 301(b)(10)(i) to require that all ATSs (including both NMS Stock ATSs and non-NMS Stock ATSs) adopt written safeguards and written procedures that limit access to the confidential trading information of subscribers to those employees of the ATS who are operating the system or are responsible for its compliance with Regulation ATS or any other applicable rules,[1070] and implement written standards controlling employees of the ATS trading for their own accounts.[1071] In addition, proposed Rule 301(b)(10)(ii) would require that the oversight procedures, which an ATS adopts and implements to ensure that the above safeguards and procedures are followed, be in writing.[1072]

We received five comments on the proposed amendment to Rule 301(b)(10).[1073] Four commenters indicate that they support the requirement that ATSs memorialize safeguards and procedures in writing as proposed.[1074] An additional commenter does not object to the Commission's proposal to require that an ATS's procedures to protect confidential information be memorialized in writing.[1075]

We are adopting the amendments to Rule 301(b)(10) as proposed. We continue to believe that safeguards and procedures to ensure the confidential treatment of ATS subscribers' trading information are important, and that the potential for misuse of such information continues to exist. We also continue to believe that requiring an ATS to reduce to writing those safeguards and procedures, as well as its oversight procedures to ensure that such safeguards and procedures are followed, will strengthen the effectiveness of the ATS's safeguards and procedures and will better enable the ATS to protect confidential subscriber trading information and implement and monitor the adequacy of, and the ATS's compliance with, its safeguards and procedures.[1076] The proposed revisions would aid investors, market participants, and regulators by consolidating written safeguards and procedures into one place for easy review and evaluation.[1077] Further, we agree with the comment that asserts that the process of consolidating these safeguards and procedures may facilitate ATS operators' identification of gaps or opportunities for improvement of these measures.[1078] In addition, we believe that reducing ATSs' safeguards and procedures under Rule 301(b)(10) to writing will help the Commission and its staff, and the staff of the SRO of which an ATS's broker-dealer operator is a member, evaluate whether an ATS has established such procedures and safeguards, whether the ATS has implemented and is abiding by them, and whether they comply with the requirements of Rule 301(b)(10). This should assist the Commission, and the applicable SRO(s), to exercise more effective oversight of ATSs regarding the ATSs' compliance with Rule 301(b)(10) and other federal securities laws, rules, and regulations. Furthermore, we believe that the amendments we are adopting to Rule 301(b)(1) will benefit market participants because they will be able to better evaluate the implementation of such safeguards and procedures, once they are reduced to writing.

We also proposed to amend the record preservation requirements of Rule 303(a)(1) to incorporate the amendments to Rule 301(b)(10).[1079] We received no comments on the proposed change to Rule 303(a)(1).[1080] We are adopting, as proposed, Rule 303(a)(1)(v), which requires that an ATS, for a period of not less than three years, the first two years in an easily accessible place, preserve at least one copy of the written safeguards and written procedures to protect subscribers' confidential trading information and the written oversight procedures created in the course of complying with Rule 301(b)(10).[1081]

VII. EDGAR Filing Requirements; Structured Data

Form ATS–N would be filed electronically in a structured format through EDGAR. By filing in EDGAR, NMS Stock ATSs will be given the option of filing using a web-fillable Form ATS–N which will render into XML in EDGAR, or to file directly in XML using the XML schema for NMS Stock ATSs as published on the Commission's website. With both options, the Commission will receive the Form ATS–N information in XML format. For those NMS Stock ATSs that would prefer to manually key in all of their Form ATS–N responses, as had been originally proposed by us, those NMS Stock ATSs can do so using the Commission's web-fillable Form ATS–N, which will render into XML in EDGAR. For those NMS Stock ATSs that would prefer to map the information in their existing systems so that filing of Form ATS–N can be more automated and more efficient for them, those NMS Stock ATS can file in XML using the XML schema as published on the Commission's website. The Commission's XML schema and the Commission's web-fillable Form ATS–N both reflect the same set of custom XML tags and XML restrictions designed by the Commission to submit the disclosures in Form ATS–N.

As we proposed, all effective Forms ATS–N and all properly filed Form ATS–N amendments will be made publicly available. Because Form ATS–N will be filed in an XML format (either using the Commission's web-fillable form or as an XML file submitted according to the Commission's XML schema) in EDGAR, once effective, all Forms ATS–N will be centrally located on EDGAR for the public to access in the same XML format in which the Form ATS–N was received by the Commission.

The XML format is a text-searchable format that does not require the use of optical character recognition and will enhance the Commission's and the public's abilities to better gather, analyze, aggregate, compare, and use the Form ATS–N data. Requiring XML should result in the Form ATS–N data being provided in a consistent, structured format. XML is an open

[1070] *See* Rule 301(b)(10)(i)(A).

[1071] *See* Rule 301(b)(10)(i)(B).

[1072] *See* Rule 301(b)(10)(ii).

[1073] *See* ICI Letter at 10; MFA/AIMA Letter at 6; HMA Letter at 23; STANY Letter at 2; Liquidnet Letter at 17. *See also* Investor Advocate Letter at 2.

[1074] *See* ICI Letter at 10; MFA/AIMA Letter at 6; HMA Letter at 23; STANY Letter at 2.

[1075] *See* Liquidnet Letter at 17. In addition, this commenter expresses concern that the requirements of Regulation ATS relating to protection of confidential information could be interpreted in a manner that would be harmful to long-term investors by prohibiting broker-dealers that operate ATSs from providing information to customers that the customers can use to evaluate and enhance their trading performance, such reports of participants' positive action rates and the positive action rates of the contras with which they match. *See id.* The commenter is concerned that if Rule 301(b)(10) is interpreted to restrict the distribution of this type of information, this would harm long-term investors. *See id.* Proposed and adopted amendments to Rule 301(b)(10) to require an ATS to maintain written procedures to protect confidential trading information neither (i) change the standard for what constitutes adequate safeguards and procedures to protect subscribers' confidential trading information nor (ii) narrow or expand the scope of what is considered to be confidential trading information under that rule. In general, the determination of what constitutes subscribers' confidential trading information is a facts and circumstances analysis, but it is also outside of the scope of this rulemaking to provide interpretive guidance about the scope of Rule 301(b)(10).

[1076] In addition, we are requiring public disclosure related to such safeguards and procedures. *See supra* Section V.C.6.

[1077] *See* HMA Letter at 23.

[1078] *See id.*

[1079] *See supra* Section V.C.8.

[1080] *See supra* Section III.B.6.

[1081] *See* proposed Rule 303(a)(1)(v).

standard that defines, or ''tags,'' data using standard definitions. The tags establish a consistent structure of identity and context. This consistent structure can be automatically recognized and processed by a variety of software applications such as databases, financial reporting systems, and spreadsheets, and then made immediately available to the end user to search, aggregate, compare, and analyze.

In addition, XML is an open standard that is maintained by a consensus based market standards organization, rather than the Commission, and undergoes constant review. As updates to XML or industry practice develop, the Commission's XML schema and web-fillable XML architecture may also have to be updated to reflect the updates in technology. If that occurs, the supported version of the XML schema would be made available on the Commission's website and the outdated version of the schema would be removed in order to maintain data quality and consistency with the standard, while the web-fillable Form ATS–N would be updated in EDGAR to reflect the same changes in technology as the Commission's XML schema.

The Commission's XML schema and architecture for the web-fillable Form ATS–N would also incorporate certain validations to help ensure consistent formatting and completeness among all Forms ATS–N, in other words, to help ensure data quality. Validations are restrictions placed on the formatting for each data element so that comparable data is presented comparably. However, these validations would not be designed to ensure the underlying accuracy of the data. Any Form ATS–N filed in EDGAR would have to comply with validations that are incorporated within the XML schema, otherwise the Form ATS–N will not be accepted by EDGAR.

We believe that requiring Form ATS–N be provided in an XML format would provide the Commission and the public with data about NMS Stock ATSs in a format that facilitates search capabilities, and comparative analyses across NMS Stock ATSs and across filings, including more advanced text analytics for the more narrative responses of Form ATS–N. Absent this requirement, users of the Form ATS–N data that wanted to aggregate the data or search across filings or filers would need to spend additional time transferring the data into a consistent format before it could be analyzed, or incur the cost of a service provider that specializes in this data aggregation and comparison process. Further, unrestricted manual entry of data may lead to errors, thereby potentially reducing data quality and usability.

We understand that there are costs associated with structuring and that these costs may vary depending on the filer and the type of structuring. By offering two options for filers to submit Form ATS–N in EDGAR, filers will be able to select the method best suited to their situation. Overall, the we believe that the XML format of Form ATS–N will have enhanced benefits for the Commission's and the public's use of Form ATS–N while minimizing costs relative to filers having to file Form ATS–N using other structured formats.[1082] Requiring the Commission's XML schema with its incorporated validations (whether submitted as XML or in the web-fillable form) will help ensure that the data that filers submit is complete and appropriately formatted so that additional time will not have to be spent on subsequent Form ATS–N filings to correct for those errors. By comparison, the EFFS system originally proposed does not support the open-source XML format, but rather a proprietary XML implementation called XFDL. As a result, the EFFS system has fewer validation capabilities and cannot test for consistency and completeness as broadly as the XML format, and in particular, at the element level. In addition, as proposed, filers would have been required to individually upload each narrative response as a separate exhibit, whereas the XML format permits filers to provide all their narrative responses in one structured XML file, which will slightly diminish their time spent in filing in the Form ATS–N narrative information.

End users will be able to download the consistently structured information directly into databases and analyze it using various software. This would enhance their ability to conduct large-scale analysis and immediate cross-filing comparisons of NMS Stock ATSs, as well as comparisons across reporting periods within the same and among different NMS Stock ATSs. Moreover, as an open standard, XML is widely available to the public at no cost. By comparison, viewing information in the current EFFS system requires a license of a commercial proprietary viewer, which currently is not separately available to every member of the public without licensing.

Commenters who supported the standardization of Form ATS–N information also underscored the importance of making the information comparable.[1083] While the commenters did not make specific reference to the structured format, having the Form ATS–N information submitted using the Commission's XML schema or the web-fillable form will enhance the comparability of the Form ATS–N data by ensuring that the information has been submitted completely and consistently. Two commenters addressed the importance of completeness to Form ATS–N filings.[1084] With the Commission's XML schema, the restrictions incorporated into the schema (and consequently, also reflected in the web-fillable form) will help test for completeness of the data before submission and reduce filer uncertainty on the completeness and consistency of their filing. One commenter recommends that we consider ways to present information that would improve the readability and navigability of disclosure through the use of technology such as hyperlinks and/or XBRL technology.[1085] The XML format is a technology format that presents the data consistently, which improves the readability and navigability of the data. In fact, XBRL is an XML-based technology, but, as discussed later, we do not think that XBRL is the appropriate format for this form.[1086] While hyperlinks may be useful in some situations to cross-reference information, hyperlinks do not by themselves enhance the comparability of the underlying data, but can be incorporated within the XML format, as permitted.

Because Form ATS–N filings will be submitted electronically,[1087] we are revising Rule 101 of Regulation S–T [1088] to add paragraph (a)(1)(xxi) to the list of mandated electronic submissions. Specifically, paragraph (a)(1)(xvii) adds to this list Form ATS–N.

VIII. Effective Date and Compliance Date

We did not receive any comments about the effective date for the amendments. The rules being adopted today will become effective 60 days after the date of publication in the **Federal Register**.

With regard to the adopted amendments to Rules 301(b)(10) and 303(a)(1)(v) of Regulation ATS,[1089] we

[1082] *See infra* Section X.D.11.

[1083] *See* Fidelity Letter at 1; Morgan Stanley Letter at 2; SIFMA Letter at 3; UBS Letter at 2–3.

[1084] *See* MFA/AIMA Letter at 4; SIFMA Letter at 32–33.

[1085] *See* Fidelity Letter at 5.

[1086] *See infra* Section X.D.11.

[1087] *See supra* Section V.A.1.

[1088] 17 CFR 232.101.

[1089] *See supra* Section VI.

believe the 60 day effective date provides sufficient time for ATSs to memorialize in writing their safeguards and procedures to protect subscribers' confidential trading information (to the extent that those safeguards and procedures are not currently maintained in written form). Current Rule 301(b)(10) of Regulation ATS [1090] requires every ATS to have safeguards and procedures that limit access to the confidential trading information of subscribers to those employees of the ATS who are operating the system or are responsible for its compliance with Regulation ATS or any other applicable rules,[1091] and implement standards controlling employees of the ATS trading for their own accounts.[1092] We note that the adopted amendments to Rules 301(b)(10) and 303(a)(1)(v) do not modify that requirement other than to require that those safeguards and procedures be written, pursuant to Rule 301(b)(1) and preserved pursuant to Rule 303(a)(1)(v). Accordingly, we believe that the 60 days after the final rule is published in the **Federal Register** is reasonable for the amendments to Rules 301(b)(10) and 303(a)(1)(v) to become effective, and for ATSs to comply with those rules.

We believe that the compliance dates provided in Rules 304 and 301(b)(2)(viii) provide sufficient time for NMS Stock ATSs to prepare and file Form ATS–N disclosures with the Commission. Rule 304(a)(1)(iv)(A) requires a Legacy NMS Stock ATS to file with the Commission an initial Form ATS–N, in accordance with Rule 304, no earlier than January 7, 2019, and no later than February 8, 2019.[1093] Rule 301(b)(2)(viii) provides that a Legacy NMS Stock ATS that is operating pursuant to an initial operation report on Form ATS on file with the Commission as of January 7, 2019 shall be subject to the requirements of Rule 301(b)(2)(i) through (vii) until the Legacy NMS Stock ATS files an initial Form ATS–N with the Commission pursuant to Rule 304(a)(1)(iv)(A).[1094] In addition, pursuant to Rule 301(b)(2)(viii), as of January 7, 2019, an entity seeking to operate as a new NMS Stock ATS shall also be subject to Rule 304 and the rules amended in relation.[1095]

[1090] *See* 17 CFR 242.301(b)(10).

[1091] *See* Rule 301(b)(10)(i)(A).

[1092] *See* Rule 301(b)(10)(i)(B).

[1093] *See supra* Section IV.A.4.a. *See also* Rule 304(a)(1)(iv)(A).

[1094] *See supra* Section III.B.4.

[1095] *See supra* Section III.B.4; IV.A.1. *See also supra* note 291 and accompanying text.

IX. Paperwork Reduction Act

Certain provisions of the proposal contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[1096] The titles of these requirements are:

- Requirements for Alternative Trading Systems That Are Not National Securities Exchanges—Rule 301, Form ATS and Form ATS–R, 17 CFR 242.301 (OMB Control No. 3235–0509);
- Rule 303 (17 CFR 242.303) Record Preservation Requirements for Alternative Trading Systems (OMB Control No. 3235–0505); and
- Rule 304 and Form ATS–N (a new collection of information).

In accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11, we submitted these requirements to the Office of Management and Budget (''OMB'') for review and approval in accordance with the PRA and its implementing regulations.[1097] The title for the new collection of information in Rule 304 and Form ATS–N is ''Rule 304 and Form ATS–N.'' We have applied for a new OMB Control Number for this collection in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number.

In the Proposal, we solicited comments on the proposed collection of information burdens and asked whether commenters agree with our estimate of the number of respondents and burdens of the Proposal. We received one comment on our estimates of the collection of information burden included in the Proposal, which is addressed below.[1098]

A. Summary of Collection of Information

The amendments to Regulation ATS include two new categories of obligations that require a collection of information within the meaning of the PRA. The first category relates to Rule 301(b)(10) and Rule 303 of Regulation ATS [1099] and applies to all ATSs, while the second category relates to Form ATS–N and applies only to NMS Stock ATSs.

[1096] 44 U.S.C. 3501 *et seq.*

[1097] 44 U.S.C. 3507; 5 CFR 1320.11.

[1098] *See infra* note 1235 and accompanying text.

[1099] 17 CFR 242.301(b)(10); 17 CFR 242.303.

1. Requirements Relating to Rule 301(b)(10) and 303(a)(1) of Regulation ATS

The amendments to Regulation ATS will require an ATS to place in writing the safeguards and procedures required by Rule 301(b)(10) to protect subscribers' confidential trading information and oversight procedures to ensure that the safeguards and procedures are followed. In addition, we are amending Rule 303(a)(1) [1100] of Regulation ATS to require an ATS to preserve at least one copy of written safeguards and written procedures, and written oversight procedures created in the course of complying with Rule 301(b)(10) for a period of not less than three years, the first two years in an easily accessible place.[1101]

2. Requirements Relating to Rules 301(b)(2)(viii) and 304 of Regulation ATS, Including Form ATS–N

Any ATS that meets the definition of an NMS Stock ATS is required to complete an initial Form ATS–N, file it with the Commission via EDGAR, and make public via posting on its website a direct URL hyperlink to the Commission's website that contains the documents enumerated in Rule 304(b)(2).[1102]

Form ATS–N requires that the entity submitting the filing would indicate whether the NMS Stock ATS currently operates pursuant to a Form ATS, and the type of Form ATS–N filing—whether the Form ATS–N is an initial Form ATS–N, a Form ATS–N amendment (whether a material amendment, updating amendment, correcting amendment, or order display and fair access amendment), a notice of cessation, and if it is a notice of cessation, the date the NMS Stock ATS will cease to operate, or if it is a withdrawal. If the filing is a Form ATS–N amendment, the NMS Stock ATS is also required to provide a brief summary of the amendment and the EDGAR accession number for the Form ATS–N filing to be amended. If the filing is a withdrawal, the NMS Stock ATS is required to provide the EDGAR accession number for the Form ATS–N filing to be withdrawn.

Part I requires information about the broker-dealer operator.[1103] Part II of Form ATS–N requires an NMS Stock ATS to disclose information about the ATS-related activities of the broker-dealer operator and its affiliates.[1104] Part

[1100] 17 CFR 242.303(a)(1).

[1101] *Id.*

[1102] *See generally* Section IV.

[1103] *See* Section V.B.2.

[1104] *See* Section V.C.

III of Form ATS–N requires an NMS Stock ATS to provide certain information about the manner of operations of the NMS Stock ATS.[1105] Part IV of Form ATS–N requires an NMS Stock ATS to provide contact information. In addition, Form ATS–N will require NMS Stock ATSs to file the form electronically via EDGAR with a typed signature.[1106]

We are also amending Rule 303(a)(2)(ii) to require that an NMS Stock ATS preserve, for the life of the enterprise and of any successor enterprise, copies of reports filed pursuant to Rule 304.[1107]

Furthermore, an ATS that trades both NMS stocks and non-NMS stocks will be required to file both a Form ATS–N with respect to its trading of NMS stocks and a revised Form ATS that removes discussion of those aspects of the ATS related to the trading of NMS stocks. The ATS will also be required to file two Forms ATS–R filings—one to report its trading volume in NMS stocks and another to report its trading volume in non-NMS stocks.

B. Proposed Use of Information

1. Amendments to Rule 301(b)(10) and 303(a)(1) of Regulation ATS

We continue to believe that both the Commission and the SRO of which the ATS's broker-dealer operator is a member will use the written safeguards and written procedures required by the amendments to Rule 301(b)(10) to better understand how each ATS protects subscribers' confidential trading information from unauthorized disclosure and access. We continue to believe that the information contained in the records required to be preserved by Rule 303(a)(1)(v) will be used by examiners and other representatives of the Commission, state securities regulatory authorities, and SROs to evaluate whether ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations. We also believe that the requirement to memorialize in writing the safeguards and procedures to protect subscribers' confidential trading information will help assist ATSs in more effectively complying with their existing legal requirements under Regulation ATS; in particular, the requirements to protect the confidentiality of subscribers' trading information under Rule 301(b)(10) of Regulation ATS.

2. Rules 301(b)(2)(viii), 304 of Regulation ATS, Including Form ATS–N, and 301(b)(9)

We believe that market participants will use the information publicly disclosed on Form ATS–N to compare and evaluate NMS Stock ATSs when making their routing decisions.[1108] In addition, we believe we will use the information disclosed on Form ATS–N, Form ATS, and Form ATS–R to oversee the growth and development of NMS Stock ATSs.[1109] We believe that the information contained in the records required to be preserved by the amendment to Rule 303(a)(2)(ii) will be used by examiners and other representatives of the Commission, state securities regulatory authorities, and SROs to evaluate whether ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations.

C. Respondents

The ''collection of information'' requirements under the amendments to Regulation ATS relating to Rule 301(b)(10) and Rule 303(a)(1)(v) would apply to all ATSs, including NMS Stock ATSs. The ''collection of information'' requirements under the amendments to Regulation ATS relating to Rule 304, Form ATS–N, and the amendments to Rule 303(a)(2)(ii) would apply only to NMS Stock ATSs, and the ''collection of information'' requirements under the amendments to Rule 301(b)(9) would apply to NMS Stock ATSs that also transact in both NMS stocks and non-NMS stocks. Currently, there are 87 ATSs that have filed Form ATS with us. Of these 87 ATSs, 41 would meet the definition of an NMS Stock ATS.[1110] Accordingly, the we estimate that 87 entities would be required to comply with the amendments related to Rule 301(b)(10) of Regulation ATS and 41 entities would be required to complete Form ATS–N.[1111]

In addition, there are currently 10 ATSs that trade, or have indicated in Exhibit B to their Form ATS that they expect to trade, both NMS stocks and non-NMS stocks on the ATS.[1112] Under the amendments to Regulation ATS, these 10 entities would be required to file a Form ATS–N to disclose information about their NMS stock activities and file a Form ATS to disclose information about their non-NMS stock activities. Consequently, these 10 ATSs would have to amend their Forms ATS to remove information regarding operations related to the trading of NMS stocks and on an ongoing basis, file separate Forms ATS–R to report trading volume in NMS stocks and trading volume in non-NMS stocks.[1113]

With respect to Form ATS–N, we recognize there may be entities that might file a Form ATS–N to operate an NMS Stock ATS in the future. From January 2014 through March 2018, an average of 2 new ATSs per year disclose that they trade or expect to trade NMS stocks on their Form ATS initial operation reports, and would therefore fall within the definition of an NMS Stock ATS. Similarly, some ATSs that currently trade NMS stocks may choose to cease operations rather than comply with the amendments requiring them to file Form ATS–N. Other ATSs may choose to cease operations in the normal course of business. From January 2014 through March 2018, an average of 9 ATSs that trade NMS stocks have ceased operations each year.[1114]

We believe that most ATSs that currently trade NMS stocks would continue to operate notwithstanding the amendments to Regulation ATS. For the purposes of this analysis of the paperwork burden associated with the amendments to Regulation ATS, we assume that there will be 41 respondents. This number assumes that most ATSs that currently trade NMS

[1105] *See* Section V.D.

[1106] *See* Section V.A.1.

[1107] *See* Rule 303(a)(2)(ii).

[1108] *See supra* Section III.A.1.a.

[1109] *See id.*

[1110] As of March 31, 2018, 41 ATS have disclosed on their Form ATS that they trade or expect to trade NMS stock.

[1111] We recognize that there may be new entities that will seek to become ATSs, or NMS Stock ATSs, that would be required to comply with the proposed amendments to Rule 301(b)(10). From January 2014 through the first half of 2017, an average of 12 Form ATS initial operation reports were filed each year with us. Similarly, some ATSs may cease operations in the normal course of business or possibly in response to the proposed amendments to Regulation ATS. From January 2014 through the March 31, 2018, an average of 9 ATSs, including those that trade NMS stocks have ceased operations. For the purposes of this paperwork burden analysis, we assume that 87 respondents would be required to comply with the proposed amendments to Rule 301(b)(10), if adopted. We are estimating that the number of entities that may file a Form ATS initial operation report would generally offset any ATSs that may file a Form ATS cessation of operations report.

[1112] Data compiled from Forms ATS and ATS–R submitted to us as of March 31, 2018. These 10 ATSs are included within the 41 NMS Stock ATSs.

[1113] Pursuant to Rule 301(b)(9), all ATSs are required to file Form ATS–R within 30 calendar days after the end of each calendar quarter in which the market has operated, and within 10 calendar days after the ATS ceases to operate. An ATS that trades both NMS stocks and non-NMS stocks would report its transactions in NMS stocks on one Form ATS–R, and its transaction volume in other securities on a separate Form ATS–R.

[1114] In the Proposal, we cited the average number of new ATSs and ATSs that ceased operations from 2012 through the first half of 2015, which were 2 and 6, respectively. *See* Proposal, *supra* note 2, at 81092.

stocks would file a Form ATS–N with the Commission. We acknowledge that some ATSs may cease operations altogether and other entities that may commence operations as an NMS Stock ATS. Based on the current number of initial operation reports and cessation of operations reports on current Form ATS for ATSs that trade NMS stocks described above, we estimate that 2 to 3 new entities will file initial Form ATS–N to become an NMS Stock ATS and 7 to 9 NMS Stock ATSs will cease operations in each of the next three years.

D. Total Initial and Annual Reporting and Recordkeeping Burdens

1. Rules 301(b)(10) and 303(a)(1)(v) of Regulation ATS

a. Baseline Measurements

We believe that ATSs—in particular, ATSs whose broker-dealer operators are large, multi-service broker-dealers—generally have and maintain in writing their safeguards and procedures to protect subscribers' confidential trading information, as well as the oversight procedures to ensure such safeguards and procedures are followed.[1115] However, neither Rule 301(b)(10) nor Rule 303(a)(1) of Regulation ATS currently requires that an ATS have and preserve those safeguards and procedures in writing. For ATSs that currently have and preserve in written format the safeguards and procedures to protect subscribers' confidential trading information under Rule 301(b)(10) of Regulation ATS, we estimate that the average annual burden they voluntarily undertake to update and preserve those written safeguards and written procedures is 4 hours.[1116] Because neither current Rule 301(b)(10) nor current Rule 303(a)(1) requires an ATS to have and preserve its safeguards and procedures to protect subscribers' confidential trading information in writing, this burden is not reflected in the current PRA baseline burdens for Rules 301 and 303.[1117] In accordance with the below analysis, we are modifying the current PRA burdens for Rules 301 and 303 to account for the new requirement that ATSs have and preserve in written format the safeguards and procedures to protect subscribers' confidential trading information.[1118]

b. Burdens

We recognize that Rules 301(b)(10) and 303(a)(1)(v) of Regulation ATS would impose certain burdens on respondents. For ATSs that currently have and preserve in written format the safeguards and procedures to protect subscribers' confidential trading information and written oversight procedures to ensure such safeguards and procedures are followed, we believe that there will be no increased burden under the amendments to Rules 301(b)(10) and 303(a)(1)(v) of Regulation ATS. We believe that the current practices of those ATSs would already be in compliance with the rules and the amendments should not require these ATSs to take any actions in addition to those currently undertaken.

For ATSs that have not recorded in writing their safeguards and procedures to protect subscribers' confidential trading information and oversight procedures to ensure such safeguards and procedures are followed, there will be an initial, one-time burden to memorialize them in a written document(s). In the Proposal, we estimated that an ATS's initial, one-time burden to put in writing its safeguards and procedures to protect subscribers' confidential trading information and the oversight procedures to ensure such safeguards and procedures are followed would be 8 hours.[1119] We did not receive any comment on the preliminary estimates. Because ATSs are already required to have safeguards and procedures to protect subscribers' confidential trading information and to have oversight procedures to ensure such safeguards and procedures are followed, we believe that recording these items in a written format would not impose a substantial burden on ATSs and would rely on internal staff to record the ATS's Rule 301(b)(10) procedures in writing. Therefore, we estimate that an ATS's initial, one-time burden to put in writing its safeguards and procedures to protect subscribers' confidential trading information and the oversight procedures to ensure such safeguards and procedures are followed would be approximately 8 hours,[1120] but we estimate that the burden could range between 5 and 10 hours.[1121] We estimate that, of the 87 current ATSs, 15 ATSs might not have their safeguards and procedures to protect subscribers' confidential trading information or oversight procedures to ensure such safeguards and procedures are followed in writing, and would therefore be subject to this one-time initial burden.[1122] Accordingly, we estimate that the aggregate initial, one-time burden on all ATSs would be 120 hours based on our highest approximation of the additional burden per ATS.[1123]

We estimate that the average annual, ongoing burden per ATS to update and preserve written safeguards and written procedures to protect subscribers' confidential trading information, as well as to update and preserve the written standards controlling employees of the ATS trading for their own account and the written oversight procedures, would be 4 hours.[1124] As a result, we estimate that the total aggregate, ongoing burden per year for all ATSs would be 348 hours,[1125] and thus, we are modifying the current PRA burden estimates for Rules 301 and 303 to account for this increased burden on ATSs.

2. Rules 301(b)(2)(viii) and 304 of Regulation ATS, Including Form ATS–N

a. Baseline Measurements

Currently, Rule 301(b)(2)(i) of Regulation ATS [1126] requires an ATS to file an initial operation report on current Form ATS at least 20 days prior to commencing operation as an alternative trading system. Current Form ATS requires information regarding the operation of the ATS, including, among other things, classes of subscribers, the types of securities traded, the outsourcing of operations of the ATS to other entities, the procedures governing the entry of orders, the means of access to the ATS, and procedures governing execution and reporting. Regarding amendments to an existing Form ATS, Rule 301(b)(2)(ii) of Regulation ATS [1127] requires an ATS to file amendments to its current Form ATS at least 20

[1115] *See infra* Section VI.

[1116] Attorney at 2 hours + Compliance Clerk at 2 hours = 4 burden hours. For ATSs that do not have their safeguards and procedures or oversight procedures in a written format, these firms would incur a one-time initial burden to record their safeguards and procedures as well as their oversight procedures in a written format as described below.

[1117] *See* FR Doc. 2014–02143, 79 FR 6236 (February 3, 2014) (Request to OMB for Extension of Rule 301 and Forms ATS and ATS–R; SEC File No. 270–451; OMB Control No. 3235–0509) (hereinafter ''Rule 301 PRA Update''); FR Doc. 2013–17474, 78 FR 43943 (July 22, 2013) (Request to OMB for Extension of Rule 303; SEC File No. 270–450; OMB Control No. 3235–0505) (hereinafter ''Rule 303 PRA Update'').

[1118] *See infra* note 1125 and accompanying text.

[1119] *See* Proposal, *supra* note 2, at 81094.

[1120] Attorney at 7 hours + Compliance Clerk at 1 hour = 8 burden hours.

[1121] Attorney at 4–9 hours + Compliance Clerk at 1 hour = 5–10 burden hours.

[1122] It is likely that most, if not all, ATSs already fulfill their Rule 301(b)(10) obligations in writing, given the practical difficulty in ensuring such safeguards and procedures, as well as oversight procedures, are ''adequate,'' as required under Rule 301(b)(10), and contain all necessary components.

[1123] (Attorney at 7 hours + Compliance Clerk at 1 hour) x (15 ATSs) = 120 burden hours.

[1124] *See supra* note 1116 and accompanying text.

[1125] (Attorney at 2 hours + Compliance Clerk at 2 hours) × 87 ATSs = 348 burden hours.

[1126] 17 CFR 242.301(b)(2)(i).

[1127] 17 CFR 242.301(b)(2)(ii).

calendar days prior to implementing a material change to its operations. Rule 301(b)(2)(iii) of Regulation ATS [1128] requires an ATS to file amendments to its current Form ATS within 30 calendar days after the end of each calendar quarter if any information contained in its initial operation report becomes inaccurate and has not been previously reported to the Commission.[1129] Regarding shutting down an ATS, Rule 301(b)(2)(v) of Regulation ATS [1130] requires an ATS to promptly file a cessation of operation report on current Form ATS upon ceasing operations as an ATS.

Our currently approved estimate for an initial operation report on current Form ATS is 20 hours to gather the necessary information, provide the required disclosures in Exhibits A through I, and submit the Form ATS to the Commission.[1131] With respect to Form ATS amendments, we understand, based on the review of Form ATS amendments by the Commission and its staff, that ATSs that trade NMS stocks typically amend their Form ATS on average twice per year.[1132] The frequency and scope of Form ATS amendments vary depending on whether the ATS is implementing a material change or an updating change. Some ATSs may not change how they operate or anything else that might require an amendment to Form ATS in a given year while others may implement a number of changes during a given year that require Form ATS amendments. Our currently approved estimated average compliance burden for each amendment to Form ATS is approximately 6 hours.[1133] Accordingly, the estimated average annual ongoing burden of updating and amending Form ATS is approximately 12 hours per NMS Stock ATS.[1134] With respect to ceasing operations, the currently approved average estimated compliance burden for an ATS to complete a notice of cessation is 2 hours to check the appropriate box on Form ATS and send the notice of cessation to the Commission.[1135] Our currently approved estimate for the average compliance burden for each Form ATS–R filing is 4 hours.[1136]

b. Burdens

We recognize that Rules 301(b)(2)(viii) and 304 of Regulation ATS, including Form ATS–N, would impose certain burdens on respondents.[1137] Although many of the disclosures required by Form ATS–N are currently required by Form ATS, Form ATS–N requires an NMS Stock ATS to provide significantly more detail in those disclosures than currently required by Form ATS. Form ATS–N also requires additional disclosures not currently mandated by current Form ATS such as those contained in Part II of adopted Form ATS–N. Under the amendments to Regulation ATS, NMS Stock ATSs will be required to complete and file the enhanced and additional disclosures on Form ATS–N.[1138] Section IX.D.2.b.i below provides the estimated burden above the current Form ATS baseline of each item of Form ATS–N. Many of the disclosure items on Form ATS–N are already required disclosures by respondents in whole or in part on current Form ATS, while other disclosure items on Form ATS–N are novel (*i.e.,* current Form ATS does not require some form of the disclosure). Section IX.D.2.b.ii aggregates these new burdens and the additional burdens above the current Form ATS baseline that will be imposed by Form ATS–N.

(i) Analysis of Estimated Additional Burden for Form ATS–N

(a) Part I

In the Proposal, we estimated that preparing Parts I and II for a Form ATS–N would add 0.5 hours to the current baseline for an NMS Stock ATS to prepare an initial operation report on current Form ATS.[1139] Part I of adopted Form ATS–N contains substantially the same information as Parts I and II of proposed Form ATS–N. However, adopted Form ATS–N does not include several proposed disclosure requirements and contains several new requests. Overall, we estimate that the burden for Part I of adopted Form ATS–N will be the same as that which was estimated for proposed Form ATS–N. Accordingly, we estimate that Part I of adopted Form ATS–N will add an additional 0.5 hours above the baseline of current Form ATS.

(b) Part II

As explained above, Part II, Items 1 and 2 contain disclosure requests about the broker-dealer operator's and affiliates', respectively, trading activity on the NMS Stock ATS. For Part II, Item 1(a), to the extent that the broker-dealer operator is not permitted to enter or direct orders and trading interest to the NMS Stock ATS, the NMS Stock ATS would only be required to check ''no.'' In addition, to the extent the broker-dealer operator enters or directs the entry of orders and trading interest into the NMS Stock ATS, but such orders and trading interest is treated the same as trading interest from other subscribers and persons, Part II, Item 1(b) would require that the NMS Stock ATS check ''no.''

Part II, Item 1(a) of adopted Form ATS–N incorporates aspects of several proposed disclosures that addressed the activity of the broker-dealer operator's trading activity on the NMS Stock ATS. First, Part II, Item 1(a) of adopted Form ATS–N incorporates requirements of Part III, Items 1 and 2 of proposed Form ATS–N, which would have requested disclosures about the non-ATS trading centers and other NMS Stock ATSs operated by the broker-dealer operator and its affiliates. In the Proposal, we estimated that preparing Part III, Item 1 for proposed Form ATS–N would add 10 hours to the current baseline of Form ATS and Part III, Item 2 would add 4 hours to the current baseline of Form ATS, for a total estimated burden of 14 hours for Part III, Items 1 and 2.

Adopted Part II, Item 1(a) more narrowly tailors those proposed requests by focusing on the actual trading activities of the broker-dealer operator on the NMS Stock ATS and its use of the ATS's services. Primarily, the request under adopted Item 1(a): (i) Does not require an NMS Stock ATS to list all non-ATS trading centers and NMS Stock ATSs operated by the broker-dealer operator, regardless of whether those entities trade on the NMS Stock ATS; and (ii) replaces what some commenters perceived as potentially broad narrative requests to describe the ''interaction and coordination'' between

[1128] 17 CFR 242.301(b)(2)(iii).

[1129] In addition, Rule 301(b)(2)(iv) requires an ATS to promptly file an amendment on current Form ATS after the discovery that any information previously filed on current Form ATS was inaccurate when filed. 17 CFR 242.301(b)(2)(iv).

[1130] 17 CFR 242.301(b)(2)(v).

[1131] Attorney at 13 hours + Compliance Clerk at 7 hours = 20 burden hours. *See* Rule 301 PRA Update, *supra* note 1117, 79 FR 6237.

[1132] *See id.*

[1133] Attorney at 4.5 hours + Compliance Clerk at 1.5 hours = 6 burden hours. *See id.*

[1134] 2 Form ATS amendments filed annually × 6 burden hours per Form ATS amendment = 12 burden hours per ATS.

[1135] Attorney at 1.5 hours + Compliance Clerk at 0.5 hours = 2 burden hours. *See* PRA Update, *supra* note 1117, 79 FR 6237.

[1136] Attorney at 3 hours + Compliance Clerk at 1 hour = 4 burden hours. *See id.*

[1137] In establishing the estimates below with respect to Form ATS–N, we have considered its estimate of the burden for an SRO to amend a Form 19b–4. Specifically, we estimated that 34 hours is the amount of time required to complete an average rule filing and 129 hours is the amount of time required to complete a complex rule filing, and three hours is the amount of time required to complete an average amendment to a rule filing. *See* Securities Exchange Act Release No. 50486 (October 4, 2004), 69 FR 60287, 60294 (October 8, 2004).

[1138] These disclosures will be provided on Form ATS–N and may have to be amended periodically as provided in proposed Rule 304.

[1139] *See* Proposal, *supra* note 2, at 81095.

the NMS Stock ATS and those non-ATS trading centers and other NMS Stock ATSs. Instead, the NMS Stock ATS is now required to name and describe each type of business unit of the broker-dealer operator that enters or directs the entry of orders and trading interest into the NMS Stock ATS, and we have replaced the term ''interaction and coordination'' with specific, enumerated data points and narratives that the NMS Stock ATS must provide. Furthermore, the corresponding affiliate disclosures for Part III, Items 1 and 2 of proposed Form ATS–N are now encompassed by Part II, Item 2(a) of adopted Form ATS–N, so Part II, Item 1(a) of adopted Form ATS–N will not impose the entire burden that was estimated for proposed Part III, Items 1 and 2. It will impose the burden from those proposed items that would have been imposed by the disclosure requirements related to the broker-dealer operator itself, which we believe is a small fraction of the proposed estimate relevant to the requirements related to affiliates of the broker-dealer operator. Accordingly, out of the 14-hour estimate for proposed Part III, Items 1 and 2, we estimate that Part II, Item 1(a) of adopted Form ATS–N would add approximately 2.75 hours to the baseline estimate to complete an initial operation report on Form ATS.

Second, the request under Part II, Items 1(a) of adopted Form ATS–N also incorporates aspects of the disclosures proposed under Part III, Item 5(a) of proposed Form ATS–N. We estimated that preparing proposed Part III, Item 5(a) would add 5 hours to the current baseline.[1140] While we did not provide estimates for each individual subpart of Part III, Item 5 of proposed Form ATS–N, the aspects of Part III, Item 5 that are incorporated into Part II, Item 1(a) of adopted Form ATS–N (*i.e.,* information about the broker-dealer operator's trading activity on the ATS, other than the information covered by proposed Item 5(d)) accounted for approximately 1.5 hours of the 5 hour estimate. We believe that the aspects of proposed Part III, Item 5 that are incorporated into Part II, Item 1(a) of adopted Form ATS–N would still add approximately 1.5 hours to the baseline for an initial operation report on current Form ATS.[1141] Adopted Form ATS–N requires the NMS Stock ATS to identify business units of the broker-dealer operator that enter or direct the entry of orders, whereas proposed Form ATS–N would have required the NMS Stock ATS to identity all business units that may enter orders or other trading interest. However, we believe that it would impose approximately the same burden for the broker-dealer operator to compile both lists because both would involve the collection of information about internal units of the broker-dealer operator.[1142] Accordingly, we estimate that the adopted requests under Part II, Item 1(a) would add a total of approximately 4.25 hours to the current baseline for an initial operation report on current Form ATS. This would result in an aggregate initial burden of 174.25 hours above the baseline for all NMS Stock ATSs to complete Part II, Items 1(a) and (b) of Form ATS–N.[1143]

The information sought under Part II, Item 1(b) of adopted Form ATS–N would have been requested under Part III, Item 9 of proposed Form ATS–N. We estimated that completing Part III, Item 9 of proposed Form ATS–N would add 2 hours to the current baseline of Form ATS.[1144] In most cases, Part II, Item 1(b) of adopted Form ATS–N will require the NMS Stock ATS to answer ''yes'' or ''no'' and list applicable item numbers in Part III of adopted Form ATS–N. An NMS Stock ATS will need to provide a narrative under Item 1(b) only if there are differences that are not applicable to Part III. But we believe that the subject matter covered by Part III is very comprehensive, and therefore, we do not believe that an NMS Stock ATS typically will need to provide additional narratives about differences in treatment that are not otherwise covered by Part III. Accordingly, we estimate that Part II, Item 1(b) of adopted Form ATS–N would add 0.25 hours out of the proposed 2-hour estimate for Part III, Item 9 to the current baseline for an initial operation report on Form ATS because in most instances, the NMS Stock ATS will be required to check the ''yes'' or ''no'' box and provide a list of relevant requests in Part III. This would result in an aggregate initial burden of 10.25 hours above the baseline for all NMS Stock ATSs to complete Part II, Item 1(b) of Form ATS–N.[1145]

Similarly, Part II, Items 1(c) and 1(d) of adopted Form ATS–N include requests for information that are intended to highlight disclosures about conflicts of interests and potential information leakage in Part III, Items 12 and 16, respectively, of adopted Form ATS–N. Part IV, Item 1(d) of proposed Form ATS–N set forth the proposed disclosure requirements regarding liquidity providers on the NMS Stock ATS. This request for information is now set forth in Part III, Item 12 of adopted Form ATS–N. In Part II, Item 1(c) of adopted Form ATS–N, we have now added the additional disclosure requirements for the NMS Stock ATS to answer a ''yes'' or ''no'' question and provide a list of any internal business units that trade on the NMS Stock ATS as liquidity providers in order to highlight information about potential conflicts of interest that might be disclosed in Part III, Item 12 of adopted Form ATS–N. We therefore estimate that, on average, preparing Part II, Item 1(c) for a Form ATS–N would add 1 hour to the current baseline for an initial operation report on current Form ATS. This would result in an aggregate initial burden of 41 hours above the baseline for all NMS Stock ATSs to complete Part II, Item 1(c) of Form ATS–N.[1146]

Part III, Items 1(b)(iii) and 2(b)(iii) of proposed Form ATS–N would have required the NMS Stock ATS to explain the circumstances under which subscriber orders or trading interest received by the NMS Stock ATS may be removed from the NMS Stock ATS and sent to non-ATS trading centers or other NMS Stock ATSs operated or controlled by the broker-dealer operator, respectively. These disclosures are now incorporated into Part III, Item 16 of adopted Form ATS–N. However, we believe that information about the routing or removal of orders from the NMS Stock ATS to a trading center operated or controlled by the broker-dealer operator may include information that market participants find necessary to evaluate potential conflicts of interest or information leakage on the NMS Stock ATS, so we have added Part II, Item 1(d) to Part II of adopted Form ATS–N. Part II, Item 1(d) of adopted Form ATS–N requires the NMS Stock ATS to answer a ''yes'' or ''no'' question. The narrative associated with this disclosure will be set forth in Part III, Item 16. We therefore estimate that, on average, preparing Part II, Item 1(d) for a Form ATS–N would add 0.5 hour to the current baseline for an initial operation report on current Form ATS. This would result in an aggregate initial

[1140] *See* Proposal, *supra* note 2, at 81097.

[1141] The estimated burden hours for proposed Part III, Item 5(a) related to affiliate trading on the ATS are now allocated to Part II, Item 2(a) of adopted Form ATS–N.

[1142] As noted below with regard to Part II, Item 2(a) of adopted Form ATS–N, however, the analogous change in scope for affiliate trading activity on the NMS Stock ATS will reduce the burden on NMS Stock ATSs relative to that which was proposed.

[1143] (Attorney at 3.75 + Compliance Manager at 0.5) × 41 NMS Stock ATSs = 174.25 burden hours.

[1144] *See* Proposal, *supra* note 2, at 81098.

[1145] Attorney at 0.25 hours × 41 NMS Stock ATSs = 10.25 burden hours.

[1146] Compliance Manager at 1.0 hours × 41 NMS Stock ATSs = 41 burden hours.

burden of 20.5 hours above the baseline for all NMS Stock ATSs to complete Part II, Item 1(d) of Form ATS–N.[1147]

The requests under Part II, Item 2 of adopted Form ATS–N mirror those of Part II, Item 2 of adopted Form ATS–N, except that the former requires disclosures about the trading activity of the broker-dealer operator and the latter require disclosures about the trading activities of affiliates.[1148] As with Item 1, to the extent no affiliate of the broker-dealer operator can enter or direct the entry of orders and trading interest into the NMS Stock ATS, the NMS Stock ATS would be required to check ''no'' under Part II, Item 2(a). In addition, to the extent that there are no differences between treatment of affiliates that can enter or direct the entry of orders and trading interest into the ATS and other subscribers and persons regarding services offered and provided by the NMS Stock ATS, the NMS Stock ATS would \ be required to check ''no'' under Part II, Item 2(b).

Likewise, as with Part II, Item 1(a) of adopted Form ATS–N, the disclosure requests in Part II, Item 2(a) of adopted Form ATS–N are more narrowly tailored than those which were proposed, and the disclosure requests about trading activities of the broker-dealer operator are no longer contained in the same questions as those regarding affiliate trading in adopted Form ATS–N. Most significantly, we believe that the burden for an NMS Stocks ATS to provide information about each of its broker-dealer operator's affiliates that trades on the NMS Stock ATS will be less than it would have been to provide: (i) A comprehensive list of all non-ATS trading centers and NMS Stock ATSs operated by affiliates, as was proposed under Part III, Items 1 and 2, respectively; and (ii) a list of each affiliate that may enter orders or other trading interest on the NMS Stock ATS, as was proposed under Part III, Item 5(a). Under their current disclosure requirements pursuant to Regulation ATS, ATSs must compile a list of subscribers that were participants on the ATS for its quarterly reports on current Form ATS–R.[1149] On the other hand, there is no current requirement for an ATS to maintain a list of its broker-dealer operator's affiliates' non-ATS trading centers or NMS Stock ATSs, as was proposed. To the extent that an NMS Stock ATS must dedicate resources to determine whether any of its affiliates direct the entry of orders or trading interest into the ATS through a third-party broker-dealer in order to be responsive to Part II, Item 2(a) of adopted Form ATS–N, we believe that burden will also be less than it would have been to compile—and keep up-to-date—a list of all non-ATS trading centers and NMS Stock ATSs operated by its affiliates.

