SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240, 242, and 249

[Release No. 34–94062; File No. S7–02–22]

RIN 3235–AM45

Amendments Regarding the Definition of "Exchange" and Alternative Trading Systems (ATSs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing to amend Rule 3b–16 under Securities Exchange Act of 1934 (''Exchange Act''), which defines certain terms used in the statutory definition of ''exchange'' under Section 3(a)(1) of the Exchange Act to include systems that offer the use of non-firm trading interest and communication protocols to bring together buyers and sellers of securities. In addition, the Commission is re-proposing amendments to its regulations under the Exchange Act that were initially proposed in September 2020 for ATSs to take into consideration systems that may fall within the definition of exchange because of the proposed amendments and operate as an ATS. The Commission is re-proposing, with certain revisions, amendments to its regulations for ATSs that trade government securities as defined under Section 3(a)(42) of the Exchange Act (''government securities'') or repurchase and reverse repurchase agreements on government securities (''Government Securities ATSs''). The Commission is also proposing to amend Form ATS–N for NMS Stock ATSs, which would require existing NMS Stock ATSs to amend their existing disclosures. In addition, the Commission is proposing to amend the fair access rule for ATSs. The Commission is also proposing to require electronic filing of and to modernize Form ATS–R and Form ATS, which would require existing Form ATS filers to amend their existing disclosures. Further, the Commission is re-proposing amendments to its regulations regarding systems compliance and integrity to apply to ATSs that meet certain volume thresholds in U.S. Treasury Securities or in a debt security issued or guaranteed by a U.S. executive agency, or government-sponsored enterprise (''Agency Securities'').

DATES: Comments should be received on or before April 18, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/regulatory-actions/how-to-submit-comments*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–02–22 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–02–22. 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 (*https://www.sec.gov/rules/proposed.shtml*). Comments are also 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 a.m. and 3 p.m. Operating conditions may limit access to the Commission's public reference room. 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.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Regulation ATS: Tyler Raimo, Assistant Director, at (202) 551–6227; Matthew Cursio, Special Counsel, at (202) 551–5748; David Garcia, Special Counsel, at (202) 551–5681; Megan Mitchell, Special Counsel, at (202) 551–4887; Amir Katz, Special Counsel, at (202) 551–7653; and Joanne Kim, Attorney Advisor, at (202) 551–4393, and for Regulation SCI: David Liu, Special Counsel, at (312) 353–6265 and Sara Hawkins, Special Counsel, at (202) 551–5523, Office of Market Supervision, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to the following rules under the Exchange Act: (1) 17 CFR 232.101 (Rule 101 of Regulation S–T); (2) 17 CFR 240.3b–16 (Rule 3b–16); (3) 17 CFR 242.300 (Rule 300 of Regulation ATS);[1] (4) 17 CFR 242.301 (Rule 301 of Regulation ATS); (5) 17 CFR 242.302 (Rule 302 of Regulation ATS); (6) 17 CFR 242.304 (Rule 304 of Regulation ATS);[2] and (7) 17 CFR 242.1000 (Rule 1000 of Regulation SCI).[3]

I. Introduction

In September 2020, the Commission issued a proposal to amend Regulation ATS and Regulation SCI for Government Securities ATSs (''2020 Proposal'').[4] The Commission recognized the critical role of government securities in the U.S. and global economy, the significant volume in government securities transacted on systems currently operating as ATSs, and these ATSs' growing importance to investors and overall securities market structure. Notwithstanding their importance for government securities, the investor protection and fair and orderly market principles of Regulation ATS have limited application to Government Securities ATSs.[5] For

[1] ''Regulation ATS'' consists of 17 CFR 242.300 through 242.304 (Rules 300 through 304 under the Exchange Act). *See also* Regulation ATS Adopting Release, *infra* note 31.

[2] The Commission adopted Rule 304 on July 18, 2018. *See* Securities Exchange Act Release No. 83663 (July 18, 2018), 83 FR 38768 (August 7, 2018) (''NMS Stock ATS Adopting Release'').

[3] The Commission adopted 12 CFR 242.1000 through 242.1007 (Regulation SCI) on November 19, 2014. *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (''Regulation SCI Adopting Release'').

[4] *See* Securities Exchange Act Release No. 90019 (September 28, 2020), 85 FR 87106 (December 31, 2020).