Additionally, the burden to complete Item 2(a) will likely vary significantly among NMS Stock ATSs because the number of affiliates of each broker-dealer operator—and the number of those affiliates that trade on the NMS Stock ATS—may vary significantly among ATSs. However, even though the wording of the disclosure requests are almost identical, Part II, Item 2(a) of adopted Form ATS–N will likely impose a greater burden than that of Part II, Item 1(a) because we believe it will take an NMS Stock ATS longer to compile the necessary information about affiliated third-party entities than it will to compile that information for internal business units of the broker-dealer operator. Accordingly, we estimate that, on average, preparing adopted Part II, Item 2(a) would add approximately 6.25 hours to the current baseline for an initial operation report on current Form ATS. This will result in an aggregate initial burden of 256.25 hours above the baseline for all NMS Stock ATSs to complete Part II, Item 2(a) of Form ATS–N.[1150]

Like Part II, Item 1(b) of adopted Form ATS–N, the disclosure request in Part II, Item 2(b) will usually require the NMS Stock ATS to answer ''yes'' or ''no'' and list applicable item numbers in Part III of adopted Form ATS–N. An NMS Stock ATS must provide a narrative under Item 2(b) only if there are differences that are not applicable to Part III. Accordingly, we estimate that Part II, Item 2(b) of adopted Form ATS–N would add .25 hours out of the proposed 2 hours for Part III, Item 9 to the current baseline for an initial operation report on Form ATS because in most instances, the NMS Stock ATS will be required to check the ''yes'' or ''no'' box and provide a list of relevant requests in Part III. This would result in an aggregate initial burden of 10.25 hours above the baseline for all NMS Stock ATSs to complete Part II, Item 1(b) of Form ATS–N.[1151]

Furthermore, as is the case with Part II, Item 1 of adopted Form ATS–N, Part II, Items 2(c) and 2(d) of adopted Form ATS–N includes requests for information that are intended to highlight potential conflicts of interests and information leakage that will be disclosed in Part III, Items 12 and 16, respectively, of adopted Form ATS–N. Accordingly, similar to Part II, Item 1(c), we estimate that, on average, preparing Part II, Item 2(c) for a Form ATS–N would add 1 hour to the current baseline for an initial operation report on current Form ATS. This would result in an aggregate initial burden of 41 hours above the baseline for all NMS Stock ATSs to complete Part II, Item 1(c) of Form ATS–N.[1152] Similar to Part II, Item 1(d), we estimate that, on average, preparing Part II, Item 2(d) for a Form ATS–N would add 0.5 hour to the current baseline for an initial operation report on current Form ATS. This would result in an aggregate initial burden of 20.5 hours above the baseline for all NMS Stock ATSs to complete Part II, Item 2(d) of Form ATS–N.[1153]

As explained above, Part II, Item 3 of adopted Form ATS–N contains disclosure requests about order interaction with the broker-dealer operator and its affiliates. To the extent that the NMS Stock ATS does not allow subscribers to opt out of interacting with the broker-dealer operator, the NMS Stock ATS must check ''no'' to Part II, Item 3(a). Similarly, to the extent that the NMS Stock ATS does not allow subscribers to opt out of interacting with the broker-dealer operator, the NMS Stock ATS must check ''no'' to Part II, Item 3(b). In addition, to the extent that the terms and conditions of the opt out processes are the same for all subscribers, the NMS Stock ATS must check ''no'' to Part II, Item 3(c).

The requirements under Part II, Items 3(a) and (b) of adopted Form ATS–N are intended to cover the subject matter originally proposed under Part III, Item 5(d) of proposed Form ATS–N.[1154] In the Proposal, we estimated that all of the items of Part III, Item 5 of proposed Form ATS–N would add 5 hours to the current baseline for an initial operation report on current Form ATS.[1155] While we did not provide estimates for each individual subpart of Part III, Item 5 of proposed Form ATS–N, subpart (d) of Part III, Item 5 of proposed Form ATS–N accounted for approximately 1 hour of the 5 hour estimate. We believe that the requests under Part II, Items 3(a)

[1147] Compliance Manager at 0.5 hours × 41 NMS Stock ATSs = 20.5 burden hours.

[1148] *See supra* Section V.C.1.

[1149] *See* Exhibit A of Form ATS–R.

[1150] (Attorney at 5.75 hours + Compliance Manager at 0.5 hours) × 41 NMS Stock ATSs = 256.25 burden hours.

[1151] Attorney at 0.25 hours × 41 NMS Stock ATSs = 10.25 burden hours.

[1152] (Compliance Manager at 1.0 hours) × 41 NMS Stock ATSs = 41 burden hours.

[1153] (Compliance Manager at 0.5 hours) × 41 NMS Stock ATSs = 20.5 burden hours.

[1154] Other requirements of Part III, Item 5 of proposed Form ATS–N are incorporated in adopted Part II, Item 1.

[1155] *See* Proposal, *supra* note 2, at 81097.

and (b) would still add approximately 1 hour to the baseline for an initial operation report on current Form ATS. As described in the Proposal, the broker-dealer operator should already know whether subscribers can opt out of interacting with the orders and trading interests of the broker-dealer operator and its affiliates.[1156]

In addition, we have incorporated the disclosure request from Part III, Item 9 regarding differentiated and preferential treatment into the disclosure request under Part II, Item 3(c) of adopted Form ATS–N. We estimate that Item 3(c) would add approximately .5 hours out of the proposed 2 hours for Part III, Item 9 to the baseline for an initial operation report on Form ATS. To the extent there are such differences, the NMS Stock ATS would be required to provide a narrative under Part II, Item 3(c) regarding services or functionalities of the NMS Stock ATS in addition to the narratives about manner of operations required under Part III. Accordingly, we estimate that, on average, preparing Part II, Item 3 for adopted Form ATS–N would add 1.5 hours to the baseline for an initial operation report on current Form ATS. This will result in an aggregate initial burden of 61.5 hours above the baseline for all NMS Stock ATSs to complete Part II, Item 3 of adopted Form ATS–N.[1157]

As explained above, Part II, Item 4 of adopted Form ATS–N contains disclosure requests about arrangements with other trading centers. In the Proposal, we estimated that the requirements of Part III, Item 4 of proposed Form ATS–N—which set forth the proposed requests regarding arrangements with unaffiliated trading centers—would add 4 hours to the current baseline for an initial operation report on current Form ATS.[1158] We have revised the proposed disclosure to clarify the scope of requested information and to add a requirement to disclose any arrangements with affiliated trading centers.[1159] As we stated in the Proposal, depending on the extent to which the broker-dealer operator or any affiliate of the broker-dealer operator has any formal or informal arrangement with a trading center to access the services of the NMS Stock, the hourly burden related to completing Part II, Item 4 would likely vary.[1160] While the scope of Part III, Item 4 of proposed Form ATS–N only encompassed arrangements with unaffiliated trading centers, Part II, Item 4 of adopted Form ATS–N encompasses arrangements with both unaffiliated and affiliated trading centers. However, we still believe that the hourly burden for the adopted disclosure request will vary depending on the extent to which a broker-dealer operator enters into arrangements with its affiliates and on the number of the broker-dealer operator's affiliates. We therefore, estimate that, on average and consistent with the proposed disclosure requirement, preparing Part II, Item 4 for a Form ATS–N would still add approximately 4 hours, on average, to the current baseline for an initial operation report on current Form ATS. This results in an aggregate initial burden of 164 hours above the current baseline for all NMS Stock ATSs to complete Part II, Item 4 of adopted Form ATS–N.[1161]

As explained above, Part II, Item 5 of adopted Form ATS–N contains disclosure requests about other products or services. To the extent that that the broker-dealer operator or any of its affiliates does not offer subscribers any products or services for the purpose of effecting transactions or for submitting, disseminating, or displaying orders and trading interest in the NMS Stock ATS, the NMS Stock ATS would need to check ''no'' on Part II, Items 5(a) and 5(b) and Items 5(c) and 5(d), respectively.

Part II, Item 5 of adopted Form ATS–N adopts, with modifications, the disclosure requests in Part III, Item 3 of proposed Form ATS–N, which would have required an NMS Stock ATS to disclose whether the broker-dealer operator, or any of its affiliates, offers subscribers any products or services used in connection with trading on the NMS Stock ATS (*e.g.,* algorithmic trading products, market data feeds). In the Proposal, we estimated that it would take an average of 3 hours for an NMS Stock ATS to disclose this information.[1162] As noted in the Proposal, we believe that depending on the extent to which the broker-dealer operator or any of its affiliates offers subscribers or persons any products or services for the purpose of effecting transactions or for submitting, disseminating, or displaying orders and trading interest in the NMS Stock ATS, the hourly burden related to completing Part II, Item 5 would likely vary.[1163] We have modified the proposed disclosures to require a summary of the terms and conditions for use and a cross-reference to the applicable Item number(s) in Part III of adopted Form ATS–N where the use of the product or service is explained. Only if there is no applicable Item in Part III would the NMS Stock ATS be required to include a narrative of the use of the product or service with the ATS under Part II, Item 5. While we have revised the wording of the adopted disclosure request to reduce the potential of NMS Stock ATSs unnecessarily disclosing commercially sensitive information,[1164] we do not believe that the estimated burden of the proposed disclosure request should change. It was not our intent to require NMS Stock ATSs to provide granular details that might constitute commercially sensitive information in response to the proposed disclosure requests. We therefore, estimate that, on average and consistent with the estimate in the Proposal, preparing Part II, Item 5 for a Form ATS–N would add 3 hour to the current baseline for an initial operation report on current Form ATS. This results in an aggregate initial burden of 123 hours above the current baseline for all NMS Stock ATSs to complete Part II, Item 5 of Form ATS–N.[1165]

As explained above, Part II, Item 6 of adopted Form ATS–N contains disclosure requests about the activities of service providers. Part II, Item 6(a) is similar to the request contained in Part III, Item 7 of proposed Form ATS–N, and Part II, Items 6(b) and (c) of adopted Form ATS–N are similar to the requests in Part III, Item 8 of proposed Form ATS–N. In the Proposal, we estimated that, on average, preparing Part III, Item 7 of proposed Form ATS–N would add 4 hours to the current baseline for an initial operation report on current Form ATS.[1166] Part II, Item 6(a) of adopted Form ATS–N asks for information about shared employees like proposed Part III, Item 7, but does not require the NMS Stock ATS to disclose the identity and titles of such employees, as was proposed. In addition, Part II, Item 6(a) requires a summary of such information, which results in a reduced filing burden relative to that which was proposed.

Part III, Item 8 of proposed Form ATS–N would have required an NMS Stock ATS to disclose information about whether any operation, service, or function of the NMS Stock ATS is

[1156] *See* id. at 81096.

[1157] (Attorney at 1 hours + Compliance Manager at 0.5 hours) × 41 NMS Stock ATSs = 61.5 burden hours.

[1158] *See* Proposal, *supra* note 2, at 81096.

[1159] *See supra* Section V.C.3.

[1160] *See* Proposal, *supra* note 2, at 81096.

[1161] (Compliance Manager at 3 hours + Senior Marketing Manager at 1 hour) × 164 NMS Stock ATSs = 164 burden hours.

[1162] *See* Proposal, *supra* note 2, at 81096.

[1163] *See id.*

[1164] *See supra* Section V.C.4.

[1165] (Compliance Manager at 2 hours + Senior Marketing Manager at 1 hour) × 41 NMS Stock ATSs = 123 burden hours.

[1166] *See* Proposal, *supra* note 2, at 81097.

performed by any person(s) other than the broker-dealer operator of the NMS Stock ATS. We had estimated that, on average, preparing Part III, Item 8 for proposed Form ATS–N would add 3 hours to the current baseline for an initial operation report on current Form ATS.[1167] Like Part II, Item 6(a), Part II, Item 6(b) of adopted Form ATS–N only requires a summary of the role and responsibilities of service providers to the ATS. As with Part II, Item 6(a) of adopted Form ATS–N, we estimate that only requiring a summary narrative for the service provider request in adopted Form ATS–N would result in a reduced filing burden relative to that which was proposed. Additionally, Item 6(c) requires the NMS Stock ATS to identify service providers and their affiliates that use the services of the ATS and list the services used; Part III, Item 8(c) of proposed Form ATS–N would have required the NMS Stock ATS to describe the circumstances and means by which service providers enter orders or trading interest on the ATS. Due to the reduced filing burden of adopted Part II, Items 6(a)–(c) relative that which was proposed, we estimate that, on average, Part II, Items 6(a)–(c) of adopted Form ATS–N would add 4.5 hours to the current baseline for an initial operating report on Form ATS.

Furthermore, as with Part II, Items 1, 2, and 3 of adopted Form ATS–N, we have incorporated aspects of Part III, Item 9 of proposed Form ATS–N regarding differentiated and preferential treatment into Part II, Item 6(d) of adopted Form ATS–N.[1168] We estimate that Item 3(c) would add approximately .5 hours out of the proposed 2-hour burden estimate for Part III, Item 9 to the current baseline for an initial operation report on current Form ATS because the NMS Stock ATS would be required to provide a narrative in Item 6(d) in additional to narratives about the manner of operations under Part III of adopted Form ATS–N. Accordingly, we estimate that on average, Part II, Item 6 of adopted Form ATS–N will add approximately 5 hours to the burden for an initial operation report on current Form ATS. This results in an aggregate initial burden of 205 hours above the current baseline for all NMS Stock ATSs to complete Part II, Item 6 of Form ATS–N.[1169]

As explained above, Part II, Item 7 of adopted Form ATS–N contains disclosure requests about the NMS Stock ATS's protection of confidential subscriber trading information. Part II, Item 7 of adopted Form ATS–N is similar to Part III, Item 10 of proposed Form ATS–N, which would have required certain disclosures related to the NMS Stock ATS's written safeguards and written procedures to protect the confidential trading information of subscribers pursuant to Rule 301(b)(10) of Regulation ATS.[1170] As previously discussed, NMS Stock ATSs will now be required to have and maintain written policies and procedures under Rule 301(b)(10) of Regulation ATS.[1171] Part II, Item 7(a) of adopted Form ATS–N requires a description of these policies and procedures, and the request in Item 7(a) will contain the information requested in Part III, Items 10(c) and (d) of proposed Form ATS–N. Part II, Item 7(b)–(c) of adopted Form ATS–N requests the same information as Part III, Item 10(a) of proposed Form ATS–N. Lastly, Part II, Item 7(d) is similar to Part III, Item 10(b) of proposed Form ATS–N, but the adopted request only requires a summary of roles and responsibilities, rather than identification of the positions or titles of all persons that have access to confidential trading information and a description of the circumstances of such access as was proposed. We continue to believe that NMS Stock ATSs should, pursuant to their existing obligations under Rule 301(b)(10), be aware of all persons that can access the confidential trading information of subscribers, the circumstances under which such persons can access that information, and what information they can access. As such, we believe that this change to proposed Part II, Item 10(b) of adopted Form ATS–N does not increase the proposed burden estimate. Rather, because the adopted request in Part II, Item 7(d) reduces the level of detail from that which was proposed and the other requests from proposed Part III, Item 10 are unchanged in adopted Form ATS–N, we estimate that the burden for Part II, Item 7 of adopted Form ATS–N is less than that which was proposed by 0.5 hours. In the Proposal, we estimated that Part III, Item 10 would add 2 hours to the baseline for an NMS Stock ATS to complete this item.[1172] Accordingly, we estimate that, on average, preparing Part II, Item 7 for a Form ATS–N would add 1.5 hours above the current baseline for an initial operation report on current Form ATS. This would result in an aggregate initial burden of 61.5 hours above the current baseline for all NMS Stock ATSs to complete Item 7 of Part II of Form ATS–N.[1173]

(c) Part III

Part III, Item 1 of adopted Form ATS–N is based on Part IV, Item 1(c) of proposed Form ATS–N, although certain information from the proposed item is not required to be disclosed in this item. Specifically, the requirement to describe any criteria for distinguishing among types of subscribers, classes of subscribers, or other persons is being removed from the item because such information is covered under Part III, Item 13 of adopted Form ATS–N on ''Segmentation; Notice.''[1174] Moreover, the required information on whether the NMS Stock ATS accepts non-broker-dealers as subscribers to the ATS is being converted to a ''yes'' or ''no'' question and placed in Part III, Item 2 of adopted Form ATS–N.

Part IV, Item 1 of proposed Form ATS–N is, in large part, already required under current Form ATS.[1175] We estimated all of Part IV, Item 1 of proposed Form ATS–N, which includes subparts (a)–(e), would add 6 hours to the to the current baseline for an initial operation report on current Form ATS.[1176] We now estimate that Part III, Item 1 as adopted would add 0.5 hours of burden to the current baseline. The current requirement of Exhibit A on Form ATS to describe the classes of subscribers on the ATS should oftentimes have substantial overlap with the requirement in Part III, Item 1 to select the types of subscribers from a list of checkboxes and identify any other types of subscribers. The additional 0.5 hours of burden is meant to account for identifying and listing any types of

[1167] *See id.*

[1168] Other requirements of Part III, Item 5 of proposed Form ATS–N are incorporated in adopted Part II, Item 1.

[1169] (Attorney at 3 hours + Compliance Manager at 2 hours) × 41 NMS Stock ATSs = 205.

[1170] Specifically, an NMS Stock ATS would be required to: (1) Describe the means by which a subscriber may consent or withdraw consent to the disclosure of confidential trading information to any persons (including the broker-dealer operator and any of its affiliates); (2) identify the positions or titles of any persons that have access to confidential trading information, describe the confidential trading information to which the persons have access, and describe the circumstances under which the persons can access confidential trading information; (3) describe the written standards controlling employees of the NMS Stock ATS that trade for employees' accounts; and (4) describe the written oversight procedures to ensure that the safeguards and procedures are implemented and followed.

[1171] *See supra* Section VI.

[1172] *See* Proposal, *supra* note 1 at 81098.

[1173] (Attorney at 1.0 hour + Compliance Manager at 0.5 hour) × 41 NMS Stock ATSs = 61.5 burden hours.

[1174] *See supra* Section V.D.1.

[1175] *See* Proposal, *supra* note 2, at 81098–81099.

[1176] The requirements related to subparts (a)–(e) of Item 1 of proposed Form ATS–N have been broken out into separate questions with the exception of subpart (b) which is being eliminated. We did not provide estimates for each individual subpart of Part IV, Item 1 of proposed Form ATS–N.

subscribers that are not already captured by the classes of subscribers identified in Exhibit A of Form ATS. We therefore estimate that, on average, preparing Part III, Item 1 for a Form ATS–N would add 0.5 hours to the current baseline for an initial operation report on current Form ATS. This would result in an aggregate initial burden of 20.5 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 1 of adopted Form ATS–N.[1177]

Part III, Item 2 of adopted Form ATS–N requires similar information to that required under Part IV, Items 1(a) and 1(b) of proposed Form ATS–N.[1178] In the Proposal, we estimated all of Part IV, Item 1 of proposed Form ATS–N, which includes subparts (a)–(e), would add 6 hours to the to the current baseline for an initial operation report on current Form ATS.[1179] However, a number of provisions of Part IV, Item 1 of proposed Form ATS–N either have been eliminated or moved to other Items in the adopted Form. Depending on the complexity of the NMS Stock ATS, the disclosure burden related to Part III, Item 2 of Form ATS–N would likely vary. For example, an NMS Stock ATS with two sets of conditions for different persons to satisfy before accessing the ATS services would likely have less of a burden than an NMS Stock ATS with five groups of persons that have to satisfy varying conditions. Accordingly, we estimate that, on average, preparing Part III, Item 2 for a Form ATS–N would add 1.0 hour to the current baseline for an initial operation report on current Form ATS. This would result in an aggregate initial burden of 41 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 2 of adopted Form ATS–N.[1180]

Part III, Item 3 of adopted Form ATS–N requires similar information to that required under Part IV, Item 1(e) of proposed Form ATS–N, with certain clarifications to reduce potential confusion with the application of Rule 301(b)(5) of Regulation ATS. First, Item 3(a) as adopted asks for a summary description of the conditions for excluding, in whole or in part, a subscriber from the ATS's services rather than the more detailed proposed requirement that the NMS Stock ATS describe the circumstances by which access for a subscriber or other person may be limited or denied. Second, we are no longer requiring that the NMS Stock ATS describe its procedures or standards to determine whether to exclude. Third, we are changing the language in the request to correspond closely with the definition of ATS in Regulation ATS.[1181] In the Proposal, we estimated all of Part IV, Item 1 of proposed Form ATS–N, which includes subparts (a)–(e), would add 6 hours to the current baseline for an initial operation report on current Form ATS.[1182] Although ATSs are not required to establish conditions for excluding subscribers from using the ATS, as stated in the Proposal,[1183] in our experience, ATSs often have rules governing subscribers' participation on the ATS, and if a subscriber fails to comply with these rules, the ATS may limit or deny access to the NMS Stock ATS. The burden associated with the request would likely vary depending on the complexity of the ATS, whether it has conditions for excluding subscribers, and whether those conditions differ among subscribers. For some NMS Stock ATSs, the information required by Part III, Item 3 would require gathering information on its practices for excluding subscribers that previously may have been ad hoc decisions in order to prove the summary of conditions for excluding subscribers required by the Item. Accordingly, we estimate that, on average, preparing Part III, Item 3 for a Form ATS–N would add 1 hour to the current baseline for an initial operation report on current Form ATS. This would result in an aggregate initial burden of 41 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 3 of adopted Form ATS–N.[1184]

Part III, Item 4 of adopted Form ATS–N is substantially similar to Part IV, Item 2 of proposed Form ATS–N, except that we are modifying the example provided in this item by replacing references in the Proposal to hours when ''pre-opening or after-hours *trading* occurs'' (emphasis added) with ''hours of operation outside of regular trading hours'' and the format of the item is being changed to a ''yes'' or ''no'' question. In the Proposal, we estimated that, on average, preparing Part IV, Item 2 for a Form ATS–N would add 0.5 hours to the current baseline for an initial operation report on current Form ATS, and we believe this estimate is still accurate for the adopted Item.[1185] The NMS Stock ATS is aware of the hours during which it operates, including any hours of operation outside of regular trading hours. Based on the experience of the Commission and its staff reviewing Form ATS and ATS–R filings, we believe that most ATSs that currently trade NMS stocks do not provide for after-hours or pre-opening trading of NMS stock. For NMS Stock ATSs for which the times when orders or trading interest may be sent to the NMS Stock ATS are not the same for all subscribers and the broker-dealer operator, the disclosure burden related to Part IV, Item 2 would likely be greater. Considering the foregoing, we continue to believe that, on average, preparing Part III, Item 4 for a Form ATS–N would add 0.5 hours to the current baseline for an initial operation report on current Form ATS. This would result in an aggregate initial burden of 20.5 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 4 of adopted Form ATS–N.[1186]

Part III, Item 5 of adopted Form ATS–N is based on Part IV, Item 4(a) of proposed Form ATS–N, although we have made modifications to the proposed item, and also are incorporating Part III, Item 6 proposed Form ATS–N. First, we are separating the requests regarding direct and indirect means of entry for orders and trading interest into the NMS Stock ATS so that information regarding direct means of entry will be disclosed in Part III, Item 5(a) of adopted Form ATS–N and information about other means of entry for orders and trading interest will be disclosed in adopted Part III, Item 5(c) of adopted Form ATS–N. Also, the information required by Part III, Item 5(a) on the direct means of order entry is being revised from the Proposal to be in a ''yes'' or ''no'' format. We are also moving and revising Part III, Item 6 of proposed Form ATS–N to adopted Part III, Item 5(c) regarding the means available for entering orders other than entering orders directly.[1187] Part III, Item 5(c) of adopted Form ATS–N would not require a broker-dealer operator to disclose its SOR's routing table or other information about how the SOR may route orders. Part III, Item 5(b) of adopted Form ATS–N no longer contains the proposed language ''[d]escribe the interaction and coordination,'' which was contained in

[1177] Attorney at 0.5 hours × 41 NMS Stock ATSs = 20.5 burden hours.

[1178] Adopted Part III, Item 2 removed some of the provisions in Part IV, Items 1(a) and 1(b) of proposed Form ATS–N and formatted the item to ''yes'' or ''no'' questions.

[1179] *See* Proposal, *supra* note 2, at 81098–81099.

[1180] (Attorney at 0.7 hours + Compliance Manager at 0.3 hours) × 41 NMS Stock ATSs = 41 burden hours.

[1181] *See* 17 CFR 242.300(a).

[1182] *See* Proposal, *supra* note 2, at 81098–81099.

[1183] *See* Proposal, *supra* note 2, at 81063.

[1184] (Attorney at 0.7 hours + Compliance Manager at 0.3 hours) × 41 NMS Stock ATSs = 41 burden hours.

[1185] *See* Proposal, *supra* note 2, at 81099.

[1186] Compliance Manager at 0.5 hours × 41 NMS Stock ATSs = 20.5 burden hours.

[1187] *See supra* Section V.D.5.

Part III, Item 6(b) of proposed Form ATS–N. Rather, Part III, Item 5(b) requires the NMS Stock ATS to ''identify and explain'' sources of order flow other than those used for direct entry into the ATS. Furthermore, the adopted disclosure requirements of Part III, Item 5(c) require the NMS Stock ATS to ''list and provide a summary description of the terms and conditions for entering orders or trading interest into the ATS'' through these sources.

In the Proposal, we estimated that, on average, preparing Part IV, Item 4, which includes both subparts (a) (related to order entry) and (b) (related to co-location) would add 5 hours to the current baseline for an initial operation report on current Form ATS.[1188] While we did not provide estimates for each individual subpart, each subpart of Part IV, Item 4 of proposed Form ATS–N accounted for half of the 5 hour estimate (*i.e.,* 2.5 hours each for subparts (a) and (b)). Furthermore, we estimated that, on average, preparing Part III, Item 6 of proposed Form ATS–N would add 10 hours to the current baseline for an initial operation report on current Form ATS. We estimate that the burden hours for adopted Part III, Item 5 that correspond to the information required in Part IV, Item 4(a) of proposed Form ATS–N would be substantially similar (*i.e.,* 2.5 hours). Therefore, we estimate Part III, Item 4 would add 2.5 hours to the current baseline for an initial operation report on current Form ATS.[1189] The disclosure requirements that were proposed in Part III, Item 6 of proposed Form ATS–N have been revised and moved to this Item 5(c) as adopted. We expect that the associated burden would be reduced as we are allowing the NMS Stock ATS to ''list and provide a summary description of the terms and conditions for entering orders or trading interest into the ATS,'' as opposed to the ''interaction and coordination'' language used in the Proposal. Therefore, we estimate this requirement would add 8.0 hours to the current baseline for an initial operation report on current Form ATS [1190] Thus, in total, we estimate that, on average, preparing Part III, Item 5 for a Form ATS–N would add 10.5 hours to the current baseline for an initial operation report on current Form ATS. This would result in an aggregate initial burden of 430.5 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 5 of adopted Form ATS–N.[1191]

We have made various revisions to the proposed item in adopted Part III, Item 6 of adopted Form ATS–N. Part III, Item 6(a) is limiting the proposed request by allowing for a ''summary'' of the terms and conditions for co-location and related services. We are also converting the information required by Part IV, Item 4(b) of proposed Form ATS–N into a series of ''yes'' or ''no'' questions, with accompanying explanations as applicable, in Part III, Item 6 of adopted Form ATS–N. [1192] We are also separating the requests for disclosure into separate sub-parts.

In the Proposal, the we estimated that, on average, preparing Part IV, Item 4 of proposed Form ATS–N, which included subparts (a) (connectivity and order entry) and (b) (co-location), would add 5 hours to the current baseline for an initial operation report on current Form ATS.[1193] We intended that each subpart of Part IV, Item 4 accounted for half of the 5 hour estimate (*i.e.,* 2.5 hours each for subparts (a) and (b)). We have reduced the burden compared to the proposed item by allowing for a summary of the terms and conditions related to co-location and related services in Part III, Item 6(a). On the other hand, the information required in Part III, Item 6(e) of Form ATS–N was previously proposed under a different item (Part IV, Item 7 of proposed Form ATS–N), and therefore, the burden related to responding to this item is now being added to Item 6(e) as adopted. Therefore, as we have revised Part III, Item 6 to both reduce the associated burden (by allowing for a summary) and increase the associated burden (by moving information required in proposed Part IV, Item 7 of proposed Form ATS–N), we believe that the burden hours for Part III, Item 6 will remain the same as the proposed estimate for Part IV, Item 4(b), 2.5 hours above the current baseline for an initial operation report. This would result in the aggregate initial burden of 95 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 6 of adopted Form ATS–N.[1194]

The disclosure requirements in Part III, Item 7 of adopted Form ATS–N are substantially the same as those set forth in Part IV, Item 3(a) and(b) of proposed Form ATS–N. ATSs that currently trade NMS stocks vary in the depth of their disclosures related to order types. We estimated in the Proposal that, on average, preparing Part IV, Item 3 of proposed Form ATS–N, which also included Items 3(c) and 3(d) that have been moved to other items in the adopted form,[1195] would add 6 hours to the current baseline for an initial operation report on current Form ATS.[1196] Because the requirements in Part III, Item 7 of adopted Form ATS–N are substantially the same as the corresponding requirements set forth in subparts (a) and (b) of Part IV, Item 3 of proposed Form ATS–N, we estimate that the burden hours will also be substantially similar. While we did not provide estimates for each individual subpart of Part IV, Item 3 of proposed Form ATS–N, subparts (a) and (b) of Part IV, Item 3 of proposed Form ATS–N, accounted for 4 hours (of the 6 burden hours estimated for Part IV, Item 3). Consequently, we estimate that adopted Part III, Item 7 will also add 4 hours above the current baseline for an initial operation report on current Form ATS, resulting in the aggregate initial burden of 164 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 7 of adopted Form ATS–N.[1197]

Part III, Item 8 of adopted Form ATS–N is based on Part IV, Item 3(c) of proposed Form ATS–N. In adopted Form ATS–N, Part III, Item 8, we separated the requests proposed under Item 3(c) into six sub-parts. However, the requirements have not changed significantly.[1198] Additionally, we are adding to Part III, Item 8(a) of adopted Form ATS–N a request for the NMS Stock ATS to provide information about any maximum order or trading interest size requirements. Because the requirements in Part III, Item 8 of adopted Form ATS–N are substantially the same as the corresponding

[1188] *See* Proposal, *supra* note 2, at 81101–02.

[1189] (Attorney at 0.5 hours + Compliance Manager at 1 hours + Senior Systems Analyst at 1 hours) × 41 NMS Stock ATSs = 102.5 burden hours.

[1190] (Attorney at 3 hours + Compliance Manager at 2 hours + Senior Systems Analyst at 3 hours) × 41 NMS Stock ATSs = 328 burden hours.

[1191] (Attorney at 3.5 hours + Compliance Manager at 3 hours + Senior Systems Analyst at 4 hours) × 41 NMS Stock ATSs = 430.5 burden hours.

[1192] *See supra* note 839.

[1193] *See* Proposal, *supra* note 2, at 81101–02. The requirements related to subparts (a) and (b) of Item 4 of proposed Form ATS–N have been broken out into separate items in the adopted form. Item 4(a) is being adopted as Part III, Item 5, as modified. *See supra* notes 1188- 1191 and accompanying text.

[1194] (Attorney at 1 hour + Compliance Manager at 1 hour + Senior Systems Analyst at .5) × 41 NMS Stock ATSs = 102.5 burden hours.

[1195] Item 3(c) of proposed Form ATS–N is being adopted with modifications as Item 8 of adopted Form ATS–N. Item 3(d) is being adopted with modifications as Item 9 of adopted Form ATS–N.

[1196] *See* Proposal, *supra* note 2, at 81099.

[1197] (Attorney at 1.0 hours + Compliance Manager at 2 hours + Senior Systems Analyst at 1) × 41 NMS Stock ATSs = 164 burden hours.

[1198] We are relocating Part IV, Item 3(c) of proposed Form ATS–N to Part III, Item 8 of adopted Form ATS–N and adopting a ''yes'' or ''no'' format. We are requiring that the NMS Stock ATS identify and explain any differences in the treatment of subscribers and the broker-dealer operator, as applicable, in separate sub-items 8(b), 8(d), and 8(f), respectively, which is the same as required in Part IV, Item 3(c) of the Proposal.

requirements set forth in Part IV, Item 3 of proposed Form ATS–N, we estimate that the burden hours in adopted Part III, Item 8 that correspond to the information required in proposed Part IV, Item 3 would be substantially similar. While we did not provide estimates for each individual subpart of Part IV, Item 3 of proposed Form ATS–N, subpart (c) of Part IV, Item 3 of proposed Form ATS–N, would have accounted for 1 hour (of the 6 burden hours estimated for Part IV, Item 3). Consequently, we estimate that the burden hours in adopted Part III, Item 8 would add 1 hour to the current baseline for an initial operation report on current Form ATS, resulting in the aggregate initial burden of 41 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 8 of adopted Form ATS–N.[1199]

Part III, Item 9 of adopted Form ATS–N is based on Part IV, Item 3(d) of proposed Form ATS–N. We separated Part IV, Item 3(d) of proposed Form ATS–N into two sub-parts in adopted Part III, Item 9. However, the requirements have not changed substantially. We are adding ''price or size minimums'' as examples of information that could be contained in the messages and ''order management system, smart order router and FIX'' to illustrate the types of mechanisms that could transmit messages, such as IOIs and conditional orders. Because the requirements in Part III, Item 9 of adopted Form ATS–N are substantially the same as the corresponding requirements set forth in Part IV, Item 3(d) of proposed Form ATS–N, we estimate that the burden hours in adopted Part III, Item 9 that correspond to the information required in Part IV, Item 3(d) of proposed Form ATS–N are substantially similar. While we did not provide estimates for each individual subpart of Part IV, Item 3 of proposed Form ATS–N, subpart (d) would have accounted for 1 hour (of the 6 burden hours estimated for Part IV, Item 3). Accordingly, we estimate that the burden hours in adopted Part III, Item 9 would add 1 hour to the current baseline for an initial operation report on current Form ATS, resulting in the aggregate initial burden of 41 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 9 of adopted Form ATS–N.[1200]

Part III, Item 10 of adopted Form ATS–N corresponds with Part IV, Item 9(a) of proposed Form ATS–N. We separated what was proposed in Part IV, Item 9(a) into five sub-parts in adopted Part III, Item 10. We are adding to Part III, Item 10(a) of adopted Form ATS–N requirements regarding ''when'' and how such orders and trading interest are ''priced [and] prioritized'' and ''any order types allowed'' during the opening and reopening processes.[1201] Additionally, we are formatting the requests that parallel the information requested in the Proposal into three sub-parts (adopted Items 10(a), 10(c) and 10(e)) and adding a ''yes'' or ''no'' question to Item 10(e) to improve readability and facilitate comparisons of the information for market participants. Also, we are adding a new requirement to identify and explain any differences in the treatment of subscribers and the broker-dealer operator in the opening and reopening processes, if applicable, in the form of ''yes'' or ''no'' questions in adopted Part III, Items 10(b) and 10(d). We estimate that the overall burden hours for adopted Part III, Item 10 will be slightly more than Part IV, Item 9(a) because while the adopted subparts that parallel the information requested in the proposed item (adopted Items 10(a), 10(c) and 10(e)) result in a similar burden, we expect that the new subparts (adopted Items 10(b) and 10(d)) will impose an additional burden on some NMS Stock ATSs that treat subscribers and the broker-dealer operator differently. While we did not provide an estimate for each individual subpart of Part IV, Item 9 of proposed Form ATS–N, subpart (a) would have accounted for 1 hour (of the 3 burden hours estimated for Part IV, Item 9).[1202] Consequently, we estimate that the burden hours in adopted Part III, Item 10 would add 1.25 hours to the current baseline for an initial operation report on current Form ATS, resulting in the aggregate initial burden of 51.25 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 9 of adopted Form ATS–N.[1203]

Part III, Item 11 of adopted Form ATS–N is substantively similar to Part IV, Item 7 of proposed Form ATS–N, but we are making various revisions to the Item. We are limiting the request to require NMS Stock ATSs to provide a summary of the structure of the NMS Stock ATS marketplace instead of describing the means or facilities used by the NMS Stock ATS to bring together the orders of multiple buyers and sellers. In Part III, Item 11(c) of adopted Form ATS–N, we are combining the requests in the Proposal in Part IV, Items 7(b) (''Order Interaction Rules'') and 7(c) (''Other Trading Procedures''). Part IV, Items 7(b) and 7(c) of proposed Form ATS–N were intended to solicit information about the ATS's established non-discretionary methods that dictate the terms of trading among the multiple buyers and sellers entering orders and trading interest. In addition to a trading facility, non-discretionary methods include rules and procedures. We are revising the language in adopted Item 11(c) to recognize this overlap by requiring the NMS Stock ATS to ''explain the established, non-discretionary rules and procedures of the NMS Stock ATS, including order interaction rules,'' which requires the same information as the proposed subparts. As another component of an NMS Stock ATS's non-discretionary methods, we are moving the trading procedures description required in proposed Item 7(c) into adopted Item 11(c) and including the examples of the trading procedures of an NMS Stock ATS (*e.g.,* price protection mechanisms, shorts sales, locked-cross markets) in adopted Item 11(c) as well. Finally, we are converting the prompts in Part IV, Item 7(a), 7(b) and 7(c) of proposed Form ATS–N to identify and explain any differences among subscribers and persons into ''yes'' or ''no'' questions in Items 11(b) and 11(d) of adopted Form ATS–N.

Consistent with the estimate in the Proposal, we estimate that, on average, preparing Part III, Item 11 for a Form ATS–N will add 6 hours to the current baseline for an initial operation report on current Form ATS to provide a description of the NMS Stock ATS's trading services. This will result in an aggregate initial burden of 246 hours

[1199] (Attorney at .25 hours + Compliance Manager at .25 hours + Senior Systems Analyst at .5) × 41 NMS Stock ATSs = 41burden hours.

[1200] (Attorney at .25 hours + Compliance Manager at 0.25 hours + Senior Systems Analyst at 0.5) × 41 NMS Stock ATSs = 41 burden hours. As noted above, we estimate the burden for Part III, Item 7 of adopted Form ATS–N to be 4 hours above the baseline and the burden for Part III, Item 8 to be 1 hour above the baseline. Accordingly, we estimate that the total burden hours above the baseline for Part III, Items 7, 8, and 9 of adopted Form ATS–N is 6 hours, which is the same as that which was proposed for Part IV, Item 3.

[1201] The words in quotes in this sentence represent new text from that proposed in Item 9(a), adopted as Item 10(a). The requirement to explain *when* orders and trading interest are priced, prioritized, matched and executed when the NMS Stock ATS opens or re-opens for trading is not expected to change significantly the burden on the ATS given that Form ATS–N requires disclosure of the hours of operations under Part III, Item 4 of adopted Form ATS–N.

[1202] Part IV, Item 9(b) of proposed Form ATS–N is being adopted with modifications as Item 17 of adopted Form ATS–N. Part IV, Item 9(c) of proposed Form ATS–N is being adopted with modifications as Item 18 of adopted Form ATS–N. We are estimating 1.25 burden hours for Item 17 and 1.25 burden hours for Item 18 of adopted Form ATS–N.

[1203] (Attorney at .5 hours + Senior Systems Analyst at .75) × 41 NMS Stock ATSs = 51.25 burden hours.

above the current baseline for all NMS Stock ATSs to complete Part III, Item 11 of adopted Form ATS–N.[1204]

The requirements of Part III, Item 12 were proposed as Part IV, Item 1(d) of proposed Form ATS–N. In the Proposal, we estimated that the entire Part IV, Item 1 (which also would have addressed eligibility, terms and conditions of use, types of subscribers, and liquidity providers)[1205] would add 6 hours to the current baseline for an initial operation report on current Form ATS. The requirements related to eligibility, terms and conditions of use, types of subscribers, and liquidity providers have been broken out into separate questions, and Part III, Item 12 of adopted Form ATS–N solely relates to formal and informal arrangements with subscribers or the broker-dealer operator to provide orders or trading interest to the NMS Stock ATS. We believe that Part III, Item 12 of adopted Form ATS–N will add 1 hour to the current baseline for an initial operation report on current Form ATS. This would result in an aggregate initial burden of 41 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 12 of adopted Form ATS–N.[1206]

Part III, Item 13 of adopted Form ATS–N corresponds with Part IV, Item 5(a) and (b) of proposed Form ATS–N. The requirements of Part III, Item 13 of adopted Form ATS–N cover the requirements proposed under Part IV, Items 5(a) and 5(b), although we have modified the proposed requirements.[1207] We are adding ''yes'' or ''no'' questions to Part III, Item 13(a), 13(b), 13(d) and 13(e) of adopted Form ATS–N to facilitate responses to the items and to facilitate market participants finding the information.

We are also modifying certain components of Part IV, Item 5 of proposed Form ATS–N. First, we are adding the terms ''classifications, tiers, or levels'' to adopted Part III, Item 13(a) through (e) in addition to ''categories'' to describe the groupings that an NMS Stock ATS may segment subscriber orders. Second, we are providing two additional examples, order size and duration, of criteria for segmentation of subscribers' orders and trading interest. Third, we are providing additional specificity around what ''changing segmented categories'' means by requiring NMS Stock ATSs to provide a discussion around overriding a determination of segmented category. Fourth, we are requiring a description of how segmentation affects order interaction on Part III, Item 13 of adopted Form ATS–N. Finally, we are requiring under Part III, Item 13(d) of adopted Form ATS–N that the NMS Stock ATS describe ''whether and how such designation can be contested.''

In the Proposal, we estimated that, on average, preparing Part IV, Item 5 for a Form ATS–N would add 7 hours to the current baseline for an initial operation report on current Form ATS to provide a detailed description of how, if at all, the NMS Stock ATS segments order flow, provides any notice to those trading on the NMS Stock ATS regarding segmentation, and allows order preferencing. The proposed requirement regarding order preferencing is broken out into a separate item, Part III, Item 14 of adopted Form ATS–N, which is described below. We also are adding a ''yes'' or ''no'' question in adopted Part III, Item 13(b) regarding identifying orders by a customer of a broker-dealer as a customer order. We believe the aforementioned minor modifications to the proposed question will slightly increase the burden for the adopted item. Therefore, we believe that Part III, Item 13 of adopted Form ATS–N will add 6 hours to the current baseline for an initial operation report on current Form ATS. This would result in an aggregate initial burden of 205 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 13 of adopted Form ATS–N.[1208]

Part III, Item 14(a) is substantially similar to Part IV, Item 5(c) of proposed Form ATS–N. However, we have added a requirement in Item 14(b), that if counter-party selection functionality is not the same for all subscribers and the broker-dealer operator, that the NMS Stock ATS identify and explain any differences. The burden associated with this change is likely to vary among NMS Stock ATS depending on their complexity and the extent to which they treat all subscribers and the broker-dealer operator the same or differently. We estimated that, on average, preparing all of Part IV, Item 5 (including subparts (a), (b), and (c)) for a Form ATS–N would add 7 hours to the current baseline for an initial operation report on current Form ATS to provide a detailed description of how, if at all, the NMS Stock ATS segments order flow, provides any notice to those trading on the NMS Stock ATS regarding segmentation, and allows counter-party selection.[1209] We understand that most, but not all, ATSs that currently trade NMS stocks allow subscribers to enter some type of counter-party selection criteria. These ATSs vary in the depth of their description as to how they allow counter-party selection. We believe that Part III, Item 14 of adopted Form ATS–N, which solely relates to counter-party selection, will add 2 hours to the current baseline for an initial Form ATS. This will result in an aggregate initial burden of 82 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 14 of adopted Form ATS–N.[1210]

Part III, Item 15 is modified from a similar requirement of Part IV, Item 6 of proposed Form ATS–N, which asked about order display and the subscribers and persons to which orders and trading interest are displayed or otherwise made known. We are changing the language in this item from ''order information or other trading interest'' to ''subscriber orders and trading interest.'' We are also revising the proposed requests to make clear that it only applies to the display of the NMS Stock ATS's subscriber orders and trading interest as opposed to non-ATS orders and trading interest handled or otherwise displayed to the broker-dealer operator. Accordingly, the disclosure of non-ATS orders by affiliates of the NMS Stock ATS and others external to the ATS of non-ATS orders would not have to be disclosed. However, if for example, an affiliate of the NMS Stock ATS is displaying an order that is simultaneously bound for or resting in the NMS Stock ATS, then Item 15 would apply. In addition, we have revised the request so that Part III, Item 15(b) of adopted Form ATS–N makes clear that the request does not

[1204] Attorney at 1.0 + Compliance Manager at 2.0 + Senior Systems Analyst at 3.0) × 41 NMS Stock ATSs = 246 burden hours.

[1205] Proposed Part IV, Item 1(a) (''eligibility'') is being adopted with modifications as Part III, Item 2 of adopted Form ATS–N. Proposed Part IV, Item 1(b) (''terms and conditions'') is not being adopted, except for the request to state whether contractual agreements are written, which is being adopted with modifications as Part III, Item 2(d) of adopted Form ATS–N. Proposed Part IV, Item 1(c) (''Types of Subscribers'') is being adopted with modifications as Part III, Item 1 and Item 2(a) of adopted Form ATS–N. Proposed Part IV, Item 1(e) (''Limitation and Denial of Services'') is being adopted with modifications as Part III, Item 3 of adopted Form ATS–N.

[1206] (Attorney at 0.7 hours + Compliance Manager at 0.3 hours) × 41 NMS Stock ATSs = 41 burden hours.

[1207] *See supra* Section V.D.13.

[1208] (Attorney at 2.0 hours + Compliance Manager at 2.25 hours + Senior Systems Analyst at 1.75 hours) × 41 NMS Stock ATSs = 205 burden hours.

[1209] *See* Proposal, *supra* note 2, at 81100. Proposed Part IV, Items 5(a) and 5(b) are being adopted with modifications as Part III, Item 13 of adopted Form ATS–N. We are estimating 5 burden hours for Part III, Item 13 of adopted Form ATS–N.

[1210] (Attorney at 0.5 hours + Compliance Manager at 0.75 hours + Senior Systems Analyst at 0.75 hours) × 41 NMS Stock ATSs = 82 burden hours.

require the NMS Stock ATS to identify employees of the ATS who are operating the system. Finally, we are adding a ''yes'' or ''no'' questions in Part III, Item 15(a) that asks if the NMS Stock ATS is an ECN as defined in Rule 600(a)(23) of Regulation NMS.

Depending on the variety of trading interest that shares some trading information outside of the NMS Stock ATS and the complexity of such information sharing, the disclosure burden in responding to Part III, Item 15 would likely vary among NMS Stock ATSs. In the Proposal, we estimated that, on average, preparing Part IV, Item 6 of proposed Form ATS–N would add 5 hours to the current baseline for an initial operation report on current Form ATS, depending on such factors as described above. Although we are revising the item text to provide more specificity so NMS Stock ATSs better understand the requirements and scope of the request and provide sufficient information to market participants in Part III, Item 15 of adopted Form ATS–N, we are also simplifying responses to the item by no longer requiring NMS Stock ATSs to identify the subscriber or person to whom order and trading interest is displayed and instead requiring disclosure of the types of market participants that receive the information. Thus, we believe these changes would, in total, provide no additional burden from proposed Form ATS–N. We therefore believe that preparing Part III, Item 15 of adopted Form ATS–N will add 5 hours to the current baseline for an initial Form ATS. This will result in an aggregate initial burden of 205 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 15 of adopted Form ATS–N.[1211]

Part III, Item 16(a) relates to disclosures surrounding orders and trading interest in the NMS Stock ATS being routed to a destination outside the ATS. We understand, based on disclosures in Form ATS submissions, that some ATSs that currently trade NMS stocks do not route orders out of the ATS. Consequently, the disclosure burden related to Part III, Item 16 of adopted Form ATS–N will likely vary among NMS Stock ATSs depending on whether they route orders at all. In the Proposal, we estimated that, on average, preparing Part IV, Item 10 for proposed Form ATS–N would add 6 hours to the current baseline for an initial operation report on current Form ATS, depending on such factors as described above. We, however, are substantially simplifying the item as adopted by converting subpart (a) into a ''yes'' or ''no'' question that no longer requires a description of the circumstances under which orders are routed, and also removes the requirement to describe the means by which routing is performed and the requirement to describe any differences among subscribers and persons. We therefore estimate that Part III, Item 16 of adopted Form ATS–N will add 2 hours to the current baseline for an initial operation report, depending on the extent to which the ATS routes orders and trading interest. This will result in an aggregate initial burden of 82 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 16 of adopted Form ATS–N.[1212]

The requirements of Part III, Item 17(a) are similar to those proposed in Part IV, Item 9(b) of the proposed Form ATS–N.[1213] We estimated that, on average, preparing all of Part IV, Item 9, including subparts (a)–(c), for proposed Form ATS–N would have added 3 hours to the current baseline for an initial operation report on current Form ATS to describe its opening, reopening, or closing processes, and after-hours trading procedures.[1214] While we did not provide an estimate for each individual subpart of Part IV, Item 9 of proposed Form ATS–N, subpart (b) would have accounted for 1 hour (of the 3 burden hours estimated for Part IV, Item 9). As we stated in the Proposal, current Form ATS, Exhibit F requires an ATS to describe its closing processes. Therefore, we continue to believe that Part III, Item 17 of adopted Form ATS–N will not impose a significant additional requirement. We are newly requiring, as Part III, Item 17(b) of adopted Form ATS–N, that if the treatment of orders and trading interest during the close is not the same for all subscribers and the broker-dealer operator, the NMS Stock ATS identify and explain such differences. The burden associated with this change is likely to vary among NMS Stock ATS depending on their complexity and the extent to which they treat all subscribers and the broker-dealer operator the same or differently. Therefore, we believe that it would add 1.25 hours to the current baseline for an initial operation report on Form ATS–N. This would result in an aggregate initial burden of 51.25 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 17 of adopted Form ATS–N.[1215]

Subparts (a) and (b) of Part III, Item 18 of adopted Form ATS–N are substantially similar to Part IV, Item 9(c) of proposed Form ATS–N. We estimated that, on average, preparing all of Part IV, Item 9 for a proposed Form ATS–N would add 3 hours to the current baseline for an initial operation report on current Form ATS to describe its opening, reopening, or closing processes, and after-hours trading procedures.[1216] While we did not provide an estimate for each individual subpart of Part IV, Item 9 of proposed Form ATS–N, subpart (c) would have accounted for 1 hour (of the 3 burden hours estimated for Part IV, Item 9). In the Proposal, we stated that Exhibit F of current Form ATS requires an ATS to describe after-hours trading procedures. These procedures may vary widely across different ATSs. Therefore, we continue to estimate that the additional requirements will not impose a significant additional burden above the current baseline for an initial operation report on current Form ATS. Unlike Part IV, Item 9(c) of proposed Form ATS–N, an ATS that has trading outside of regular hours that follows the same procedures as trading within regular trading hours would need to check the boxes to indicate it conducts trading outside of its regular trading hours and to indicate that its trading procedures do not differ between regular and outside of regular trading hours; it would not need to describe any after-hours trading procedures. We, however, also added the requirement that the NMS Stock ATS describe, as applicable, the treatment of orders and trading interest outside of regular trading hours if it is not the same for all subscribers and broker-dealer operator as Item 18(c) of adopted Form ATS–N. In light of these changes, we believe that Part III, Item 18 of adopted Form ATS–N would add 1.25 hours to the current baseline for an initial operation report on Form ATS–N. This would result in an

[1211] (Attorney at 1 hour + Compliance Manager at 2 hours + Senior Systems Analyst at 2 hours) × 41 NMS Stock ATSs = 205 burden hours.

[1212] (Attorney at 0.5 hours + Compliance Manager at 0.5 hours + Senior Systems Analyst at 1 hours) × 41 NMS Stock ATSs = 82 burden hours.

[1213] Although we are revising the item text to provide more specificity so NMS Stock ATSs better understand the requirements and scope of the request and provide sufficient information to market participants, we believe these revisions should not change the burden of the required disclosure.

[1214] Part IV, Items 9(a) and 9(c) of proposed Form ATS–N are being adopted with modifications as Part III, Items 10 and 18 of adopted Form ATS–N, respectively. We are estimating 1.25 burden hours for Item 10 and 1.25 burden hours for Item 18 of adopted Form ATS–N.

[1215] (Compliance Manager at .75 hours + Senior Systems Analyst at 0.50 hour) × 41 NMS Stock ATSs = 51.25 burden hours.

[1216] Part IV, Items 9(a) and 9(b) of proposed Form ATS–N are being adopted with modifications as Part III, Items 10 and 17 of adopted Form ATS–N, respectively. We are estimating 1.25 burden hours for Item 10 and 1.25 burden hours for Item 17 of adopted Form ATS–N.

aggregate initial burden of 51.25 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 18 of adopted Form ATS–N.[1217]

Part III, Item 19 of adopted Form ATS–N is similar to Part IV, Item 12 of proposed Form ATS–N. In the Proposal, we estimated that, on average, preparing Part IV, Item 12 for a Form ATS–N would add 5 hours to the current baseline for an initial operation report on current Form ATS to describe the NMS Stock ATS's fee structure and any differences among subscribers relating to fees, rebates, or other charges. As discussed in the Proposal,[1218] current Form ATS does not require an ATS to disclose and explain its fee structure, and few, if any, do so in their current Form ATS filings. We recognize that, like national securities exchanges, NMS Stock ATSs may adopt a variety of fee structures that may include rebates, incentives for subscribers to bring liquidity to the NMS Stock ATS, more traditional transaction-based fee structures, and other fees such as a monthly subscriber access fee. Depending on the complexity and variety of an NMS Stock ATS's fee structure and the extent to which these fees are not the same for all subscribers, the disclosure burden related to Part III, Item 19 of adopted Form ATS–N will likely vary.

However, we are requiring additional specificity related to the description of fees of the NMS Stock ATS that are based on or bundled with the use of non-ATS services or products offered by the broker-dealer operator or its affiliates. These were not previously explicitly specified by Part IV, Item 12 of proposed Form ATS–N, and the adopted item will likely require additional burden hours for NMS Stock ATSs that are operated by multi-service broker-dealers that bundle their ATS fees with other non-ATS services or products. In contrast, we are narrowing the request for NMS Stock ATSs to describe any differences in fees or rebates charged to different ''subscribers,'' and instead asking for NMS Stock ATSs to disclose any differentiation between fees and/or rebates charged among ''types'' of subscribers, which should reduce the burden of responding as differences among individual subscribers need not be explained. Accordingly, we estimate that, on average, preparing Part III, Item 19 of Form ATS–N would add 6 hours to the current baseline for an initial operation report on current Form ATS. This will result in an aggregate initial burden of 246 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 19 of Form ATS–N.[1219]

Part III, Item 20 of adopted Form ATS–N is substantially similar to Part IV, Item 8 of proposed Form ATS–N with certain modifications. We are renaming the item ''Suspension of Trading,'' converting the prompt in Part IV, Item 8(a) of proposed Form ATS–N to identify and explain any differences among subscribers and persons into a ''yes'' or ''no'' question in Part III, Item 20(b) of adopted Form ATS–N, revising the language to refer to procedures for stopping trading, and clarifying that suspensions of trading in an NMS stock are responsive. In the Proposal, we estimated that, on average, preparing Part IV, Item 8 for a Form ATS–N would add 2.5 hours to the current baseline for an initial operation report on current Form ATS to provide a detailed description of the NMS Stock ATS's procedures for system disruptions, malfunctions, or other suspensions.

We believe that NMS Stock ATSs should be able to provide the disclosures in Part III, Item 20 of adopted Form ATS–N as they should already be aware of how the ATS operates, handles system disruptions, malfunctions or other suspensions based on the information required in Exhibits G and F of current Form ATS. We recognize, however, that Part III, Item 20 is significantly more specific and detailed in its disclosure requirements than current Form ATS.

Accordingly, we estimate that respondents would incur an additional burden above the current baseline when preparing the disclosures required under Part III, Item 20 of Form ATS–N, consistent with the estimated burden for proposed Item IV, Part 8. We estimate that, on average, preparing Part III, Item 20 for a Form ATS–N would add 2.5 hours to the current baseline for an initial operation report on current Form ATS to provide a detailed description of the NMS Stock ATS's procedures for suspending or stopping trading on the NMS Stock ATS. This would result in an aggregate initial burden of 102.5 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 20 of proposed Form ATS–N.[1220]

Part III, Item 21 is substantially the same as Part IV, Item 13(a) of proposed Form ATS–N with certain modifications. We are limiting the description of any arrangements for reporting transactions on the NMS Stock ATS to only ''material arrangements'' in the adopted item, and converting the prompt in the proposed Part IV, Item 13(a) to describe any differences among subscribers and persons into a ''yes'' or ''no'' question in Part III, Item 21(b) of adopted Form ATS–N.

Part III, Item 22 is substantially the same as Part IV, Item 13(b) of proposed Form ATS–N with certain modifications. We are limiting the description of any arrangements to facilitate the clearance and settlement of transactions on the NMS Stock ATS to only ''material arrangements'' in the adopted item, and converting the prompt in Part IV, Item 13(b) of proposed Form ATS–N to describe any differences among subscribers and persons into a ''yes'' or ''no'' question in Part III, Item 22(b) of adopted Form ATS–N. In addition, we are removing the phrase ''undertaken by the NMS Stock ATS'' from the proposed requirement to describe any procedures or arrangements by the NMS Stock ATS to facilitate clearance and settlement on the ATS.

In the Proposal, we estimated that, on average, preparing Part IV, Item 13 for a Form ATS–N would add 0.5 hours to the current baseline for an initial operation report on current Form ATS.[1221] We believe that preparing Part III, Items 21 and 22 for a Form ATS–N will impose a lesser burden as compared to the proposed items because the adopted items only require that ''material'' arrangements related to reporting and clearance and settlement of transactions be disclosed (as opposed to ''any arrangements'' in the Proposal). Therefore, we estimate that, on average, preparing Part III, Item 21 and 22 for a Form ATS–N would add 0.5 hours to the current baseline for an initial operation report on current Form ATS to provide a more detailed description of the NMS Stock ATS's trade reporting, clearance, and settlement arrangements or procedures. This will result in an aggregate initial burden of 20.5 hours above the current baseline for all NMS Stock ATSs to complete Part III, Items 21 and 22 of adopted Form ATS–N.[1222]

Part III, Item 23 of adopted Form ATS–N is substantially the same as Part IV, Item 11 of proposed Form ATS–N with certain modifications. We are revising the request to make clear that an NMS Stock ATS would not be

[1217] (Compliance Manager at .75 hours + Senior Systems Analyst at 0.50 hour) × 41 NMS Stock ATSs = 51.25 burden hours.

[1218] *See id.* at 81103.

[1219] (Attorney at 2 hour + Compliance Manager at 3 hours + Senior Systems Analyst at 1 hour) × 41 NMS Stock ATSs = 246 burden hours.

[1220] (Attorney at 1 hour + Compliance Manager at .5 hours + Senior Systems Analyst at 1 hour) × 41 NMS Stock ATSs = 102.5 burden hours.

[1221] *See* Proposal, *supra* note 2, at 81103.

[1222] Compliance Manager at 0.50 hours × 41 NMS Stock ATSs = 20.5 burden hours.

expected to provide information about the market data that the broker-dealer operator uses to route orders and trading interest from the NMS Stock ATS to away destinations by removing from the item the prompt to describe how the ATS uses market data to determine routing destinations. As discussed above in Section V.D.23, we believe, however, that it would be responsive to Part III, Item 23 for the NMS Stock ATS to provide information about the ATS's use of market data to determine when resting orders and trading interest will be removed from inside the NMS Stock ATS as such orders and trading interest reside inside the ATS. Accordingly, the NMS Stock ATS should disclose, in response to this request, the market data that is used to remove resting orders and trading from the NMS Stock ATS. Because the adopted Item is removing the requirement from the proposed Item for information related to using market data to determine routing destinations, and the adopted Item is adding a requirement to explain how market data is used to determine when resting orders will be removed from the NMS Stock ATS, we believe that the resulting overall burden for the adopted Item will remain the same. In addition, we are adding a requirement that if the use of market data is not the same for all subscribers and the broker-dealer operator, that the NMS Stock ATS must identify and explain any differences.

We believe that the disclosures under Part III, Item 23 will not impose any significant additional burden on NMS Stock ATSs, which should already be aware of the market data that they use and the manner in which they use it. The information requested in Part III, Item 23 of adopted Form ATS–N is similar to that required by Part IV, Item 11 of proposed Form ATS–N. In the Proposal, we estimated that, on average, preparing Part IV, Item 11 for a Form ATS–N would add 4 hours to the current baseline for an initial operation report on current Form ATS to describe the sources of market data and the manner in which the NMS Stock ATS uses market data.[1223] However, unlike Part IV, Item 11 of proposed Form ATS–N, Part III, Item 23 also requests information regarding differences in treatment between subscribers and the broker-dealer operator. We believe that this requirement would add to the total additional burden; however, we believe that such information should be readily available to the NMS Stock ATS. Therefore, we believe that preparing Part IV, Item 11 for a Form ATS–N will add 5 hours to the current baseline for an initial operation report on current Form ATS. This would result in an aggregate initial burden of 205 hours above the current baseline for all NMS Stock ATSs to complete Part IV, Item 11 of adopted Form ATS–N.[1224]

Part III, Items 24 and 25 of adopted Form ATS–N correspond with of Part IV, Item 14 and 15 of proposed Form ATS–N. Current Form ATS does not require an ATS to disclose the information that would be required under Part III, Items 24 and 25 of Form ATS–N. However, based on the experience of the Commission and its staff, we continue to believe that no ATSs currently executed 5% or more of the average daily volume in an NMS Stock as reported by an effective transaction reporting plan for four of the preceding six calendar months, and we believe that most—if not all—ATSs that currently trade NMS stocks already have procedures in place to prevent that threshold from being crossed on the ATS's system. Historically, ATSs have crossed these thresholds very rarely, with at most three ATSs that trade NMS stocks crossing either of the thresholds in any given year.

If, however, an NMS Stock ATS were to cross these 5% thresholds, a disclosure burden related to amending a Form ATS–N to complete Part III, Items 24 and 25 of Form ATS–N may result. Because Items 24 and 25 of Part III are tied to existing obligations that arise pursuant to Rule 301(b)(3) and Rule 301(b)(5) of Regulation ATS, respectively, we believe that NMS Stock ATSs should already be generally aware of the procedures they would follow pursuant to those rules, which should reduce the burden associated with the disclosures that would be required under Items 24 and 25. An NMS Stock ATS would only have to respond to Part III, Items 24 or 25 of a Form ATS–N if the NMS Stock ATS previously operated as an ATS, triggered the applicable 5% thresholds, and was subject to Rules 301(b)(3) and 301(b)(5). Further, NMS Stock ATSs would be less likely to have to complete Item 24 as compared to Item 25 because Item 24 requires as an additional precondition that the NMS Stock ATS displays orders in an NMS stock to more than one person in the system (other than employees of the NMS Stock ATS). For new NMS Stock ATSs (*i.e.,* NMS Stock ATSs that did not previously operate as an ATS), the NMS Stock ATS would not have been in operation for at least four months to trigger the applicable thresholds, meaning that such NMS Stock ATSs would only be required to complete Item 24 or 25 (or both) in a Form ATS–N Amendment. In the Proposal, we estimated that completion of Part IV, Item 14 or 15 in a Form ATS–N amendment (or in a Form ATS–N in the case of an NMS Stock ATS that previously operated as an ATS), would be 5 hours per item. We believe that the requirements in Part III, Items 24 and 25 remain substantially unchanged, and that the burden should remain the same. Therefore, we continue to believe that completion of Part III, Item 24 or 25 would be 5 hours per item.

Triggering the 5% threshold, a precondition necessary to require completion of Part III, Items 24 and 25 of Form ATS–N, currently occurs, and we estimate would continue to occur, very infrequently. Based on the review of Form ATS and Form ATS–R disclosures by the Commission and its staff, we estimate that 1 NMS Stock ATS would have to complete Item 24, and 2 NMS Stock ATSs would have to complete Item 25 in any given year. Accordingly, we estimate that the disclosures that would be required under Part III, Items 24 and 25 of adopted Form ATS–N would result in an aggregate initial burden of 15 hours above the current baseline.[1225]

Part III, Item 26 of adopted Form ATS–N corresponds with of Part IV, Item 16 of proposed Form ATS–N. An NMS Stock ATS will not be required to develop or publish any new statistics for purposes of making the required disclosures under Item 26. It is only be required to make the disclosures for statistics it already otherwise publishes or provides in the course of its operations. Thus, NMS Stock ATSs that do not publish or otherwise provide aggregate platform-wide market quality statistics, other than those currently required under Rule 605 of Regulation NMS, would not incur any additional burden due to the adopted disclosure request under Item 26. For NMS Stock ATSs that do publish or provide such statistics, Item 26 imposes an additional burden above the baseline because current Form ATS does not require the disclosure of market quality statistics. In the Proposal, we estimated that preparing Part IV, Item 16 of proposed Form ATS–N would add 7 hours to the current baseline for an initial operation report on current Form ATS.[1226] Part III, Item 26 of adopted Form ATS–N is substantially the same as Part IV, Item

[1223] *See* Proposal, *supra* note 2, at 81103.

[1224] (Compliance Manager at 2.5 hours + Senior Systems Analyst at 2.5 hours) × 41 NMS Stock ATSs = 205 burden hours.

[1225] (Attorney at 2 hours + Compliance Manager at 1 hour + Senior Systems Analyst at 2 hours) × 3 NMS Stock ATSs = 15 burden hours.

[1226] *See* Proposal, *supra* note 2, at 81104.

16 of proposed Form ATS–N. Therefore, as adopted, we still estimate that preparing Part III, Item 26 will add 7 hours to the current baseline for an initial operation report on current Form ATS. This will result in an aggregate initial burden of 287 hours above the current baseline for all NMS Stock ATSs to complete Part III, Item 26 of adopted Form ATS–N.[1227]

(ii) Estimated Burden Above the Current Baseline for an Initial Form ATS–N, Form ATS–N Amendment, and Notice of Cessation on Form ATS–N

(a) Initial Form ATS–N

Based on the above analysis, we estimate that an initial Form ATS–N will, on average, require approximately 107.4 burden hours above the baseline for an initial operation report on current Form ATS. This results in an estimated 127.4 hours in total, including the current baseline.[1228] ATSs that trade NMS stocks vary in terms of their structure, the manner in which they operate, and the depth and extent of their disclosures on Form ATS. Consequently, we believe that the estimated hour burden regarding Form ATS–N will likely vary among NMS Stock ATSs, depending on such factors as the extent of their current disclosures on Form ATS, the complexity and structure of their system, and the extent of their other broker-dealer or affiliate activities.

(b) Form ATS–N Amendments

As previously noted, we estimate that ATSs that trade NMS stocks submit 2 amendments on Form ATS, on average, each year.[1229] In the Proposal we estimated that the 46 respondents would file 3 Form ATS–N amendments each year, for an estimated total of 138 Form ATS–N amendments.[1230]

We currently estimate that the hourly burden related to an amendment to Form ATS is 6 hours.[1231] In the Proposal, we estimated that the average hourly burden above this current baseline of 6 hours for each Form ATS–N amendment would be 3 hours—for a total of 9 hours—to accommodate the more voluminous and detailed disclosures required by Form ATS–N as compared to Form ATS.[1232]

Rule 304(a)(2) of Regulation ATS will contain the same three general categories of required amendments for Form ATS–N as Rule 301(b)(2) of Regulation ATS currently requires for current Form ATS;[1233] in addition, Form ATS–N requires two additional types of amendments—order display and fair access amendments. However, due to the greater detail and number of disclosures required by Form ATS–N, we believe that respondents will likely file more amendments to Form ATS–N than NMS Stock ATSs currently do for Form ATS. For example, adopted Form ATS–N requests information about the ATS-related activities of the broker-dealer operator and its affiliates in Part III of Form ATS–N, and these requests are not contained in current Form ATS. To the extent information provided in response to these requests changes, an NMS Stock ATS must file a Form ATS–N amendment. We are mitigating some of the additional burden by requiring that NMS Stock ATSs file correcting amendments only to correct ''material'' information that was inaccurate or incomplete when filed.[1234] Current Form ATS requires ATSs to promptly file amendments upon discovery that any information was inaccurate when filed. As adopted, filers instead would correct any immaterial information when they file updating amendments, which could potentially reduce the frequency with which NMS Stock ATSs would need to file amendments.

With respect to Form ATS–N amendments, one commenter expresses concern that due to the breadth of Form ATS–N disclosures, the estimated amount of time and resources required to keep Form ATS–N ''evergreen'' is ''daunting,'' and asserts that the Commission did not fully consider in the Proposal the amount of time and resources that would be required to keep Form ATS–N current.[1235] We fully considered the burden for each question on the Form ATS–N by indicating the estimated burden hour for each item. After consideration of comments, we made changes to adopted Form ATS–N, which we believe will alleviate some of the potential burdens of Form ATS–N, including, among other things, requiring correcting amendments only for ''material'' information,[1236] narrowing the scope of the required disclosures related to affiliates that can enter or direct the entry of orders and trading interest into the ATS,[1237] and eliminating the proposed requirement to attach a copy of any materials currently provided to subscribers or other persons related to the operations of the NMS Stock ATS or the disclosures on Form ATS–N.[1238] However, as with amendments to Form ATS, the burden on NMS Stock ATSs associated with updating Form ATS–N to reflect current ATS functionality will vary depending on the frequency and scope of changes made by the NMS Stock ATSs. Making complete and comprehensible disclosures of material changes to the NMS Stock ATS's operations, such as the introduction of a new order type and its attributes or changes to segmentation procedures and parameters, would likely require more time and resources from an NMS Stock ATS than providing complete and comprehensible disclosures of a simple change to the NMS Stock ATS's physical or website address. We believe that the frequency with which an NMS Stock ATS files Form ATS–N amendments in a given year may vary greatly, as some NMS Stock ATSs may make infrequent changes to their operations and functionality, but other NMS Stock ATSs, such as those that publish or otherwise provide to one or more subscribers or person aggregate platform-wide market quality statistics, may file several Form ATS–N amendments annually.

Therefore, we continue to believe that the requirements for Form ATS–N amendments will add 3 hours above the current baseline of 6 hours for amendments to Form ATS, as set forth in the Proposal. We estimate that the 41 respondents will file 3 Form ATS–N amendments each year, for a total of 123

[1227] (Attorney at 1 hour + Compliance Manager at 1 hour + Senior Systems Analyst at 5 hours) × 41 NMS Stock ATSs = 287 burden hours. Unlike the proposed requirement under Part IV, Item 16, the adopted requirement will allow the NMS Stock ATS to make certifications in lieu of filing Exhibits 4 and 5, which we believe will significantly reduce the burden imposed by this request for information.

[1228] (Current Baseline at 20 hours) + (Part I at 0.5 hour) + (Part II at an average of 29 hours) + (Part III at an average of 77.5 hours) + (Access to EDGAR at 0.15 hours, *see infra* Section IX.D.2.b.iv) = 127.4 burden hours. The aggregate totals by professional, including the baseline, are estimated to be approximately 54.1 hours for an Attorney, .5 hours for a Chief Compliance Manager, 33.9 hours for a Compliance Manager, 30.25 hours for a Senior Systems Analyst, 1 hour for a Senior Marketing Manager, and 7.65 hours for a Compliance Clerk. This estimated burden for a Form ATS–N includes the hour burden associated with completing Part III, Items 24 and 25 of proposed Form ATS–N. We believe that the majority of NMS Stock ATSs would not be required to complete those items of the proposed form.

[1229] *See supra* note 1132 and accompanying text. During the fiscal year of 2017, we received 85 amendments from ATSs that trade NMS stocks, of which there were approximately 38 at any given time during 2017. Some ATSs that trade NMS stocks filed as many as 7 amendments while others did not file any amendments in 2017.

[1230] *See* Proposal, *supra* note 2, at 81105.

[1231] *See supra* note 1133 and accompanying text.

[1232] Attorney at 1 hour + Compliance Manager at 2 hours = 3 burden hours above the baseline.

[1233] *See* 17 CFR 242.301(b)(2). *See also supra* Section IV.B.1.

[1234] *See supra* note 498 and accompanying text.

[1235] *See* Fidelity Letter at 10.

[1236] *See supra* note 498 and accompanying text.

[1237] *See* supra Section V.C.

[1238] *See supra* Section V.B.2.

Form ATS–N amendments.[1239] In addition, an NMS Stock ATS must provide a brief summary of the amendment at the top of Form ATS–N.[1240] As proposed, an NMS Stock ATS would have been required to submit two redlines—Exhibit 3A to show changes to Part III of proposed Form ATS–N and Exhibit 4A to show changes to Part IV of proposed Form ATS–N. We estimated that the requirement would create an additional burden of 0.5 hours to draft the summary and create the redline(s).[1241] Adopted Form ATS–N requires NMS Stock ATSs to submit as Exhibit 3 one marked document that indicates changes to ''yes'' or ''no'' answers or additions to or deletions to both Part I, Parts II, and III. We believe that requiring a single marked document rather than two separate documents will reduce the filing burden on ATSs, and that requiring a marked document for changes to Part I would impose minimal burden, and therefore we estimate that this requirement would add an additional burden of 0.4 hours to draft the summary and prepare the marked documents showing the amendments the NMS Stock ATS is making.[1242] This would result in a total estimated hourly burden, including the baseline, of 9.4 hours for a Form ATS–N amendment,[1243] and an aggregate annual burden on all NMS Stock ATSs of 1,156.2 hours.[1244]

Under the Proposal, a Legacy NMS Stock ATS would have continued to operate pursuant to its existing Form ATS initial operation report pending our review of the Legacy NMS Stock ATS's filed Form ATS–N and would have been required to continue filing amendments on Form ATS to provide notice of changes to the operations of its system.[1245] Adopted Rule 304(a)(1)(iv)(C) requires a Legacy NMS Stock ATS to amend its Form ATS–N to notify the Commission of operational changes during the review period.[1246] We believe that if a Legacy NMS Stock ATS had been required to file amendments to Form ATS during the Commission review period, the Legacy NMS Stock ATS would have also complied with the requirements of Rule 304 by amending its Form ATS–N to reflect such changes disclosed in such Form ATS amendments. During the Commission review period, the Legacy NMS Stock ATS would have, therefore, submitted amendments to both Form ATS and Form ATS–N. Although we are now requiring that a Legacy NMS Stock ATS amend its Form ATS–N during the review period rather than its Form ATS, this requirement does not change our estimates of the aggregate burden hours for filing amendments. Although a Legacy NMS Stock ATS will be required to amend Form ATS–N, which requires greater detail and a larger number of disclosures than Form ATS, the Legacy NMS Stock ATS will no longer need to file a Form ATS amendment during the review period and a Form ATS–N amendment to reflect changes disclosed in such Form ATS–N amendments.

(c) Notice of Cessation on Form ATS–N

From January 2014 through March 2018, an average of 9 ATSs that trade NMS stocks ceased operations each year.[1247] Although it is unclear how many NMS Stock ATSs might cease operations each year going forward, for purposes of providing a PRA burden estimate, we are estimating that this average would generally remain the same for NMS Stock ATSs using Form ATS–N because economic conditions, business reasons, and other factors may cause some NMS Stock ATSs to cease operations. Accordingly, we estimate that 9 respondents may file a cessation of operation report on Form ATS–N each year. In the Proposal, we estimated that the average compliance burden for each cessation of operations filing would be 2 hours.[1248] We received no comments on this estimate, and continue to believe that the burden for filing a notice of cessation on Form ATS–N will not be significantly greater than that for filing a cessation of operations report on current Form ATS. Both Form ATS and Form ATS–N require the ATS to check the appropriate box indicating that the ATS is ceasing operations; however, Form ATS–N also requires that the NMS Stock ATS provide the date that the NMS Stock ATS expects to cease operating. Accordingly, we estimate that the average compliance burden for each respondent will be 2 hours.[1249] This will result in an aggregate annual burden of 18 hours for all NMS Stock ATSs that choose to cease operations and submit a cessation of operation report on Form ATS–N.[1250]

(iii) ATSs That Trade Both NMS and Non-NMS Stocks

ATSs that trade both NMS stocks and non-NMS stocks would incur: (1) The above baseline burdens related to filing a Form ATS–N and Form ATS–N amendments;[1251] (2) the additional burden of filing a new Form ATS to only disclose information related to non-NMS stock trading activity on the ATS;[1252] and (3) the burden of completing and filing two Forms ATS–R. We received no comment on the estimated burden set forth in the Proposal for ATSs to separately file a Form ATS for its non-NMS stock trading activity and Form ATS–N for its NMS stock trading activity.[1253] We continue to believe that the average estimated burden set forth in the Proposal is a reasonable estimate of the additional burden. Accordingly, we estimate that the total hourly burden for an ATS to separately file a Form ATS for its non-NMS stock trading activity and Form ATS–N for its NMS stock trading activity will be 20 burden hours to amend its initial operation report on Form ATS for its non-NMS stock trading activity and 127.4 burden hours to file its initial Form ATS–N. The estimated hour burden related to the initial operation report submission on Form ATS for non-NMS stock trading activity may be less than the estimated 20 burden hours, as, to the extent the NMS Stock ATS in question is currently operating, the description of its non-NMS stock trading activity should already be contained in its existing Form ATS.[1254] As previously noted, there are currently 10 ATSs that trade, or have indicated that they expect to trade, in Exhibit B to their Form ATS, both NMS stocks and non-NMS stocks on the ATS. Consequently, we estimate that the aggregate initial burden on ATSs to file these separate forms would be 1,774 hours, and the aggregate annual

[1239] 41 respondents × 3 Form ATS–N amendments per year = 123 Form ATS–N amendments per year.

[1240] *See* Exhibit 3 to Form ATS–N.

[1241] *See* Proposal, *supra* note 2, at 81105.

[1242] Compliance Clerk at 0.4 hours. Most word processing software provides for this functionality.

[1243] Attorney at 5.5 hours + Compliance Manager at 2 hours + Compliance Clerk at 1.9 hours = 9.4 burden hours.

[1244] 123 amendments per year × 9.4 hours = 1,156.2 aggregate burden hours. Therefore, the aggregate burden hours equals 1,156.2 hours.

[1245] *See* Proposal, *supra* note 2, at 81023; *see also* proposed Rule 304(a)(1)(i).

[1246] *See* 17 CFR 242.304(a)(1)(iv)(C).

[1247] *See supra note* 1114.

[1248] *See* Proposal, *supra* note 2, at 81105.

[1249] Attorney at 1.5 hours + Compliance Clerk at 0.5 hours = 2 burden hours. *See supra* note 1135, and accompanying text.

[1250] 2 burden hours × 9 NMS Stock ATSs = 18 aggregate annual burden hours.

[1251] *See supra* Sections IX.D.2.b.ii.A and B.

[1252] *See supra* Section IX.D.2.a and accompanying text for the baseline estimates for submitting an IOR for Form ATS and amendments to Form ATS.

[1253] *See supra* note 1136 and accompanying text for the baseline estimate for submitting a Form ATS–R.

[1254] The hourly burden related to amendments to its Form ATS and Form ATS–N would remain unchanged: 6 estimated burden hours for amendments to Form ATS, and 9.4 estimated burden hours for Form ATS–N amendments. *See supra* notes 1231–1232, 1240–1243 and accompanying text.

burden for filing amendments to both forms would be 402 hours.[1255]

We estimate that the total burden for completing and filing two Forms ATS–R would be 4.5 hours, which is 0.5 hours [1256] above the current baseline burden of 4 hours for filing a Form ATS–R.[1257] We believe that ATSs required to file two Forms ATS–R will incur an additional burden above the baseline because they would be required to divide their trading statistics between two forms and file each form separately. We do not believe that those ATSs will incur any additional burden to collect the required information because they currently assemble that information when preparing their current Form ATS–R filings. As previously noted, there are currently 10 ATSs that trade, or have indicated that they expect to trade in Exhibit B to their Form ATS, both NMS stocks and non-NMS stocks on the ATS; those ATSs would be required to file a pair of Forms ATS–R four times annually. Consequently, we estimate that the aggregate annual burden of filing two Forms ATS–R for those ATS that effect transactions in both NMS stocks and non-NMS stocks would be 180 hours.[1258]

(iv) Access to EDGAR

The Proposal contemplated the use of an online filing system, the EFFS, but the adopted amendments to Regulation ATS will require NMS Stock ATSs to submit certain Form ATS–N filings through the Commission's EDGAR system. Based on the widespread use and availability of the internet, we believe that filing Form ATS–N in an electronic format will be a less burdensome and more efficient filing process for NMS Stock ATSs and the Commission, as it is likely to be less expensive and cumbersome than mailing and filing paper forms to the Commission.[1259]

For a Form ATS–N filer to gain access to make filings on the EDGAR system, the filer must submit a Form ID as required by Regulation S–T Rule 11 (B) and submit the Form ID following the processes detailed in Volume I of the EDGAR Filer Manual. Once a Form ID has been successfully completed and processed, EDGAR will establish a Central Index Key (''CIK'') number which enables each authorized user to create EDGAR access codes, which will enable the NMS Stock ATS to use EDGAR. We estimate that the burden associated with receiving access to EDGAR by submitting a Form ID is 0.15 burden hours per response. All registered broker-dealers have been assigned a CIK number and do not need to submit a Form ID to access EDGAR.[1260] Because all ATSs, regardless of whether they trade NMS stocks, are operated by registered broker-dealers, we estimate that there will be no burden associated with gaining access to EDGAR for Legacy NMS Stock ATSs or non-NMS Stock ATSs that later decide to trade NMS stocks. Based on the number of initial filings and cessation of operations reports on current Form ATS for ATSs that trade NMS stocks, we estimate that, 2 to 3 new entities will file Form ATS–N to become an NMS Stock ATS in each of the next three years. We estimate that among these new entities, 1 new entity per year will be operated by an entity that has not previously registered as a broker-dealer or that does not otherwise already have access to EDGAR. The total estimated hourly burden and aggregate initial burden for gaining access to EDGAR is therefore 0.15 hours.[1261]

v. Public Posting on NMS Stock ATS's Website

Rule 304(b)(3) will require each NMS Stock ATS to make public via posting on the NMS Stock ATS's website, a direct URL hyperlink to the Commission's website that contains the documents enumerated in Rule 304(b)(2). We estimate that each NMS Stock ATS will incur an initial, one-time burden to program and configure its website to post the required direct URL hyperlink pursuant to Rule 304(b)(3). We estimate that this initial, one-time burden would be approximately 2 hours, in part because many broker-dealer operators currently maintain a website for their NMS Stock ATSs.[1262] This is unchanged from the estimate set forth in the Proposal.[1263] We estimate that the aggregate initial, one-time burden will be approximately 82 hours.[1264]

(v) Recordkeeping Requirements

Because NMS Stock ATSs that solely trade NMS stocks will file Form ATS–N in lieu of Form ATS, we believe that the amendment to Rule 303(a)(2)(ii) will not result in any burden for those ATSs that are not already accounted for under the current baseline burden estimate for Rule 303.[1265] The estimated burden under amended Rule 303(a)(2)(ii) for each ATS is the same as in the Proposal.[1266] For the 10 ATSs that transact in, or have indicated in Exhibit B to their Forms ATS that they expect to trade both NMS stock and non-NMS stock on their respective ATSs, we estimate that the burden above the current baseline estimate for preserving records relating to compliance with the amendment to Rule 303(a)(ii) will be, consistent with the estimate in the proposing release, approximately 3 hours annually per ATS for a total annual burden above the current baseline burden estimate of 30 hours for all respondents.[1267] Accordingly, we are modifying the PRA burden estimate for Rule 303 to account for the increased burden on ATSs that trade both NMS stock and non-NMS stock.

E. Collection of Information Is Mandatory

All collections of information pursuant to the amended rules and Form ATS–N are mandatory for entities that meet the definition of NMS Stock ATS.

[1255] (Form ATS initial operation report at 20 hours + Form ATS–N at 127.4 hours) × 10 respondents = 1,774 aggregate burden hours. Using the estimates of 2 amendments each year to Form ATS, *see supra* Section IX.D.2.a, and 3 amendments each year to Form ATS–N, *see supra* Section IX.D.2.b.ii.B, the ongoing aggregate burden for these bifurcated ATSs would be ((2 Form ATS amendments per year × 6 hours) + (3 Form ATS–N amendments per year × 9.4 hours)) × 10 respondents = 402 aggregate ongoing burden hours per year relating to amendments.

[1256] Attorney at 0.5 hours = 0.5 burden hours.

[1257] *See supra* note 1136 and accompanying text for the baseline estimate for submitting a Form ATS–R.

[1258] ((Attorney at 3.5 hours + Compliance Clerk at 1 hour) × (4 filings annually)) × 10 ATSs = 180 aggregate burden hours.

[1259] All estimated burden hours with regard to completing Parts I–V of proposed Form ATS–N, which are explained above and herein, include the estimated burden associated with the requirement that NMS Stock ATSs file Form ATS–N in a structured XML format on EDGAR, including narrative responses that are block-text tagged, or use the web-fillable form.

[1260] A broker-dealer that has never used EDGAR to make electronic submissions may use its assigned CIK number to receive access codes that will allow the broker-dealer operator to submit Form ATS–N filings on EDGAR without needing to apply for a Form ID.

[1261] Compliance Manager at 0.15 hours × 41 NMS Stock ATSs = 6.15 burden hours.

[1262] Senior Systems Analyst at 2 burden hours.

[1263] *See* Proposal, *supra* note 2, at 81106–07.

[1264] Senior Systems Analyst at 2 hours × 41 NMS Stock ATSs = 82 burden hours.

[1265] To comply with all of the record preservation requirements of Rule 303, we currently estimate that ATSs spend approximately 1,305 hours per year (87 respondents at 15 burden hours per respondent). *See* Rule 303 PRA Update, *supra* note 1613, 78 FR 43943. At an average cost per burden hour of $111.32, the resultant total related cost of compliance is $145,272.60 per year (1,305 burden hours × $111.32/hour). *See id.* The cost per burden hour is adjusted for an inflation rate of 6.8% based on the Bureau of Labor Statistics data on CPI–U between July 2013 and March 2018.

[1266] *See* Proposal, *supra* note 2, at 81107.

[1267] 3 additional burden hours × 10 ATSs = 30 aggregate burden hours.

F. Confidentiality of Responses to Collection of Information

With respect to the amendments to Rules 301(b)(2)(viii) and 304 of Regulation ATS, including Form ATS–N, the Commission will make publicly available on its website all effective Forms ATS–N, all properly filed Form ATS–N amendments to effective Forms ATS–N, and notices of cessation on Form ATS–N. The Commission will not make publicly available on its website initial Forms ATS–N that the Commission has declared ineffective, but these forms will be available for examination and inspection by the Commission and its staff, state securities authorities, and self-regulatory organizations. Form ATS–N amendments also require each NMS Stock ATS that has a website to post on the NMS Stock ATS's website a direct URL hyperlink to the Commission's website that contains the documents enumerated in Rule 304(b)(2). The collection of information required by the amendments to Rules 301(b)(10), 303(a)(1)(v), 301(b)(9), and 303(a)(2)(ii) will not be made public, but would be used for regulatory purposes by the Commission and the SRO(s) of which the ATS's broker-dealer operator is a member. In Part II, Item 7 of Form ATS–N, however, NMS Stock ATSs must describe the written safeguards and written procedures to ensure confidential treatment of trading information that will be required under Rule 301(b)(10) as amended. To the extent that the Commission receives confidential information pursuant to this collection of information, such information will be kept confidential, subject to the provisions of applicable law.

G. Retention Period for Recordkeeping Requirements

All reports required to be made under Rules 301(b)(2)(viii), 301(b)(9), and 304 of Regulation ATS, including Form ATS–N, will be required to be preserved during the life of the enterprise and any successor enterprise, pursuant to the amendment to Rule 303(a)(2) of Regulation ATS. In addition, ATSs will be required to preserve a copy of their written safeguards and written procedures to protect subscribers' confidential trading information under Rule 301(b)(10) of Regulation ATS for not less than 3 years, the first 2 years in an easily accessible place, pursuant to Rule 303(a)(1)(v) of Regulation ATS.

X. Economic Analysis

A. Background

We are concerned that the current regulatory requirements relating to operational transparency for NMS Stock ATSs may no longer fully meet the goals of furthering the public interest and protecting investors.[1268] We are concerned that the limited and differential level of operational transparency around NMS Stock ATSs impedes market participants' ability to adequately discern how their orders interact, match, and execute on NMS Stock ATSs, which impedes their ability to evaluate whether submitting order flow to a particular NMS Stock ATS aligns with their business interests and would help them achieve their investing or trading objectives. In addition, we are concerned that the current lack of transparency around the potential conflicts of interest that arise from the ATS-related activities of the broker-dealer operator and its affiliates hinders market participants' abilities to protect their interests when doing business on NMS Stock ATSs.

We are adopting amendments to Regulation ATS to require NMS Stock ATSs to publicly file Form ATS–N, which would require NMS Stock ATSs to provide detailed disclosures about their trading operations and the ATS-related activities of their broker-dealer operators and their affiliates. In addition, we are adopting new Rule 304 as part of Regulation ATS, which provides a process for the Commission to review Form ATS–N filings and declare an NMS Stock ATS's initial Form ATS–N, after notice and opportunity for hearing, ineffective.[1269] Finally, we are adopting amendments to Rule 301(b)(10) of Regulation ATS to require that all ATSs memorialize in writing their procedures and safeguards to protect subscribers' confidential trading information.[1270]

The adopted amendments and Form ATS–N seek to make information regarding the operations of NMS Stock ATSs available to market participants, which will increase the operational transparency for NMS Stock ATSs, bringing it more in line with the operational transparency for national securities exchanges. The amendments also seek to improve the quality of information regarding different NMS Stock ATSs' operations and the ATS-related activities of their broker-dealer operators and their affiliates. As discussed in more detail below, we believe that this would help market participants make better-informed decisions about where to route their orders in order to achieve their trading or investment objectives, thereby improving the efficiency of capital allocation and enhancing execution quality. Additionally, we believe that requiring NMS Stock ATSs to memorialize their safeguards and written procedures in writing will improve Commission oversight by helping it better understand, monitor, and evaluate how each ATS protects subscribers' confidential trading information from unauthorized disclosure and access, which in turn could increase investor protection. On the other hand, creation of responses to aid disclosure of Form ATS–N and the possibility that we may declare the Form ATS–N ineffective would entail costs to NMS Stock ATSs, which could result in some of them ceasing to operate as ATSs. If some NMS Stock ATSs cease operating as ATSs, it could impact the competitive dynamics between NMS Stock ATSs and national securities exchanges, as well as the competitive dynamics among NMS Stock ATSs and between NMS Stock ATSs and broker-dealers who trade NMS stocks but do not operate an ATS.

We are sensitive to the economic consequences and effects, including the costs and benefits, of our rules. The following economic analysis identifies and considers the costs and benefits—including the effects on efficiency, competition, and capital formation—that would result from new Rule 304, Form ATS–N and the amendments to Rule 3a1–1(a) and Regulation ATS. These costs and benefits are discussed below and have informed the policy choices described throughout this release.[1271]

[1268] *See supra* Section I. *See also supra* Sections II.A and D.

[1269] Rule 304 also provides a process for the Commission to declare amendments to Form ATS–N ineffective.

[1270] Current Rule 301(b)(10) requires all ATSs establish procedures and safeguards to protect subscribers' confidential trading information, but it does not expressly require that such procedures and safeguards must be maintained in writing.

[1271] Exchange Act Section 3(f) requires the Commission, when it is engaged in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f). In addition, Exchange Act Section 23(a)(2) requires the Commission, when making rules pursuant to the Exchange Act, to consider among other matters the impact that any such rule would have on competition and not to adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78w(a)(2).

B. Baseline

The numerous parties that would be affected by new Rule 304, Form ATS–N, and the amendments include: Existing NMS Stock ATSs; potential new NMS Stock ATSs; current and potential subscribers of NMS Stock ATSs; broker-dealers that are affiliated with NMS Stock ATSs and their customers; non-ATS affiliated broker-dealers and their customers; broker-dealers that do not operate NMS Stock ATSs but send order flow to NMS Stock ATSs; institutional investors that periodically transact large trades on NMS Stock ATSs; other persons that seek to transact in NMS stocks on ATSs; and national securities exchanges that compete for order flow with NMS Stock ATSs and other OTC trading systems.

We recognize that the economic effects of Rule 304, Form ATS–N, and the amendments, including costs and benefits and effects on efficiency, competition and capital formation, should be compared to a baseline that accounts for the current market and regulatory framework for trading NMS stocks. The baseline includes: Statistics on the number of NMS Stock ATSs; current reporting requirements for NMS Stock ATSs; the lack of public disclosure of NMS Stock ATSs' operations, as well as disparate levels of information available to market participants about NMS Stock ATSs' operations and the ATS-related activities of their broker-dealer operators and their affiliates; and the competitive environment between national securities exchanges and NMS Stock ATSs, among NMS Stock ATSs, and between broker-dealers that operate NMS Stock ATSs and broker-dealers that do not operate NMS Stock ATSs.

1. Current NMS Stock ATSs

As of March 31, 2018 there are 41 ATSs that have noticed on their Form ATS that they expect to trade NMS stocks.[1272] During the first quarter in 2018, 33 ATSs, all of which operated as dark pools, traded NMS stocks and accounted for approximately 57 billion shares traded in NMS stocks (approximately $2.9 trillion in dollar volume), representing approximately 11.4% of total share trading volume (11.5% of total dollar trading volume) on all registered national securities exchanges, ATSs, and non-ATS OTC trading venues in the first quarter of 2018.[1273] Based on their market share, NMS Stock ATSs represent a significant source of liquidity in NMS stocks.

2. Current Reporting Requirements for NMS Stock ATSs

Even though ATSs directly compete for order flow in NMS stocks with national securities exchanges, ATSs are exempt from the definition of ''exchange'' and therefore are not required to register as national securities exchanges with the Commission.[1274] A system that meets the criteria of Rule 3b–16(a) may operate as an ATS on the condition that the ATS complies with Regulation ATS, which requires, among other things, that the ATS make filings with the Commission on Form ATS and Form ATS–R,[1275] which are ''deemed confidential when filed,'' as well as adhere to other reporting requirements under Regulation ATS.[1276] Furthermore, ATSs must register as broker-dealers and become members of an SRO. Accordingly, the ATS must comply with rules applicable to a broker-dealer and the SRO's rules applicable to broker-dealers. In addition, FINRA Rules 6160 and 6170 require each NMS Stock ATS to use a single, unique MPID for trade reporting purposes.[1277] FINRA uses the trade data reported by ATSs to publish aggregated weekly trading volume and trade count information on its website for each ATS on a security-by-security basis.[1278]

3. Lack of Standardized Public Disclosure

As described in detail in the Proposal,[1279] the level of information about the operations of NMS Stock ATSs and the ATS-related activities of the NMS Stock ATSs' broker-dealer operators and their affiliates vary across NMS Stock ATSs and across subscribers. Although Regulation ATS states that information on Form ATS is ''deemed confidential when filed,'' [1280] some NMS Stock ATSs voluntarily make their filings publicly available.[1281] NMS Stock ATSs that either voluntarily make their Form ATS publicly available, or publish summary information of their operations, provide market participants more information about their operations than do NMS Stock ATSs that do not make their Forms ATS or information about their operations publicly available.[1282] However, market participants cannot always use these voluntary disclosures to systematically compare NMS Stock ATSs, because the disclosures are not standardized.[1283] Additionally, subscribers might have access to more information about the NMS Stock ATSs to which they subscribe than they might about others, and also might have more information about their NMS Stock ATSs than might non-subscribers. For example, subscribers might have access to the NMS Stock ATS's subscriber manual, other subscriber quotes, and, potentially, certain market quality statistics an NMS Stock ATS may publish or otherwise disclose to subscribers in addition to what is currently publicly disclosed under Exchange Act Rule 605.[1284]

Subscribers to an NMS Stock ATS might have varying access to the different services of the NMS Stock

[1272] *See supra* note 9 and accompanying text.