[5] For the purposes of this re-proposal, the term ''Government Securities ATS'' refers to an ATS that trades government securities or repos and includes ATSs that would be subject to Regulation ATS after the effective date of any final rule. This term includes three categories of ATSs. First, a ''Currently Exempted Government Securities ATS'' means an ATS that trades government securities or repos, is operating as of the effective date of any final rule, and was formerly not required to comply with Regulation ATS under 17 CFR 240.3a1–1(a)(3) (Exchange Act Rule 3a1–1(a)(3)) exemption prior to the effective date of any final rule. Second, a ''Current Government Securities ATS'' means an ATS that trades government securities or repos and is operating pursuant to an initial operation report on Form ATS on file with the Commission as of the effective date of any final rule. Finally, when referring to regulatory requirements after the effective date of any final rule, the term ''Government Securities ATS'' also includes a Communication Protocol System that trades U.S.

example, an ATS that limits its securities activities to government securities or reverse repurchase agreements on government securities (''repos'') and registers as a broker-dealer or is a bank (*i.e.,* a Currently Exempted Government Securities ATS) is exempt from exchange registration and is not required to comply with Regulation ATS. Further, ATSs that trade *both* government securities and non-government securities (*e.g.,* corporate bonds) are subject to Regulation ATS but are not required to comply with many of its investor protection and fair and orderly markets provisions, including public transparency rules and the obligation to provide fair access to investors if the ATS has significant trading volume. In addition, ATSs that trade government securities are not subject to the systems integrity provisions of Regulation SCI.

To promote operational transparency, investor protection, system integrity, fair and orderly markets, and regulatory oversight for Government Securities ATSs, the Commission proposed in the 2020 Proposal to: Eliminate the exemption from compliance with Regulation ATS for Currently Exempted Government Securities ATSs; require all Government Securities ATSs to publicly file Form ATS–G, on which they would disclose information about their operations and potential conflicts of interest; provide a process for the Commission to review Form ATS–G disclosures for clarity, completeness, and potential violations of law and, if necessary, declare ineffective Form ATS–G filings; and require an ATS that has significant volume for U.S. Treasury Securities or Agency Securities to: (1) Establish reasonable standards for access to the ATS and apply those standards to all prospective and current subscribers in a fair and non-discriminatory manner pursuant Rule 301(b)(5) of Regulation ATS (''Fair Access Rule''); and (2) comply with the operational capability, security, business continuity planning, incident reporting, and related requirements under Regulation SCI.[6] The Commission issued a concept release (''Concept Release'') in addition to the 2020 Proposal on the regulation of fixed income electronic trading platforms.[7] The Concept Release requested comments on a wide range of topics, including the different regulatory treatment among fixed income electronic trading platforms that use diverse trading protocols or business models and various aspects of government securities, corporate bonds, and municipal securities trading, including their operations, services, fees, market data, and participants.

The Commission received comments in response to the 2020 Proposal and Concept Release.[8] Commenters expressed broad support for the 2020 Proposal. In general, commenters supported the proposed requirements to remove the exemption for Currently Exempted Government Securities ATSs and to require public disclosures on Form ATS–G.[9] However, some commenters expressed concern regarding aspects of the 2020 Proposal, including the proposed enhanced disclosure requirements and effectiveness regime[10] and the proposal to require Government Securities ATSs that meet certain volume thresholds to register as national securities exchanges.[11] In addition, commenters who opined on the Fair Access Rule and Regulation SCI had differing views about whether and how to apply them to Government Securities ATSs.[12]

In addition, the Commission received substantial comment on the Concept Release, in particular concerning the regulatory framework for fixed income electronic trading platforms. Many commenters recognized that certain electronic trading platforms for fixed income securities are not regulated as registered exchanges or ATSs despite performing the same market function as those regulated markets.[13] Several commenters expressed support for the Commission to expand the scope of its exchange regulation to encompass more fixed income platforms,[14] while several other commenters believed that such action is not necessary or appropriate.[15]

Advances in technology and innovation since Regulation ATS was adopted in 1998[16] have changed the methods by which securities markets bring together buyers and sellers of

Government securities or repos on U.S. Government securities and that chooses to operate as an ATS after the effective date of any final rule. A ''Communication Protocol System'' would include a system that offers protocols and the use of non-firm trading interest to bring together buyers and sellers of securities. The re-proposal also uses the term ''Legacy Government Securities ATS,'' which includes all ATSs that trade government securities or repos and are operating as of the effective date of any final rule, regardless of whether the ATSs are operating pursuant to an initial operation report on Form ATS on file with the Commission (*i.e.,* all Current Government Securities ATSs and Currently Exempted Government Securities ATSs).

[6] The Commission also had proposed to amend Regulation ATS to: Require that Form ATS and Form ATS–R be filed with the Commission electronically through the Electronic Data Gathering, Analysis and Retrieval (EDGAR) system and modernize both forms; eliminate confidential treatment of the types of securities that an ATS trades as disclosed on the ATS's Form ATS and Form ATS–R; update and correct Form ATS–N; change the reasons for which the Commission could extend the initial Form ATS–N review period; require NMS Stock ATSs to post on their websites the most recently disseminated Form ATS–N, except for any amendment that the Commission has declared ineffective or that has been withdrawn; and remove the exclusion from compliance with the Fair Access Rule and Rule 301(b)(6) under Regulation ATS for an ATS that matches non-displayed customer orders using prices disseminated by an effective transaction reporting plan.