[1273] *See infra* Table 1, ''NMS Stock ATSs Ranked by Dollar Trading Volume (January 1, 2018–March 30, 2018)'' Total dollar trading volume on all exchanges and off-exchange trading in the first quarter of 2018 was approximately $25.4 trillion and approximately 503 billion shares.

[1274] *See supra* Section II.B (discussing the conditions to the exemption from the definition of ''exchange'' for an ATS).

[1275] *See supra* Section II.C (discussing the Form ATS filing requirements). See also *supra* note 65 and accompanying text (discussing the Form ATS–R filing requirements).

[1276] *See supra* Section II.C (discussing the requirements of Regulation ATS); *see also* 17 CFR 242.301(b).

[1277] *See* FINRA Rules 6160 and 6170. *See also supra* note 15.

[1278] FINRA computes the aggregated statistics from trade data reported by ATSs to the FINRA equity trade reporting facilities (*i.e.,* the Alternative Display Facility, the Trade Reporting Facilities, and the OTC Reporting Facility). For trade data prior to February 1, 2016, FINRA publishes aggregated trade data reported by ATSs pursuant to former FINRA Rule 4552. FINRA publishes the information regarding NMS stocks in the S&P500 Index or the Russell 1000 Index and certain exchange-traded products on a two-week delayed basis, and the information on all other NMS stocks and OTC equity securities on a four-week delayed basis. *See* FINRA OTC Transparency Data at *https://otctransparency.finra.org/. See also supra* note 15.

[1279] *See* Proposal, *supra* note 2, at 81110–11.

[1280] *See* 17 CFR 242.301(b)(2)(vii).

[1281] *See supra* note 56.

[1282] On the other hand, some ATSs not only provide current Form ATS on their public websites, they also provide more information regarding their ATS operations. For instance, one commenter asks all their subscribers to consent to having their names publicly disclosed on their website so that all their subscribers know the universe of entities that they could be executing against. *See* Luminex Letter at 1.

[1283] The level of detail and the format in which information is presented on Form ATS varies among the NMS Stock ATSs. Several commenters agree with us that either there is a lack of disclosure about the operations of NMS Stock ATSs or that there is a need to standardize disclosures made by NMS Stock ATSs. *See* Fidelity Letter at 1; ICI Letter at 1; SIFMA Letter at 3. One commenter specifically states that opacity of venue matching logic ''increases costs for brokers connecting to venues, and they in turn pass these costs to clients.'' *See* AI Letter at 2.

[1284] Exchange Act Rule 605(a) requires every market center, including ATSs, to make publicly available for each calendar month a report containing standardized data on the covered orders in NMS stocks that it receives for execution from any market participant. Data on execution quality required under Exchange Act Rule 605(a) includes order sizes, execution sizes, effective spreads, price improvement, and quarterly volume of shares traded. *See* Rule 605(a)(8) for the definition of a covered order.

ATS.[1285] Those subscribers with greater access might obtain more knowledge and information about the operations of NMS Stock ATSs than the subscribers with less access. With this additional information, subscribers with greater access can make more nuanced decisions about which trading venue suits their trading purposes, and thus possess an informational advantage over other subscribers.

Even if having greater access to the services of an NMS Stock ATS yields additional information about the operations of the NMS Stock ATS to certain subscribers, subscribers that do not have full access to services of the NMS Stock ATS, and the resulting additional information, might still want to trade on NMS Stock ATSs in spite of their relative informational disadvantage. Had these subscribers possessed more detailed information about the operations of the NMS Stock ATS, they might have been able to make more informed—and therefore potentially different—decisions about where to route their orders for execution.

4. NMS Stock ATS Treatment of Subscriber Confidential Trading Information

Under current Rule 301(b)(10) of Regulation ATS,[1286] all ATSs must establish adequate safeguards and procedures to protect subscribers' confidential trading information, and, to ensure that those safeguards and procedures are followed, must also establish adequate oversight procedures.[1287] Furthermore, all ATSs are required to preserve certain records pursuant to Rule 303(a)(1).[1288] However, neither Rule 301(b)(10) nor Rule 303(a)(1) of Regulation ATS currently requires that an ATS maintain and preserve their safeguards and procedures to protect subscribers' confidential trading information, or their related oversight procedures in writing.

As discussed in the Proposal,[1289] we believe that ATSs—in particular, ATSs whose broker-dealer operators are large, multi-service broker-dealers—currently have and maintain in writing their safeguards and procedures to protect subscribers' confidential trading information, as well as the oversight procedures to ensure such safeguards and procedures are followed. One commenter agrees that significant ATSs have largely reduced to writing their safeguards and procedures to protect subscribers' confidential trading information.[1290] Additionally, this commenter also states these written safeguards and procedures are likely to occur in multiple formats and in different forms within the same broker-dealer. We acknowledge that, to the extent an ATS broker-dealer operator currently maintains written safeguards and written procedures to protect subscribers' confidential trading information, the written safeguards and written procedures might exist in multiple formats or differing forms within the same broker-dealer operator. Nevertheless, under the current regulatory environment for ATSs, absent specific questions in an examination by the Commission or its staff, we are not able to determine whether all ATSs currently have written safeguards and written procedures to protect subscribers' confidential trading information or, if an ATS does possess written safeguards and written procedures, to what extent they exist in multiple formats or differing forms.

5. Competition

The current market for trading NMS stocks is served by national securities exchanges, ATSs, and liquidity providers (including broker-dealers who internalize), who compete to supply investors with execution services at efficient prices. These trading venues, which compete to match orders, provide a framework for price negotiation and disseminate trading information. The sections below discuss the current state of competition between NMS Stock ATSs and national securities exchanges; competition among NMS Stock ATSs; and competition between broker-dealers that operate NMS Stock ATSs and broker-dealers that do not operate NMS Stock ATSs.

a. Competition Between NMS Stock ATSs and Registered National Securities Exchanges

In the market for NMS stock execution services, NMS Stock ATSs not only compete with other NMS Stock ATSs, they also compete with national securities exchanges. As discussed in the Proposal,[1291] NMS Stock ATSs have grown in complexity and sophistication. Some NMS Stock ATSs now offer features similar to those offered by national securities exchanges, including, among other things, anonymous order submission, limit order book matching systems, a wide range of order types, and high-speed connectivity options. However, unlike national securities exchanges, most NMS Stock ATSs have adopted a dark trading model, and do not display any quotations in the consolidated quotation data.[1292] Two commenters state that NMS Stock ATSs also compete with national securities exchanges for order flow by offering features that are not readily available on national securities exchanges.[1293] For example, while most national securities exchanges match trades via a price/time priority limit order book, some NMS Stock ATSs may match trades via auctions or block crossing mechanisms.[1294]

As discussed above and explained in more detail in the Proposal,[1295] NMS Stock ATSs and national securities exchanges are subject to different regulatory regimes, including different obligations to disclose information about their trading operations and activities. This has resulted in differences in operational transparency between national securities exchanges and NMS Stock ATSs, which limits the ability of market participants to compare the operations and execution quality of NMS Stock ATSs and national securities exchanges.

In addition to the burdens discussed above,[1296] and as discussed in more detail in the Proposal,[1297] national securities exchanges and other SROs also have regulatory obligations, such as enforcing their rules and the federal securities laws with respect to their members, which do not apply to ATSs.[1298] However, national securities exchanges also enjoy certain benefits that are not afforded to NMS Stock ATSs, such as establishing norms regarding conduct, trading, and fee structures. ATSs, on the other hand, are regulated as broker-dealers, and must comply with the rules of FINRA. Trading venues that elect to register as national securities exchanges can gain

[1285] *See* Proposal, *supra* note 2, at 81111 (discussing the differential access of subscribers to NMS Stock ATSs).

[1286] 17 CFR 242.301(b)(10).

[1287] 17 CFR 242.301(b)(10).

[1288] *See* Proposal, *supra* note 2, at 81087; *see also supra* Section III.B.6 (discussing amendments to Exchange Act Rule 303).

[1289] *See* Proposal, *supra* note 2, at 81111.

[1290] *See* HMA Letter at 23.

[1291] *See* Proposal, *supra* note 2, 80 FR at 81009.

[1292] See id.

[1293] *See* Consumer Federation of America Letter at 4; ICI Letter at 3.

[1294] *See* Proposal, *supra* note 2, 80 FR at 81009; *see also* ICI Letter at 3.

[1295] *See supra* Sections II.B–C (discussing the different mix of obligations and benefits applicable to ATSs and registered national securities exchanges). *See also* Proposal, *supra* note 2, at 81111–12.

[1296] *See supra* Section II.B.

[1297] *See* Proposal, *supra* note 2, at 81111–12

[1298] *See, e.g.,* Section 19(g) of the Exchange Act, 15 U.S.C. 78s(g), and Section 6(b) of the Exchange Act, 15 U.S.C. 78f(b). For further discussion of the costs and benefits of registering as a national securities exchange, *see* Proposal, *supra* note 2, at 81111–12.

added prestige by establishing listing standards for their securities. Additionally, national securities exchanges can be direct participants in NMS plans, which provide additional sources of revenue and input into the operation of the national market system that is not available to NMS Stock ATSs.[1299]

As discussed in more detail in the Proposal, since the adoption of Regulation NMS in 2005, the market for NMS stock execution services has become more fragmented and the number of national securities exchanges and NMS Stock ATSs has increased.[1300] Over the past decade, with the increase in fragmentation in the market for execution services, there has been a shift in the market share of trading volume in NMS stocks across trading venues.[1301] The number of active dark pools trading NMS stocks has increased from approximately 10 in 2002,[1302] to 33 today.[1303] The market share of total NMS stock share volume that is attributable to dark pools has increased from 7.9% in 2009 [1304] to 11.4% during the first quarter of 2018.[1305] Thus, greater fragmentation in the market for NMS stock execution services over the past decade has resulted in trading volume being executed on different venues, some of which include NMS Stock ATSs, particularly NMS Stock ATSs that operate as dark pools.[1306]

Several commenters state that since the inception of Regulation ATS, ATSs have operated at a competitive advantage relative to national securities exchanges, because they operate with lower transparency and greater opacity relative to national securities exchanges.[1307] Another commenter states that ''ATSs are competitors to exchanges, but do not have the same oversight, transparency requirements or responsibilities.'' [1308] This commenter also states that ''It is clearly unfair competition for ATSs to be subject to far less requirements than exchanges while executing a large percentage of the market volume.'' [1309] We agree that NMS Stock ATSs face lower regulatory burdens than national securities exchanges, including differences in the obligations to publicly disclose information about their trading operations and activities. This has resulted in differences between the operational transparency of NMS Stock ATSs and national securities exchanges and made it more difficult for market participants to evaluate how their orders interact, match, and execute on the NMS Stocks ATSs than on national security exchanges. As discussed in the Proposal,[1310] the growth in the number of NMS Stock ATSs may be driven by these less stringent regulatory obligations. However, national securities exchanges also enjoy certain advantages which are not available to NMS Stock ATSs, such as the ability to list securities and share in market data revenue generated by the CTA.

b. Competition Among NMS Stock ATSs

NMS Stock ATSs also compete with each other in a niche in the market for NMS stock execution services. The rise in the number of NMS Stock ATSs has not only affected competition between national securities exchanges and ATSs for order flow of NMS stocks, it has also impacted competition among NMS Stock ATSs.

Table 1, which is based on aggregated trade data reported by ATSs to the FINRA equity trade reporting facilities for 13 weeks of trading from January 1, 2018, to March 30, 2018, depicts the market share of total dollar volume for NMS stocks, and the total share volume for NMS stocks for individual ATSs.[1311] Even though there are many NMS Stock ATSs, much of the NMS stock dollar volume on ATSs is transacted by only a handful of venues. Table 1 shows that the top 7 NMS Stock ATSs ranked by dollar volume accounted for 63.4% of total dollar volume transacted on ATSs and 59.2% of total share volume transacted on ATSs from January 1, 2018, to March 30, 2018.

[1299] *See* Regulation ATS Adopting Release, *supra* note 3, at 70880, 70902–70903 (Section discussing generally some of the obligations and benefits of registering as a national securities exchange).

[1300] *See* Proposal, *supra* note 2, at 81112. For a list of current national securities exchanges, see *https://www.sec.gov/rules/sro.shtml.*

Although there are 12 national securities exchanges that trade NMS stocks, they are currently controlled by 5 exchange groups, namely, CBOE Global Markets, Inc. (which controls BZX, BYX, EDGA, and EDGX), CHX Holdings, Inc. (which controls CHX), Intercontinental Exchange, Inc. (which controls NYSE American, NYSE, and NYSE Arca), IEX Group Inc. (which controls IEX), and NASDAQ, Inc. (which controls Nasdaq, BX, and PHLX).

[1301] For further discussion *see* Proposal, *supra* note 2, at 81112.

[1302] *See* Regulation of Non-Public Trading Interest at 61209 n.9, and accompanying text (proposing rules and amendment to joint industry plans describing the term dark pool).

[1303] *See supra* notes 11–12 and accompanying text.

[1304] *See supra* notes 13–14 and accompanying text.

[1305] *See supra* Section X.B.1.

[1306] Several commenters also stated that ever since the inception of Regulation ATS, the market for trading NMS stocks has become more fragmented, and the number of NMS Stock ATSs and the trading volume executed on these venues has increased, but they did not provide quantitative estimates of the number of ATSs or the fraction of trading volume executed on different venues. *See* CFA Institute Letter at 2; Consumer Federation of America Letter at 4; Fidelity Letter at 3; LeveL ATS Letter at 2; Schneiderman Letter at 1, SIFMA Letter at 2.

[1307] *See* CBOE Letter at 1; CFA Institute Letter at 2; Consumer Federation of America Letter at 1–2, 4; ICI Letter at 3.

[1308] *See* Anonymous at 1.

[1309] *See id.*

[1310] *See* Proposal, *supra* note 2, at 81112.

[1311] *See supra* note 15.

MPID	ATS Description	Trades	Share Volume	Dollar Volume	% of ATS Dollar Volume	% of ATS Share Volume
UBSA	UBSA UBS ATS	74,684,445	11,558,612,209	$585,889,392,203	20.09%	20.17%
CROS	CROS CROSSFINDER	37,641,434	6,131,230,224	$313,552,657,406	10.75%	10.70%
DLTA	DLTA DEALERWEB	2,931	1,054,776,222	$249,121,940,370	8.54%	1.84%
EBXL	EBXL LEVEL ATS	20,531,738	4,036,471,200	$190,153,787,751	6.52%	7.04%
DBAX	DBAX SUPERX	21,670,068	4,030,627,076	$187,716,264,486	6.44%	7.03%
JPMX	JPMX JPM-X	16,794,978	3,240,235,070	$162,460,422,536	5.57%	5.65%
MSPL	MSPL MS POOL (ATS-4)	16,362,217	3,895,161,690	$158,860,162,674	5.45%	6.80%
LATS	LATS BARCLAYS ATS ("LX")	18,958,278	3,453,162,482	$153,009,689,163	5.25%	6.03%
BIDS	BIDS BIDS TRADING	2,278,461	2,719,614,540	$138,314,125,883	4.74%	4.75%
SGMT	SGMT SIGMA X2	15,631,833	2,462,502,574	$117,351,332,288	4.02%	4.30%
MLIX	MLIX INSTINCT X	10,332,918	2,214,264,890	$91,627,093,262	3.14%	3.86%
ICBX	ICBX INSTINET CONTINUOUS BLOCK CROSSING SYSTEM (CBX)	7,999,595	1,674,461,755	$72,977,944,819	2.50%	2.92%
ITGP	ITGP POSIT	5,530,164	1,607,349,782	$70,746,876,812	2.43%	2.81%
IATS	IATS IBKR ATS	3,666,527	1,003,205,415	$55,267,583,627	1.89%	1.75%
MSTX	MSTX MS TRAJECTORY CROSS (ATS-1)	7,255,670	1,211,480,500	$50,735,772,680	1.74%	2.11%
KCGM	KCGM KCG MATCHIT	6,339,584	1,146,037,324	$48,307,303,306	1.66%	2.00%
XSTM	XSTM CROSSSTREAM	2,392,943	804,362,651	$43,043,777,453	1.48%	1.40%
LQNA	LQNA LIQUIDNET H2O	45,824	790,199,400	$37,624,716,045	1.29%	1.38%
JPBX	JPBX JPB-X	5,795,286	618,955,773	$32,750,591,702	1.12%	1.08%
BLKX	BLKX BLOCKCROSS	55,655	618,438,688	$29,325,877,352	1.01%	1.08%
LQNT	LQNT LIQUIDNET ATS	16,107	587,409,900	$28,969,691,786	0.99%	1.03%
CXCX	CXCX CITI CROSS	3,072,427	622,238,237	$26,086,669,766	0.89%	1.09%
MSRP	MSRP MS RETAIL POOL (ATS-6)	1,542,721	318,863,430	$18,883,547,120	0.65%	0.56%
PDQX	PDQX PDQ ATS	1,510,480	323,599,205	$14,660,290,727	0.50%	0.56%
XIST	XIST INSTINET CROSSING	86,037	306,502,028	$14,542,535,261	0.50%	0.53%
LMNX	LMNX LUMINEX TRADING & ANALYTICS	5,286	174,025,591	$10,605,959,459	0.36%	0.30%
CBLC	CBLC CitiBLOC	7,957	124,141,506	$6,991,467,423	0.24%	0.22%
CIOI	CIOI CIOI	1,498	88,912,991	$3,996,712,694	0.14%	0.16%
WDNX	WDNX XE	15,435	16,415,697	$1,171,806,975	0.04%	0.03%
AQUA	AQUA AQUA	2,808	24,689,596	$836,854,096	0.03%	0.04%
USTK	USTK USTOCKTRADE SECURITIES	742,620	442,665,109	$632,171,698	0.02%	0.77%
PROS	PROS PRO SECURITIES ATS	4,799	2,196,731	$320,539,924	0.01%	0.00%
BCDX	BCDX BARCLAYS DIRECTEX	1	18,000	$451,536	0.00%	0.00%
	Total (NMS Stock ATS)	**280,978,725**	**57,302,827,486**	**$2,916,536,010,284**	**100.00%**	**100.00%**
	Total Consolidated Volume (NMS stock)[1312]	**2,299,893,482**	**502,830,180,407**	**$25,423,538,264,351**	**-**	**-**
	NMS Stock ATS as a Fraction of Total Consolidated Volume	**12.22%**	**11.40%**	**11.47%**	**-**	**-**
	Dark Pools as a Fraction of Total Consolidated Volume[1313]	**12.22%**	**11.40%**	**11.47%**	**-**	**-**

Table 1: NMS Stock ATSs Ranked by Dollar Trading Volume

(January 1, 2018—March 30, 2018) [1314]

This table shows the 33 ATSs that effected transactions in NMS stocks from January 1, 2018—March 30, 2018, ranked in descending order by dollar volume transacted. ATS data is reported weekly, and these dates approximately correspond to the first quarter of 2018. Dollar volume transacted on an ATS is calculated by multiplying the share volume for a given NMS stock on the ATS in a given week by the average trade price for that week. Dollar volume for each NMS stock is then aggregated across all NMS stocks that traded on the given ATS in that week. Also reported in this table is the number of trades, share volume, each NMS Stock ATS's market share of all NMS Stock ATS dollar volume and NMS Stock ATS share volume in that quarter.

Table 2, which is based on aggregated trade data reported by ATSs to the FINRA equity trade reporting facilities

[1312] Total Consolidated Volume includes all trading in NMS stocks on all national securities exchanges, ATSs, and non-ATS OTC trading.

[1313] *See supra* note 2 for definition of ''dark pool''.

[1314] Table 1 Data Sources: (1) FINRA Alternative Trading System (ATS) Transparency Data is aggregated trade data reported by ATSs to the FINRA equity trade reporting facilities and made available on FINRA's website as part of the OTC Transparency Data. The OTC Transparency Data is provided via *http://www.finra.org/industry/OTC-Transparency* and is copyrighted by FINRA 2018. (2) NYSE Trade and Quote Database (TAQ).

for 13 weeks of trading from January 1, 2018, to March 30, 2018, shows the average trade size, which is share volume divided by the number of trades on each of the NMS Stock ATSs. The table reveals marked differences in the average trade size of transactions executed on the various NMS Stock ATSs. Eight NMS Stock ATSs had average trade sizes in excess of 10,000 shares. This suggests that some NMS Stock ATSs receive large block orders and execute large trades.[1315] One of the advantages for market participants of trading on block crossing networks is the ability to execute large block orders while minimizing the movement of prices against their trading interest.[1316]

While these NMS Stock ATSs on average execute large size trades, the combined market share of these NMS Stock ATSs is only 12.6% when measured in dollar volume, and 6.0% when measured in share volume. The vast majority of NMS Stock ATSs have average trade sizes between 100 and 460 shares. The average trade size across all 33 NMS Stock ATSs is 204 shares, while the two NMS Stock ATSs with the highest market shares (measured either in dollar volume or share volume) have average trade sizes of 155 and 163 shares, respectively. These trade sizes are not significantly different from the average trade size of 146 shares on national securities exchanges,[1317] which suggests that the niche market NMS Stock ATSs serve is not very different from the market as a whole.[1318]

[1315] For purposes of this analysis we considered block orders as orders of more than 10,000 shares, which is the traditional definition for block orders. *See* Proposal, *supra* note 2, at 81008. *See also* Rule 600(b)(9) of Regulation NMS (defining block size with respect to an order), 17 CFR 242.600(b)(9).

[1316] *See* Proposal, *supra* note 2, at 81008 n.126, 127.

[1317] Tuttle (2013) also found that trade sizes on ''lit'' national securities exchanges are similar to those taking place on ''dark ATSs.'' However, Tuttle (2013) did not include odd lot trades when calculating trade sizes for ''lit'' national securities exchanges or ''dark ATSs.'' *See* Laura Tuttle, *Alternative Trading Systems: Description of ATS Trading in National Market System Stocks* (October 2013), *http://www.sec.gov/marketstructure/research/alternative-trading-systems-march-2014.pdf* (''Tuttle: ATS Trading in NMS Stocks''). Unlike ''lit'' national securities exchanges, dark ATSs do not publicly disseminate top of the limit-order book information. *See id.*

Table 2 in the Proposal reports that between March 30, 2015, and June 26, 2015, the average trade size on NMS Stock ATSs was 214 shares and the average trade size on national securities exchanges was 181 shares. Calculations for both of the average trade size metrics reported in the Proposal include odd lots trades. However, calculations for the average trade size on national securities exchanges reported in the Proposal also include TAQ trade volume reported from bulk trades, opening and closing trades, and intraday crosses. *See* Proposal, *supra* note 2, at 81114.

[1318] One commenter conducted similar analysis, computing average trade sizes in ''top volume ATSs'' for three time periods: May 12, 2014–May 16, 2014; March 30–June 26, 2015; and January 11, 2016–January 15, 2016 and reached similar conclusions. *See* Anonymous Letter at 4.

MPID	ATS Description	Trades	Share Volume	Dollar Volume	Average Trade Size	% of ATS Dollar Volume	% of ATS Share Volume
DLTA	DLTA DEALERWEB	2,931	1,054,776,222	$249,121,940,370	359,869	8.54%	1.84%
CIOI	CIOI CIOI	1,498	88,912,991	$3,996,712,694	59,354	0.14%	0.16%
LQNT	LQNT LIQUIDNET ATS	16,107	587,409,900	$28,969,691,786	36,469	0.99%	1.03%
LMNX	LMNX LUMINEX TRADING & ANALYTICS	5,286	174,025,591	$10,605,959,459	32,922	0.36%	0.30%
BCDX	BCDX BARCLAYS DIRECTEX	1	18,000	$451,536	18,000	0.00%	0.00%
LQNA	LQNA LIQUIDNET H2O	45,824	790,199,400	$37,624,716,045	17,244	1.29%	1.38%
CBLC	CBLC CitiBLOC	7,957	124,141,506	$6,991,467,423	15,602	0.24%	0.22%
BLKX	BLKX BLOCKCROSS	55,655	618,438,688	$29,325,877,352	11,112	1.01%	1.08%
AQUA	AQUA AQUA	2,808	24,689,596	$836,854,096	8,793	0.03%	0.04%
XIST	XIST INSTINET CROSSING	86,037	306,502,028	$14,542,535,261	3,562	0.50%	0.53%
BIDS	BIDS BIDS TRADING	2,278,461	2,719,614,540	$138,314,125,883	1,194	4.74%	4.75%
WDNX	WDNX XE	15,435	16,415,697	$1,171,806,975	1,064	0.04%	0.03%
USTK	USTK USTOCKTRADE SECURITIES	742,620	442,665,109	$632,171,698	596	0.02%	0.77%
PROS	PROS PRO SECURITIES ATS	4,799	2,196,731	$320,539,924	458	0.01%	0.00%
XSTM	XSTM CROSSSTREAM	2,392,943	804,362,651	$43,043,777,453	336	1.48%	1.40%
ITGP	ITGP POSIT	5,530,164	1,607,349,782	$70,746,876,812	291	2.43%	2.81%
IATS	IATS IBKR ATS	3,666,527	1,003,205,415	$55,267,583,627	274	1.89%	1.75%
MSPL	MSPL MS POOL (ATS-4)	16,362,217	3,895,161,690	$158,860,162,674	238	5.45%	6.80%
MLIX	MLIX INSTINCT X	10,332,918	2,214,264,890	$91,627,093,262	214	3.14%	3.86%
PDQX	PDQX PDQ ATS	1,510,480	323,599,205	$14,660,290,727	214	0.50%	0.56%
ICBX	ICBX INSTINET CONTINUOUS BLOCK CROSSING SYSTEM (CBX)	7,999,595	1,674,461,755	$72,977,944,819	209	2.50%	2.92%
MSRP	MSRP MS RETAIL POOL (ATS-6)	1,542,721	318,863,430	$18,883,547,120	207	0.65%	0.56%
CXCX	CXCX CITI CROSS	3,072,427	622,238,237	$26,086,669,766	203	0.89%	1.09%
EBXL	EBXL LEVEL ATS	20,531,738	4,036,471,200	$190,153,787,751	197	6.52%	7.04%
JPMX	JPMX JPM-X	16,794,978	3,240,235,070	$162,460,422,536	193	5.57%	5.65%
DBAX	DBAX SUPERX	21,670,068	4,030,627,076	$187,716,264,486	186	6.44%	7.03%
LATS	LATS BARCLAYS ATS ("LX")	18,958,278	3,453,162,482	$153,009,689,163	182	5.25%	6.03%
KCGM	KCGM KCG MATCHIT	6,339,584	1,146,037,324	$48,307,303,306	181	1.66%	2.00%
MSTX	MSTX MS TRAJECTORY CROSS (ATS-1)	7,255,670	1,211,480,500	$50,735,772,680	167	1.74%	2.11%
CROS	CROS CROSSFINDER	37,641,434	6,131,230,224	$313,552,657,406	163	10.75%	10.70%
SGMT	SGMT SIGMA X2	15,631,833	2,462,502,574	$117,351,332,288	158	4.02%	4.30%
UBSA	UBSA UBS ATS	74,684,445	11,558,612,209	$585,889,392,203	155	20.09%	20.17%
JPBX	JPBX JPB-X	5,795,286	618,955,773	$32,750,591,702	107	1.12%	1.08%
	Total (NMS Stock ATS)	**280,978,725**	**57,302,827,486**	**$2,916,536,010,284**	**-**	**100.00%**	**100.00%**
	Average Trade Size (NMS Stock ATS)	**-**	**-**	**-**	**204**	**-**	**-**
	Average Trade Size (Registered National Exchanges[1319])	**-**	**-**	**-**	**146**	**-**	**-**

Table 2: NMS Stock ATSs Ranked by Average Trade Size

(January 1, 2018–March 30, 2018) [1320]

This table shows 33 ATSs that effected transactions in NMS stocks from January 1, 2018–March 30, 2018, ranked in descending order by average trade size. ATS data is reported weekly, and these dates correspond approximately to the fourth quarter of 2017. Also reported in this table is the raw number of trades, share volume, dollar volume, and each NMS Stock ATS's market share of all NMS Stock ATS dollar volume and NMS Stock ATS share volume. Dollar volume transacted on an ATS is calculated by multiplying the share volume for a given NMS stock on the ATS in a given week by the average trade price for that week. Dollar volume for each NMS stock is then

[1319] National securities exchanges that transacted in NMS stocks during the period January 1, 2018 to March 30, 2018 included NYSE MKT LLC, Cboe BZX Exchange, Inc.; Cboe BYX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Chicago Stock Exchange, Inc.; The Investors Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX, Inc.; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; and NYSE Arca, Inc. NYSE National, Inc. (f.k.a. National Stock Exchange, Inc.) was not trading, but on May 17, 2018 the Commission approved a proposed rule change in connection with its relaunch. *See supra* note 9.

[1320] Table 2 *Sources:* (1) FINRA Alternative Trading System (ATS) Transparency Data is aggregated trade data reported by ATSs to the FINRA equity trade reporting facilities and made available on FINRA's website as part of the OTC Transparency Data. The OTC Transparency data is provided via *http://www.finra.org/industry/OTC-Transparency* and is copyrighted by FINRA 2018. (2) NYSE Trade and Quote Database (TAQ).

aggregated across all NMS stocks that traded on the given ATS in that week. Average trade size on national securities exchanges is calculated from TAQ data using intraday trades that took place between 9:30 a.m. and 4:00 p.m. Bulk trades and trades during the opening and close and intraday crosses are excluded from the calculation.

One commenter mentions that because the difference in average trade size between national securities exchanges and NMS Stock ATSs is small, this is evidence that ''these venues are no longer beneficial for executing block size trades between large traders.'' [1321] We do not agree with the comment that NMS Stock ATSs are no longer beneficial for executing block size trades. As can be seen in Table 2, eight ATSs have average trade sizes in excess of 10,000 shares, indicating that these ATSs are attractive venues for crossing block orders. Based on this, we believe that some ATSs—particularly ones which have average trade sizes in excess of 10,000 shares—are beneficial for certain market participants wanting to trade large block sizes.

As discussed in more detail in the Proposal,[1322] while many NMS Stock ATSs operating today are similar with respect to the limited transparency they provide with respect to their trading model, we understand that the services offered vary significantly across NMS Stock ATSs.[1323] Even though NMS Stock ATSs may not be privy to detailed information about the operations of other NMS Stock ATSs, they are able to garner information about the differential services offered by their competitors through various means,[1324] enabling ATSs to modify their products and services to better compete within the market for NMS stock execution services. Thus, as explained in more detail in the Proposal,[1325] an NMS Stock ATS may not be incented to fully reveal how orders interact, match and execute on its platform, because revealing such information adversely impacts the ATS's position within the market by also informing its competitors.

c. Competition Between Broker-Dealers That Operate NMS Stock ATSs And Broker-Dealers That Do Not Operate NMS Stock ATSs

As explained in more detail in the Proposal, competition for NMS stock order flow also exists between the broker-dealers that operate NMS Stock ATSs and broker-dealers that do not operate NMS Stock ATSs but otherwise effect transactions in NMS stocks.[1326] Some broker-dealers who operate their own NMS Stock ATS(s) may provide their affiliates with access to certain services that are not afforded to broker-dealers that do not have their own ATS platform,[1327] which may result in trading advantages.[1328]

6. Effect of NMS Stock ATSs on the Current Market for NMS Stock Execution Services

As discussed above, the current market for NMS stock execution services consists of competition for order flow among national securities exchanges, NMS Stock ATSs, and broker-dealers who operate or control non-ATS trading centers.[1329] This section specifically discusses the impact that this current market structure for NMS stock execution services has on trading costs to market participants; the process by which the price of NMS stocks are determined in the market (''price discovery''); and market efficiency.

a. Trading Costs

As described in detail in the Proposal,[1330] some academic research has suggested that the decline in trading costs since the adoption of Regulation ATS in 1998 and Regulation NMS in 2005 could, in part, be driven by the rising fragmentation of trading volume and competition for order flow, through the proliferation of new trading venues such as NMS Stock ATSs.[1331] Trading on NMS Stock ATSs may also benefit institutional investors [1332] by providing a useful tool whereby they may be able to reduce the ''price impact'' of their trades and obtain enhanced execution quality for their orders.[1333] Five commenters also express the belief that the increase in trading on ATSs has contributed to a competitive marketplace that has led to improved costs and liquidity, and that this has benefitted both retail and institutional investors.[1334]

Another element that may affect trading costs is order internalization by broker-dealers. As described detail in the Proposal,[1335] some academic literature has found that internalization of order flow increases trading costs and reduces market depth and price informativeness. In the current operational environment of NMS Stock ATSs, subscribers' orders or other trading interests could be removed from the broker-dealer's NMS Stock ATS and routed to, among other destinations, another trading center operated by the broker-dealer operator for internalization. Thus, the fact that some broker-dealers operate their own NMS Stock ATSs, and yet internalize some order flow rather than executing it on their own NMS Stock ATS, may have a deleterious effect on market quality.

The current market for NMS stock execution services—which includes NMS Stock ATSs—provides value to market participants. If all NMS Stock ATSs were to cease operating as ATSs, market participants might incur costs associated with not being able to find an adequate trading venue that offers benefits similar to those that NMS Stock ATSs provide. To the extent that market participants value these ATS-specific features, the decision of certain NMS

[1321] *See* Anonymous Letter at 3.

[1322] Proposal, *supra* note 2, at 81115.

[1323] Two commenters agree with us. These commenters mention that some ATSs offer subscribers the ability to customize trading parameters, including price instructions and counterparty selection, while others offer subscribers different methods of accessing the ATS, such as FIX connections or trading through the broker-dealer's smart order router. *See* Consumer Federation of America Letter at 4; ICI Letter at 2–3.

[1324] These are discussed in more detail in the Proposal. *See* Proposal, *supra* note 2, at 81115.

[1325] *See id.*

[1326] *See id.*

[1327] A number of commenters state that broker-dealer operators and their affiliates may have access to certain features of an ATS that are not available to other subscribers. *See* Better Markets Letter at 4–6; Consumer Federation of America Letter at 7–10; HMA Letter at 13–15; Liquidnet Letter at 11. One of these commenters states that broker-dealer operators and their affiliates may receive preferential treatment or access to the ATS, such as faster or more direct access to the ATS, priority status to execute their orders over those of other subscribers, or the ability to further customize with whom their order flow interacts. *See* Consumer Federation of America Letter at 8.

[1328] For further explanation, *see* Proposal, *supra* note 2, at 81115.

[1329] *See supra* Section X.B.5.

[1330] *See* Proposal, *supra* note 2, at 81115–16.

[1331] Other academic literature has suggested that the increase in fragmentation has had a counteracting effect and has increased bid-ask spreads. This literature, however, has focused on small stocks, and fragmentation across exchanges, rather than fragmentation across exchanges and between exchanges and NMS Stock ATSs. *See* Haslag, Peter and Matthew Ringgenberg, 2016, ''The Causal Impact of Market Fragmentation on Market Liquidity,'' working paper, *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2591715*; Baldauf, Markus and Joshua Mollner, 2017, ''Trading in Fragmented Markets,'' working paper, *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2782692.*

[1332] *See* Proposal, *supra* note 2, at 81115 (discussing the impact of NMS Stock ATSs on institutional investor trading costs).

[1333] One commenter agreed that NMS Stock ATSs, specifically dark pools, serve a ''useful purpose to those wishing to trade large blocks of shares at lower cost without moving the public price as a result of other market participants identifying and trading ahead of their interest.'' Barnard Letter at 1.

[1334] *See* Fidelity Letter at 3; LeveL ATS Letter at 2; Morgan Stanley Letter at 4; STANY Letter at 2; UBS Letter at 8.

[1335] *See* Proposal, *supra* note 2, at 81117.

Stock ATSs to cease operating as ATSs could increase the trading costs of these market participants and impact whether and how they affect certain trading strategies.

While the existence of NMS Stock ATSs has reduced the trading costs on average for market participants, the lack of transparency regarding ATS operations and the ATS-related activities of the ATS broker-dealer operator and its affiliates has contributed to higher search costs for market participants to find a trading venue that serves their investing or trading objectives. A by-product of these higher search costs is uncertainty pertaining to how their orders will be handled, particularly for subscribers to NMS Stock ATSs that have not made their Form ATS public.[1336]

b. Price Discovery

While the increased fragmentation of trading volume associated with the current market for NMS stock execution services has been a factor in lowering trading costs for market participants, the academic literature has found that it has had a mixed impact on price discovery.

As described in more detail in the Proposal,[1337] some academic studies have suggested that the market segmentation caused by the coexistence of national securities exchanges and NMS Stock ATSs can improve price discovery.[1338] They suggest that price discovery can improve either as a result of more aggressive competition among market participants in providing liquidity or as a result of the segmentation of informed and uninformed market participants.[1339] These academic studies predict that because the orders of informed market participants are more likely to execute on national securities exchanges, they will be more likely to trade on national securities exchanges and uninformed market participants will be more likely to trade on NMS Stock ATSs.[1340] Because informed market participants have better knowledge about the value of a security than uninformed market participants, this segmentation can improve price discovery on national securities exchanges.[1341]

Other academic studies suggest that the presence of NMS Stock ATSs in the current trading environment can harm price discovery.[1342] These studies have suggested that because some NMS Stock ATSs are crossing networks and often derive their prices from national securities exchanges, price impact costs that result from trading on a national securities exchange harm prices on NMS Stock ATSs, resulting in less trading and harming price discovery.[1343] When trading, informed market participants often balance two types of costs, namely price impact costs and execution costs. In comparison to NMS Stock ATSs, on national securities exchanges an informed market participant's order experiences lower execution risk but higher price impact costs. However, since NMS Stock ATSs often match orders at prices derived from national securities exchanges, and if trading on national securities exchanges generates worse prices due to price impact, this could spill over and affect a market participant's profit on trades executed on the NMS Stock ATS. This spillover could result in informed market participants trading less aggressively, which could in turn reduce price discovery.[1344] One academic study finds, while low levels of trading on NMS Stock ATSs are not harmful, price discovery is harmed when levels of trading on NMS Stock ATSs are high (*i.e.,* they estimate that this occurs when trading on NMS Stock ATSs in a given NMS stock exceeds approximately 10% of dollar volume).[1345]

c. Market Efficiency

Currently, the coexistence of national securities exchanges and NMS Stock ATSs seems to have beneficial effects on market efficiency. One academic study suggests that while not all trades that execute on NMS Stock ATSs are large block trades, those that are have been beneficial to market efficiency.[1346] If NMS Stock ATSs were not a viable trading venue for market participants, some market participants might not execute large orders at all because of the price impact costs of executing on a national securities exchange. Therefore, the ability for market participants to execute large trades on NMS Stock ATSs generates liquidity, which can improve market efficiency.[1347] The same study also suggests that small trades that execute on NMS Stock ATSs are beneficial in that they also generate market efficiency.[1348]

Several commenters assert that the lack of transparency of NMS Stock ATSs has resulted in a decrease in market efficiency because more order flow executed on NMS Stock ATSs increases the difficulty investors face when identifying which venues offer them the best execution quality.[1349] As discussed above, increased market fragmentation could increase search costs by making it more difficult for market participants to find liquidity to execute their orders.[1350] Increased search costs could reduce competition between liquidity suppliers, which could increase trading costs.[1351] These increased trading costs could reduce the incentives for market participants to acquire costly information, which could in turn result

[1336] Several commenters agree with our analysis that the differences have resulted in higher search costs for market participants. *See* Better Markets Letter at 2; CFA Institute Letter at 2; Consumer Federation of America Letter at 2–4.

[1337] *See* Proposal, *supra* note 2, at 81116–17.

[1338] *See* Boulatov, Alex, and Thomas George, 2013, ''Hidden and Displayed Liquidity in Securities Markets with Informed Liquidity Providers,'' *Review of Financial Studies* 26, 2095–2137; Comerton-Forde, Carole and Talis Putnins, 2015, ''Dark Trading and Price Discovery,'' *Journal of Financial Economics* 118, 70–92.; and Zhu, Haoxiang, 2014, ''Do Dark Pools Harm Price Discovery?'' *Review of Financial Studies* 27, 747–789. Comerton-Forde and Putnins (2015) and Zhu (2014) specifically examine dark pools.

[1339] Uninformed market participants trade for non-informational reasons. In some cases, they are termed ''noise traders,'' since their trades are based on their beliefs and sentiments, and are not grounded on fundamental information. *See* Vishwanath, Ramanna and Chandrasekhar Krishnamurti, 2009, ''Investment Management: A Modern Guide to Security Analysis and Stock Selection,'' Springer Publishing.

[1340] *See* Proposal, *supra* note2, at 81116 (discussing the segmentation of trading by informed and uninformed market participants between national securities exchanges and ATSs).

[1341] *See* Comerton-Forde and Putnins (2015) and Zhu (2014), *supra* note 1338.

[1342] *See* Ye, Mao, 2011, ''A Glimpse into the Dark: Price Formation, Transaction Cost and Market Share of the Crossing Network,'' working paper, *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1521494*; Degryse, Hans, Frank de Jong and Vincent van Kervel, 2015, ''The Impact of Dark Trading and Visible Fragmentation on Market Quality,'' *Review of Finance* 19, 1587–1622; Comerton-Forde and Putnins (2015), *supra* note1338. These studies specifically examine dark pools.

[1343] One commenter agrees with the conclusions from these studies and remarked that trading on NMS Stock ATSs ''reduces the information that could assist the transparent market in determining an accurate fair price'' and that prices quoted on transparent markets may no longer be efficient or informative. *See* Barnard Letter at 1–3.

[1344] *See* Ye (2011), *supra* note1342.

[1345] *See* Comerton-Forde and Putnins (2015), *supra* note 1338.

[1346] *See id.*

[1347] A number of academic studies have found that increased liquidity can improve market efficiency by reducing the limits to arbitrage or increasing the incentives to produce costly information. *See* Chordia, Tarun, Richard Roll and Avanidhar Subrahmanyam, 2008, ''Liquidity and market efficiency,'' *Journal of Financial* Economics 97, 249–268; Kyle, Albert, 1984, ''Market structure, information, futures markets, and price formation,'' Gary G. Storey, Andrew Schmitz, and Alexander H. Sarris (Editors.), International Agricultural Trade: Advanced Readings in Price Formation, Market Structure, and Price Instability, Westview Press, Boulder and London (1984), pp. 45–64.

[1348] *See* Comerton-Forde and Putnins (2015), *supra* note 1338.

[1349] *See* Barnard Letter at 1–3; Better Markets Letter at 2.

[1350] *See supra* Section X.B.6.a.

[1351] *See* Yin, Xiangkang, 2005, ''A Comparison of Centralized and Fragmented Markets with Costly Search,'' *Journal of Finance,* 60, 1567–1590.

in a reduction in market efficiency.[1352] However, as discussed above, the increased market fragmentation caused by NMS Stock ATSs could also improve market efficiency by allowing institutional investors a viable way to trade and reduce price impact costs.[1353] The commenters did not provide any analysis to support their claims that the increase in order flow executed on NMS Stock ATSs has decreased market efficiency. As such, we continue to believe that the current market for NMS stock execution services, consisting of national securities exchanges, ATSs and other off-exchange venues, has together resulted in an improvement to market efficiency.

C. Economic Effects and Effects on Efficiency, Competition, and Capital Formation

We have considered the economic effects of new Rule 304, Form ATS–N and the amendments to Rule 3a1–1(a) and Regulation ATS. This section provides an overview of the economic effects of new Rule 304, Form ATS–N, and the amendments to Rule 3a1–1(a) and Regulation ATS, including the costs, benefits, and the effects on efficiency, competition, and capital formation. This section also discusses additional economic effects, including benefits and costs related to specific requirements of new Rule 304, Form ATS–N and the amendments to Rule 3a1–1(a) and Regulation ATS.

We believe that the amendments will improve Commission oversight and thereby improve investor protection and generate greater transparency about the operations of NMS Stock ATSs and the ATS-related activities of their broker-dealer operators and their affiliates.[1354] As explained below, through these effects, the adopted amendments may promote greater competition for order flow, which could result in enhanced execution quality, and we believe that this could result in improvements to efficiency and capital formation.

We have attempted, where possible, to quantify the benefits and costs and impacts on efficiency, competition, and capital information that may result from new Rule 304, Form ATS–N, and the amendments to Rule 3a1–1(a) and Regulation ATS. However, as we discussed in the Proposal and as explained more fully below,[1355] it is difficult to quantify many of the economic effects of the new rule and amendments due to the complexity of the market for NMS execution services and our lack of certain relevant information. For instance, it is difficult to determine what fraction of order flow will be internalized or routed to national securities exchanges or to non-ATS trading centers if NMS Stock ATSs are required to publicly disclose information about their operations on Form ATS–N. Additionally, we do not have certain information, such as information on market participant routing agreements or fee arrangements that may influence future order routing decisions.

As we further noted in the Proposal, it is similarly difficult to determine whether NMS Stock ATSs will continue or cease operating as ATSs in light of the new rule and amendments,[1356] as that decision depends on numerous factors and we lack information about many of those factors. For example, we do not have information on the extent to which existing NMS Stock ATSs or potentially new ATSs rely on a competitive advantage, such as a unique matching methodology or other operational characteristics, to attract order flow, or the extent to which the new disclosure requirements will impact those competitive advantages and thus drive decisions on operating status. Moreover, we lack information on how many NMS Stock ATSs may decide to register as national securities exchanges, as some ECNs have in previous years, as a result of new Rule 304, Form ATS–N and the amendments to Rule 3a1–1(a) and Regulation ATS.[1357]

Commenters did not provide any additional information or analysis that would allow us to estimate the impacts on order flow or the continued operation of NMS Stock ATSs under the new rule and amendments. In light of the complexities of the market and the lack of currently available information, we are unable to quantify many of the economic effects of new Rule 304, Form ATS–N, and the amendments to Rule 3a1–1(a) and Regulation ATS. Therefore, much of the discussion below is qualitative in nature, although we try to describe, where possible, the direction of these effects.

1. Economic Effects of Enhanced Filing Requirements of Form ATS–N

As discussed above, we are amending Rule 3a1–1(a) and Regulation ATS to require ATSs that transact in NMS stocks to comply with the requirements of Rule 304 to operate pursuant to the exemption from the definition of ''exchange.'' [1358] The amendments would require an NMS Stock ATS to file reports pursuant to Rule 304, which includes the requirement to file Form ATS–N, in lieu of current Form ATS, to disclose information about its operations and the ATS-related activities of its broker-dealer operator and its affiliates.[1359] We believe that these disclosures will help market participants assess whether the ATS's mode of operation is consistent with their ability to obtain the best executions and also help them assess potential conflicts of interest that might adversely impact their trading on the NMS Stock ATS.

Rule 304 will also provide a process by which the Commission will review initial Forms ATS–N and Form ATS–N amendments and declare them ineffective if it finds that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors. We are also adopting a process by which the Commission could suspend, limit, or revoke an NMS Stock ATS's exemption from the definition of an ''exchange'' under Rule 3a1–1(a)(2).[1360] An NMS Stock ATS could not operate pursuant to the exemption from the definition of ''exchange'' unless the NMS Stock ATS files Form ATS–N with the Commission and the Form ATS–N has become effective.[1361]

a. Benefits

As described in detail in the Proposal,[1362] we believe that new Rule 304, Form ATS–N and the amendments to Rule 3a1–1(a) and Regulation ATS would result in better regulatory oversight of NMS Stock ATSs and increased investor protection by providing the Commission and relevant SROs with information about NMS Stock ATSs that currently may only be available during an examination process. In comparison to Form

[1352] See Kyle, Albert, 1989, ''Information speculation with imperfect competition,'' *Review of Economic Studies* 56, 317–356.

[1353] *See supra* Section X.B.6.a.

[1354] *See supra* Sections V.C–D.

[1355] *See* Proposal, *supra* note 2, at 81118.

[1356] For the purposes of the PRA, we estimate the annual average number of NMS Stock ATSs that file Cessation of Operation notices on Form ATS–N. *See supra* Section IX.D.2.b.ii.C. This estimate is based on the historical number of cessations per year and, while recognizing that the amendments may result in cessations, does not attempt to predict the effect of the amendments on the number of cessations.

[1357] *See* Proposal, *supra* note 2, at 81109 (discussing ATSs that previously operated as ECNs and subsequently registered as national securities exchanges).

[1358] *See supra* Section III.A. *See also* Rules 3a1–1(a)(2) and (3), 300, 301, and 304.

[1359] *See supra* Section V for information disclosed on Form ATS–N.

[1360] *See supra* Section IV.E (discussing the public posting requirements of Form ATS–N).

[1361] *See supra* Section IV.A.3.

[1362] *See* Proposal, *supra* note 2, at 81119–20.

ATS,[1363] Form ATS–N will contain more detailed information about the operations of NMS Stock ATSs, including information about the ATS-related activities of the broker-dealer operator and its affiliates.[1364] The Commission and SROs could utilize this information to help prioritize examinations and possibly help identify potential issues. Additionally, the enhanced disclosure requirements under Form ATS–N will provide market participants with significantly more detailed information with which to analyze and evaluate how orders are handled and executed on NMS Stock ATSs, which could allow them to better assess an NMS Stock ATS as a potential trading venue.[1365]

We are also adopting a requirement that Form ATS–N and Form ATS–N amendments be filed electronically in a XML text-searchable format. We believe that requiring Form ATS–N and Form ATS–N amendments to be filed in a XML text-searchable format, coupled with the enhanced disclosure requirements, will facilitate a more effective and thorough review and analysis of NMS Stock ATSs by regulators, which should yield greater insights into the operations of NMS Stock ATSs and the ATS-related activities of their broker-dealer operators and their affiliates. Such benefits could increase investor protection by improving the effectiveness and efficiency of the examination process.

We believe that the process of reviewing an initial Form ATS–N or Form ATS–N amendments will allow the Commission to evaluate, among other things, the completeness and comprehensibility of the NMS Stock ATSs' disclosures and, if necessary, declare the Form ATS–N ineffective.[1366] We believe that the review and public disclosure process will improve the quality of information the Commission receives from NMS Stock ATSs, which will allow the Commission to better protect investors from potentially incomprehensible or incomplete disclosures that would misinform market participants about the operations of an NMS Stock ATS or the ATS-related activities of its broker-dealer operator.[1367]

We received several comment letters regarding whether the proposed amendments would adequately protect investors. One commenter was optimistic, stating the amendments are aimed at ''bolstering transparency in capital markets, which should enable and enhance investor protections.'' [1368] Three commenters were not as optimistic. One commenter states that the Commission review process for Form ATS–N ''will very quickly devolve into an unreasonably burdensome exercise for Commission staff while providing little benefit to market integrity or investor protection.'' [1369] Another commenter mentions that ''no amount of required public disclosure can cure the problem presented by an ATS that makes inaccurate disclosures to subscribers.'' [1370] A third states that no amount of disclosure can provide the necessary protection against broker-dealer conflicts of interest, and that more needs to be done to protect investors.[1371] We continue to believe that increased regulatory oversight and disclosure of NMS Stock ATS operations and activities would help protect investors. We expect that the quality of the information the Commission receives from NMS Stock ATSs will improve as a result of the incentives created by the procedure to review their filings and declare them ineffective, if necessary, and that the incidences of incomplete and incomprehensible disclosures would be mitigated. As market participants will not be able to trade on NMS Stocks ATSs that do not comply with Form ATS–N requirements, the review process will protect investors from events that may have transpired if ATSs, whose Forms ATS–N have been declared ineffective, were allowed to trade NMS stocks. Additionally, we continue to believe that the disclosure of broker-dealer conflicts of interest will allow market participants to better assess an NMS Stock ATS as a potential trading venue and thus better protect their interests.[1372]

b. Costs

As described in detail in the Proposal,[1373] we believe that the filing requirements of Form ATS–N could impose costs on NMS Stock ATSs. We recognize that an ineffectiveness declaration could impose costs on an NMS Stock ATS—such as costs from having to cease operations, roll back a change in operations, or delay the start of operations—and could impose costs on individual market participants and the overall market for NMS stock execution services resulting from a potential reduction in competition or the removal of a sole provider of a niche service within the market.[1374] However, NMS Stock ATSs and market participants would not incur these costs unless the Commission declares a Form ATS–N or a Form ATS–N amendment ineffective. We believe that NMS Stock ATSs would be incentivized to comply with the requirements of Form ATS–N, as well as federal securities laws, including the other requirements of Regulation ATS, to avoid an ineffectiveness declaration, which produces benefits to the market. Therefore, we believe that NMS Stock ATSs would be incentivized to submit Form ATS–N disclosures that are complete and comprehensive to avoid bearing the costs of resubmitting a Form ATS–N filing or of having their Form ATS–N declared ineffective.

We also understand that both new and existing NMS Stock ATSs will incur implementation costs in order to comply with the amendments to Regulation ATS. NMS Stock ATSs will need to develop internal processes to ensure correct and complete reporting on Form ATS–N, which can be viewed as a fixed setup cost, which NMS Stock ATSs may have to incur, regardless of the amount of trading activity that takes place on them. As a result, these implementation costs will fall more heavily on lower-dollar volume NMS Stock ATSs (as opposed to ATSs transacting greater dollar volume), because these ATSs have a smaller revenue base to accommodate the largely fixed implementation costs. However, smaller NMS Stock ATSs that are not operated by multi-service broker-dealer operators and do not engage in other brokerage or dealing activities in addition to their NMS Stock ATSs will likely incur lower implementation costs because certain sections of Form ATS–N (such as

[1363] *See supra* Section II.C (discussing the Form ATS filing requirements).

[1364] *See supra* Section V for information disclosed on ATS–N.

[1365] Three commenters agreed with our assessment that the enhanced disclosure requirements under Form ATS–N would result in improved regulatory oversight by the Commission. *See* Fidelity Letter at 1; SIFMA Letter at 3; Virtu Letter at 2.

[1366] *See supra* Section IV.A.4 (describing the effectiveness process for initial Form ATS–N filings).

[1367] One commenter agrees that our enhanced regulatory oversight can help ensure consistency of disclosures provided by ATSs and their broker-dealer operators. *See* Fidelity Letter at 1.

[1368] *See* CFA Institute Letter at 6.

[1369] *See* Consumer Federation of America Letter at 10.

[1370] *See* Fidelity Letter at 4.

[1371] *See* Better Markets Letter at 1, 5–6.

[1372] *See infra* Section X.C.2.a (''Economic Effects of Public Disclosure of Form ATS–N—Benefits'').

[1373] *See* Proposal, *supra* note 2, at 81120–21.

[1374] *See infra* Section X.C.4.a (''Impact on Efficiency, Competition, and Capital Formation—Competition'').

several items of Part II) will not be applicable to these NMS Stock ATSs.

In addition to affecting NMS Stock ATSs, the implementation costs could also indirectly affect market participants by potentially causing some NMS Stock ATSs to alter or reduce the services they offer to certain subscribers. For example, the adopted amendments might cause some NMS Stock ATSs to reduce or stop offering customized reports to certain subscribers in order to redirect resources to support the standardized reports.

Relative to the baseline, the amendments to Regulation ATS will also impose implementation costs for all NMS Stock ATSs, including Legacy NMS Stock ATSs, in that they will require NMS Stock ATSs to adhere to heightened disclosure and reporting requirements regarding their operations. Legacy NMS Stock ATSs should already comply with the current requirements of Regulation ATS. Therefore, the compliance costs of the amendments should be incremental relative to the costs associated with the existing requirements. Specifically, we believe that the incremental costs will consist largely of providing new disclosures and updating records and retention policies necessary to comply with the amendments. Based on the analysis for purposes of the PRA,[1375] we estimate that the amendments to Regulation ATS relating to Rules 301(b)(2)(viii) and 304 of Regulation ATS, including Form ATS–N, will result in a one-time burden of 127.4 hours for each NMS Stock ATS,[1376] which will result in an estimated one-time paperwork compliance cost to an NMS Stock ATS of approximately $41,689.10.[1377] This will result in an aggregate estimated initial hour burden for all NMS Stock ATSs to complete Form ATS–N and comply with Rules 301(b)(2)(viii) and 304 of Regulation ATS of 5,223.4 hours at an estimated cost of $1,709,253.10.[1378]

In addition to the implementation costs mentioned above, there are also expected ongoing costs for NMS Stock ATSs to comply with the amendments to Rule 3a1–1(a) and Regulation ATS. For instance, NMS Stock ATSs will incur ongoing costs associated with amending their Form ATS–N prior to material changes in their operations, or to correct any material information that has become inaccurate. Regardless of the reason for filing a Form ATS–N amendment, we estimate for the purposes of the PRA that it will take an NMS Stock ATS approximately 28.2 hours annually[1379] to prepare and file its Form ATS–N amendments at an estimated annual cost of $8,898.60 per ATS.[1380] This will result in an estimated aggregate ongoing hour burden for all NMS Stock ATSs to amend their Forms ATS–N and comply with Rules 301(b)(2)(viii) and 304 of Regulation ATS of 1,156.2 hours at an estimated cost of $364,842.60 annually.[1381]

Some existing NMS Stock ATSs that also trade non-NMS stocks might incur additional costs due to the amendments. As discussed above,[1382] pursuant to the amendments to Regulation ATS, an ATS that trades both NMS stocks and non-NMS stocks will be subject to the requirements of Rule 304 with respect to its NMS stock trading operations and Rule 301(b)(2) with respect to its non-NMS stock trading operations. Accordingly, NMS Stock ATSs that also transact in non-NMS stocks will incur additional implementation costs when compared to ATSs that only trade NMS stocks, because the former group will be required to file both Form ATS–N and a revised Form ATS that removes discussion of those aspects of the ATS related to the trading of NMS stocks. Those NMS Stock ATSs will also be required to file a pair of Forms ATS–R four times annually. For the purposes of the PRA, we estimate that the aggregate initial burden for those ATSs to separately file an initial Form ATS–N in regard to their NMS stock trading activity and a current Form ATS in regard to their non-NMS stock trading activity will be 1,774 hours[1383] at an aggregate estimated cost of $474,431.[1384] We also estimate that the aggregate annual burden to file separate Forms ATS–R for those ATSs that effect transactions in both NMS stocks and non-NMS stocks will be 180 hours[1385] at an aggregate estimated cost of $59,560.[1386] Furthermore, we estimate that these ATSs that facilitate transactions in both NMS stocks and non-NMS stocks will incur an additional estimated recordkeeping burden of 3 hours annually per ATS, resulting in an estimated cost of $333.96 per ATS[1387] and an aggregate estimated hour burden of 30 hours at an estimated cost of $3,339.60, due to the amendments to Rule 303(a)(2)(ii).[1388]

The amendments to Regulation ATS will require Form ATS–N be filed electronically in a structured format

[1375] *See supra* Section IX (estimating burden hours). We estimate the wage rate associated with these burden hours based on salary information for the securities industry compiled by SIFMA. The estimated wage figure for attorneys, for example, is based on published rates for attorneys, modified to account for a 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate for 2013 of $380 for attorneys. *See* Securities Industry and Financial Markets Association, Management & Professional Earnings in the Securities Industry—2013, *available at: https://www.sifma.org/resources/research/management-and-professional-earnings-in-the-securities-industry-2013/*. These estimates are adjusted for an inflation rate of 6.85% based on the Bureau of Labor Statistics data on CPI–U between October 2013 and March 2018. Therefore, the current inflation-adjusted effective hourly wage rates for attorneys are estimated at $406 ($380 × 1.0685). We discuss other costs of compliance with the proposed rule below.

[1376] *See supra* note 1228 and accompanying text.

[1377] (Attorney at $406 × 54.1 hours) + (Chief Compliance Manager at $518 × 0.5 hours) + (Compliance Manager at $302 × 33.9 hours) + (Senior Systems Analyst at $278 × 30.25 hours) + (Senior Marketing Manager at $298 × 1 hour) + (Compliance Clerk at $68 × 7.65 hours) = $41,689.10. This compliance cost estimate for a Form ATS–N includes the estimated costs associated with completing Part III Items 24 and 25 of Form ATS–N, but as explained above, we believe that the majority of NMS Stock ATSs would not be required to complete those items of the form. *See supra* Section IX.D.2.b.i.C.

[1378] 127.4 burden hours × 41 NMS Stock ATSs = 5,223.4 burden hours. $41,689.10 × 41 NMS Stock ATSs = $1,709,253.10. This preliminary aggregate compliance cost estimate assumes that all NMS Stock ATSs would be required to complete Part III Items 24 and 25 of Form ATS–N. However, as noted above, we estimate that 1 NMS Stock ATS would be required to complete Part III, Item 24, *see supra* Section IX.D.2.b.i.C, and 2 NMS Stock ATSs would be required to complete Part III, Item 25, *see id.*

[1379] *See supra* Section IX.D.2.b.ii.B. As explained above, we estimate that each NMS Stock ATS would file 3 Form ATS–N amendments per year, and the hourly burden per amendment would be 9.4 hours.

[1380] (Attorney at $406 × 16.5 hours) + (Compliance Manager at $302 × 6 hours) + (Compliance Clerk at $68 × 5.7 hours) = $8,898.60.

[1381] 28.2 hours × 41 NMS Stock ATSs = 1,156.2 hours. $8.898.60 × 41 NMS Stock ATSs = $364,842.60.

[1382] *See supra* Section IX.D.2.b.iii.

[1383] *See supra* note 1255 and accompanying text.

[1384] ((Attorney for Form ATS at $406 × 13 hours) + (Attorney for Form ATS–N at $406 × 54.1 hours) + (Chief Compliance Manager for Form ATS–N at $518 × 0.5 hours) + (Compliance Manager for Form ATS–N at $302 × 33.9 hours) + (Senior Systems Analyst for Form ATS–N at $278 × 30.25 hours) + (Senior Marketing Manager for Form ATS–N at $298 × 1 hour) + (Compliance Clerk for Form ATS at $68 × 7 hours) + (Compliance Clerk for Form ATS–N at $68 × 7.65 hours)) × 10 ATSs = $474,431. This aggregate compliance cost estimate includes the estimated costs associated with completing Part III, Items 24 and 25 of Form ATS–N, but as explained above, we believe that the majority of NMS Stock ATSs would not be required to complete those items of the form. *See supra* Section IX.D.2.b.i.C.

[1385] *See supra* note 1258 and accompanying text.

[1386] ((Attorney at $406 × 3.5 hours) + (Compliance Clerk at $68 × 1 hours) × (4 filings annually)) × 10 ATSs = $59,560.

[1387] At an average cost per burden hour of $111.32, *see supra* note 1265, the resultant total related cost of compliance for each ATS would be $333.96 ((3 burden hours) × $111.32/hour).

[1388] 3 hours × 10 ATSs = 30 burden hours. $333.96 × 10 ATSs = $3,339.60. *See supra* Section IX.D.2.b.vi.

through EDGAR.[1389] Based on the widespread use and availability of the internet, we believe that filing Form ATS–N in an electronic format will be less burdensome and a more efficient filing process than the current paper process for NMS Stock ATSs and the Commission, as it is likely to be less expensive and cumbersome than mailing and filing paper forms to the Commission.

In order to electronically file a Form ATS–N, a broker-dealer operator of an NMS Stock ATS will need to access the EDGAR system. As discussed above,[1390] a broker-dealer that has not previously received access to EDGAR would need to submit a Form ID.[1391] For the purposes of the PRA, we estimate that each ATS that needs to submit a Form ID to gain access to EDGAR will incur a one-time burden of 0.15 hours, which would result in each ATS incurring a one-time estimated cost of $45.30.[1392] Based on analysis in the PRA, we estimate that each year 1 new NMS Stock ATS will be operated by an entity that needs to submit a Form ID to gain access to EDGAR.[1393] This would result in an aggregate estimated initial burden of 0.15 hours at an estimated cost of $45.30.[1394]

Rule 304(b)(3) will require each NMS Stock ATS to make public via posting on the NMS Stock ATS's website, a direct URL hyperlink to the Commission's website that contains the documents enumerated in Rule 304(b)(2). For the purposes of the PRA, we estimate that each NMS Stock ATS will incur an initial, one-time burden of approximately 2 hours to program and configure its website in order to post the required direct URL hyperlink pursuant to Rule 304(b)(3),[1395] which will result in each NMS Stock ATS incurring an estimated one-time cost of approximately $556.[1396] This will result in an aggregate estimated initial, one-time hour burden for all NMS Stock ATSs to comply with Rule 304(b)(3) of approximately 82 hours at an estimated cost of approximately $22,796.[1397]

2. Economic Effects of Public Disclosure of Form ATS–N

We believe that the amendments requiring public disclosure of Form ATS–N will improve the information available to market participants and make that information consistent, which would assist market participants in evaluating and choosing the NMS Stock ATSs to which they may route orders or become a subscriber due to the enhanced disclosure requirements. Requiring such public disclosure will increase the operational transparency requirements of NMS Stock ATSs to bring those requirements more in line with the operational transparency requirements of national securities exchanges.[1398]

a. Benefits

We believe that the public disclosure of Form ATS–N will generate greater transparency about the operations of NMS Stock ATSs and the ATS-related activities of their broker-dealer operators and their affiliates. This will aid market participants by reducing search costs when evaluating potential NMS stock trading venues to decide which venue best suits their trading purposes. This section discusses specific economic benefits of the public disclosure of Form ATS–N including: The economic benefits of public disclosure of standardized information about the operations of NMS Stock ATSs; the economic benefits of public disclosure of the ATS-related activities of the broker-dealer operator and its affiliates; the economic benefits of public disclosure of aggregate platform-wide order flow and execution statistics regarding the NMS Stock ATS; and the economic benefits of filing Form ATS–N in a structured format.

(i) Benefits of Public Disclosure of Standardized Information of Operations of NMS Stock ATSs

We believe that requiring detailed, public disclosures about the operations of NMS Stock ATSs will, among other things, better standardize the type of information market participants receive about those operations. As a result, search costs for market participants will be lower relative to the baseline, as homogenous disclosure requirements for all NMS Stock ATSs as part of the amendments to Regulation ATS should facilitate market participants' comparison of NMS Stock ATSs when deciding which venue most suits their trading purposes. Accordingly, as described in detail in the Proposal,[1399] we believe the enhanced operational transparency resulting from the public disclosures on Form ATS–N should aid market participants when evaluating potential trading venues, and that the requirement for NMS Stock ATSs to disclose whether and how they segment their order flow, any criteria used to assign order flow, and their fee structures should provide market participants with a better understanding of the operating environment for NMS Stock ATSs.[1400] Beyond providing benefits to market participants, the enhanced disclosure requirements for NMS Stock ATSs could provide benefits to certain NMS Stock ATSs or national securities exchanges.[1401] Since the establishment of Regulation ATS, the market for order execution services for trading NMS stocks—particularly on ATSs—has flourished. The number of ATSs that trade NMS stocks has increased substantially since the inception of Regulation ATS, and as of the end of the first quarter of 2018, trading volume of NMS stocks on ATSs accounted for 11.4% of total share volume.[1402] As they are expected to calibrate the level of transparency between NMS Stock ATSs and national securities exchanges, the amendments could foster greater competition for order flow of NMS stocks between these trading platforms. This greater competition for order flow could in turn incentivize NMS Stock ATSs to innovate—particularly in terms of their technology—so that they can attract more trading volume to their venue.

One commenter states that ''[f]ailing to extend enhanced transparency requirements to Exchanges for activities commensurate with those of ATSs would result in an incomplete picture of market quality, making it difficult for investors to conduct meaningful comparisons to inform their decisions and protect their own interests.'' [1403] As discussed above,[1404] national securities exchanges are already subject to more stringent public disclosure requirements than NMS Stock ATSs. For example,

[1389] *See supra* Section VII (Section in the front-end which specifically discusses structured disclosure aspects of Form ATS–N).

[1390] *See supra* Section IX.D.2.b.iv.

[1391] *See id* (discussing Central Index Key (''CIK'') numbers).

[1392] Compliance Manager at $302 × 0.15 hours = $45.30.

[1393] Because all ATSs, regardless of whether they trade NMS stocks, are operated by registered broker-dealers who have been assigned a CIK number, for the purposes of the PRA, we estimate that Legacy NMS Stock ATSs or non-NMS Stock ATSs that later decide to trade NMS stocks will not incur any costs associated with gaining access to EDGAR. *See supra* Section IX.D.2.b.iv.

[1394] 0.15 burden hours × 1 NMS Stock ATS = 0.15 burden hours. $45.30 × 1 NMS Stock ATS = $45.30.

[1395] *See supra* Section IX.D.2.b.v.

[1396] Senior Systems Analyst at $278 × 2 hours = $556.

[1397] 2 hours × 41 NMS Stock ATSs = 82 hours. $556 × 41 NMS Stock ATSs = $22,796.

[1398] *See supra* Section III.A.

[1399] *See* Proposal, *supra* note 2, at 81123–24.

[1400] *See* Proposal, *supra* note 2, at 81123 (discussing the effects of the increased public disclosures about the operations of NMS Stock ATSs on market participant search costs).

[1401] *See id* (discussing the effects of the increased public disclosures about the operations of NMS Stock ATSs on certain NMS Stock ATSs).

[1402] *See supra* Section X.B.1.

[1403] *See* Markit Letter at 4.

[1404] *See supra* Section X.B.5.a.

national securities exchanges are required to publicly file proposed rule changes with the Commission to disclose, among other things, their manner of operations and fees.[1405] These proposed rules changes are subject to notice and comment from the public, as well as Commission consideration, pursuant to Section 19(b) and Rule 19b–4.[1406] Therefore, we continue to believe that the adopted amendments would reduce the discrepancy in the level of transparency between NMS Stock ATSs and national securities exchanges, thereby assisting market participants in making more informed trading decisions and providing them with a clearer understanding about where to route their orders in order to receive best execution.

The adopted amendments modify the process for publicly disclosing a material amendment to a Form ATS–N from the process originally detailed in the Proposal.[1407] We proposed in Rule 304(b)(2)(iv) making all amendments to Form ATS–N, including material amendments, public upon filing.[1408] In response to commenters' concerns that making public Form ATS–N material amendments before expiration of the Commission's 30-day calendar review period could stifle innovation or be confusing or misleading to the public,[1409] we are modifying the proposed rules for making Form ATS–N material amendments public. Under the adopted amendments, the cover page of the filed material amendment will be made public by the Commission upon filing and, unless the Commission declares the material amendment ineffective, the entirety of the material amendment, as amended, will be made public by the Commission following the expiration of the Commission's 30-calendar day review period.[1410] The cover page would provide a brief narrative about the content of the amendment including: The Part and Item number of Form ATS–N that is subject to the change, whether or not such change will apply to all subscribers and the broker-dealer operator, and a brief summary of the change. Although the adopted process for material amendments would not provide market participants with as much transparency about a forthcoming material change to the operations of the NMS Stock ATS as the proposed process, we believe that the adopted process will provide increased transparency, relative to the baseline, to market participants about a material change during the Commission review period.

(ii) Benefits of Public Disclosure of the ATS-Related Activities of the Broker-Dealer Operator and Its Affiliates

Most NMS Stock ATSs are operated by broker-dealers that also engage in other brokerage and dealing activities.[1411] A broker-dealer operator of an NMS Stock ATS, or its affiliates, could have business interests that conflict with the interests of its ATS's subscribers,[1412] or customers of its subscribers.[1413] As described in more detail in the Proposal,[1414] we believe that public disclosure of detailed information about the ATS-related activities of the broker-dealer operator and its affiliates on Form ATS–N will allow market participants to better evaluate any conflicts of interest that may arise from such activities, allowing market participants to better determine whether submitting order flow to a particular NMS Stock ATS aligns with their business interests.[1415] Further, the enhanced disclosure requirements could discourage broker-dealer operators from trading internally as principal in their NMS Stock ATS under circumstances where the trading might raise conflict of interest concerns, because those operations will be subject to public scrutiny by market participants.[1416]

The adopted amendments modify the requests for information on Form ATS–N regarding the activities of the NMS Stock ATS broker-dealer operator and its affiliates from those in Proposed Form ATS–N.[1417] In response to commenters' concerns that the scope of the requests in Part III of proposed Form ATS–N are too broad (especially for large, multiservice broker-dealers) and might require information about the broker-dealer operator's and its affiliates' activities that do not directly relate to the NMS Stock ATS, we are modifying certain requests on proposed Form ATS–N to solicit information from NMS Stock ATSs that focus on (1) the ability of the business units or affiliates of the broker-dealer operator to enter, or direct the entry of, orders into the NMS Stock ATS; and (2) whether those business units and affiliates receive any preferential treatment with respect to the services offered by the NMS Stock ATS, including any special access to information about trading interest.[1418] This differs from the Proposal primarily with regard to the proposed requests for information about the trading centers of the broker-dealer operator and its affiliates that did not transact on the NMS Stock ATS. For example, Part III, Item 1 of proposed Form ATS–N would have required an NMS Stock ATS to disclose whether the broker-dealer operator or any of its affiliates operate or control any non-ATS trading center(s) that is an OTC market maker or executes orders in NMS stocks internally by trading as principal or crossing orders as agent (''non-ATS trading centers''), and if so, to (1) identify the non-ATS trading center(s); and (2) describe any interaction or coordination between the identified non-ATS trading center(s) and the NMS Stock ATS.[1419] We have modified this disclosure to omit from Form ATS–N a list of non-ATS trading centers of the broker-dealer operator or its affiliates that cannot trade on the NMS Stock ATS.

This modification means that, relative to the disclosures on proposed Form ATS–N, market participants will receive less information concerning the non-ATS related operations of the NMS Stock ATS broker-dealer operator and its affiliates. However, we believe that the disclosures in adopted Form ATS–N concerning the ATS-related activities of the broker-dealer operator or its affiliates will still allow market participants to better evaluate any potential conflicts of interest that may arise on the NMS Stock ATS. Therefore, we do not believe that the benefits from the public disclosure of the ATS-related

[1405] *See* Proposal, *supra* note 2, at 81011.

[1406] *See id.*

[1407] *See supra* Section IV.B.1.a (discussing Form ATS–N material amendments).

[1408] *See* Proposal, *supra* note 2, at 81034.

[1409] *See supra* Section IV.E.2.c.

[1410] *See id.*

[1411] *See supra* Section II.A.2.

[1412] Based on information provided on Form ATS, a small number of ATSs solely limit their broker-dealer business to the operation of an ATS.

[1413] One commenter states that unavoidable conflicts of interest arise if an operator (or its affiliates) engages in principal trading activities within the ATS or if it is informed by others' trading activities within the ATS. *See* HMA Letter at 13. Another commenter states ''conflicts of interest arising from the operational complexities of ATSs, including the dual roles of the broker-dealer as ATS operators and as brokers, proliferated, all while remaining invisible to investors.'' Better Markets Letter at 2.

[1414] *See* Proposal, *supra* note 2, at 81124–25.

[1415] A number of commenters generally agree with us that increased standardized information about the manner of operations of the broker-dealer that operates the NMS Stock ATS and potential conflicts of interest that may arise with its affiliates may better enable market participants to evaluate the extent to which individual trading venues align with their investment and trading decisions. *See* Fidelity Letter at 1; ICI Letter at 3; KCG Letter at 1; MFA/AIMA Letter at 2; PDQ Letter at 2; SIFMA Letter at 4–8.

[1416] *See* Proposal, *supra* note 2, at 81124 (discussing the effects of the public disclosure of the ATS-related activities of the broker-dealer operator and its affiliates).

[1417] *See* Proposal, *supra* note 2, at 81043.

[1418] *See supra* Section V.C.

[1419] *See* Proposal, *supra* note 2, at 81045.

activities of the broker-dealer operator or its affiliates on adopted Form ATS–N will vary significantly from the benefits described in the Proposal.[1420]

(iii) Benefits of Public Disclosure of Aggregate Platform-Wide Order Flow and Execution Statistics

Part III, Item 26 of adopted Form ATS–N requests that an NMS Stock ATS explain and provide the most recent disclosure of aggregate platform-wide order flow and execution statistics regarding the NMS Stock ATS that are not otherwise required disclosures under Exchange Act Rule 605 of Regulation NMS and that the NMS Stock ATS provided to one or more subscribers by the NMS Stock ATS at the end of calendar quarter. As described in detail in the Proposal, this disclosure request could benefit market participants.[1421]

NMS Stock ATSs that currently provide these aggregate platform-wide order flow and execution statistics to one or more subscribers could continue to provide their subscribers with these market quality statistics, in which case, the NMS Stock ATS will publicly disclose these statistics and how they are calculated in Form ATS–N, and all market participants, not just subscribers, would have access to the information. We believe this would reduce the discrepancy in information that subscribers receive and provide the opportunity for more market participants to benefit from this information which may be useful to market participants when evaluating an NMS Stock ATS as a possible venue to which to route orders in order to accomplish their investing or trading objectives.[1422] Further, to the extent that subscribers that receive those market quality statistics currently do not know how the NMS Stock ATS calculates the market quality statistics, adopted Form ATS–N would help these subscribers better understand the statistics.

Two commenters agree with us that the requirement to disclose aggregate platform-wide order flow and execution statistics on Form ATS–N, if they are otherwise disclosed to subscribers, could cause NMS Stock ATSs to stop providing these statistics to their subscribers.[1423] If some NMS Stock ATSs cease disclosing these market quality statistics to subscribers, it could reduce transparency to the detriment of the subscribers who currently benefit from the receipt of certain market quality statistics regarding an NMS Stock ATS, which could in turn result in spill-over effects on the market. One commenter agrees and states the elimination of this flow of information from the NMS Stock ATSs would have a deleterious effect on subscriber knowledge and understanding of a given ATS's operations, and negatively affect the availability of information that some subscribers consider important for their best execution determinations.[1424]

(iv) Benefits of Filing Form ATS–N in a Structured Format

We believe that benefits will accrue to both the Commission and market participants as a result of having a structured format for Form ATS–N. Specifically, having Form ATS–N filed in the XML text-searchable format will allow the Commission and its staff and market participants to efficiently review and analyze information provided on Form ATS–N. In particular, the XML format will allow the Commission and the public to better gather, analyze, aggregate, compare, and use the Form ATS–N data. Requiring XML should result in the Form ATS–N data being provided in a consistent, structured format. XML is an open standard that defines, or ''tags,'' data using standard definitions. The tags establish a consistent structure of identity and context. This consistent structure can be automatically recognized and processed by a variety of software applications such as databases, financial reporting systems, and spreadsheets, and then made immediately available to the end user to search, aggregate, compare, and analyze.

We believe that requiring Form ATS–N be provided in an XML format will provide the Commission and the public with data about NMS Stock ATSs in a format that facilitates search capabilities, and comparative analyses across NMS Stock ATSs and across filings, including more advanced text analytics for the more narrative responses of Form ATS–N. Absent this requirement of a specified format, users of the Form ATS–N data that wanted to aggregate the data or search across filings or filers would need to spend additional time transferring the data into a consistent format before it could be analyzed, or incur the cost of a service provider that specializes in this data aggregation and comparison process. Further, unrestricted manual entry of data could lead to errors, thereby potentially reducing data quality and usability.

Commenters who supported the standardization of Form ATS–N information also underscored the importance of making the information comparable.[1425] While the commenters did not make specific reference to the structured format, having the Form ATS–N information submitted using the Commission's XML schema will enhance the comparability of the Form ATS–N data by ensuring that the information has been submitted completely and consistently. Two commenters addressed the importance of completeness to Form ATS–N filings.[1426] With the Commission's XML schema, the restrictions incorporated into the schema (and consequently, also reflected in the web-fillable form) will help test for completeness of the data before submission and reduce filer uncertainty on the completeness and consistency of their filing. One commenter recommended that we consider ways to present information that would improve the readability and navigability of disclosure through the use of technology such as hyperlinks and/or XBRL technology.[1427] The XML format selected by us is a technology format that presents the data consistently, which improves the readability and navigability of the data. In fact, XBRL is an XML-based technology, but, as discussed later, we do not think that XBRL is the appropriate format for this form.[1428] While hyperlinks may be useful in some situations to cross-reference information, it does not by itself enhance the comparability of the underlying data, but can be incorporated within the XML format, as permitted.

b. Costs

We recognize that the filing and public disclosure of Form ATS–N and Form ATS–N amendments could impose costs on NMS Stock ATSs as well as costs on market participants. This section discusses specific costs associated with the filing and public disclosure of Form ATS–N including: the costs to NMS Stock ATSs; the effects of public disclosure of Form ATS–N on

[1420] *See* Proposal, *supra* note 2, at 81122.

[1421] *See* Proposal, *supra* note 2, at 81124.

[1422] *See id* (discussing how the disclosure of aggregate platform-wide order flow and execution statistics might help NMS Stock ATSs attract order flow).

[1423] *See* MFA/AIMA Letter at 5; SIFMA Letter at 27. One of these commenters suggests that these NMS Stock ATSs could begin to direct parties requesting statistics and analysis to order information available on FINRA's website or through third-party vendors. *See* SIFMA Letter at 27.

[1424] *See* SIFMA Letter at 27.

[1425] *See* Fidelity Letter at 1; Morgan Stanley Letter at 2; SIFMA Letter at 3; UBS Letter at 2–3.

[1426] *See* MFA/AIMA Letter at 4; SIFMA Letter at 32–33.

[1427] *See* Fidelity Letter at 5.

[1428] *See infra* Section X.D.11.

the price impact costs of market participants; and the costs associated with filing Form ATS–N and Form ATS–N amendments in a structured format.

(i) Costs to NMS Stock ATSs

We recognize that there would be costs that accrue to NMS Stock ATSs as a result of the adopted amendments. For NMS Stock ATSs, disclosure of previously non-public information could have some impact on the direction of order flow in the market. If this previously non-public information is valuable to certain NMS Stock ATSs—to the extent that it drives its revenues—disclosure of this information on Form ATS–N could be costly for these NMS Stock ATSs. For instance, disclosure of an NMS Stock ATS's innovations could potentially result in other ATSs implementing similar methodologies, which could cause the NMS Stock ATS to lose its technological advantage. Such an ATS may need to engage in costly research in order to develop new innovations to stay profitable in the market. If an ATS cannot innovate fast enough to regain its competitive advantage in the market, order flow may then potentially migrate to other NMS Stock ATSs, broker-dealers that operate non-ATS trading centers, or to national securities exchanges.[1429] Additionally, some order flow could be directed away from an NMS Stock ATS and towards one of these other trading centers if the disclosure of previously non-public information, such as aggregate platform-wide order flow and execution statistics or information about the ATS related activities of the broker-dealer operator and its affiliates, causes some market participants to discover that their orders would have a greater likelihood of receiving lower execution quality on the NMS Stock ATS relative to these other trading centers. As such, this may result in lower revenues for some NMS Stock ATSs. These ATSs may then find it unprofitable to continue operating as ATSs and could exit the market for stock execution services or switch their business strategies to increase market share or profitability, possibly by continuing to operate as non-ATS OTC execution venues, such as OTC trading venues in which the broker-dealer operator internalizes order flow.[1430]

However, as discussed above,[1431] we lack certain information necessary to quantify the extent to which entities that operate as ATSs for NMS Stocks would be dissuaded from doing so. Specifically, as discussed in the Proposal,[1432] the decision for an NMS Stock ATS to continue operating or to cease operating as an ATS depends on numerous factors and we lack information about many of those factors. Commenters did not provide any additional information or analysis that would allow us to quantify the impact on Legacy NMS Stocks ATSs or other entities that may otherwise seek to operate a new NMS Stock ATS. Therefore, while we continue to believe that the costs of the adopted amendments could cause some Legacy NMS Stock ATSs to cease operating as ATSs and could dissuade some entities who would seek to operate as ATSs for NMS Stocks from doing so, we remain unable to quantify that impact. Furthermore, we do not have information to make reasonable assumptions about the fraction of displaced volume—from NMS Stock ATSs that would cease operations—that would be internalized by broker-dealer operator or its affiliates or directed towards national securities exchanges, NMS Stock ATSs, or non-ATS OTC trading centers.

(ii) Price Impact Costs

We recognize that heightened disclosure requirements pertaining to the public disclosure of Form ATS–N could increase market participants' trading costs relative to the baseline if some ATSs cease operating as ATSs or if there is reduced entry of new NMS Stock ATSs. Institutional investors can elect to use NMS Stock ATSs in an attempt to minimize the price impact of their trades. Even though the size of the average order on NMS Stock ATSs has been shown to be roughly equivalent to that on national securities exchanges, smaller orders on NMS Stock ATSs can be the result of shredding larger orders.[1433] Preventing information regarding those orders from becoming public can minimize adverse price moves that may occur when proprietary traders learn that there may be large buyers or sellers in the market. Thus, NMS Stock ATSs represent a tool for institutional investors to help control information leakage.

If there is reduced entry of new NMS Stock ATSs or some NMS Stock ATSs cease operating as ATSs and shut down their ATSs as a result of the amendments, there could be a reduction in the number of trading platforms that allow institutional investors to control their price impact costs. Institutional investors who would have traded on these NMS Stock ATSs, might now have to trade on other trading venues, such as other NMS Stock ATSs, non-ATS OTC execution venues, or national securities exchanges. If institutional investors execute their orders on a national securities exchange, they might have to absorb price impact costs, because national securities exchanges may not offer a means for reducing these costs.

Additionally, if some NMS Stock ATSs cease operating as ATSs and begin operating as non-ATS OTC execution venues, such as an OTC trading venue in which the broker-dealer operator internalizes order flow, there could be an increase in the internalization of order flow. Increased internalization could reduce market depth and price informativeness and increase spreads and price impact costs.[1434] However, as discussed above,[1435] we do not know the extent to which the adopted amendments would affect an NMS Stock ATS's decision to continue operations or cease operating as an ATS, and, therefore, cannot estimate the number of ATSs that would cease operating as ATSs. Nor do we have information in order for us to make reasonable assumptions about the fraction of displaced volume—from NMS Stock ATSs that would cease operations—that would be internalized by a broker-dealer operator or its affiliates or directed towards national securities exchanges, NMS Stock ATSs, or non-ATS OTC trading centers. Commenters did not provide any additional information or analysis that would allow us to quantify the number of Legacy NMS Stocks ATSs that would cease operating as ATSs or estimate the impacts on internalization or order flow. Therefore, we cannot estimate the impact that the adopted amendments would have on an NMS Stock ATS's price impact costs.

As described in detail in the Proposal,[1436] the price impact cost institutional investors face on a national securities exchange is related to the depth of the market, and the depth of the market is often related to the market capitalization of a stock and its liquidity.[1437] Because NMS Stock ATSs

[1429] *See infra* Section X.C.4.a for a discussion of the competitive effects of these costs (''Impact on Efficiency, Competition, and Capital Formation—Competition'').

[1430] *See infra* Section X.C.4.a.i.

[1431] *See supra* Section X.C and *supra* note 1356.

[1432] *See* Proposal, *supra* note 2, at 81118.

[1433] *See* Tuttle: ATS Trading in NMS Stocks, *supra* note 1317.

[1434] *See supra* Section X.B.6.a.

[1435] *See supra* Section X.C and *supra* note 1356.

[1436] *See* Proposal, *supra* note 2, at 81127–28.

[1437] A deep market is one in which larger orders do not have a much greater impact on prices than smaller orders. *See* Foucault, Pagano and Roell, 2013, ''Market Liquidity,'' *Oxford University Press.*

trade larger dollar volume in small capitalization, low-priced stocks, the price impact costs for institutional investors that trade in such stocks could in fact increase significantly if many NMS Stock ATSs decide to exit the market. However, as discussed above,[1438] we cannot estimate what price market participants would receive in these stocks and, thus, we cannot estimate the price impact costs associated with the adopted amendments.

(iii) Filing in Structured Format

We understand that there are also costs associated with varying degrees of structuring Form ATS–N. By offering two options for filers to submit Form ATS–N in EDGAR, filers will be able to select the method best suited to their situation.[1439] We believe that the XML format of Form ATS–N has enhanced benefits for the Commission's and market participants' use of Form ATS–N while minimizing costs relative to filers having to file Form ATS–N using other structured formats.[1440] By requiring the XML format, the Form ATS–N data must be structured to conform to incorporated validations. As stated previously, the validations will not test for the underlying accuracy of the data, but it will test for consistency and completeness.[1441] For the NMS Stock ATSs that file Form ATS–N, the validations will help ensure that the form they submit is complete and appropriately formatted so that additional time will not have to be spent on subsequent Form ATS–N filings to correct for those errors. By comparison, the EFFS system originally proposed does not support the open-source XML format, but rather a proprietary XML implementation called XFDL. As a result, the EFFS system has fewer validation capabilities and cannot test for consistency and completeness as broadly as the XML format, in particular, at the element level. In addition, as proposed, filers would have been required to individually upload each narrative response as a separate exhibit, whereas EDGAR permits filers to provide all of their narrative responses within one structured XML file, which will slightly diminish their time spent in filing in the Form ATS–N information.

3. Economic Effects of Written Safeguards and Written Procedures To Protect Subscribers' Confidential Trading Information, and Recordkeeping Requirements

a. Benefits

As explained above, we believe that the amendments to Rules 301(b)(10) [1442] and 303(a)(1) [1443] of Regulation ATS could increase investor protection by strengthening the effectiveness of NMS Stock ATSs' safeguards and procedures to better protect confidential subscriber trading information and improving those ATSs' ability to implement and monitor the adequacy of, and the ATSs' compliance with, their safeguards and procedures.[1444] Furthermore, as discussed above,[1445] we believe that requiring ATSs to memorialize their safeguards and procedures in writing will improve Commission oversight by helping the Commission better understand, monitor, and evaluate how each NMS Stock ATS protects subscribers' confidential trading information from unauthorized disclosure and access, which in turn could increase investor protection.[1446] We also expect that this requirement will help oversight by the SRO of which the NMS Stock ATS's broker-dealer operator is a member.

b. Costs

We believe that there would be implementation costs for NMS Stock ATSs that have not preserved in writing their safeguards and procedures to protect subscribers' confidential trading information and their oversight procedures to ensure that those safeguards and procedures are followed, which are required under Rule 301(b)(10) of Regulation ATS.[1447] Based on the analysis for purposes of the PRA, we estimate that, in order to comply with the amendments to Rules 301(b)(10) and 303(a)(1)(v) of Regulation ATS,[1448] it could take up to 87 ATSs an estimated one-time burden of up to 8 hours each, resulting in an estimated one-time paperwork cost of $2,910 for each ATS.[1449] This would result in an aggregate estimated initial hour burden of 696 hours at an estimated cost of $253,170.[1450]

Furthermore, the amendments to Rules 301(b)(10) and 303(a)(1)(v) relating to written safeguards and written procedures to protect subscribers' confidential trading information would impose ongoing costs for all NMS Stock ATSs. For the purposes of the PRA, we estimate it could take approximately 4 hours annually for each ATS to update and maintain these safeguards and procedures,[1451] resulting in an estimated annual paperwork cost for each ATS of $948.[1452] This would result in an estimated aggregate ongoing hour burden for all ATSs to maintain and update their safeguards and procedures pursuant to Rules 301(b)(10) and 303(a)(1)(v) of 348 hours at an estimated cost of $82,476 annually.[1453]

We are also amending the recordkeeping rules relevant to the amendments to Rule 301 and new Rule 304. NMS Stock ATSs shall preserve Form ATS–N, Form ATS–N amendments, and a Form ATS–N notice of cessation for the life of the enterprise and any successor enterprise pursuant to Rule 303(a)(2) [1454] of Regulation ATS.[1455] We are also amending Rule 303(a)(1) [1456] so that ATSs must preserve for a period of not less than three years, the first two in an easily accessible place, the written safeguards and procedures that would be required under the amendments to Rule 301(b)(10). We understand that these amendments regarding recordkeeping requirements will require NMS Stock ATSs to set up systems and procedures, and these are expected to account for a portion of the implementation costs

[1438] *See supra* Section X.C and *supra* note 1356.

[1439] *See supra* Section VII.

[1440] *See infra* Section X.D.11.

[1441] *See supra* Section VII (discussing structured disclosure aspects of Form ATS–N).

[1442] 17 CFR 242.301(b)(10).

[1443] 17 CFR 242.303(a).

[1444] *See supra* Section VI.

[1445] *See id.*

[1446] Three commenters agree with us that requiring ATSs to adopt written safeguards and written procedures would be beneficial to Commission oversight by helping the Commission better understand, monitor, and evaluate how each ATS protects subscribers' confidential trading information from unauthorized disclosure and access. *See* HMA Letter at 17–18; ICI Letter at 10–11; MFA/AIMA Letter at 6.

[1447] 17 CFR 242.301(b)(10).

[1448] *See supra* Section VI.

[1449] (Attorney at $406 × 7 hours) + (Compliance Clerk at $68 × 1 hour) = $2,910. As explained in the PRA, we believe that the majority of ATSs already maintain their written safeguards and procedures in writing, so most ATSs would not incur this initial cost. *See supra* Section IX.D.1.b. For purposes of this economic analysis, however, we assume that the initial cost of this new requirement would be imposed on all ATSs.

[1450] 8 hours × 87 ATSs = 696 hours. $2,910 × 87 ATSs = $253,170.

[1451] *See supra* note 1116 and accompanying text.

[1452] (Attorney at $406 × 2 hours) + (Compliance Clerk at $68 × 2 hours) = $948 annual paperwork cost per ATS.

[1453] 4 annual burden hours × 87 ATSs = 348 annual burden hours. $948 annual paperwork cost per ATS × 87 NMS Stock ATSs = $82,476 aggregate annual paperwork cost.

[1454] 17 CFR 242.303(a)(2).

[1455] An NMS Stock ATS that had previously made filings on Form ATS would be required to preserve those filings for the life of the enterprise, as well as filings made going forward on Form ATS–N.

[1456] 17 CFR 242.303(a)(1).

related to Rules 301(b)(2)(viii) and 304 of Regulation ATS [1457] and the amendments to Rules 301(b)(10) and 303(a)(1)(v) of Regulation ATS discussed above.

4. Impact on Efficiency, Competition, and Capital Formation

We have considered the effects of the amendments on efficiency, competition, and capital formation. We believe that the amendments will help market participants make better informed decisions about where to route their orders in order to achieve their trading or investment objectives, enhance execution quality, and improve efficiency and capital allocation.

We understand that the amendments to Regulation ATS could affect the competitive dynamics in the market for NMS stock execution services.[1458] These disclosure requirements for NMS Stock ATSs could create a disincentive for entities to become ATSs in the market for NMS stock execution services and also result in some stand-alone ATSs exiting the market and some multi-service broker-dealers electing to cease operating their NMS Stock ATSs and instead initiate or increase operations as non-ATS OTC execution venues. However, in spite of these costs, and as discussed in more detail below, we believe that the NMS Stock ATSs that remain may propagate greater interaction between buyers and sellers who trade on these venues, fostering not only trading between one and another, but also facilitating the price discovery process and capital formation. The consistent set of information that will be disclosed in Form ATS–N will impact how market participants react in terms of their trading, which could improve market efficiency.[1459]

Moreover, increased transparency regarding the operations of NMS Stock ATSs could impact competition between broker-dealers that operate NMS Stock ATSs and broker-dealers who trade NMS stocks but do not operate an NMS Stock ATS, such as internalizers. Because broker-dealers who transact in NMS stocks but do not operate ATSs are not subject to the operational transparency requirements, these broker-dealers could obtain a competitive advantage and attract and internalize order flow that would otherwise be entered and executed on NMS Stock ATSs. Furthermore, greater operational transparency of NMS Stock ATSs could also impact competition between NMS Stock ATSs and national securities exchanges, resulting in a larger amount of order flow being executed on national securities exchanges.

a. Competition

The adopted amendments could impact the competitive dynamics in the market for NMS stock execution services, which includes competition between national securities exchanges and NMS Stock ATSs, among NMS Stock ATSs themselves, and between broker-dealers that operate NMS Stock ATSs and those that do not.

As discussed above,[1460] we believe that the public disclosure of Form ATS–N could appropriately calibrate the level of transparency between NMS Stock ATSs and national securities exchanges, which could foster even greater competition for order flow of NMS stocks between those trading platforms. However, the increased public disclosure requirements associated with adopted Form ATS–N along with the uncertainty as to whether a Form ATS–N will be declared ineffective may raise the barriers to entry for new entities seeking to act as ATSs in the market for NMS stock execution services and may cause some existing Legacy NMS Stock ATSs to cease operating as ATSs. This could affect competition in the market for NMS stock execution services, which could in turn affect market participants. Additionally, the public disclosure of some previously non-public information about the manner of operations of the ATS, such as information on certain matching methodologies or order types, along with the greater competition for order flow, could affect the incentives of NMS Stock ATSs to innovate.

The sections below discuss specific impacts of the adopted amendments on the competitive dynamics in the market for NMS stock execution services, including: Their impact on the entry of new NMS Stock ATSs and the continuation of existing Legacy NMS Stock ATSs, the impact of changes in the number of NMS Stock ATSs on market participant trading costs, and their impact on the incentives of ATSs to innovate.

(i) Entry of New and Continuation of Legacy NMS Stock ATSs

We believe that the adopted amendments could potentially raise the barriers to entry for new entities seeking to act as ATSs in the market for NMS stock execution services and could also affect the decision of Legacy NMS Stock ATSs to continue operating as ATSs. As discussed in more detail below, the uncertainty surrounding whether Form ATS–N and Form ATS–N amendment filings will be declared ineffective, the increased implementation and ongoing compliance costs associated with the adopted amendments, and the effects of public disclosure of previously non-public information required on Form ATS–N might dissuade some potential new ATSs from entering the market and could cause some Legacy NMS Stock ATSs to cease operating as ATSs.[1461]

If the costs of the adopted amendments make it unprofitable for the broker-dealer operator of a Legacy NMS Stock ATS to continue operating the ATS,[1462] the broker-dealer operator could sell the ATS to another broker-dealer or shut down the ATS. Alternatively, a multi-service broker-dealer operator could cease operating the Legacy NMS Stock ATS as an ATS and instead initiate operations as a non-ATS OTC execution venue, such as an OTC trading venue in which the broker-dealer operator internalizes order flow.[1463] If a Legacy NMS Stock ATS that ceases operations is operated by a multi-service broker-dealer operator that also operates, or has affiliates that operate, other non-ATS OTC execution venues, the multi-service broker-dealer operator or its affiliates could increase operations at one of these venues instead of choosing to operate the Legacy NMS Stock ATS as a non-ATS OTC execution venue. If a Legacy NMS Stock ATS ceases to operate as an ATS, the broker-dealer operator or its affiliates might internalize the order flow that would have typically been sent to the ATS or they might send that order flow to a third-party broker-dealer to internalize.[1464] Alternatively, the displaced order flow could be sent to one of the remaining NMS Stock ATSs

[1457] *See supra* Section X.C.1.b.

[1458] *See infra* Section X.C.4.a (''Impact on Efficiency, Competition, and Capital Formation—Competition'').

[1459] *See infra* Section X.C.4.b (''Impact on Efficiency, Competition, and Capital Formation—Efficiency'').

[1460] *See supra* Section X.C.2.a.

[1461] Several commenters agreed that the disclosure requirements associated with Form ATS–N could act as a barrier to entry for new NMS Stock ATSs in the market; dissuade some existing ATSs from continuing to operate as ATSs; and force some smaller NMS Stock ATSs out of business. *See* Fidelity Letter at 10; Luminex Letter at 1–2; STANY Letter at 2.

[1462] *See supra* Section X.C.1.b, Section X.C.2.b, and Section X.C.3.b.

[1463] One commenter said that the disclosure obligations that only apply to broker-dealer ATS operators may incentivize broker-dealer ATS operators to seek alternatives other than operating an ATS. *See* Morgan Stanley Letter at 3.

[1464] One commenter said the disclosure requirements could result in ATSs closing down their NMS Stock ATS operations and increase the use of broker-dealer internalized executions. *See* Fidelity Letter at 4, 5, 9, 10–11.

or to a national securities exchange for execution.

If increased barriers to entry cause fewer ATSs to enter the market or the increased costs of the adopted amendments cause some unprofitable Legacy NMS Stock ATSs to shut down operations, there could be fewer trading venues in the market for NMS Stock execution services. We believe that if the adopted amendments result in fewer trading venues in the market or cause some Legacy NMS Stock ATSs to operate as non-ATS OTC execution venues, it could affect market participants by reducing the number of NMS stock trading venues and, thus, reducing a market participant's opportunities to minimize its trading costs by sending orders to different trading platforms.[1465]

While we believe that the adopted amendments could act as a barrier to entry or dissuade some existing ATSs from continuing to operate as ATSs, we reiterate that we lack certain information necessary to quantify the extent to which entities that otherwise would seek to operate as ATSs for NMS Stocks would be dissuaded from doing so.[1466] Specifically, as discussed in the Proposal,[1467] the decision for an NMS Stock ATS to continue operating or to cease operating as an ATS depends on numerous factors and we lack information about many of those factors. For example, we do not have information on the extent to which existing NMS Stock ATSs or potentially new ATSs rely on a competitive advantage, such as a unique matching methodology, to attract order flow or the extent to which the new rule and amendments would impact that competitive advantage. Furthermore, the decision to cease operating as an ATS is idiosyncratic to the particular NMS Stock ATS and we cannot ascertain the extent to which small (or in fact large) ATSs may be more prone to cease operating as ATSs.[1468]

Commenters did not provide any additional information or analysis that would allow us to quantify the impact on Legacy NMS Stocks ATSs or other entities that might otherwise seek to operate a new NMS Stock ATS. Therefore, while we continue to believe that the costs of the adopted amendments could cause some Legacy NMS Stock ATSs to cease operating as ATSs and could dissuade some entities who would seek to operate as ATSs for NMS Stocks from doing so, we remain unable to quantify that impact.

The subsections below discuss how various elements of the adopted amendments could potentially affect the barriers to entry for new entities seeking to act as ATSs and the decision of Legacy NMS Stock ATSs to continue or cease operating as ATSs in the market for NMS stock execution services, including: The enhanced filing requirements of Form ATS–N, the implementation and ongoing compliance costs associated with the adopted amendments, and the public disclosure of previously non-public information required on Form ATS–N.

(a) Enhanced Filing Requirements of Form ATS–N

The filing requirements of Form ATS–N will impose costs on NMS Stock ATSs. An ineffectiveness declaration would impose costs on an NMS Stock ATS—such as costs from having to cease operations, roll back a change in operations, or delay the start of operations—and could impose costs on the overall market for NMS stock execution services resulting from a potential reduction in competition or the removal of a sole provider of a niche service within the market. The adopted amendments to Regulation ATS might beget uncertainty as to whether an NMS Stock ATS's Form ATS–N will be declared ineffective.[1469] Greater uncertainty surrounding this process might act as a deterrent for potential ATSs wishing to effect transactions in NMS stocks, which could raise barriers for potential new entrants to the market for NMS stock execution services.

The amendments we are adopting permit a Legacy NMS Stock ATS to continue its operations, on a provisional basis, pursuant to the filed initial Form ATS–N, and any amendments thereto, during the Commission's review of its initial Form ATS–N. However, if after notice and opportunity for hearing, the Commission declares the Form ATS–N filed by a legacy NMS Stock ATS ineffective, the ATS would be required to cease its activities relating to NMS stocks. The NMS Stock ATS would then have the opportunity to address deficiencies in the previously filed form by filing a new Form ATS–N.[1470]

The Commission could also declare amendments to an effective Form ATS–N ineffective. In particular, the adopted amendments require an NMS Stock ATS to file amendments on Form ATS–N to notice a material change to its operations at least 30 days prior to implementing that material change.[1471] If the Commission declares a material amendment ineffective before this advance notice period has expired, the NMS Stock ATS would be required to unwind the material change if it has already been implemented on the ATS or be precluded from proceeding to implement the change if it was not already implemented. The NMS Stock ATS could, however, continue to operate pursuant to a Form ATS–N that had become effective.[1472] Given the additional uncertainty introduced by the possibility that the Commission could declare a Form ATS–N or a Form ATS–N amendment ineffective, coupled with the number and complexity of the new disclosures that would be required under Form ATS–N, some broker-dealer operators of Legacy NMS Stock ATSs might find that the costs of compliance outweigh the benefits of continuing to operate their NMS Stock ATS, particularly if the operation of the ATS does not constitute a significant source of profit for a broker-dealer operator. As such, some NMS Stock ATSs might elect to cease operating as an ATS.

The adopted amendments might also potentially raise the barriers to entry for new entities seeking to act as ATSs in the market for NMS stock execution service by delaying the start of operations for new NMS Stock ATSs. Currently, to comply with Regulation ATS, an entity seeking to operate as an ATS must, among other things, file an initial operation report with the Commission on Form ATS at least 20 days before commencing operations.[1473] Under the adopted amendments, an entity seeking to operate as an ATS in the market for NMS stock execution services could not commence operations until its initial Form ATS–N became effective, which could occur 120 calendar days after initially filing Form ATS–N with the Commission or at the end of the extended Commission review period.[1474] Additionally, the disclosures required by Form ATS–N would be more comprehensive and require

[1465] *See infra* Section X.C.4.a.ii.

[1466] *See supra* Section X.C and *supra* note 1356.

[1467] *See* Proposal, *supra* note 2, at 81118.

[1468] *See id.*

[1469] *See supra* Section X.C.1.b.

[1470] *See supra* Section IV.A.3.

[1471] The amendments to Rule 301(a)(5) could, under exceptional circumstances such as to prevent substantial harm to market participants, allow an NMS Stock ATS to implement a material change more quickly by seeking an exemption from the Commission from the 30-calendar day advance notice requirements of Rule 304(a)(2)(i)(A). *See supra* Section III.B.3.

[1472] Nothing would preclude the NMS Stock ATS from later submitting a new or revised Form ATS–N amendment for consideration by the Commission.

[1473] *See supra* Section II.C.

[1474] Our review period could last less than 120 days. Alternatively, we could extend the review period an additional 90 calendar days, if the Form ATS–N is unusually lengthy or raises novel or complex issues that require additional time for review. *See supra* Section IV.A.2.

significantly more detail than those required on current Form ATS, which in turn could also delay the start of operations for new NMS Stock ATSs.

(b) Implementation and Ongoing Compliance Costs

As explained above, NMS Stock ATSs will incur both implementation and ongoing costs to meet the regulatory requirements under Rule 304.[1475] On the margin, if these costs outweigh the benefits of operating an NMS Stock ATS, they could act as a deterrent for potential ATSs wishing to effect transactions in NMS stocks or cause some Legacy NMS Stock ATSs to cease operating as an ATS. However, we do not believe that the implementation and ongoing costs are significant enough to make this a likely possibility.

The implementation and ongoing costs associated with filing Form ATS–N could also differentially affect small and large NMS Stock ATSs. As Table 1 shows, there is a significant degree of difference in the size of NMS Stock ATSs, when measured by dollar or share volume. We believe that the estimated implementation cost is a fixed cost that would be roughly similar across NMS Stock ATSs, regardless of their dollar volume size; this implies that implementation costs will represent a larger fraction of revenue generated on a small NMS Stock ATS relative to that percentage on a large NMS Stock ATS. If the costs associated with filing Form ATS–N become disproportionately greater for smaller volume NMS Stock ATSs, some of these Legacy NMS Stock ATSs might be more likely to cease operating as ATSs. However, if the NMS Stock ATSs that decide to cease operating as ATSs due to this fixed implementation cost only transact small dollar (or share) volume, there may not be a large impact on the overall competitive structure for remaining NMS Stock ATSs. Moreover, the order flow that was being traded on these small NMS Stock ATSs might be absorbed and redistributed amongst these larger remaining NMS Stock ATSs. On the other hand, if the implementation costs cause a small NMS Stock ATS that is the sole provider of a niche service to cease operating as an ATS, it could affect market participants by requiring them to seek execution on other NMS stock trading venues that do not minimize their trading costs to the same extent.[1476]

(c) Public Disclosure of Form ATS–N

Once an NMS Stock ATS's initial Form ATS–N has become effective, the information disclosed on Form ATS–N will be made available to the broader investing public.[1477] Updating and correcting amendments to Form ATS–N, as well as the cover page of material amendments, would be made public upon filing and the entirety of material amendments to Form ATS–N would be made public following the expiration of the review period.[1478]

While the information elicited on Form ATS–N is similar to the information that national securities exchanges are required to publicly disclose, we believe that the disclosure of this previously non-public information could have some impact on the competition for order flow in the market. For instance, to the extent that an NMS Stock ATS's competitive advantage in the market is driven by its matching methodology, other operational characteristics that are currently confidential, or the non-public disclosure of certain aggregate platform-wide market quality statistics provided to subscribers, the disclosure of this information could result in other NMS Stock ATSs implementing similar methodologies, which might cause market participants to direct more order flow to those other NMS Stock ATSs. In addition, some order flow might be directed away from NMS Stock ATSs and towards national securities exchanges or broker-dealers that operate non-ATS trading centers if market participants discover that their orders would have a greater likelihood of receiving lower execution quality on an NMS Stock ATS relative to these other trading centers. As such, this could result in lower revenues for some NMS Stock ATSs. Those ATSs might then find it unprofitable to continue operating as ATSs. This might cause the broker-dealer operator to sell the ATS to another broker-dealer or shut down the ATS. It could also cause the broker-dealer operator to switch its business strategies to increase market share or profitability, possibly by continuing to operate as a non-ATS OTC execution venue, such as OTC trading venue in which the broker-dealer operator internalizes order flow. The disclosure of previously non-public operational information required under initial Form ATS–N could erode a new NMS Stock ATS's competitive advantage and prevent it from attracting order flow. This could potentially raise the barriers to entry for new entities seeking to act as ATSs in the market for NMS stock execution services and dissuade some entities that would potentially seek to operate as ATSs for NMS stocks from doing so. We believe that a reduction in the entry of new ATSs or some Legacy NMS Stock ATSs electing to cease operating as ATSs could affect competition in the market for NMS Stock execution services, which could in turn affect market participants.

Not only could an NMS Stock ATS's competitive advantage be driven by its current matching methodology or other operational characteristics, it could also be driven by the NMS Stock ATS's ability to improve these methodologies through technological innovation or enhancements.[1479] We believe that the disclosure of an NMS Stock ATS's innovations in Form ATS–N amendments could potentially result in certain NMS Stock ATSs losing their technological advantage. If NMS Stock ATSs cannot innovate fast enough to regain their competitive advantage in the market, orders may also flow away from those NMS Stock ATSs, and as a result, those trading venues may choose to cease operating as ATSs if operating the ATS becomes unprofitable for the broker-dealer operator.

Both large and small NMS Stock ATSs could be affected by the detailed disclosures required under Rule 304 and Form ATS–N, though, the adopted amendments could affect the ability of each type of ATS to stay in the market differently. As noted above, to the extent that an ATS's dominance in the market—in terms of being able to attract substantial NMS stock trading volume—is driven by its matching methodology or other operational characteristics that are currently confidential, the public disclosure of this information might result in lower revenue for the NMS Stock ATS. If public disclosure reduces revenue for a small NMS Stock ATS, or a large ATS without a substantial profit margin, the broker-dealer operator might no longer view the ATS as being profitable and cease operating it as an ATS. The broker-dealer operator of a large ATS that ceases operating as an ATS might be more likely to continue to operate the system as a non-ATS OTC execution venue. However, the broker dealer of a small ATS that ceases to operate as an ATS could potentially shutdown the ATS altogether. Alternatively, if public disclosure reduces revenue for a large NMS Stock ATS or a smaller NMS Stock ATS with large profit margins, such an ATS may

[1475] *See supra* Section X.C.1.b (''Economic Effects of Enhanced Filing Requirements of Form ATS–N—Costs'').

[1476] *See infra* Section X.C.4.a.ii.

[1477] *See supra* Section V for information contained on Form ATS–N.

[1478] *See supra* Section IV.E. *See also* Rule 304(b)(2).

[1479] *See infra* X.C.4.a.iii.

continue operating as an ATS but may need to engage in costly research in order to develop new methodologies or enhancements that are less likely to be affected by the public disclosure requirements in order to stay profitable in the market. Further, if revenue and earnings margins for operating an NMS Stock ATS are below the average for the entire market, the NMS Stock ATS risks being squeezed out by its competitors and could potentially cease operating as an ATS.[1480] As discussed in detail above,[1481] the effect on market participants if an ATS ceases operating as an ATS could vary based on the size (dollar volume) of the ATS. If the NMS Stock ATSs that cease operating as ATSs transact only small dollar (or share) volumes, we might not expect to see a large impact on the overall competitive structure of the NMS Stock ATSs that would remain in the market. Many smaller NMS Stock ATSs might not engage in other brokerage or dealing activities in addition to the operation of their NMS Stock ATS. Therefore, certain aspects of Form ATS–N (such as several items of Part II) might not be applicable to smaller NMS Stock ATSs, which would reduce the burdens and mitigate the effects of the disclosure requirements on these smaller NMS Stock ATSs.

The increased transparency regarding the operations of NMS Stock ATSs might impact competition between broker-dealers that operate NMS Stock ATSs and broker-dealers who trade NMS stocks but do not operate an NMS Stock ATS, such as internalizers. Because broker-dealers who transact in NMS stocks but do not operate ATSs are not subject to the operational transparency requirements, these broker-dealers could be at a competitive advantage and attract and internalize order flow that would otherwise be entered and executed on NMS Stock ATSs.[1482] These disclosure requirements could also influence a broker-dealer operator's decisions with respect to its operations of the NMS Stock ATS. Given the disclosure requirements regarding the ATS-related activities of broker-dealer operators and their affiliates, a multi-service broker-dealer operator of an NMS Stock ATS might cease operating its NMS Stock ATS as an ATS and instead internalize the order flow or send that order flow to a third-party broker-dealer that executes it.[1483] Alternatively, the broker-dealer operator might send the order flow to a non-affiliated NMS Stock ATS that is operated by a non-multi-service broker-dealer, which would likely not encounter the same potential conflicts of interest as a multi-service broker-dealer that operates an NMS Stock ATS. Finally, the broker-dealer operator could also send its order flow to national securities exchanges for execution. While we cannot quantify how much order flow from these displaced multi-services broker-dealers that operate NMS Stock ATSs would be routed back to national securities exchanges,[1484] we believe that routing order flow to lit venues could potentially have some positive effects on price discovery and transparency.[1485]

In response to commenters' concerns that proposed Form ATS–N would have required the public disclosure of proprietary or commercially sensitive information, we have revised the adopted Form ATS–N requests to not seek disclosure of certain information that could be proprietary or commercially sensitive, such as routing tables or numerical order flow segmentation metrics.[1486] Additionally, we have revised the disclosures concerning the broker-dealer operator and its affiliates to focus on (1) the ability of the business units or affiliates of the broker-dealer operator to enter, or direct the entry of, orders into the NMS Stock ATS; and (2) whether those business units and affiliates receive any preferential treatment with respect to the services offered by the NMS Stock ATS, including any special access to information about trading interest.[1487] We believe these changes should reduce the costs of the public disclosure of Form ATS–N for a NMS Stock ATS relative to what they were in the Proposal.[1488] Additionally, these changes, because of the decreased costs of public disclosure relative to the Proposal, should reduce the barriers to entry and also reduce the likelihood that a Legacy NMS Stock ATS ceases operating as an ATS compared to the Proposal.

(ii) Effects of Changes in Number of NMS Stock ATSs on Market Participant Trading Costs

Overall, we believe that the possible decision of entities that currently are NMS Stock ATSs to cease operating as ATSs, or the reduced entry of new NMS Stock ATSs, due to the requirements under Rule 304 and Form ATS–N could affect competition in the market for NMS stock execution services and could impact market participants by reducing the number of entities that are willing to act as NMS Stock ATSs and publicly disclose how they operate. If there is a reduction in the number of trading venues, either from some Legacy NMS Stock ATSs shutting down their operations or reduced entry into the market by prospective NMS Stock ATSs, it could impact market participants by reducing the number of NMS stock trading venues and, thus, reducing market participants' opportunities to minimize its trading costs by sending orders to different trading platforms. Additionally, if some Legacy NMS Stock ATSs cease operating as ATSs and begin to operate as non-ATS OTC execution venues, there might be an increase in the internalization of order flow. Increased internalization could reduce market depth and price informativeness and increase spreads,[1489] which could increase market participant trading costs. Therefore, the possible decision of NMS Stock ATSs to cease operating as ATSs and lower rate of entry for new NMS Stock ATSs could result in greater costs relative to the baseline cost savings that NMS Stock ATSs currently afford market participants.

However, as discussed above and in the Proposal,[1490] we lack information to determine the extent to which the increased public disclosure requirements associated with adopted Form ATS–N or the uncertainty as to whether a Form ATS–N will be declared ineffective would affect a Legacy NMS Stock ATS's decision to continue operations or cease operating as an ATS or the decision of potential ATSs to enter the market. Therefore, we cannot

[1480] *See* Singhvi, Surrendra S. and Harsha B. Desai, 1971, ''An Empirical Analysis of the Quality of Corporate Financial Disclosure,'' *Accounting Review* 46, 129–138.

[1481] *See supra* Section X.C.4.a.i.B.

[1482] Four commenters assert that the enhanced filing requirements under the amendments to Regulation ATS would disproportionately impact multi-service broker-dealers who operate NMS Stock ATSs relative to other broker-dealers. These commenters state that these broker-dealers are held to a higher disclosure standard than broker-dealers that do not operate ATSs. *See* Fidelity Letter at 4, 9, 11; Liquidnet Letter at 9; Morgan Stanley Letter 2; STA Letter at 2.

[1483] One commenter agrees that the enhanced disclosure requirements may incentivize multi-service broker-dealer ATS operators to seek alternatives other than operating an ATS. *See* Morgan Stanley Letter at 3. Another commenter states that the enhanced disclosure requirements could result in ATSs closing down their NMS Stock ATS operations and increase the use of broker-dealer internalized executions. *See* Fidelity Letter at 4, 9, 10–11.

[1484] *See supra* Section X.C.

[1485] *See infra* Section X.4.b (''Impact on Efficiency, Competition, and Capital Formation—Efficiency'').

[1486] *See supra* Section IV.E.2.a.

[1487] *See supra* Section V.C.

[1488] *See* Proposal, *supra* note 2, at 81125.

[1489] *See supra* Section X.A.6.a.

[1490] *See supra* Section X.C and *supra* note 1356; *see also* Proposal, *supra* note 2, at 81118.

estimate the number of ATSs that would cease operating as ATSs or the number of potential new ATSs that would be dissuaded from entering the market. Furthermore, we do not have information in order for us to make reasonable assumptions about the fraction of displaced volume—from NMS Stock ATSs that would cease operating as ATSs—that would be internalized by a broker-dealer operator or its affiliates or directed towards national securities exchanges, NMS Stock ATSs, or non-ATS OTC trading centers. Commenters did not provide any additional information or analysis that would allow us to estimate the impacts on order flow or the continued operation of NMS Stock ATSs under the new rule and amendments. Therefore, we cannot quantify the ultimate effect that this will have on competition and market participant trading costs.

(iii) Innovation

As discussed above, the public availability of effective Form ATS–N and Form ATS–N amendments could result in the disclosure of an NMS Stock ATS's previously non-public operational information.[1491] These disclosures could potentially affect the incentives of NMS Stocks ATSs to innovate.

The disclosure of an NMS Stock ATS's innovations in its Form ATS–N or Form ATS–N amendments could potentially result in certain NMS Stock ATSs losing their technological advantage. For example, to the extent that an NMS Stock ATS's competitive advantage in the market is driven by its matching methodology, the disclosure of this information could result in other NMS Stock ATSs implementing similar methodologies. On the one hand, this could potentially reduce the incentives for ATSs to innovate. For instance, if publicly disclosing an NMS Stock ATS's new technological innovations results in the ATS earning less revenue from new innovations it develops, relative to the baseline, the ATS might lose its incentives to innovate.

On the other hand, the increase in transparency resulting from the public disclosure of Form ATS–N could foster greater competition for order flow in the market for NMS Stock ATS execution services. This greater competition for order flow could in turn incentivize NMS Stock ATSs to innovate—particularly in terms of their technology—so that they can attract more trading volume to their venue. For example, if the public disclosure of technology giving an NMS Stock ATS a competitive advantage results in the ATS losing that competitive advantage, the ATS could be forced to innovate and develop new technology or enhancements in order to attract more trading volume to its venue. However, if some NMS Stock ATSs cannot innovate fast enough to regain their competitive advantage in the market, orders might also flow away from these NMS Stock ATSs, and as a result, these ATSs may choose to cease operating as ATSs.[1492]

We do not have information on the extent to which existing NMS Stock ATSs or potentially new ATSs rely on a technological advantage, such as a unique matching methodology, to attract order flow. Nor do we have information regarding the ability of NMS Stock ATSs to innovate and replace a competitive advantage it might lose. Additionally, commenters did not provide any further information or analysis that would allow us to estimate at what rate NMS Stock ATSs innovate. Therefore, we cannot quantify the ultimate effect the adopted amendments will have on innovation.

As discussed above, we have revised the adopted Form ATS–N requests to not seek disclosure of certain information that could be proprietary or commercially sensitive, such as routing tables or numerical order flow segmentation metrics.[1493] Additionally, in response to commenters' concerns that making Form ATS–N material amendments public before the expiration of the Commission's 30-day calendar review period, at which point material changes could be implemented, could reduce the incentives for ATSs to innovate or be confusing or misleading to the public,[1494] we are modifying the proposed rules for making Form ATS–N material amendments public. Under the adopted amendments, the entirety of the material amendment, as amended, will be made public by the Commission following the Commission's 30-calendar day review period.[1495] We believe that these changes, relative to the Proposal, will reduce the likelihood that details concerning an NMS Stock ATS's technological innovations are disclosed to competitors before the ATS has a chance to implement them. Relative to the Proposal, the ATS might be able to derive greater benefits from new innovations, which could increase the incentives for NMS Stock ATSs to innovate.

Four commenters state that the proposed process for declaring a Form ATS–N ineffective would reduce the incentives to develop new technological innovations.[1496] One of these commenters expresses concern that the process will be used to delay the effectiveness of NMS Stock ATSs whose features, while meeting regulatory requirements, do not meet current industry norms.[1497] The Commission's review process for declaring a Form ATS–N ineffective could affect the incentives of an existing or potentially new NMS Stock ATS to innovate. As discussed above,[1498] an ineffectiveness declaration could impose costs on an NMS Stock ATS—such as costs from having to cease operations, roll back a change in operations, or delay the start of operations. The uncertainty regarding whether a Form ATS–N featuring a new innovation will be declared ineffective could discourage or delay existing and potentially new NMS Stock ATSs from developing or introducing new technological innovations. Additionally, the extended review for an initial Form ATS–N could raise the barriers to entry for new NMS Stock ATSs and reduce the incentives for potentially new ATSs to bring new innovations to the market.[1499] However, as discussed in detail above,[1500] the Commission's review of Form ATS–N disclosures will not focus on the merits of the Form ATS–N disclosures. Therefore, to the extent the disclosures are complete and comprehensible, the Commission's review process for a Form ATS–N filing that contains innovative features that do not meet current industry norms should not take longer or result in an increased chance of the Form ATS–N being declared ineffective.

b. Efficiency

As discussed above, the heightened disclosure requirements for NMS Stock ATSs might cause some NMS Stock ATSs to cease operating as ATSs and either shut down their operation or instead operate as non-ATS OTC execution venues, such as an OTC trading venue in which the broker-dealer operator internalizes order flow. This could affect competition in the market for NMS Stock execution services.[1501] If it is the case that the NMS Stock ATSs that cease operating as

[1491] *See supra* Section X.C.2.

[1492] *See supra* Section X.C.4.a.i.

[1493] *See supra* Section IV.E.2.a.

[1494] *See supra* Section IV.E.2.c.

[1495] The cover page of the filed material amendment will be made public by the Commission upon filing. *See id.*

[1496] *See* Fidelity Letter at 2–3, 8; KCG Letter at 5, 8; Luminex Letter at 1; STANY Letter at 2.

[1497] *See* Fidelity Letter at 9.

[1498] *See supra* Section X.C.1.b.

[1499] *See supra* Section X.C.4.a.i.A.

[1500] *See supra* Section IV.A.3.b.

[1501] *See supra* Section X.C.4.a ("Impact on Efficiency, Competition, and Capital Formation—Competition").

ATSs are the ones that have worse execution quality, the surviving NMS Stock ATSs might enhance execution quality and allow market participants to transact at lower prices. If more order flow is directed towards these remaining NMS Stock ATSs, there could be a higher likelihood that the orders of buyers and sellers on an NMS Stock ATS would interact and execute, which could improve liquidity. It is also possible that the enhanced disclosure from NMS Stock ATSs might result in more order flow migrating towards national securities exchanges, which might foster greater order interaction between buyers and sellers on a national securities exchange, thereby improving price discovery. Moreover, because some NMS Stock ATSs operate as crossing networks and derive their prices from national securities exchanges, greater price discovery on a national securities exchange could spill over to affect the execution prices on the surviving NMS Stock ATSs and thereby potentially reduce market participants' trading costs. Additionally, given the fairly standardized set of information that will be publicly disclosed on Form ATS–N and that trading in the market by NMS Stock ATSs might in fact be concentrated on fewer NMS Stock ATSs as a result of the amendments, market participants might process, and react more quickly to, information pertaining to changes in an NMS Stock ATS's operations when evaluating potential trading venues. As such, the amendments to Regulation ATS might improve market efficiency.

c. Capital Formation

Under the adopted amendments, market participants would be aware of which NMS Stock ATSs offer better execution services or better protection against the dissemination of their non-public trading information, and as a result, these NMS Stock ATSs could attract even more order flow. Furthermore, to the extent the adopted amendments appropriately calibrate the level of transparency between NMS Stock ATSs and national securities exchanges, this would foster greater competition for order flow of NMS stocks between those trading platforms. Even if some NMS Stock ATSs cease operating as ATSs, we believe the enhanced disclosure requirements of the adopted amendments will assist market participants in obtaining best execution of their orders. This could lead to lower spreads and thereby foster greater capital formation and increased market liquidity relative to the baseline.

D. Reasonable Alternatives

1. Require NMS Stock ATSs to Publicly Disclose Current Form ATS

We could allow NMS Stock ATSs to continue to describe their operations on current Form ATS, but make Form ATS public either by posting it on the Commission's website or requiring NMS Stock ATSs to publicly disclose their initial operation reports, amendments, and cessation of operations on Form ATS. Non-NMS Stock ATSs' Form ATS filings would continue to remain confidential.

As described in detail in the Proposal, this alternative would lower the cost of compliance for current and future NMS Stock ATSs compared to the adopted amendments, but market participants would continue to receive limited information regarding how orders interact, match, and execute on NMS Stock ATSs and the ATS-related activities of NMS Stock ATSs' broker-dealer operators and their affiliates.[1502] Public disclosure of Form ATS could have some harmful effects on the competitive dynamics of NMS Stock ATSs; however, such effects would likely be smaller than those expected under the adopted amendments. Regulators' oversight of NMS Stock ATSs under this alternative would not be improved compared to the baseline, as it would under the adopted amendments.

Six commenters disagree with our analysis of this alternative.[1503] These commenters suggest that we could achieve our transparency goals by requiring all ATS operators to publicly disclose Form ATS. For the reasons discussed above and in the Proposal, we continue to believe that this alternative would reduce the benefits that would accrue to market participants as compared to the adopted amendments.

2. Require Form ATS–N But Deem Information Confidential

We could require NMS Stock ATSs to file Form ATS–N with the Commission, but not make it publicly available. Form ATS–N would include detailed disclosures about the NMS Stock ATS's operations and the ATS-related activities of its broker-dealer operator and its affiliates, and the Commission could declare filings on Form ATS–N ineffective. As described in detail in the Proposal,[1504] we believe that this alternative would improve the quality of NMS Stock ATSs' disclosures and strengthen the Commission's oversight of NMS Stock ATSs. However, this alternative would not make NMS Stock ATSs' operations more transparent for market participants.

No commenters directly remarked on this alternative, and we continue to believe that this alternative would entail fewer benefits to market participants as compared to the adopted amendments, because it would not make NMS Stock ATSs' operations more transparent for market participants. However, a number of commenters suggest we take a tiered public disclosure approach and not publicly disclose certain information on Form ATS–N that is potentially sensitive and of a proprietary nature.[1505] We believe that a tiered public disclosure system for Form ATS–N would still produce the benefits from the improved quality of NMS Stock ATSs' disclosures and the information about the ATS-related activities of the broker-dealer operator and its affiliates described above. Additionally, the public disclosure of a portion of Form ATS–N could improve transparency and provide market participants with more information about an NMS Stock ATS's operations, which would lower search costs relative to the baseline. Because all of the information on Form ATS–N would not be made public, the benefits of increased transparency could be lower under a tiered public disclosure approach than they would be under the adopted amendments. Therefore, search costs may be higher and market participants may make less informed decisions regarding where to route their orders and therefore result in lower execution quality under a tiered public disclosure approach than they would obtain under the adopted amendments. However, the public disclosure costs to ATSs may be lower under a tiered public disclosure approach, which could result in lower barriers to entry for new NMS Stock ATSs and fewer Legacy NMS Stock ATSs ceasing to operate at ATSs than under the adopted amendments.

3. Require NMS Stock ATSs to Publicly Disclose Form ATS–N But Not Declare Form ATS–N Ineffective

We could require NMS Stock ATSs to file Form ATS–N and make it public, but continue to use the current notice regime instead of the process for declaring Form ATS–N ineffective. As described in detail in the Proposal,[1506]

[1502] *See* Proposal, *supra* note 2, at 81128–29.

[1503] *See* Luminex Letter at 2–5; MFA/AIMA Comment Letter at 2; Morgan Stanley Letter at 2; PDQ Letter at 2; SIFMA Comment Letter at 3; STANY Letter at 3.

[1504] *See* Proposal, *supra* note 2, at 81129.

[1505] *See* Liquidnet Letter at 8; Luminex Letter at 2; Morgan Stanley at 2; SSGA Letter at 2; STANY Letter at 3; UBS Letter at 7.

[1506] *See* Proposal, *supra* note 2, at 81129.

relative to the adopted rule, the alternative of maintaining the current notice regime would lower demand for Commission and staff resources, could reduce costs for NMS Stock ATSs, and could lower the barriers to entry for new NMS Stock ATSs. However, it would be more difficult for the Commission to exercise its oversight responsibilities and the alternative would not provide the same level of protection to market participants as the adopted amendments.

Two commenters disagree with our analysis of this alternative, and expressed concerns that the effectiveness determination of Form ATS–N would be a burdensome process for the Commission.[1507] They suggest that these potential costs outweigh the benefits of the review process under the adopted amendments. We believe that the review process will contribute towards costs in terms of Commission resources. However, for the reasons discussed above, we continue to believe that the review process will provide benefits in terms of mitigating inaccurate and incomplete disclosures, which could improve investor protection.[1508]

4. Initiate Differing Levels of Public Disclosure Depending on NMS Stock ATS Characteristics

We could require different levels of disclosure among NMS Stock ATSs based on dollar trading volume. As described in detail in the Proposal,[1509] this could reduce compliance costs relative to the adopted amendments. However, because a portion of the implementation costs are fixed and because certain sections of Form ATS–N would not be applicable to smaller NMS Stock ATSs that are not operated by multi-service broker-dealer operators and do not engage in other brokerage or dealing activities, any reduction in compliance costs smaller NMS Stock ATSs might experience under this alternative could be small.

At the same time, this alternative could result in a competitive advantage for small NMS Stock ATSs, because it could give them more time to innovate without having to disclose such innovation to competitors.[1510] This could give small NMS Stock ATSs an advantage in attracting order flow relative to large NMS Stock ATSs, which could spill over to market participants that execute on these ATSs, by increasing the execution quality of their trades. Nonetheless, because broker-dealer operators could have the incentive to allocate order flow to multiple NMS Stock ATSs to avoid reaching threshold volumes, this alternative could create some information opacity in the market, which could lead to lower execution quality for market participants relative to the adopted amendments.

One commenter expressed concerns about applying different levels of disclosure based on metrics such as trading volume, mentioning that Form ATS–N is not sufficiently onerous relative to Form ATS to justify small-scale exemptions.[1511] Contrary to this concern, another commenter stated that the disclosure requirements should apply to larger ATSs with a ''substantial market footprint'' to avoid discouraging competitive innovations among NMS Stock ATSs.[1512] Although compliance costs may be lessened if small stock ATSs are required to provide less disclosure on Form ATS–N, (*i.e.,* ATSs with lower trading volume), this reduction in compliance costs could be small.

Requiring less disclosure from small NMS Stock ATSs might also result in greater innovation relative to the adopted amendments. However, we continue to believe that requiring less disclosure from low-volume NMS Stock ATSs could reduce the benefits market participants receive from the greater transparency about the operations of NMS Stock ATSs and the ATS-related activities of their broker-dealer operators and their affiliates. This could increase market participant search costs when evaluating potential NMS stock trading venues, which could result in market participants making less informed decisions about which trading venue aligns with their investing or trading objectives.

5. Require NMS Stock ATSs To Register as National Securities Exchanges and Become SROs

We could eliminate the exemption from the definition of ''exchange'' for NMS Stock ATSs under Exchange Act Rule 3a1–1(a) so that an NMS Stock ATS would be required to register as a national securities exchange and become an SRO. While commenters did not remark on this alternative, we continue to believe that, as described in detail in the Proposal,[1513] this alternative would provide market participants with more information about priority, order interaction, display, and execution procedures, which would help them make better informed decisions about where to route their orders for best execution. Competition among and between trading venues could increase, leading to greater market liquidity and market efficiency. Further, this alternative could strengthen Commission oversight, thus benefitting market participants.

However, this alternative would create high startup costs and high ongoing operational costs for NMS Stock ATSs compared to the adopted amendments.[1514] We continue to believe that these costs to NMS Stock ATSs would be significant.

6. Discontinue Quarterly Volume Reports on Form ATS–R

We could amend Regulation ATS so that NMS Stock ATSs would no longer be required to file quarterly volume reports on Form ATS–R. As described in detail in the Proposal,[1515] we believe this alternative could result in reduced costs for NMS Stock ATSs, because they would no longer be required to prepare a quarterly Form ATS–R in addition to their Form ATS–N. However, some competitively sensitive information contained on Form ATS–R, such as the ATS's subscriber list and the list of persons granted, denied, or limited access during the reporting period—which is not solicited under adopted Form ATS–N, would be made public on Form ATS–N. Making such information public could harm the NMS Stock ATS as well as persons denied access.

One commenter suggested that in light of information on FINRA's website regarding ATSs,[1516] and the detailed disclosures in periodic disclosures that would be required by proposed Form ATS–N, we should no longer require an NMS Stock ATS to file Form ATS–R.[1517] However, this commenter did not suggest that the information that is contained on Form ATS–R and not included on FINRA's website or Form ATS–N,[1518] such as the ATS's subscriber list and the list of persons granted, denied, or limited access during the reporting period, should be

[1507] *See* Consumer Federation of America Letter at 2, 10–11; Fidelity Letter at 9.

[1508] *See supra* Section IV.A.2 (''Rule 304(a)(1)(ii): Commission Review Period'')

[1509] *See* Proposal, *supra* note 2, at 81129.

[1510] *See id.*

[1511] *See* CFA Institute Letter at 3.

[1512] *See* STANY Letter at 2.

[1513] *See Proposal, supra* note 2, at 81129–30.

[1514] Newly registered national securities exchanges must establish appropriate surveillance and disciplinary mechanisms, and as a result incur start-up costs associated with such obligations, such as writing a rule book. *See* Regulation ATS Adopting Release, *supra* note 3, at 70907. Furthermore, the cost of acquiring the necessary assets and the operating funds to carry out the day-to-day functions of a national securities exchange are significant.

[1515] *See Proposal, supra* note 2, at 81130.

[1516] *See supra* note 15.

[1517] *See* SIFMA Letter at 8 n.16.

[1518] *See supra* note 259.

included in Form ATS–N. If ATSs were no longer required to file Form ATS–R and this information was not made available in Form ATS–N, then the Commission could lose efficient access to information available in the form that helps it oversee and monitor the trading activity of NMS Stock ATSs.[1519] This loss of efficiency could reduce the benefits of Commission oversight, which could reduce investor protection relative to today.

7. Require NMS Stock ATSs To Operate as Limited Purpose Entities

We could amend Regulation ATS to require an NMS Stock ATS to operate as a ''stand-alone'' entity, which would exist only to operate the ATS and have no affiliation with any broker-dealer that seeks to execute proprietary or agency orders on the NMS Stock ATS. Under this alternative, NMS Stock ATSs would be required to publicly disclose Form ATS–N, Form ATS–N amendments, and notices of cessation on Form ATS–N, and would be limited purpose entities that could not engage in any activities other than operation of the ATS. This alternative would prohibit the broker-dealer operator of the NMS Stock ATS from engaging in any other broker-dealer activity, and would consequently prohibit the operation of an NMS Stock ATS by a multi-service broker-dealer.

While commenters did not remark on this alternative, we continue to believe that, as described in detail in the Proposal,[1520] the benefit of this alternative would be to eliminate potential conflicts of interest, but that this alternative might discourage broker-dealers from creating and operating innovative NMS Stock ATS platforms, and instead drive them to execute their own proprietary trades internally on their other broker-dealer systems. In addition, many broker-dealers might choose to file a cessation of operations report and shut down the operations of their NMS Stock ATS,[1521] resulting in similar (though potentially more severe) effects on the competitive dynamics of the ATS market as under the adopted amendments.

8. Prohibit Broker-Dealer Operators and Affiliates From Trading on the NMS Stock ATS

Several commenters believe that the increased disclosure requirements on Form ATS–N concerning the ATS-related activities of the broker-dealer operator and its affiliates do not do enough to reduce conflicts of interest and suggested that we prohibit conflicts of interest altogether on NMS Stock ATSs.[1522] Under this alternative, the broker-dealer operator could continue to act as a broker-dealer operator of an NMS Stock ATS and engage in non-ATS functions, but would be subject to new requirements designed to limit potential conflicts of interest. These requirements would include a prohibition on trading on the NMS Stock ATS by the broker-dealer operator and its affiliates.

We believe that banning conflicts of interest, as opposed to increasing disclosure of relationships between the ATS and the broker-dealer operator and the broker-dealer operator's affiliates, could be potentially harmful. Multi-service broker-dealers, that is, broker-dealers who have operations and activities in addition to the ATS may be more prone to having conflicts of interest, and therefore, banning conflicts of interest could result in these broker-dealers ceasing to operate their ATSs.[1523] Therefore, we believe that this approach suggested by these commenters could have substantially deleterious effects on liquidity provision, and for this reason, we are maintaining our approach in the adopted amendment.

9. Lower the Fair Access Threshold for NMS Stock ATSs

NMS Stock ATSs are not required to provide fair access to the services of the NMS Stock ATS unless the ATS reaches the 5% trading volume threshold in a stock under Rule 301(b)(5) of Regulation ATS.[1524] We could lower the fair access threshold under Rule 301(b)(5) of Regulation ATS [1525] for NMS Stock ATSs to a level sufficiently low that most NMS Stock ATSs would be prohibited from engaging in many discriminatory practices.[1526]

As described in detail in the Proposal,[1527] we believe that there would be fewer benefits under this alternative because the fair access requirements would apply only to the NMS stocks for which the NMS Stock ATS had crossed the fair access threshold. We could address that situation by proposing further amendments to the fair access requirements. However, we believe that the disclosures that would be required by Form ATS–N requirements would be a cost effective and simpler approach than proposing fundamental revisions to the fair access requirements that would achieve the aim of providing market participants with information to better assess NMS Stock ATSs as potential trading venues.

No commenters directly commented on this alternative, and we continue to believe it would result in fewer benefits than the adopted amendments. However, one commenter recommended as an alternative that, in addition to the adopted amendments, we should also eliminate the 5% fair access threshold for NMS Stock ATSs, *i.e.,* reduce the fair access threshold to zero, because the current volume threshold creates a competitive imbalance between exchanges—which are subject to fair access requirements—and NMS Stock ATSs.[1528] Under the commenter's alternative, if the fair access threshold were eliminated, then all NMS Stock ATSs would need to meet the requirements of Rule 301(b)(5) that prohibit or limit discriminatory practices of ATSs.[1529] Because the commenter's alternative would include the adopted amendments and the public disclosure of Form ATS–N, the operational transparency for NMS Stock ATSs would still increase, bringing it more in line with the operational transparency for national securities exchanges. In addition, imposing fair access requirements on all NMS Stock ATSs could further reduce conflicts of interest on ATSs, relative to the adopted amendments, because an ATS might not be able to offer preferential treatment to certain subscribers. However, the increased costs of fair access compliance could cause more ATSs to cease operating as ATSs. More ATSs ceasing to operate as ATSs may cause an increase in the internalization of order flow, which could reduce price informativeness and increase trading costs.[1530]

[1519] *See supra* Section III.B.5 (''Rule 301(b)(9): Form ATS–R Quarterly Reports'').

[1520] *See* Proposal, *supra* note 2, at 81130.

[1521] Alternatively, current broker-dealer operators of ATSs that trade NMS stocks may choose to spin-off or sell their ATS rather than cease operations. The expected number of broker-dealer operators selling their ATSs at once could affect the value the broker-dealer operator could receive from the sale and, as such, could factor into the decision of whether to spin-off, sell, or fold their ATS.

[1522] *See* Better Markets Letter at 5–6; Consumer Federation of America Letter at 7–8; HMA Letter at 1.

[1523] *See supra* Section X.C.4.a.i.

[1524] *See supra* Section II.C.

[1525] 17 CFR 242.301(b)(5).

[1526] As discussed above in Section II.C, the requirements of Rule 301(b)(5) that prohibit or limit discriminatory practices of ATSs only apply to NMS Stock ATSs that cross the fair access threshold, and then, apply only with respect to the NMS stocks in which an ATS crosses the threshold.

[1527] *See* Proposal, *supra* note 2, at 81131.

[1528] *See* Citadel Letter at 2–3.

[1529] *See supra* Section II.C.

[1530] *See supra* Section X.B.6.a.

10. Requirements To Disclose Aggregate Platform-Wide Order Flow and Execution Statistics to all Subscribers

We could eliminate the requirement for NMS Stock ATSs to disclose aggregate platform-wide order flow and execution statistics that the ATS publishes or otherwise provides to one or more subscribers that are not disclosed pursuant to Rule 605 of Regulation NMS from Form ATS–N. An advantage of this approach is that NMS Stock ATSs may be motivated to continue to provide order flow and execution statistics to subscribers under this alternative.[1531] However, relative to the adopted amendments, this approach may fail to mitigate the problem of differential access to information about ATS operations and activities across market participants, resulting in some market participants making less-informed decisions about how to obtain best execution for themselves and their clients.

11. Specify Alternative Structured Formats for Form ATS–N

We could specify alternative structured formats such as Inline XBRL, or FIXML.[1532] The benefit of Inline XBRL is that it provides more sophisticated validation, presentation and reference features for filers and users. However, we do not believe that Inline XBRL is yet in common use by all entities that would be filing Form ATS–N. To use Inline XBRL with Form ATS–N, the Commission would have to design a new Commission-specific taxonomy for the Form ATS–N disclosures. While the Inline XBRL, FIXML, and XML formats would all require the use of an XML-based schema, Inline XBRL would require the additional familiarity with the Commission-specific taxonomy that is not necessary for the relatively simple disclosure requirements of Form ATS–N. FIXML is a format designed and used for expressing trading information, and while familiar to NMS Stock ATSs, it is not widely used by the public. The end users of Form ATS–N data will likely incur upfront costs to learn and use FIXML, unlike the widely used and freely available XML format. For these reasons, we believe that the XML format would minimize costs relative to filers having to file Form ATS–N using these other structured formats.

12. Specify Other Filings Methods for Form ATS–N

We could require NMS Stock ATSs to use the EFFS/SRTS system currently used for other NMS filings instead of EDGAR. While commenters did not remark on this alternative, the primary benefit of this alternative approach would be that ATSs would likely be familiar with the web fillable forms and related filing process on EFFS/SRTS. Relative to the adopted amendments, learning the EDGAR filing process may pose an initial transition burden, although the larger NMS Stock ATSs may already be familiar with the EDGAR filing process, and the completion of web fillable forms in EDGAR would be very similar to the EFFS/SRTS experience without the additional burden of an annual digital signature certification. Finally, the time and effort of filing as proposed would be incrementally more costly to NMS Stock ATSs because each narrative response would have to be individually uploaded as a separate exhibit, as opposed to providing all of their narrative responses within one structured XML file or completing all narrative responses in one web-fillable form. Moreover, because the EFFS system does not support the open-source XML format, but rather a proprietary XML implementation called XFDL, the EFFS system has fewer validation capabilities than EDGAR, particularly at the element level. As a result, some NMS Stock ATSs might inadvertently submit incomplete or inconsistently formatted information that is not discovered until after Commission staff review, which would then require the NMS Stock ATS to spend additional time to refile the information. We believe this would result in extra costs in filing Form ATS–N through EFFS/SRTS relative to requiring NMS Stock ATSs to filing Form ATS–N through EDGAR.

XI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') [1533] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. We certified in the Proposal, pursuant to Section 605(b) of the RFA,[1534] that the amendments to Regulation ATS would not, if adopted, have a significant economic impact on a substantial number of small entities. We included this certification in Section XV of the Proposing Release. Although we encouraged written comments regarding this certification, no commenters responded to this request.

For purposes of Commission rulemaking in connection with the RFA,[1535] a small entity includes a broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[1536] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[1537]

All ATSs, including NMS Stock ATSs, would continue to have to

[1531] Two commenters agree with our assessment under this alternative that eliminating the requirement for NMS Stock ATSs to disclose aggregate platform-wide order flow and execution statistics that the ATS publishes or otherwise provides to one or more subscribers that are not disclosed pursuant to Rule 605 of Regulation NMS could be beneficial to subscribers because it may motivate NMS Stock ATSs to continue to provide order flow and execution statistics to subscribers. *See* MFA/AIMA Letter at 5; SIFMA Letter at 27.

The same commenters also suggest that eliminating these requirements could result in ATSs continuing to send customized reports and bespoke statistics to their clients. *See* MFA/AIMA Letter at 5; SIFMA Letter at 27. Under the adopted amendments disclosure requirements under Part III, Item 26 would not apply when an NMS Stock ATS provides a participant with individualized or custom reports containing data relating to that participant's specific usage of the ATS.

[1532] One commenter recommends that we structure Form ATS–N so that it breaks out the required information on NMS Stock ATS operations in a format that is comparable across ATSs. It also suggests we might also consider ways to present information that would improve the readability and navigability of disclosure through the use of technology such as hyperlinks and/or XBRL technology. *See* Fidelity Letter at 5.

[1533] 5 U.S.C. 601 *et seq.*

[1534] 5 U.S.C. 605(b).

[1535] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. We have adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this rulemaking, are set forth in Rule 0–10 under the Exchange Act, 17 CFR 240.0–10. *See* Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[1536] 17 CFR 240.17a–5(d).

[1537] *See* 17 CFR 240.0–10(c). *See also* 17 CFR 240.0–10(i) (providing that a broker or dealer is affiliated with another person if: such broker or dealer controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25 percent or more of the voting securities of such other person or is entitled to receive 25 percent or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person; or such broker or dealer introduces transactions in securities, other than registered investment company securities or interests or participations in insurance company separate accounts, to such other person, or introduces accounts of customers or other brokers or dealers, other than accounts that hold only registered investment company securities or interests or participations in insurance company separate accounts, to such other person that carries such accounts on a fully disclosed basis).

register as broker-dealers.[1538] We examined recent FOCUS data for the 41 broker-dealers that currently operate ATSs that trade NMS stocks and concluded that no more than 5 of the broker-dealer operators of ATSs that currently trade NMS stocks had total capital of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter) and were not affiliated with any person that is not a small business or small organization. Three of these five entities, however, never reported transactions in any security, including NMS stocks, to the Commission since filing an initial operations report on Form ATS. Therefore, we believe that it is unlikely that these three entities would complete a Form ATS–N to operate as an NMS Stock ATS pursuant to Rule 304.

The remaining two entities include one broker-dealer that operates an ATS pursuant to an active Form ATS on file with the Commission and has reported transactions in NMS stocks to the Commission. The other broker-dealer has filed an initial operation report on Form ATS with the Commission and noticed its intention to trade NMS stocks; however, this ATS has not yet commenced operations. We do not believe that Rule 304, including the requirement for NMS Stock ATSs to file a Form ATS–N, will represent a significant economic impact on these two entities. Stand-alone broker-dealers that operate an ATS, such as these two entities, will have less complex ATS operations than multi-service broker-dealers that operate an ATS. For example, we believe that these two entities would not need to respond to all requests in Part II of Form ATS–N because they are not likely to engage in the same ATS-related activities as multi-service broker-dealers that operate an ATS. As a result, we expect that the burden associated with completing the form would be substantially lower for these two ATS.[1539] In addition, because we believe that the two ATSs are operationally less complex than ATSs operated by multi-service broker-dealer operators, the burden to respond to the items under Part III of Form ATS–N (Manner of ATS Operations) [1540] would be lower than for the average NMS Stock ATS operated by a multi-service broker-dealer operator.[1541]

We are also amending Rule 301(b)(10) to require that all ATSs reduce to writing their safeguards and procedures to protect subscribers' confidential trading information and their oversight procedures to ensure that such safeguards and procedures are followed. The amendment to Rule 301(b)(10) would thus apply to the 15 small entities that are ATSs (including NMS Stock and non-NMS Stock ATSs), but we believe that there would not be significant economic impact on these entities because, based on our experience, most of these ATSs already maintain their Rule 301(b)(10) safeguards and procedures in writing, and to the extent they do not, any resulting burden is small.[1542]

Consequently, for these reasons, for purposes of the RFA, we certify that the amendments to Regulation ATS would not have a significant economic impact on a substantial number of small entities.

XII. Statutory Authority and Text of Amendments

Pursuant to Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly Sections [3(b), 5, 6, 11A, 15, 17(a), 17(b), 19, 23(a), and 36 thereof (15 U.S.C. 78c, 78k–1, 78*o,* 78q(a), 78q(b), 78w(a), and 78mm)], the Commission adopts Form ATS–N under the Exchange Act, to amend Rule 3a1–1(a) and Regulation ATS under the Exchange Act, and to amend 17 CFR 200.30–33.

List of Subjects in 17 CFR Parts 232, 240, 242 and 249

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

For the reasons stated in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 232.101 by adding paragraph (a)(1)(xxi) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xxi) Form ATS–N (§ 249.640 of this chapter).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1934

■ 3. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112–106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

[1538] 17 CFR 242.301(b)(1).

[1539] As estimated in the PRA, we estimate an average total cost of $41,689.10 for the initial hour burden of complying with Rules 301(b)(2)(viii) and 304 of Regulation ATS (including completing Form ATS–N). The burden hours associated with Part II of Form ATS–N is 29 hours. *See supra* note 1228. We estimate that ATSs that are small entities would likely need to complete approximately half of Part II. Thus, the reduction of 14.5 burden hours (29 hours × 0.5 = 14.5 hours) would result in a cost savings of $5,155 for each small entity compared to the average total cost estimate. (Attorney 7.5 hours × $406) + (Compliance Manager 6.0 hours × $302) + (Senior Marketing Manager 1 hour × $298) = $5,155.

[1540] For example, based on Commission experience, less operationally complex ATS may not need to respond to all or part of the requests in Part III of Form ATS–N, such as Item 5 (Means of Entry), Item 6 (Connectivity and Co-location), Item 7 (Order Types and Attributes), Item 9 (Conditional Orders and Indications of Interest), Item 13 (Segmentation; Notice), Item 14 (Counter-Party Selection), among others. In addition, a smaller NMS Stock ATS is unlikely to exceed the volume thresholds that would subject the ATS to the requirements of Rule 301(b)(3) and 301(b)(5) of Regulation ATS, and therefore, Part III, Items 24 and 25 would be inapplicable. These items represent 36 burden hours above the current baseline for an initial operation report on current Form ATS. These 36 burden hours represent a cost of approximately $11,846 for each ATS that would likely be substantially reduced for these two small entities. (Attorney 12.25 hours × $406) + (Compliance Manager 11.25 hours × $302) + (Senior Systems Analyst 12.5 hours × $278) = $11,846. As noted above, the we estimate an average total cost of $41,689.10 for the initial hour burden of complying with Rules 301(b)(2)(viii) and 304 of Regulation ATS (including completing Form ATS–N).

[1541] If the three inactive ATSs discussed above in this section (which we expect would not complete a Form ATS–N) were to complete a Form ATS–N, they would experience a substantially reduced burden in completing Form ATS–N given that they also are not multi-service broker-dealers, and their systems are less complex than other NMS Stock ATSs.

[1542] In the Proposal, we estimated that 15 of the 84 ATS at that time might *not* have these procedures in writing. *See* Proposal, *supra* note 2, at 81093. We did not receive any comments on this estimate. The PRA burden for an ATS to put in writing its procedures protect subscribers' confidential trading information, and the oversight procedures to ensure such safeguards and procedures are followed, would be approximately 8 hours, which represents $2,910 in costs for each ATS. (Attorney 7 hours × $406) + (Compliance Clerk 1 hour × $68) = $2,910.

§ 240.3a1–1 [Amended]

■ 4. Amend § 240.3a1–1 by removing ''242.303'' from paragraphs (a)(2) and (3) and adding in its place ''242.304''.

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 5. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78*o*(b), 78*o*(c), 78*o*(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

■ 6. Amend § 242.300 by:

■ a. In paragraph (f) introductory text, adding the phrase ''the broker-dealer of'' before the phrase ''an alternative trading system'' wherever it occurs;

■ b. In paragraphs (f)(2) and (3), adding the phrase ''the broker-dealer of'' before the phrase ''the alternative trading system''; and

■ c. Adding paragraph (k) to read as follows:

§ 242.300 Definitions.

* * * * *

(k) *NMS Stock ATS* means an alternative trading system, as defined in paragraph (a) of this section, that trades NMS stocks, as defined in paragraph (g) of this section.

■ 7. Amend § 242.301 by:

■ a. In paragraph (a)(5), adding the phrase ''or § 242.304'' after the phrase ''paragraph (b) of this section'';

■ b. In paragraph (b)(2)(i), removing the phrase '', or if the alternative trading system is operating as of April 21, 1999, no later than May 11, 1999'';

■ c. In paragraph (b)(2)(vii), removing the phrase ''Market Regulation, Stop 10–2'' and in its place adding ''Trading and Markets'';

■ d. Adding paragraph (b)(2)(viii);

■ e. In paragraph (b)(9)(i), adding the word ''Separately'' before the word ''File'' and changing the first letter of the word ''File'' to lower case and adding the phrase ''for transactions in NMS stocks, as defined in paragraph (g) of this section, and transactions in securities other than NMS stocks'' after the phrase ''(§ 249.638 of this chapter)'';

■ f. In paragraph (b)(9)(ii), adding the word ''Separately'' before the word ''File'' and changing the first letter of the word ''File'' to lower case and adding the phrase ''for transactions in NMS stocks and transactions in securities other than NMS stocks'' after the phrase ''required by Form ATS–R'';

■ g. In the heading of paragraph (b)(10), adding the word ''Written'' before the phrase ''Procedures to ensure the confidential treatment of trading information'' and changing the first letter of the word ''Procedures'' to lower case;

■ h. In paragraph (b)(10)(i) introductory text, adding the word ''written'' before the word ''safeguards'' in both instances and adding the word ''written'' before the word ''procedures'' in both instances; and

■ i. In paragraph (b)(10)(ii), adding the word ''written'' before the word ''oversight'' and adding the word ''written'' before the word ''safeguards''.

The addition reads as follows:

§ 242.301 Requirements for alternative trading systems.

* * * * *

(b) * * *

(2) * * *

(viii) An NMS Stock ATS that is operating pursuant to an initial operation report on Form ATS on file with the Commission as of January 7, 2019 (''Legacy NMS Stock ATS'') shall be subject to the requirements of paragraphs (b)(2)(i) through (vii) of this section until that ATS files an initial Form ATS–N with the Commission pursuant to § 242.304(a)(1)(iv)(A). Thereafter, the Legacy NMS Stock ATS shall file reports pursuant to § 242.304. An alternative trading system that trades NMS stocks and securities other than NMS stocks shall be subject to the requirements of § 242.304 of this chapter with respect to NMS stocks and paragraph (b)(2) of this section with respect to non-NMS stocks. As of January 7, 2019, an entity seeking to operate as an NMS Stock ATS shall not be subject to the requirements of paragraphs (b)(2)(i) through (vii) of this section and shall file reports pursuant to § 242.304.

* * * * *

■ 8. Amend § 242.303 by:

■ a. In paragraph (a) introductory text, removing ''(b)(9)'' and adding in its place ''(b)(8)'';

■ b. Adding paragraph (a)(1)(v); and

■ c. In paragraph (a)(2)(ii), adding the phrase ''or § 242.304'' after the phrase ''paragraph (b)(2) of § 242.301''.

The addition reads as follows:

§ 242.303 Record preservation requirements for alternative trading systems.

(a) * * *

(1) * * *

(v) At least one copy of the written safeguards and written procedures to protect subscribers' confidential trading information and the written oversight procedures created in the course of complying with paragraph (b)(10) of § 242.301.

* * * * *

■ 9. Add § 242.304 under the undesignated center heading Regulation ATS—Alternative Trading Systems to read as follows:

§ 242.304 NMS Stock ATSs.

(a) *Conditions to the exemption.* Unless not required to comply with Regulation ATS pursuant to § 242.301(a), an NMS Stock ATS must comply with §§ 242.300 through 242.304 (except § 242.301(b)(2)(i) through (vii)) to be exempt pursuant to § 240.3a1–1(a)(2).

(1) *Initial Form ATS–N.* (i) *Filing and effectiveness requirement.* No exemption is available to an NMS Stock ATS pursuant to § 240.3a1–1(a)(2) unless the NMS Stock ATS files with the Commission an initial Form ATS–N, in accordance with the conditions of this section, and the initial Form ATS–N is effective pursuant to paragraph (a)(1)(iii) or (a)(1)(iv)(A) of this section.

(ii) *Commission review period.* (A) The Commission may, by order, as provided in paragraph (a)(1)(iii) of this section, declare an initial Form ATS–N filed by an NMS Stock ATS ineffective no later than 120 calendar days from the date of filing with the Commission, or, if applicable, the end of the extended review period. The Commission may extend the initial Form ATS–N review period for:

(*1*) An additional 90 calendar days, if the Form ATS–N is unusually lengthy or raises novel or complex issues that require additional time for review, in which case the Commission will notify the NMS Stock ATS in writing within the initial 120-calendar day review period and will briefly describe the reason for the determination for which additional time for review is required; or

(*2*) Any extended review period to which a duly authorized representative of the NMS Stock ATS agrees in writing.

(B) During review by the Commission of the initial Form ATS–N, the NMS Stock ATS shall amend its initial Form ATS–N pursuant to the requirements of paragraphs (a)(2)(i)(B) and (C) of this section. To make material changes to its initial Form ATS–N during the Commission review period, the NMS Stock ATS shall withdraw its filed initial Form ATS–N and may refile an initial Form ATS–N pursuant to paragraph (a)(1) of this section.

(iii) *Effectiveness; Ineffectiveness determination.* (A) An initial Form ATS–N, as amended, filed by an NMS Stock ATS will become effective, unless declared ineffective, upon the earlier of:

(*1*) The completion of review by the Commission and publication pursuant to paragraph (b)(2)(i) of this section; or

(*2*) The expiration of the review period, or, if applicable, the end of the extended review period, pursuant to paragraph (a)(1)(ii) of this section.

(B) The Commission will, by order, declare an initial Form ATS–N ineffective if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors. If the Commission declares an initial Form ATS–N ineffective, the NMS Stock ATS shall be prohibited from operating as an NMS Stock ATS pursuant to § 240.3a1–1(a)(2). An initial Form ATS–N declared ineffective does not prevent the NMS Stock ATS from subsequently filing a new Form ATS–N.

(iv) *Transition for Legacy NMS Stock ATSs.* (A) *Initial Form ATS–N filing requirements.* A Legacy NMS Stock ATS shall file with the Commission an initial Form ATS–N, in accordance with the conditions of this section, no earlier than January 7, 2019, and no later than February 8, 2019. An initial Form ATS–N filed by a Legacy NMS Stock ATS shall supersede and replace for purposes of the exemption the previously filed Form ATS of the Legacy NMS Stock ATS. The Legacy NMS Stock ATS may operate, on a provisional basis, pursuant to the filed initial Form ATS–N, and any amendments thereto, during the review of the initial Form ATS–N by the Commission. An initial Form ATS–N filed by a Legacy NMS Stock ATS, as amended, will become effective, unless declared ineffective, upon the earlier of:

(*1*) The completion of review by the Commission and publication pursuant to paragraph (b)(2)(i) of this section; or

(*2*) The expiration of the review period, or, if applicable, the end of the extended review period, pursuant to paragraph (a)(1)(iv)(B) of this section.

(B) *Commission review period; Ineffectiveness determination.* The Commission may, by order, as provided in paragraph (a)(1)(iii) of this section, declare an initial Form ATS–N filed by a Legacy NMS Stock ATS ineffective no later than 120 calendar days from the date of filing with the Commission, or, if applicable, the end of the extended review period. The Commission may extend the initial Form ATS–N review period for a Legacy NMS Stock ATS for:

(*1*) An additional 120 calendar days if the initial Form ATS–N is unusually lengthy or raises novel or complex issues that require additional time for review, in which case the Commission will notify the Legacy NMS Stock ATS in writing within the initial 120-calendar day review period and will briefly describe the reason for the determination for which additional time for review is required; or

(*2*) Any extended review period to which a duly-authorized representative of the Legacy NMS Stock ATS agrees in writing.

(C) *Amendments to initial Form ATS–N.* During review by the Commission of the initial Form ATS–N filed by a Legacy NMS Stock ATS, the Legacy NMS Stock ATS shall amend its initial Form ATS–N pursuant to the requirements of paragraphs (a)(2)(i)(A) through (D) of this section.

(2) *Form ATS–N amendment.* (i) *Filing requirements.* An NMS Stock ATS shall amend a Form ATS–N, in accordance with the conditions of this section:

(A) At least 30 calendar days, except as provided by paragraph (a)(2)(i)(D) of this section, prior to the date of implementation of a material change to the operations of the NMS Stock ATS or to the activities of the broker-dealer operator or its affiliates that are subject to disclosure on Form ATS–N (''Material Amendment'');

(B) No later than 30 calendar days after the end of each calendar quarter to correct information that has become inaccurate or incomplete for any reason and was not required to be reported to the Commission as a Form ATS–N amendment pursuant to paragraphs (a)(2)(i)(A), (C), or (D) of this section (''Updating Amendment'');

(C) Promptly, to correct information in any previous disclosure on Form ATS–N, after discovery that any information previously filed on Form ATS–N was materially inaccurate or incomplete when filed (''Correcting Amendment''); or

(D) No later than seven calendar days after information required to be disclosed in Part III, Items 24 and 25 on Form ATS–N has become inaccurate or incomplete (''Order Display and Fair Access Amendment'').

(ii) *Commission review period; Ineffectiveness determination.* The Commission will, by order, declare ineffective any Form ATS–N amendment filed pursuant to paragraphs (a)(2)(i)(A) through (D) of this section, no later than 30 calendar days from filing with the Commission, if the Commission finds that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors. A Form ATS–N amendment declared ineffective shall prohibit the NMS Stock ATS from operating pursuant to the ineffective Form ATS–N amendment. A Form ATS–N amendment declared ineffective does not prevent the NMS Stock ATS from subsequently filing a new Form ATS–N amendment. During review by the Commission of a Material Amendment, the NMS Stock ATS shall amend the Material Amendment pursuant to the requirements of paragraphs (a)(2)(i)(B) through (C) of this section. To make material changes to a filed Material Amendment during the Commission review period, an NMS Stock ATS shall withdraw its filed Material Amendment and must file the new Material Amendment pursuant to (a)(2)(i)(A) of this section.

(3) *Notice of cessation.* An NMS Stock ATS shall notice its cessation of operations on Form ATS–N at least 10 business days prior to the date the NMS Stock ATS will cease to operate as an NMS Stock ATS. The notice of cessation shall cause the Form ATS–N to become ineffective on the date designated by the NMS Stock ATS.

(4) *Suspension, limitation, and revocation of the exemption from the definition of exchange.* (i) The Commission will, by order, if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors, suspend for a period not exceeding twelve months, limit, or revoke the exemption for an NMS Stock ATS pursuant to § 240.3a1–1(a)(2) of this chapter.

(ii) If the exemption for an NMS Stock ATS is suspended or revoked pursuant to paragraph (a)(4)(i) of this section, the NMS Stock ATS shall be prohibited from operating pursuant to the exemption pursuant to § 240.3a1–1(a)(2) of this chapter. If the exemption for an NMS Stock ATS is limited pursuant to paragraph (a)(4)(i) of this section, the NMS Stock ATS shall be prohibited from operating in a manner otherwise inconsistent with the terms and conditions of the Commission order.

(b) *Public disclosures.* (1) Every Form ATS–N filed pursuant to this section shall constitute a ''report'' within the meaning of sections 11A, 17(a), 18(a), and 32(a) (15 U.S.C. 78k–1, 78q(a), 78r(a), and 78ff(a)), and any other applicable provisions of the Act.

(2) The Commission will make public via posting on the Commission's website, each:

(i) Effective initial Form ATS–N, as amended;

(ii) Order of ineffective initial Form ATS–N;

(iii) Form ATS–N amendment to an effective Form ATS–N:

(A) *Material Amendments:* The cover page of the Material Amendment will be made public by the Commission upon filing and, unless the Commission declares the Material Amendment

ineffective, the entirety of the Material Amendment, as amended, will be made public by the Commission following the expiration of the review period pursuant to paragraph (a)(2)(ii) of this section.

(B) *Updating, Correcting, and Order Display and Fair Access Amendments:* The entirety of Updating, Correcting, and Order Display and Fair Access Amendments will be made public by the Commission upon filing. Notwithstanding the foregoing, an Updating or Correcting Amendment filed to a Material Amendment will be made public by the Commission following the expiration of the review period for such Material Amendment pursuant to paragraph (a)(2)(ii) of this section.

(iv) Order of ineffective Form ATS–N amendment;

(v) Notice of cessation; and

(vi) Order suspending, limiting, or revoking the exemption for an NMS Stock ATS from the definition of an ''exchange'' pursuant to § 240.3a1–1(a)(2) of this chapter.

(3) Each NMS Stock ATS shall make public via posting on its website a direct URL hyperlink to the Commission's website that contains the documents enumerated in paragraph (b)(2) of this section.

(c) *Form ATS–N disclosure requirements.* (1) An NMS Stock ATS must file a Form ATS–N in accordance with the instructions therein.

(2) Any report required to be filed with the Commission under this section shall be filed on Form ATS–N, and include all information as prescribed in Form ATS–N and the instructions thereto. Such document shall be executed at, or prior to, the time Form ATS–N is filed and shall be retained by the NMS Stock ATS in accordance with §§ 242.303 and § 232.302 of this chapter, and the instructions in Form ATS–N.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 10. The general authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

■ 11. Add § 249.640 to subpart G to read as follows:

§ 249.640 Form ATS–N, information required of NMS Stock ATSs pursuant to § 242.304(a) of this chapter.

This form shall be used by every NMS Stock ATS to file required reports under § 242.304(a) of this chapter.

Note: The text of Form ATS–N will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

THE SECURITIES AND EXCHANGE COMMISSION HAS NOT PASSED UPON THE MERITS OR ACCURACY OF THE DISCLOSURES IN THIS FILING.

United States Securities and Exchange Commission

Washington, DC

FORM ATS-N

Intentional Misstatements or Omissions of Facts May Constitute Criminal Violations

See 18 U.S.C.1001 and 15 U.S.C. 78ff(a)

File No:

{NMS Stock ATS} is making this filing pursuant to the
Rule 304 under the Securities Exchange Act of 1934

- Does the NMS Stock ATS currently operate pursuant to a Form ATS?

Yes☐ No☐

Type of Filing (select one)

☐ Initial Form ATS-N	Rule 304(a)(1)(i)
☐ Material Amendment	Rule 304(a)(2)(i)(A)
☐ Updating Amendment	Rule 304(a)(2)(i)(B)
☐ Correcting Amendment	Rule 304(a)(2)(i)(C)
☐ Order Display and Fair Access Amendment	Rule 304(a)(2)(i)(D)

- Statement about the Form ATS-N Amendment pursuant to Instruction A.7(g) of this form:

- Provide the EDGAR accession number for the Form ATS-N filing to be amended:

☐ Notice of Cessation Rule 304(a)(3)

- Date the NMS Stock ATS will cease to operate: mm/dd/yyyy

☐ Withdrawal of Form ATS-N filing

Provide the EDGAR accession number for the Form ATS-N filing to be withdrawn:

Part I: Identifying Information

1. Is the organization, association, Person, group of Persons, or system filing the Form ATS-N a broker-dealer registered with the Commission?

   Yes☐ No☐

2. Full name of registered broker-dealer of the NMS Stock ATS ("Broker-Dealer Operator") as stated on Form BD:

3. Full name(s) of NMS Stock ATS under which business is conducted, if different:

4. Provide the SEC file number and CRD number of the Broker-Dealer Operator:

   a. SEC File No.:
   b. CRD No.:

5. Provide the full name of the national securities association of the Broker-Dealer Operator, the effective date of the Broker-Dealer Operator's membership with the national securities association, and Market Participant Identifier ("MPID") of the NMS Stock ATS:

   a. National Securities Association:
   b. Effective Date of Membership:
   c. MPID of the NMS Stock ATS:

6. Provide, if any, the website URL of the NMS Stock ATS:

7. Provide the primary, and if any, secondary, physical street address(es) of the NMS Stock ATS matching system:

8. Attach as Exhibit 1, the most recently filed or amended Schedule A of Form BD for the Broker-Dealer Operator disclosing information related to direct owners and executive officers.

   ☐ Select if, in lieu of filing, {NMS Stock ATS} certifies that the information requested under this Exhibit is available at the website above and is accurate as of the date of this filing.

9. Attach as Exhibit 2, the most recently filed or amended Schedule B of Form BD for the Broker-Dealer Operator disclosing information related to indirect owners.

   ☐ Select if, in lieu of filing, {NMS Stock ATS} certifies that the information requested under this Exhibit is available at the website above and is accurate as of the date of this filing.

10. For filings made pursuant to Rule 304(a)(2)(i)(A) through (D) (i.e., Form ATS-N Amendments), attach as Exhibit 3 a document marked to indicate changes to "yes" or "no" answers or additions to or deletions from any Item in Part I, II, and Part III, as applicable. Do not include in Exhibit 3 Items that are not changing.

Part II: Activities of the Broker-Dealer Operator and its Affiliates

Item 1: Broker-Dealer Operator Trading Activities on the ATS

a. Are business units of the Broker-Dealer Operator permitted to enter or direct the entry of orders and trading interest (*e.g.,* quotes, conditional orders, or indications of interest) into the NMS Stock ATS?

Yes☐ No☐

If yes, name and describe each type of business unit of the Broker-Dealer Operator that enters or directs the entry of orders and trading interest into the ATS (e.g., NMS Stock ATS, type of trading desks, market maker, sales or client desk) and, for each business unit, provide the applicable MPID and list the capacity of its orders and trading interest (*e.g.,* principal, agency, riskless principal).

b. If yes to Item 1(a), are the services that the NMS Stock ATS offers and provides to the business units required to be identified in Item 1(a) the same for all Subscribers?

Yes☐ No☐

If no, explain any differences in response to the applicable Item number in Part III of this form, as required, and list the applicable Item number here. If there are differences that are not applicable to Part III, explain those differences here.

c. Are there any formal or informal arrangements with any of the business units required to be identified in Item 1(a) to provide orders or trading interest to the NMS Stock ATS (e.g., undertaking to buy or sell continuously, or to meet specified thresholds of trading or quoting activity)?

Yes☐ No☐

If yes, identify the business unit and respond to the request in Part III, Item 12 of this form.

d. Can orders and trading interest in the NMS Stock ATS be routed to a Trading Center operated or controlled by the Broker-Dealer Operator?

Yes☐ No☐

If yes, respond to request in Part III, Item 16 of this form.

Item 2: Affiliates Trading Activities on the ATS

a. Are Affiliates of the Broker-Dealer Operator permitted to enter or direct the entry of orders and trading interest into the NMS Stock ATS?

Yes☐ No☐

If yes, name and describe each type of Affiliate that enters or directs the entry of orders and trading interest into the ATS (e.g., broker-dealer, NMS Stock ATS, investment company, hedge fund, market maker, principal trading firm), and, for each Affiliate, provide the applicable MPID and list the capacity of its orders and trading interest (*e.g.,* principal, agency, riskless principal).

b. If yes, to Item 2(a), are the services that the NMS Stock ATS offers and provides to the Affiliates required to be identified in Item 2(a) the same for all Subscribers?

Yes☐ No☐

If no, explain any differences in response to the applicable Item number in Part III of this form, as required, and list the applicable Item number here. If there are differences that are not applicable to Part III, explain those differences.

c. Are there any formal or informal arrangements with an Affiliate required to be identified in Item 2(a) to provide orders or trading interest to the NMS Stock ATS (e.g., undertaking to buy or sell continuously, or to meet specified thresholds of trading or quoting activity)?

Yes☐ No☐

If yes, identify the Affiliate and respond to the request in Part III, Item 12 of this form.

d. Can orders and trading interest in the NMS Stock ATS be routed to a Trading Center operated or controlled by an Affiliate of the Broker-Dealer Operator?

Yes☐ No☐

If yes, respond to the request in Part III, Item 16 of this form.

Item 3: Order Interaction with Broker-Dealer Operator; Affiliates

a. Can any Subscriber opt out from interacting with orders and trading interest of the Broker-Dealer Operator in the NMS Stock ATS?

Yes☐ No☐

If yes, explain the opt-out process.

b. Can any Subscriber opt out from interacting with the orders and trading interest of an Affiliate of the Broker-Dealer Operator in the NMS Stock ATS?

Yes☐ No☐

If yes, explain the opt-out process.

c. If yes to Item 3(a) or 3(b), are the terms and conditions of the opt-out processes required to be identified in Item 3(a), 3(b), or both, the same for all Subscribers?

Yes☐ No☐

If no, identify and explain any differences.

Item 4: Arrangements with Trading Centers

a. Are there any formal or informal arrangements (e.g., mutual, reciprocal, or preferential access arrangements) between the Broker-Dealer Operator and a Trading Center to access the NMS Stock ATS services (e.g., arrangements to effect transactions or to submit, disseminate, or display orders and trading interest in the ATS)?

Yes☐ No☐

If yes, identify the Trading Center and the ATS services and provide a summary of the terms and conditions of the arrangement.

b. If yes to Item 4(a), are there any formal or informal arrangements between an Affiliate of the Broker-Dealer Operator and a Trading Center to access the NMS Stock ATS services?

Yes☐ No☐

If yes, identify the Trading Center and ATS services and provide a summary of the terms and conditions of the arrangement.

Item 5: Other Products and Services

a. Does the Broker-Dealer Operator offer Subscribers any products or services for the purpose of effecting transactions or submitting, disseminating, or displaying orders and trading interest in the NMS Stock ATS (e.g., algorithmic trading products that send orders to the ATS, order management or order execution systems, data feeds regarding orders and trading interest in, or executions occurring on, the ATS)?

Yes☐ No☐

If yes, identify the products or services offered, provide a summary of the terms and conditions for use, and list here the applicable Item number in Part III of this form where the use of the product or service is explained. If there is no applicable Item in Part III, explain the use of the product or service with the ATS here.

b. If yes to Item 5(a), are the terms and conditions of the services or products required to be identified in Item 5(a) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

c. Does any Affiliate of the Broker-Dealer Operator offer Subscribers, the Broker-Dealer Operator, or both, any products or services for the purpose of effecting transactions or

submitting, disseminating, or displaying orders or trading interest in the NMS Stock ATS?

Yes☐ No☐

If yes, identify the products or services offered, provide a summary of the terms and conditions for use, and list here the applicable Item number in Part III of this form where the use of the product or service is explained. If there is no applicable item in Part III, explain the use of the product or service with the ATS here.

d. If yes to Item 5(c), are the terms and conditions of the services or products required to be identified in Item 5(c) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 6: Activities of Service Providers

a. Does any employee of the Broker-Dealer Operator or its Affiliate that services both the operations of the NMS Stock ATS and any other business unit or any Affiliate of the Broker-Dealer Operator ("shared employee") have access to confidential trading information on the NMS Stock ATS?

Yes☐ No☐

If yes, identify the business unit, Affiliate, or both that the shared employee services, and provide a summary of the role and responsibilities of the shared employee at the ATS and the business unit, Affiliate, or both that the shared employee services.

b. Does any entity, other than the Broker-Dealer Operator, support the services or functionalities of the NMS Stock ATS ("service provider") that are required to be explained in Part III of this form?

Yes☐ No☐

If yes, both identify the service provider and provide a summary of the role and responsibilities of the service provider in response to the applicable Item number in Part III of this form, as required. List the applicable Item number here. If there are services or functionalities that are not applicable to Part III, identify the service provider, the services and functionalities, and also provide a summary of the role and responsibilities of the service provider here.

c. If yes to Item 6(b), does the service provider, or any of its Affiliates, use the NMS Stock ATS services?

Yes☐ No☐

If yes, identify the service provider, or the Affiliate as applicable, and the ATS services that the service provider or its Affiliates use.

d. If yes to Item 6(c), are the services that the NMS Stock ATS offers and provides to the entity required to be identified in Item 6(c) the same for all Subscribers?

Yes☐ No☐

If no, identify and explain any differences.

Item 7: Protection of Confidential Trading Information

a. Describe the written safeguards and written procedures to protect the confidential trading information of Subscribers to the NMS Stock ATS, including:

   i. written standards controlling employees of the ATS that trade for employees' accounts; and
   ii. written oversight procedures to ensure that the safeguards and procedures described above are implemented and followed.

b. Can a Subscriber consent to the disclosure of its confidential trading information to any Person (not including those employees of the NMS Stock ATS who are operating the system or responsible for its compliance with applicable rules)?

Yes☐ No☐

If yes, explain how and under what conditions.

c. If yes to Item 7(b), can a Subscriber withdraw consent to the disclosure of its confidential trading information to any Person (not including those employees of the NMS Stock ATS who are operating the system or responsible for its compliance with applicable rules)?

Yes☐ No☐

If yes, explain how and under what conditions.

d. Provide a summary of the roles and responsibilities of any Persons that have access to confidential trading information, the confidential trading information that is accessible by them, and the basis for the access.

Part III: Manner of Operations

Item 1: Types of ATS Subscribers

Select the type(s) of Subscribers that can use the NMS Stock ATS services:

☐ Investment Companies ☐ Retail Investors ☐ Issuers ☐ Brokers

☐ NMS Stock ATSs ☐ Asset Managers ☐ Principal Trading Firms

☐ Hedge Funds ☐ Market Makers ☐ Banks ☐ Dealers

☐ Other

If other, identify the type(s) of subscriber.

Item 2: Eligibility for ATS Services

a. Does the NMS Stock ATS require Subscribers to be registered broker-dealers?

Yes☐ No☐

b. Are there any other conditions that the NMS Stock ATS requires a Person to satisfy before accessing the ATS services?

Yes☐ No☐

If yes, list and provide a summary of the conditions.

c. If yes to Item 2(b), are the conditions required to be identified in Item 2(b) the same for all Persons?

Yes☐ No☐

If no, identify and describe any differences.

d. Does the NMS Stock ATS require Subscribers to enter a written agreement to use the ATS services?

Yes☐ No☐

Item 3: Exclusion from ATS Services

a. Can the NMS Stock ATS exclude, in whole or in part, any Subscriber from the ATS services?

Yes☐ No☐

If yes, list and provide a summary of the conditions for excluding, in whole or in part, a Subscriber from the ATS services.

b. If yes to Item 3(a), are the conditions required to be identified in Item 3(a) the same for all Subscribers?

Yes☐ No☐

If no, identify and explain any differences.

Item 4: Hours of Operations

a. Provide the days and hours of operation of the NMS Stock ATS, including the times when orders or trading interest can be entered on the ATS, and any hours of operation outside of regular trading hours.

b. Are the hours of operations the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 5: Means of Entry

a. Does the NMS Stock ATS permit orders and trading interest to be entered directly into the ATS (e.g., via Financial Information eXchange ("FIX") protocol, Binary)?

Yes☐ No☐

If yes, explain the protocol that can be used to directly enter orders and trading interest into the ATS.

b. If yes to Item 5(a), are the protocols required to be identified in Item 5(a) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

c. Are there any other means for entering orders and trading interest into the NMS Stock ATS (e.g., smart order router, algorithm, order management system, sales desk)?

Yes☐ No☐

If yes, identify and explain the other means for entering orders and trading interest, indicate whether the means are provided through the Broker-Dealer Operator, either by itself or through a third-party contracting with the Broker-Dealer Operator, or through an Affiliate of the Broker-Dealer Operator, and list and provide a summary of the terms and conditions for entering orders or trading interest into the ATS through these means.

d. If yes to Item 5(c), are the terms and conditions required to be identified in Item 5(c) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 6: Connectivity and Co-location

a. Does the NMS Stock ATS offer co-location and related services (*e.g.,* cabinets and equipment, cross-connects)?

Yes☐ No☐

If yes, provide a summary of the terms and conditions for co-location and related services, including the speed and connection (*e.g.,* fiber, copper) options offered.

b. If yes to Item (6)(a), are the terms and conditions required to be identified in Item 6(a) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

c. Does the NMS Stock ATS offer any other means besides co-location and related services required to be explained in this Item 6(a) to increase the speed of communication with the ATS?

Yes☐ No☐

If yes, explain the means to increase the speed of communication with the ATS and provide a summary of the terms and conditions for its use.

d. If yes to Item 6(c), are the terms and conditions required to be identified in Item 6(c) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

e. Does the NMS Stock ATS offer any means to reduce the speed of communication with the ATS (e.g., speed bumps)?

Yes☐ No☐

If yes, explain the methods to reduce the speed of communication with the ATS and provide a summary of the terms and conditions for its use.

f. If yes to Item 6(e), are the terms and conditions required to be identified in Item 6(e) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 7: Order Types and Attributes

a. Identify and explain each order type offered by the NMS Stock ATS. In your explanation, include the following:

i. priority, including the order type's priority upon order entry and any subsequent change to priority (if applicable); whether and when the order type can receive a new time stamp; the order type's priority vis-à-vis other orders on the book due to changes in the NBBO or other reference price; and any instance in which the order type could lose execution priority to a later arriving order at the same price;

ii. conditions, including any price conditions (e.g., how price conditions affect the rank and price at which it can be executed; conditions on the display or non-display of an order; or conditions on executability and routability);

iii. order types designed not to remove liquidity (e.g., post-only orders), including what occurs when such order is marketable against trading interest on the NMS Stock ATS when received;

iv. order types that adjust their price as changes to the order book occur (*e.g.,* price sliding orders or pegged orders) or have a discretionary range, including an order's rank and price upon order entry and whether such prices or rank may change based on the NBBO or other market conditions when using such order type; when the order type is executable and at what price the execution would occur; whether the price at which the order type can be executed ever changes; and if the order type can operate in different ways, the default operation of the order type;

v. whether an order type is eligible for routing to other Trading Centers;

vi. the time-in-force instructions that can be used or not used with each order type;

vii. the circumstances under which order types may be combined with another order type, modified, replaced, canceled, rejected, or removed from the NMS Stock ATS; and

viii. the availability of order types across all forms of connectivity to the NMS Stock ATS and differences, if any, in the availability of an order type across those forms of connectivity.

b. Are the terms and conditions for each order type and attribute the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 8: Order Sizes

a. Does the NMS Stock ATS require minimum or maximum sizes for orders or trading interest?

Yes☐ No☐

If yes, specify any minimum or maximum order or trading interest size requirements and any related handling procedures.

b. If yes to Item 8(a), are the requirements and procedures required to be identified in Item 8(a) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

c. Does the NMS Stock ATS accept or execute odd-lot orders?

Yes☐ No☐

If yes, specify any odd-lot order requirements and related handling procedures (e.g., odd lot treated the same as round lot).

d. If yes to Item 8(c), are the requirements and procedures required to be identified in Item 8(c) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

e. Does the NMS Stock ATS accept or execute mixed-lot orders?

Yes☐ No☐

If yes, specify any mixed lot order requirements and related handling procedures (*e.g.,* mixed lot treated the same as round lot).

f. If yes, to Item 8(e), are the requirements and procedures required to be identified in 8(e) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 9: Conditional Orders and Indications of Interest

a. Does the NMS Stock ATS send or receive any messages indicating trading interest (*e.g.,* IOIs, actionable IOIs, or conditional orders)?

Yes☐ No☐

If yes, identify and explain the use of the messages, including information contained in messages (e.g., price or size minimums), how the message is transmitted (e.g., order management system, smart order router, FIX), when the message is transmitted (e.g., automatically by the ATS, or upon the sender's request), the type of Persons that receive the message (e.g., Subscribers, Trading Centers), responses to conditional orders or IOIs (e.g., submission to firm-up conditional orders), and the conditions under which the message might result in an execution in the ATS (e.g., response time parameters, interaction, and matching).

b. If yes to Item 9(a), are the terms and conditions governing conditional orders and indications of interest the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 10: Opening and Reopening

a. Explain how the NMS Stock ATS opens or re-opens for trading, including when and how orders and trading interest are priced, prioritized, matched, and executed, and identify any order types allowed prior to the start of regular trading hours or following a stoppage of trading in a security during regular trading hours.

b. Are the processes and procedures governing opening and re-opening the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

c. Explain how unexecuted orders and trading interest are handled at the time the NMS Stock ATS begins regular trading at the start of regular trading hours or following a stoppage of trading in a security during regular trading hours.

d. Are the processes or procedures governing unexecuted orders and trading at the time the NMS Stock ATS begins regular trading at the start of regular trading hours, or following a stoppage of trading in a security during regular trading hours, the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

e. Are there any differences between pre-opening executions, executions following a stoppage of trading in a security during regular trading hours, and/or executions during regular trading hours?

Yes☐ No☐

If yes, identify and explain the differences.

Item 11: Trading Services, Facilities and Rules

a. Provide a summary of the structure of the NMS Stock ATS marketplace (e.g., crossing system, auction market, limit order matching book) and explain the means and facilities for bringing together the orders of multiple buyers and sellers on the NMS Stock ATS.

b. Are the means and facilities required to be identified in Item 11(a) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

c. Explain the established, non-discretionary rules and procedures of the NMS Stock ATS, including order interaction rules for the priority, pricing methodologies, allocation, matching, and execution of orders and trading interest, and other procedures governing trading, such as price improvement functionality, price protection mechanisms, short sales, locked-crossed markets, the handling of execution errors, and the time-stamping of orders and executions.

d. Are the established, non-discretionary rules and procedures required to be identified in Item 11(c) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 12: Liquidity Providers

Are there any formal or informal arrangements with any Subscriber or the Broker-Dealer Operator to provide orders or trading interest to the NMS Stock ATS (e.g., undertaking to buy or sell continuously, or to meet specified thresholds of trading or quoting activity)?

Yes☐ No☐

If yes, describe the arrangement, including the terms and conditions.

Item 13: Segmentation; Notice

a. Are orders and trading interest in the NMS Stock ATS segmented into categories, classifications, tiers, or levels (e.g., segmented by type of participant, order size, duration, source, or nature of trading activity)?

Yes☐ No☐

If yes, explain the segmentation procedures, including (i) a description for how orders and trading interest are segmented; (ii) identify and describe any categories, classification, tiers, or levels and the types of orders and trading interest that are included in each; (iii) provide a summary of the parameters for each segmented category and length of time each segmented category is in effect; (iv) any procedures for overriding a determination of segmented category; and (v) how segmentation can affect order interaction.

b. If yes to Item 13(a), is the segmentation of orders and trading interest the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

c. Does the NMS Stock ATS identify orders or trading interest entered by a customer of a broker-dealer on the NMS Stock ATS as a customer order?

Yes☐ No☐

d. If yes to Item 13(a), does the NMS Stock ATS disclose to any Person the designated segmented category, classification, tier, or level of orders and trading interest?

Yes☐ No☐

If yes, provide a summary of the content of the disclosure, when and how the disclosure is communicated, who receives it, and whether and how such designation can be contested.

e. If yes to Item 13(d), are the disclosures required to be identified in 13(d) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 14: Counter-Party Selection

a. Can orders or trading interest be designated to interact or not interact with certain orders or trading interest in the NMS Stock ATS (e.g., designated to execute against a specific Subscriber's orders or trading interest or prevent a Subscriber's order from executing against itself)?

Yes☐ No☐

If yes, explain the counter-party selection procedures, including how counter-parties can be selected, and whether the designations affect the interaction and priority of trading interest in the ATS.

b. If yes to Item 14(a), are the procedures for counter-party selection required to be identified in Item 14(a) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 15: Display

a. Does the NMS Stock ATS operate as an Electronic Communication Network as defined in Rule 600(a)(23) of Regulation NMS?

Yes☐ No☐

b. Are Subscriber orders and trading interest bound for or resting in the NMS Stock ATS displayed or made known to any Person (not including those employees of the NMS Stock ATS who are operating the system)?

Yes☐ No☐

If yes, explain the display procedures, including how and when Subscriber orders and trading interest are displayed, how long orders and trading interest are displayed, what information about orders and trading interest is displayed, and the functionality of the Broker-Dealer Operator and types of market participants that receive the displayed information.

c. If yes to Item 15(b), are the display procedures required to be identified in 15(b) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 16: Routing

a. Can orders and trading interest in the NMS Stock ATS be routed to a destination outside the NMS Stock ATS?

Yes☐ No☐

b. If yes to Item 16(a), must affirmative instructions from a Subscriber be obtained before its orders or trading interest can be routed from the NMS Stock ATS?

Yes☐ No☐

If yes, describe the affirmative instruction and explain how the affirmative instruction is obtained. If no, explain when orders in the NMS Stock ATS can be routed from the ATS (e.g., at the discretion of the Broker-Dealer Operator).

Item 17: Closing

a. Are there any differences between how orders and trading interest are treated on the NMS Stock ATS during the close and how orders and trading interest are treated during regular trading hours?

Yes☐ No☐

If yes, identify and explain the differences as compared to the information provided in the relevant Part III Items of this form.

b. Is the treatment of orders and trading interest during the close the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 18: Trading Outside of Regular Trading Hours

a. Does the NMS Stock ATS conduct trading outside of its regular trading hours?

Yes☐ No☐

b. If yes to Item 18(a), are there any differences between trading outside of regular trading hours and trading during regular trading hours in the NMS Stock ATS?

Yes☐ No☐

If yes, identify and explain the differences.

c. If yes to Item 18(a), is the treatment of orders and trading interest outside of regular trading hours the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 19: Fees

a. Identify and describe any fees or charges for use of the NMS Stock ATS services, including the type of fees (e.g., subscription, connectivity), the structure of the fees (e.g., fixed, volume-based, transaction-based), variables that impact the fees (e.g., types of securities traded, block orders, form of connectivity to the ATS), differentiation among types of Subscribers (e.g., broker-dealers, institutional investors, retail) and range of fees (e.g., high and low).

b. Identify and describe any fees or charges for use of the NMS Stock ATS services that are bundled with the Subscriber's use of non-ATS services or products offered by the Broker-Dealer Operator or its Affiliates, including a summary of the bundled services and products, the structure of the fee, variables that impact the fee, differentiation among types of Subscribers, and range of fees.

c. Identify and describe any rebate or discount of fees or charges required to be identified in Items 19(a) and 19(b), including the type of rebate or discount, structure of the rebate or discount, variables that impact the rebate or discount, differentiation among types of Subscribers, and range of rebate or discount.

Item 20: Suspension of Trading

a. Explain any procedures for suspending or stopping trading on the NMS Stock ATS, including the suspension of trading in individual NMS stocks.

b. Are the procedures for suspending or stopping trading the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 21: Trade Reporting

a. Explain any procedures and material arrangements for reporting transactions on the NMS Stock ATS, including where an ATS reports transactions and under what circumstances.

b. Are the procedures and material arrangements for reporting transactions on the NMS Stock ATS the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 22: Clearance and Settlement

a. Describe any procedures and material arrangements undertaken to facilitate the clearance and settlement of transactions on the NMS Stock ATS (e.g., whether the ATS becomes a counterparty, whether it submits trades to a registered clearing agency, or whether it requires Subscribers to have arrangements with a clearing firm).

b. Are the procedures and material arrangements undertaken to facilitate the clearance and settlement of transactions on the NMS Stock ATS the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 23: Market Data

a. Identify the sources of market data used by the NMS Stock ATS (e.g., proprietary feed from a national securities exchange, feed from the securities information processor ("SIP")), and how the ATS uses market data from these sources to provide the services that it offers, including how the ATS uses market data to determine the NBBO and protected quotes, and display, price, prioritize, execute, and remove orders and trading interest on the ATS.

b. Are the sources of market data and how the NMS Stock ATS uses market data for the services that it offers the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 24: Order Display and Execution Access

a. Has the NMS Stock ATS displayed Subscriber orders to any Person (other than NMS Stock ATS employees) and had an average daily share volume of 5% or more in that NMS stock as reported by an effective transaction reporting plan or disseminated through an automated quotation system during four of the preceding six calendar months?

Yes☐ No☐

b. If yes to Item 24(a), is the NMS Stock ATS required to comply with Rule 301(b)(3)(ii) of Regulation ATS?

Yes☐ No☐

If yes,

i. Provide the ticker symbol for each such NMS stock displayed during each of the last 6 calendar months;

ii. Explain how the ATS displays such orders on a national securities exchange or through a national securities association; and

iii. Explain how the ATS provides access to such orders displayed in the national market system equivalent to the access to other orders displayed on that national securities exchange or through a national securities association pursuant to Rule 301(b)(iii) of Regulation ATS.

Item 25: Fair Access

a. Has the NMS Stock ATS executed 5% or more of the average daily trading volume in an NMS stock as reported by an effective transaction reporting plan or disseminated through an automated quotation system during four of the preceding six calendar months?

Yes☐ No☐

b. If yes to Item 25(a), is the NMS Stock ATS required to comply with Rule 301(b)(5)(ii) of Regulation ATS?

Yes☐ No☐

If yes,

i. Provide the ticker symbol for each such NMS stock during each of the last 6 calendar months; and

ii. Describe the written standards for granting access to trading on the ATS pursuant to Rule 301(b)(5)(ii)(A) of Regulation ATS.

Item 26: Aggregate Platform Data

Does the NMS Stock ATS publish or otherwise provide to one or more Subscribers aggregate platform-wide order flow and execution statistics of the ATS that are not otherwise required disclosures under Rule 605 of Regulation NMS?

Yes☐ No☐

If yes,

i. Attach, as Exhibit 4, the most recent disclosure of aggregate platform-wide order flow and execution statistics of the ATS that are not otherwise required disclosures under Rule 605 of Regulation NMS and that the ATS provided to one or more Subscribers as of the end of each calendar quarter.

☐ Select if, in lieu of filing, {NMS Stock ATS} certifies that the information requested under Exhibit 4 is available at the website provided in Part I, Item 6 of this form and is accurate as of the date of this filing.

ii. Attach, as Exhibit 5, a list and explanation of the categories or metrics for the aggregate platform-wide order flow and execution statistics provided as Exhibit 4 and explain the criteria or methodology used to calculate aggregate platform-wide order flow and execution statistics.

☐ Select if, in lieu of filing, {NMS Stock ATS} certifies that the information requested under Exhibit 5 is available at the website provided in Part I, Item 6 of this form and is accurate as of the date of this filing.

Part IV: Contact Information, Signature Block, and Consent to Service

Provide the following information of the Person at {NMS Stock ATS} prepared to respond to questions for this submission:

First Name: Last Name:

Title:

E-Mail: Telephone:

Primary Street Address of the NMS Stock ATS:

Mailing Address of the NMS Stock ATS (if different):

The {NMS Stock ATS} consents that service of any civil action brought by, or notice of any proceeding before, the SEC or a self-regulatory organization in connection with the alternative trading system's activities may be given by registered or certified mail to the contact employee at the primary street address or mailing address (if different) of the NMS Stock ATS, or via email, at the addresses provided on this Form ATS-N. The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said alternative trading system. The undersigned and {NMS Stock ATS} represent that the information and statements contained herein, including exhibits, schedules, or other documents attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true, and complete.

Date {auto fill} {NMS Stock ATS}

By: _____ Title_____

FORM ATS–N INSTRUCTIONS

A. FILING FORM ATS–N:

1. Form ATS–N is a public reporting form that is designed to provide market participants and the Commission with information about the operations of the NMS Stock ATS and the ATS-related activities of its Broker-Dealer Operator and its Affiliates. Among other things, an NMS Stock ATS must file Form ATS–N to be exempt from the definition of ''exchange'' pursuant to Exchange Act Rule 3a1–1(a)(2).

2. A separate Form ATS–N is required for each NMS Stock ATS operated by the same Broker-Dealer Operator.

3. An NMS Stock ATS must provide all the information required by Form ATS–N, including responses to each Item, as applicable, and the Exhibits, and disclose information that is accurate, current, and complete.

4. An NMS Stock ATS must respond to each request in detail unless otherwise provided (*i.e.,* where the request indicates that the ATS is required to disclose ''summary'' information).

5. Any report required to be submitted pursuant to Rule 304 of Regulation ATS shall be prepared, formatted, and submitted in accordance with Regulation S–T and the EDGAR Filer Manual. Filers have the option of submitting the information to EDGAR using the most recent version of the XML schema for Rule 304 as specified by the EDGAR Filer Manual, or submitting the information using the web-fillable form for Rule 304 in EDGAR.

6. Initial Form ATS–N: Prior to commencing operations, an NMS Stock ATS shall file an initial Form ATS–N and the initial Form ATS–N must become effective. If an NMS Stock ATS is currently operating pursuant to a Form ATS it must indicate such on the Form ATS–N. If the NMS Stock ATS is operating pursuant to a previously filed initial operation report on Form ATS as of January 7, 2019, such NMS Stock ATS shall file with the Commission a Form ATS–N no earlier than January 7, 2019, and no later than February 8, 2019.

7. Form ATS–N Amendment

a. An NMS Stock ATS shall amend a Form ATS–N in accordance with the conditions of Rule 304.

b. A Material Amendment, except as provided by Rule 304(a)(2)(i)(D) for an

Order Display and Fair Access Amendment, must be filed at least 30 calendar days prior to the date of implementation of a material change to the operations of the NMS Stock ATS or to the activities of the Broker-Dealer Operator or its Affiliates that are subject to disclosure on Form ATS–N.

c. An Updating Amendment must be filed no later than 30 calendar days after the end of each calendar quarter to correct any other information that has become inaccurate or incomplete for any reason and was not previously required to be reported to the Commission as a Form ATS–N Amendment pursuant to Rule 304(a)(2)(i)(A), Rule 304(a)(2)(i)(C), or Rule 304(a)(2)(i)(D).

d. A Correcting Amendment must be filed promptly to correct information in any previous disclosure on Form ATS–N, after discovery that any information previously filed on Form ATS–N was materially inaccurate or incomplete when filed.

e. An Order Display and Fair Access Amendment must be filed no later than seven calendar days after information required to be disclosed in Part III, Items 24 and 25 on Form ATS–N has become inaccurate or incomplete.

f. An NMS Stock ATS must select only one ''Type of Amendment'' for each Form ATS–N Amendment filed with the Commission.

g. For each Amendment, indicate the Part and Item number of the Form ATS–N that is the subject of the change, provide a brief summary of the changes, and state whether or not the changes apply to all Subscribers and the Broker-Dealer Operator.

h. For each Amendment, provide the EDGAR accession number for the filing that is being amended.

8. Notice of Cessation: An NMS Stock ATS shall notice its cessation of operations on Form ATS–N at least 10 business days prior to the date the NMS Stock ATS will cease to operate as an NMS Stock ATS.

9. Withdrawal: If an NMS Stock ATS determines to withdraw a filing, it must check the ''Withdrawal of Form ATS–N filing'' check box for the type of filing and provide the EDGAR accession number of the Form ATS–N filing that is being withdrawn. An NMS Stock ATS may withdraw an initial Form ATS–N or an Amendment before the end of the applicable Commission review period. An NMS Stock ATS may withdraw a notice of cessation of operations at any time before the date that the NMS Stock ATS had indicated it intended to cease operating. A Legacy NMS Stock ATS may not withdraw its initial Form ATS–N at any time.

10. A filing that is defective may be rejected and not be accepted by the EDGAR system. Any filing so rejected shall be deemed not to have been filed. *See generally* Regulation S–T (17 CFR part 232).

B. CONTACT INFORMATION

• The individual listed on the NMS Stock ATS's response to Part IV of Form ATS–N as the contact representative must be authorized to receive all incoming communications and be responsible for disseminating that information, as necessary, within the NMS Stock ATS. The contact information provided in Part IV of Form ATS–N will not be made public.

C. RECORDKEEPING

• A copy of this Form ATS–N must be retained by the NMS Stock ATS in accordance with the EDGAR Filer Manual and Rule 303 of Regulation ATS and must be made available for inspection upon a regulatory request.

D. PAPERWORK REDUCTION ACT DISCLOSURE

• Form ATS–N requires an NMS Stock ATS to provide the Commission with certain information regarding: (1) the operation of the NMS Stock ATS and the ATS-related activities of the Broker-Dealer Operator and its Affiliates; (2) material and other changes to the operations and disclosures of the NMS Stock ATS; and (3) notice upon ceasing operation of the NMS Stock ATS. Form ATS–N is designed to provide the public with information to, among other things, help them make informed decisions about whether to participate on the NMS Stock ATS. In addition, the Form ATS–N is designed to provide the Commission with information to permit it to carry out its market oversight and investor protection functions.

• The information provided on Form ATS–N will help the Commission to determine whether an NMS Stock ATS is in compliance with the federal securities laws and the rules or regulations thereunder, including Regulation ATS. An NMS Stock ATS must:

○ File an initial Form ATS–N prior to commencing operations.

○ File a Form ATS Amendment: (1) At least 30 calendar days prior to the date of implementation of a material change to the operations of the NMS Stock ATS or to the activities of the Broker-Dealer Operator or its Affiliates that are subject to disclosure on Form ATS–N (Material Amendment); (2) no later than 30 calendar days after the end of each calendar quarter to correct any other information that has become inaccurate or incomplete for any reason and was not previously required to be reported to the Commission as a Form ATS–N amendment pursuant to Rule 304(a)(2)(i)(A), Rule 304(a)(2)(i)(C), or Rule 304(a)(2)(i)(D) (Updating Amendment); (3) promptly, to correct information in any previous disclosure on Form ATS–N, after discovery that any information previously filed on Form ATS–N was materially inaccurate or incomplete when filed (Correcting Amendment); or (4) no later than seven calendar days after information required to be disclosed in Part III, Items 24 and 25 on Form ATS–N has become inaccurate or incomplete (Order Display and Fair Access Amendment). During the Commission review period of an initial Form ATS–N filing, an NMS Stock ATS that is operating as of January 7, 2019 shall amend its filed Form ATS–N pursuant to these requirements, and an NMS Stock ATS that was not operating as of January 7, 2019 shall amend its filed Form ATS–N pursuant to the requirements for Updating and Correcting Amendments. During the Commission review period of an initial Form ATS–N filing, an NMS Stock ATS shall amend a filed Material Amendment pursuant to the requirements for Updating and Correcting Amendments.

○ Notice its cessation of operations at least 10 business days before the date the NMS Stock ATS ceases to operate as an NMS Stock ATS.

• This collection of information will be reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. 3507. An agency may not conduct or sponsor, and a Person is not required to respond to, a collection of information unless it displays a currently valid control number. We estimate that an NMS Stock ATS will spend approximately 127.4 hours completing the Form ATS–N, approximately 9 hours preparing each amendment to Form ATS–N, and approximately 2 hours preparing a notice of cessation on Form ATS–N. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

E. EXPLANATION OF TERMS

The following terms are defined for purposes of Form ATS–N.

• **AFFILIATE:** Shall mean, with respect to a specified Person, any Person that, directly or indirectly, controls, is under common control with, or is controlled by, the specified Person.

• **ALTERNATIVE TRADING SYSTEM:** Shall mean any organization, association, Person, group of Persons, or system: (1) that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of Rule 3b-16 under the Exchange Act; and (2) that does not (i) set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, Person, group of Persons, or system, or (ii) discipline subscribers other than by exclusion from trading. 17 CFR 242.300(a).

• **BROKER-DEALER OPERATOR:** Shall mean the registered broker-dealer of the NMS Stock ATS pursuant to 17 CFR 242.301(b)(1).

• **CONTROL:** Shall mean the power, directly or indirectly, to direct the management or policies of the broker-dealer of an alternative trading system, whether through ownership of securities, by contract, or otherwise. A Person is presumed to control the broker-dealer of an alternative trading system if that Person: (1) is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (2) directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the broker-dealer of the alternative trading system; or (3) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the broker-dealer of the alternative trading system. 17 CFR 242.300(f).

• **NMS SECURITY:** Shall mean any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. 17 CFR 242.600(b)(46).

• **NMS STOCK:** Shall mean any NMS security other than an option. 17 CFR 242.600(b)(47).

• **NMS STOCK ATS:** Shall mean an alternative trading system, as defined in Rule 300(a) under the Exchange Act, that trades NMS stocks, as defined in Rule 300(g) under the Exchange Act. 17 CFR 242.300(k).

• **ORDER:** Shall mean any firm indication of a willingness to buy or sell a security as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order. 17 CFR 242.300(e).

• **PERSON:** Shall mean a natural person or a company. 15 U.S.C. 80a-2(a)(28).

• **SUBSCRIBER:** Shall mean any Person that has entered into a contractual agreement with an alternative trading system to access an alternative trading system for the purpose of effecting transactions in securities, or for submitting, disseminating or displaying orders on such alternative trading system, including a customer, member, user, or participant in an alternative trading system. A subscriber, however, shall not include a national securities exchange or association. 17 CFR 242.300(b).

• **TRADING CENTER:** Shall mean a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent. 17 CFR 242.600(b)(78).

By the Commission.

Dated: July 18, 2018

Brent J. Fields,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A

Key to Comment Letters Cited in Regulation of NMS Stock Alternative Trading Systems (File No. S7–23–15

Letter from Venu Palaparthi, Senior Vice President, Virtu Financial to Brent J. Fields, Secretary, Commission, dated December 2, 2015 (''Virtu Letter'')

Letter from Clive Williams, Head of Global Equity Trading, Thea N. Williams, Head of Global Fixed Income Trading, and Jonathan D. Siegel, Senior Legal Counsel, T. Rowe Price Associates, Inc. to Brent J. Fields, Secretary, Commission, dated February 23, 2016 (''T. Rowe Price Letter'')

Letter from Jonathan A. Clark, Chief Executive Officer, and James C. Dolan, Chief Compliance Office, Luminex Trading & Analytics LLC to Brent J. Fields, Secretary, Commission, dated February 23, 2016 (''Luminex Letter'')

Letter from Eric T. Schneiderman, Attorney General, State of New York, to the Honorable Mary Jo White, Chair, and Brent J. Fields, Secretary, Commission, dated February 23, 2016 (''Schneiderman Letter'')

Letter from Scott Pintoff, General Counsel, MarketAxess Corporation, to Secretary, Commission, dated February 24, 2016 (''MarketAxess Letter'')

Letter from David W. Blass, General Counsel, Investment Company Institute, to Brent J. Fields, Secretary, Commission, dated February 25, 2016 (''ICI Letter'')

Letter from Chris Barnard, to the Commission, dated February 25, 2016 (''Barnard Letter'').

Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association and Jiří Król, Deputy Chief Executive Officer, Global Head of Government Affairs, Alternative Investment Management Association, to Brent J. Fields, Secretary, Commission, dated February 26, 2016 (''MFA/AIMA Letter'')

Letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, Financial Industry Regulatory Authority, Inc., to Brent J. Fields, Secretary, Commission, dated February 26, 2016 (''FINRA Letter'')

Letter from Phillip S. Gillespie, General Counsel and Executive Vice President, State Street Global Advisors, to Brent J. Fields, Secretary, Commission, dated February 26, 2016 (''SSGA Letter'')

Letter from John Russell, Chairman of the Board and James Toes, President and Chief Executive Office, Securities Traders Association, to Brent J. Fields, Secretary, Commission, dated February 26, 2016 (''STA Letter'')

Letter from D. Keith Ross, Chief Executive Officer, PDQ Enterprises, LLC and Christopher Meade, Chief Compliance Officer, PDQ ATS, Inc., to Brent J. Fields, Secretary, Commission, dated February 26, 2016 (''PDQ Letter'')

Letter from Howard Meyerson, General Counsel, Liquidnet, Inc., to Brent J. Fields, Secretary, Commission, dated February 26, 2016 (''Liquidnet Letter'')

Letter from Denis Ignatovich, Co-Founder, and Grant Passmore, Ph.D., Co-Founder, Aesthetic Integration Ltd. (''AI Letter'')

Letter from Dave Lauer, Chairman, Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated February 26, 2016 (''HMA Letter'')

Letter from Kurt N. Schacht, CFA, Managing Director, Standards & Advocacy, CFA Institute, and James C. Allen, CFA, Head, Capital Markets Policy, CFA Institute, to Brent J. Fields, Secretary, Commission, dated February 26, 2016 (''CFA Institute Letter'')

Letter from Micah Hauptman, Financial Services Counsel, Consumer Federation of America, to Brent J. Fields, Secretary, Commission, dated February 26, 2016 (''Consumer Federation of American Letter'')

Letter from Timothy J. Mahoney, Chief Executive Office, BIDS Trading L.P., to Brent J. Fields, Secretary, Commission, dated February 26, 2016 (''BIDS Letter'')

Letter from Marc B. Bryant, Senior Vice President, Deputy General Counsel, Fidelity Investments, to Brent J. Fields, Secretary, Commission, dated February 26, 2016 (''Fidelity Letter'')

Letter from Angelo Evangelou, Deputy General Counsel, Legal Division, Chicago Board Options Exchange, Incorporated, to Brent J. Fields, Secretary, Commission, dated March 1, 2016 (''CBOE Letter'')

Letter from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel LLC, to Brent J. Fields, Secretary,

Commission, dated March 1, 2016 (''Citadel Letter'')

Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission, dated March 7, 2016 (''SIFMA Letter'')

Letter from Kimberly Unger, Chief Executive Officer & Executive Director, The Security Traders Association of New York, Inc., to Brent J. Fields, Secretary, Commission, dated March 4, 2016 (''STANY Letter'')

Letter from Mark Holder, Managing Director, UBS Securities LLC, to Brent J. Fields, Secretary, Commission, dated March 21, 2016 (''UBS Letter'')

Letter from Anonymous to Commission, dated February 26, 2016 (''Anonymous Letter'')

Letter from Dennis M. Kelleher, President and Chief Executive Officer, Stephen W. Hall, Legal Director & Securities Specialist, and Allen Dreschel, Attorney, Better Markets, Inc., to Brent J. Fields, Secretary, Commission, dated February 26, 2016 (''Better Markets Letter'')

Letter from John A. McCarthy, General Counsel, KCG Holdings, Inc., to Brent J. Fields, Secretary, Commission, dated March 15, 2016 (''KCG Letter'')

Letter from David Weisberger, Managing Director, Markit, to Brent J. Fields, Secretary, Commission, dated April 15, 2016 (''Markit Letter'')

Letter from William Neuberger and Andrew F. Silverman, Managing Directors and Global Co-Heads, Morgan Stanley Electronic Trading, to Brent J. Fields, Secretary, Commission, dated May 19, 2016 (''Morgan Stanley Letter'')

Letter from John F. Linares, General Counsel, LeveL ATS, to Brent J. Fields, Secretary, Commission, dated September 7, 2016 (''LeveL ATS Letter'').

Letter from Rick A. Fleming, Investor Advocate, Office of the Investor Advocate, Commission, to Brent J. Fields, Secretary, Commission, dated September 9, 2016 (''Investor Advocate Letter'')

Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, to the Honorable Walter J. Clayton, Chairman, Commission, dated May 18, 2017 (''MFA Letter 2'')

[FR Doc. 2018–15896 Filed 8–6–18; 8:45 am]

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FEDERAL REGISTER

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Part III

The President

Executive Order 13846—Reimposing Certain Sanctions With Respect to Iran

Federal Register
Vol. 83, No. 152
Tuesday, August 7, 2018

Presidential Documents

Title 3—

The President

Executive Order 13846 of August 6, 2018

Reimposing Certain Sanctions With Respect to Iran

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), the Iran Sanctions Act of 1996 (Public Law 104–172) (50 U.S.C. 1701 note), as amended (ISA), the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111–195) (22 U.S.C. 8501 *et seq.*), as amended (CISADA), the Iran Threat Reduction and Syria Human Rights Act of 2012 (Public Law 112–158) (TRA), the Iran Freedom and Counter-Proliferation Act of 2012 (subtitle D of title XII of Public Law 112–239) (22 U.S.C. 8801 *et seq.*) (IFCA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code, in order to take additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995,

I, DONALD J. TRUMP, President of the United States of America, in light of my decision on May 8, 2018, to cease the participation of the United States in the Joint Comprehensive Plan of Action of July 14, 2015 (JCPOA), and to re-impose all sanctions lifted or waived in connection with the JCPOA as expeditiously as possible and in no case later than 180 days from May 8, 2018, as outlined in the National Security Presidential Memorandum–11 of May 8, 2018 (Ceasing United States Participation in the Joint Comprehensive Plan of Action and Taking Additional Action to Counter Iran's Malign Influence and Deny Iran All Paths to a Nuclear Weapon), and to advance the goal of applying financial pressure on the Iranian regime in pursuit of a comprehensive and lasting solution to the full range of the threats posed by Iran, including Iran's proliferation and development of missiles and other asymmetric and conventional weapons capabilities, its network and campaign of regional aggression, its support for terrorist groups, and the malign activities of the Islamic Revolutionary Guard Corps and its surrogates, hereby order as follows:

Section 1. *Blocking Sanctions Relating to Support for the Government of Iran's Purchase or Acquisition of U.S. Bank Notes or Precious Metals; Certain Iranian Persons; and Iran's Energy, Shipping, and Shipbuilding Sectors and Port Operators.* (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a person the measures described in subsection (b) of this section upon determining that:

(i) on or after August 7, 2018, the person has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the purchase or acquisition of U.S. bank notes or precious metals by the Government of Iran;

(ii) on or after November 5, 2018, the person has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), or the Central Bank of Iran;

(iii) on or after November 5, 2018, the person has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of:

(A) any Iranian person included on the list of Specially Designated Nationals and Blocked Persons maintained by the Office of Foreign Assets

Control (SDN List) (other than an Iranian depository institution whose property and interests in property are blocked solely pursuant to Executive Order 13599 of February 5, 2012); or

(B) any other person included on the SDN List whose property and interests in property are blocked pursuant to subsection (a) of this section or Executive Order 13599 (other than an Iranian depository institution whose property and interests in property are blocked solely pursuant to Executive Order 13599); or

(iv) pursuant to authority delegated by the President and in accordance with the terms of such delegation, sanctions shall be imposed on such person pursuant to section 1244(c)(1)(A) of IFCA because the person:

(A) is part of the energy, shipping, or shipbuilding sectors of Iran;

(B) operates a port in Iran; or

(C) knowingly provides significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of a person determined under section 1244(c)(2)(A) of IFCA to be a part of the energy, shipping, or shipbuilding sectors of Iran; a person determined under section 1244(c)(2)(B) of IFCA to operate a port in Iran; or an Iranian person included on the SDN List (other than a person described in section 1244(c)(3) of IFCA).

(b) With respect to any person determined by the Secretary of the Treasury in accordance with this section to meet any of the criteria set forth in subsections (a)(i)–(a)(iv) of this section, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of such person are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(c) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order or, where specifically provided, the effective date of the prohibition.

Sec. 2. *Correspondent and Payable-Through Account Sanctions Relating to Iran's Automotive Sector; Certain Iranian Persons; and Trade in Iranian Petroleum, Petroleum Products, and Petrochemical Products.* (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a foreign financial institution the sanctions described in subsection (b) of this section upon determining that the foreign financial institution has knowingly conducted or facilitated any significant financial transaction:

(i) on or after August 7, 2018, for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran;

(ii) on or after November 5, 2018, on behalf of any Iranian person included on the SDN List (other than an Iranian depository institution whose property and interests in property are blocked solely pursuant to Executive Order 13599) or any other person included on the SDN List whose property and interests in property are blocked pursuant to subsection 1(a) of this order or Executive Order 13599 (other than an Iranian depository institution whose property and interests in property are blocked solely pursuant to Executive Order 13599);

(iii) on or after November 5, 2018, with NIOC or NICO, except for a sale or provision to NIOC or NICO of the products described in section 5(a)(3)(A)(i) of ISA provided that the fair market value of such products is lower than the applicable dollar threshold specified in that provision;

(iv) on or after November 5, 2018, for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran; or

(v) on or after November 5, 2018, for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran.

(b) With respect to any foreign financial institution determined by the Secretary of the Treasury in accordance with this section to meet any of the criteria set forth in subsections (a)(i)–(a)(v) of this section, the Secretary of the Treasury may prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by such foreign financial institution.

(c) Subsections (a)(ii)–(a)(iv) of this section shall apply with respect to a significant financial transaction conducted or facilitated by a foreign financial institution for the purchase of petroleum or petroleum products from Iran only if:

(i) the President determines under subparagraphs (4)(B) and (C) of subsection 1245(d) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81) (2012 NDAA) (22 U.S.C. 8513a) that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions; and

(ii) an exception under subparagraph 4(D) of subsection 1245(d) of the 2012 NDAA from the imposition of sanctions under paragraph (1) of that subsection does not apply.

(d) Subsection (a)(ii) of this section shall not apply with respect to a significant financial transaction conducted or facilitated by a foreign financial institution for the sale, supply, or transfer to or from Iran of natural gas only if the financial transaction is solely for trade between the country with primary jurisdiction over the foreign financial institution and Iran, and any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution.

(e) Subsections (a)(ii)–(a)(v) of this section shall not apply with respect to any person for conducting or facilitating a transaction for the provision (including any sale) of agricultural commodities, food, medicine, or medical devices to Iran.

(f) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order or, where specifically provided, the effective date of the prohibition.

Sec. 3. *''Menu-based'' Sanctions Relating to Iran's Automotive Sector and Trade in Iranian Petroleum, Petroleum Products, and Petrochemical Products.* (a) The Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Homeland Security, and the United States Trade Representative, and with the President of the Export-Import Bank, the Chairman of the Board of Governors of the Federal Reserve System, and other agencies and officials as appropriate, is hereby authorized to impose on a person any of the sanctions described in section 4 or 5 of this order upon determining that the person:

(i) on or after August 7, 2018, knowingly engaged in a significant transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran;

(ii) on or after November 5, 2018, knowingly engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran;

(iii) on or after November 5, 2018, knowingly engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran;

(iv) is a successor entity to a person determined by the Secretary of State in accordance with this section to meet any of the criteria set forth in subsections (a)(i)–(a)(iii) of this section;

(v) owns or controls a person determined by the Secretary of State in accordance with this section to meet any of the criteria set forth in subsections (a)(i)–(a)(iii) of this section, and had knowledge that the person engaged in the activities referred to in those subsections; or

(vi) is owned or controlled by, or under common ownership or control with, a person determined by the Secretary of State in accordance with this section to meet any of the criteria set forth in subsections (a)(i)–(a)(iii) of this section, and knowingly participated in the activities referred to in those subsections.

(b) Subsection (a)(ii) of this section shall apply with respect to a person only if:

(i) the President determines under subparagraphs (4)(B) and (C) of subsection 1245(d) of the 2012 NDAA that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions; and

(ii) an exception under subparagraph 4(D) of subsection 1245(d) of the 2012 NDAA from the imposition of sanctions under paragraph (1) of that subsection does not apply.

Sec. 4. *Agency Implementation Authorities for ''Menu-based'' Sanctions.* When the Secretary of State, in accordance with the terms of section 3 of this order, has determined that a person meets any of the criteria described in subsections (a)(i)–(a)(vi) of that section and has selected any of the sanctions set forth below to impose on that person, the heads of relevant agencies, in consultation with the Secretary of State, as appropriate, shall take the following actions where necessary to implement the sanctions imposed by the Secretary of State:

(a) the Board of Directors of the Export-Import Bank of the United States shall deny approval of the issuance of any guarantee, insurance, extension of credit, or participation in an extension of credit in connection with the export of any goods or services to the sanctioned person;

(b) agencies shall not issue any specific license or grant any other specific permission or authority under any statute or regulation that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or technology to the sanctioned person;

(c) with respect to a sanctioned person that is a financial institution:

(i) the Chairman of the Board of Governors of the Federal Reserve System and the President of the Federal Reserve Bank of New York shall take such actions as they deem appropriate, including denying designation, or terminating the continuation of any prior designation of, the sanctioned person as a primary dealer in United States Government debt instruments; or

(ii) agencies shall prevent the sanctioned person from serving as an agent of the United States Government or serving as a repository for United States Government funds;

(d) agencies shall not procure, or enter into a contract for the procurement of, any goods or services from the sanctioned person;

(e) the Secretary of State shall deny a visa to, and the Secretary of Homeland Security shall exclude from the United States, any alien that the Secretary of State determines is a corporate officer or principal of, or a shareholder with a controlling interest in, a sanctioned person; or

(f) the heads of the relevant agencies, as appropriate, shall impose on the principal executive officer or officers, or persons performing similar functions and with similar authorities, of a sanctioned person the sanctions described in subsections (a)–(e) of this section, as selected by the Secretary of State.

(g) The prohibitions in subsections (a)–(f) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order or, where specifically provided, the effective date of the prohibition.

Sec. 5. *Additional Implementation Authorities for ''Menu-based'' Sanctions.* (a) When the President, or the Secretary of State or the Secretary of the Treasury pursuant to authority delegated by the President and in accordance with the terms of such delegation, has determined that sanctions described in section 6(a) of ISA shall be imposed on a person pursuant to ISA, CISADA, TRA, or IFCA and has selected one or more of the sanctions set forth below to impose on that person or when the Secretary of State, in accordance with the terms of section 3 of this order, has determined that a person meets any of the criteria described in subsections (a)(i)–(a)(vi) of that section and has selected one or more of the sanctions set forth below to impose on that person, the Secretary of the Treasury, in consultation with the Secretary of State, shall take the following actions where necessary to implement the sanctions selected and maintained by the President, the Secretary of State, or the Secretary of the Treasury:

(i) prohibit any United States financial institution from making loans or providing credits to the sanctioned person totaling more than $10,000,000 in any 12-month period, unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities;

(ii) prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest;

(iii) prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person;

(iv) block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the sanctioned person, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in;

(v) prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person;

(vi) restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from the sanctioned person; or

(vii) impose on the principal executive officer or officers, or persons performing similar functions and with similar authorities, of a sanctioned person the sanctions described in subsections (a)(i)–(a)(vi) of this section, as selected by the President or Secretary of State or the Secretary of the Treasury, as appropriate.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order or, where specifically provided, the effective date of the prohibition.

Sec. 6. *Sanctions Relating to the Iranian Rial.* (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a foreign financial institution the sanctions described in subsection (b) of this section upon determining that the foreign financial institution has, on or after August 7, 2018:

(i) knowingly conducted or facilitated any significant transaction related to the purchase or sale of Iranian rials or a derivative, swap, future, forward, or other similar contract whose value is based on the exchange rate of the Iranian rial; or

(ii) maintained significant funds or accounts outside the territory of Iran denominated in the Iranian rial.

(b) With respect to any foreign financial institution determined by the Secretary of the Treasury in accordance with this section to meet the criteria set forth in subsection (a)(i) or (a)(ii) of this section, the Secretary of the Treasury may:

(i) prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by such foreign financial institution; or

(ii) block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of such foreign financial institution, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(c) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order or, where specifically provided, the effective date of the prohibition.

Sec. 7. *Sanctions with Respect to the Diversion of Goods Intended for the People of Iran, the Transfer of Goods or Technologies to Iran that are Likely to be Used to Commit Human Rights Abuses, and Censorship.* (a) The Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State, is hereby authorized to impose on a person the measures described in subsection (b) of this section upon determining that the person:

(i) has engaged, on or after January 2, 2013, in corruption or other activities relating to the diversion of goods, including agricultural commodities, food, medicine, and medical devices, intended for the people of Iran;

(ii) has engaged, on or after January 2, 2013, in corruption or other activities relating to the misappropriation of proceeds from the sale or resale of goods described in subsection (a)(i) of this section;

(iii) has knowingly, on or after August 10, 2012, transferred, or facilitated the transfer of, goods or technologies to Iran, any entity organized under the laws of Iran or otherwise subject to the jurisdiction of the Government of Iran, or any national of Iran, for use in or with respect to Iran, that are likely to be used by the Government of Iran or any of its agencies or instrumentalities, or by any other person on behalf of the Government of Iran or any of such agencies or instrumentalities, to commit serious human rights abuses against the people of Iran;

(iv) has knowingly, on or after August 10, 2012, provided services, including services relating to hardware, software, or specialized information or professional consulting, engineering, or support services, with respect to goods or technologies that have been transferred to Iran and that are likely to be used by the Government of Iran or any of its agencies or instrumentalities, or by any other person on behalf of the Government of Iran or any of such agencies or instrumentalities, to commit serious human rights abuses against the people of Iran;

(v) has engaged in censorship or other activities with respect to Iran on or after June 12, 2009, that prohibit, limit, or penalize the exercise of freedom of expression or assembly by citizens of Iran, or that limit access to print or broadcast media, including the facilitation or support of intentional frequency manipulation by the Government of Iran or an entity owned or controlled by the Government of Iran that would jam or restrict an international signal;

(vi) has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the activities described in subsections (a)(i)–(a)(v) of this section or any person whose property and interests in property are blocked pursuant to this section; or

(vii) is owned or controlled by, or has acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this section.

(b) With respect to any person determined by the Secretary of the Treasury in accordance with this section to meet any of the criteria set forth in subsections (a)(i)–(a)(vii) of this section, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of such person are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(c) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order or, where specifically provided, the effective date of the prohibition.

Sec. 8. *Entities Owned or Controlled by a United States Person and Established or Maintained Outside the United States.* (a) No entity owned or controlled by a United States person and established or maintained outside the United States may knowingly engage in any transaction, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran, if that transaction would be prohibited by Executive Order 12957, Executive Order 12959 of May 6, 1995, Executive Order 13059 of August 19, 1997, Executive Order 13599, or sections 1 or 15 of this order, or any regulation issued pursuant to the foregoing, if the transaction were engaged in by a United States person or in the United States.

(b) Penalties assessed for violations of the prohibition in subsection (a) of this section, and any related violations of section 15 of this order may be assessed against the United States person that owns or controls the entity that engaged in the prohibited transaction.

(c) The prohibitions in subsection (a) of this section apply, except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order or, where specifically provided, the effective date of the prohibition, except to the extent provided in subsection 20(c) of this order.

Sec. 9. *Revoking and Superseding Prior Executive Orders.* The following Executive Orders are revoked and superseded:

(a) Executive Order 13628 of October 9, 2012 (Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions With Respect to Iran); and

(b) Executive Order 13716 of January 16, 2016 (Revocation of Executive Orders 13574, 13590, 13622, and 13645 With Respect to Iran, Amendment

of Executive Order 13628 With Respect to Iran, and Provision of Implementation Authorities for Aspects of Certain Statutory Sanctions Outside the Scope of U.S. Commitments Under the Joint Comprehensive Plan of Action of July 14, 2015).

Sec. 10. *Natural Gas Project Exception.* Subsections 1(a), 2(a)(ii)–(a)(v), 3(a)(ii)–(a)(iii), and, with respect to a person determined by the Secretary of State in accordance with section 3 to meet the criteria of 3(a)(ii)–(iii), 3(a)(iv)–(vi) of this order shall not apply with respect to any person for conducting or facilitating a transaction involving a project described in subsection (a) of section 603 of TRA to which the exception under that section applies.

Sec. 11. *Donations.* I hereby determine that, to the extent section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) may apply, the making of donations of the types of articles specified in such section by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the national emergency declared in Executive Order 12957, and I hereby prohibit such donations as provided by subsections 1(b), 5(a)(iv), 6(b)(ii), and 7(b) of this order.

Sec. 12. *Prohibitions.* The prohibitions in subsections 1(b), 5(a)(iv), 6(b)(ii), and 7(b) of this order include:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 13. *Entry into the United States.* The unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in subsections 1(a), 3(a), and 7(a) of this order would be detrimental to the interests of the United States, and the entry of such persons into the United States, as immigrants or nonimmigrants, is hereby suspended. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 14. *General Authorities.* The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including adopting rules and regulations, to employ all powers granted to me by IEEPA and sections 6(a)(6), 6(a)(7), 6(a)(8), 6(a)(9), 6(a)(11), and 6(a)(12) of ISA, and to employ all powers granted to the United States Government by section 6(a)(3) of ISA, as may be necessary to carry out the purposes of this order, other than the purposes described in sections 3, 4, and 13 of this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. All agencies of the United States shall take all appropriate measures within their authority to implement this order.

Sec. 15. *Evasion and Conspiracy.* (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order or in Executive Order 12957, Executive Order 12959, Executive Order 13059, or Executive Order 13599 is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order or in Executive Order 12957, Executive Order 12959, Executive Order 13059, or Executive Order 13599 is prohibited.

Sec. 16. *Definitions.* For the purposes of this order:

(a) the term ''automotive sector of Iran'' means the manufacturing or assembling in Iran of light and heavy vehicles including passenger cars, trucks, buses, minibuses, pick-up trucks, and motorcycles, as well as original

equipment manufacturing and after-market parts manufacturing relating to such vehicles;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''financial institution'' includes (i) a depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act) (12 U.S.C. 1813(c)(1)), including a branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) (12 U.S.C. 3101(7)); (ii) a credit union; (iii) a securities firm, including a broker or dealer; (iv) an insurance company, including an agency or underwriter; and (v) any other company that provides financial services;

(d) the term ''foreign financial institution'' means any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes, but is not limited to, depository institutions, banks, savings banks, money service businesses, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and holding companies, affiliates, or subsidiaries of any of the foregoing. The term does not include the international financial institutions identified in 22 U.S.C. 262r(c)(2), the International Fund for Agricultural Development, the North American Development Bank, or any other international financial institution so notified by the Secretary of the Treasury;

(e) the term ''Government of Iran'' includes the Government of Iran, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran;

(f) the term ''Iran'' means the Government of Iran and the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to international arrangements;

(g) the term ''Iranian depository institution'' means any entity (including foreign branches), wherever located, organized under the laws of Iran or any jurisdiction within Iran, or owned or controlled by the Government of Iran, or in Iran, or owned or controlled by any of the foregoing, that is engaged primarily in the business of banking (for example, banks, savings banks, savings associations, credit unions, trust companies, and bank holding companies);

(h) the term ''Iranian person'' means an individual who is a citizen or national of Iran or an entity organized under the laws of Iran or otherwise subject to the jurisdiction of the Government of Iran;

(i) the terms ''knowledge'' and ''knowingly,'' with respect to conduct, a circumstance, or a result, mean that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result;

(j) the terms ''Naftiran Intertrade Company'' and ''NICO'' mean the Naftiran Intertrade Company Ltd. and any entity owned or controlled by, or operating for or on behalf of, the Naftiran Intertrade Company Ltd.;

(k) the terms ''National Iranian Oil Company'' and ''NIOC'' mean the National Iranian Oil Company and any entity owned or controlled by, or operating for or on behalf of, the National Iranian Oil Company;

(l) the term ''person'' means an individual or entity;

(m) the term ''petrochemical products'' includes any aromatic, olefin, and synthesis gas, and any of their derivatives, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea;

(n) the term ''petroleum'' (also known as crude oil) means a mixture of hydrocarbons that exists in liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities;

(o) the term ''petroleum products'' includes unfinished oils, liquefied petroleum gases, pentanes plus, aviation gasoline, motor gasoline, naphtha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, petrochemical feedstocks, special naphthas, lubricants, waxes, petroleum coke, asphalt, road oil, still gas, and miscellaneous products obtained from the processing of: crude oil (including lease condensate), natural gas, and other hydrocarbon compounds. The term does not include natural gas, liquefied natural gas, biofuels, methanol, and other non-petroleum fuels;

(p) the term ''sanctioned person'' means a person that the President, or the Secretary of State or the Secretary of the Treasury pursuant to authority delegated by the President and in accordance with the terms of such delegation, has determined is a person on whom sanctions described in section 6(a) of ISA shall be imposed pursuant to ISA, CISADA, TRA, or IFCA, and on whom the President, the Secretary of State, or the Secretary of the Treasury has imposed any of the sanctions in section 6(a) of ISA or a person on whom the Secretary of State, in accordance with the terms of section 3 of this order, has decided to impose sanctions pursuant to section 3 of this order;

(q) the term ''subject to the jurisdiction of the Government of Iran'' means a person organized under the laws of Iran or any jurisdiction within Iran, ordinarily resident in Iran, or in Iran, or owned or controlled by any of the foregoing;

(r) the term ''United States financial institution'' means a financial institution as defined in subsection (c) of this section (including its foreign branches) organized under the laws of the United States or any jurisdiction within the United States or located in the United States; and

(s) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 17. *Notice.* For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 12957, there need be no prior notice of a listing or determination made pursuant to subsections 1(b), 5(a)(iv), 6(b)(ii), and 7(b) of this order.

Sec. 18. *Delegation to Implement Section 104A of CISADA.* The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including adopting rules and regulations, and to employ all powers granted to me by IEEPA, as may be necessary to carry out section 104A of CISADA (22 U.S.C. 8513b). The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury.

Sec. 19. *Rights.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

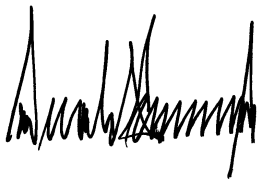
Sec. 20. *Effect on Actions or Proceedings, Blocked Property, and Regulations, Orders, Directives, and Licenses.* (a) Pursuant to section 202 of the NEA (50 U.S.C. 1622), the revocation of Executive Orders 13716 and 13628 as set forth in section 9 of this order, shall not affect any action taken or proceeding pending not finally concluded or determined as of the effective date of this order, or any action or proceeding based on any act committed prior to the effective date of this order, or any rights or duties that matured or penalties that were incurred prior to the effective date of this order.

(b) Except to the extent provided in statutes or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, the following are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: all property and interests in property that were blocked pursuant to Executive Order 13628 and remained blocked immediately prior to the effective date of this order.

(c) Except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, all regulations, orders, directives, or licenses that were issued pursuant to Executive Order 13628 and remained in effect immediately prior to the effective date of this order are hereby authorized to remain in effect—subject to their existing terms and conditions—pursuant to this order, which continues in effect certain sanctions set forth in Executive Order 13628.

Sec. 21. *Relationship to Algiers Accords.* The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

Sec. 22. *Effective Date.* This order is effective 12:01 a.m. eastern daylight time on August 7, 2018.



THE WHITE HOUSE,
August 6, 2018.

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