[7] *See* 2020 Proposal, *supra* note 4.

[8] These comment letters are available at *https://www.sec.gov/comments/s7-12-20/s71220.htm* and discussed throughout this proposal.

[9] *See, e.g.,* letter from Marcia E. Asquith, Executive Vice President & Corporate Secretary, Financial Industry Regulatory Authority, Inc., dated March 1, 2021 (''FINRA Letter'') at 2; letter from Rob Toomey, Managing Director & Associate General Counsel, Securities Industry and Financial Markets Association, Chris Killian, Managing Director, Securitization and Credit, Securities Industry and Financial Markets Association, and Leslie Norwood, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association, dated March 1, 2021 (''SIFMA Letter'') at 2; letter from Elisabeth Kirby, Head of U.S. Market Structure, Tradeweb Markets Inc., dated March 1, 2021 (''Tradeweb Letter'') at 2; letter from Jennifer W. Han, Chief Counsel & Head of Regulatory Affairs, Managed Funds Association, dated March 1, 2021 (''MFA Letter'') at 2–3; and Tyler Gellasch, Executive Director, Healthy Markets Association, dated March 22, 2021 (''Healthy Markets Letter'') at 7.

[10] *See* letter from Robert Laorno, General Counsel, ICE Bonds Securities Corporation, dated March 8, 2021 (''ICE Bonds Letter I'') at 5.

[11] *See* letter from Kathleen M. Cronin, Senior Managing Director, General Counsel and Corporate Secretary, CME Group Inc., dated February 26, 2021 (''BrokerTec Letter'') at 3–4.

[12] *See, e.g.,* SIFMA Letter at 5 (supporting the proposed volume thresholds); Americans for Financial Reform Education Fund, dated March 1, 2021 (''AFREF Letter'') at 3 (supporting the proposed threshold with respect to Regulation SCI and stating that they believe the proposed threshold for the Fair Access Rule is too low); Healthy Markets Letter at 10–11 (recommending a lower threshold for Regulation SCI); letter from Gregory Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated March 1, 2021 (''Bloomberg Letter'') at 5–6 (stating that the proposed thresholds are too high); ICE Bonds Letter I at 5 (suggesting a 20 percent threshold for application of Regulation SCI); Tradeweb Letter at 3, 11 (recommending a ''more material'' threshold for applying Regulation SCI). *See also infra* Sections III.B.4 and III.C.

[13] *See, e.g.,* letter from Stephen John Berger, Managing Director, Global Head of Government and Regulatory Policy, Citadel, dated March 1, 2021 (''Citadel Letter''); letter from Joanna Mallers, Secretary, FIA Principal Traders Group, dated March 1, 2021 (''FIA PTG Letter'') at 2; letter from Robert Laorno, General Counsel, ICE Bonds Securities Corporation, dated March 15, 2021 (''ICE Bonds Letter II'') at 2–4; FINRA Letter at 6; MFA Letter at 8; Tradeweb Letter at 4.

[14] *See, e.g.,* Citadel Letter; FIA PTG Letter; ICE Bonds Letter II.

[15] *See, e.g.,* letter from Sarah A. Bessin, Associate General Counsel, Investment Company Institute and Nhan Nguyen, Counsel, Investment Company Institute, dated March 1, 2021 (''ICI Letter'') at 2, 7; letter from Scott Pintoff, General Counsel, MarketAxess, dated March 1, 2021 (''MarketAxess Letter'') at 2–4; Bloomberg Letter at 17–20.

[16] *See* Regulation ATS Adopting Release, *infra* note 31.

securities. As discussed further below, innovations in trading protocols have increased efficiencies and access to discover liquidity and prices, search for a counterparty, and agree upon the terms of a trade. Instead of using exchange markets that offer only the use of firm orders and provide matching algorithms, market participants are able to connect to numerous Communication Protocol Systems, which offer the use of protocols and non-firm trading interest to bring together buyers and sellers of securities. Communication Protocol Systems today perform similar market place functions of bringing together buyers and sellers as registered exchanges and ATSs and have become an increasingly preferred choice of trading venue, particularly for fixed income securities. However, as a function of how Exchange Act Rule 3b–16 currently defines the terms in Section 3(a)(1) of the Exchange Act, Communication Protocol Systems do not fall within the definition of exchange. As a result, Communication Protocol Systems are not subject to the same regulatory requirements as registered exchanges and ATSs and the investors using them do not receive the investor protection, fair and orderly markets, transparency, and oversight benefits stemming from exchange regulation. Further, by Communication Protocol Systems falling outside the definition of exchange, a disparity has developed among similar markets that bring together buyers and sellers of securities, in which some are regulated as exchanges and others are not. This regulatory disparity can create a competitive imbalance and a lack of investor protections.[17]

Given the changing conditions among markets to bring together buyers and sellers of securities, and taking into consideration comment letters submitted in response to the 2020 Proposal and the Concept Release, the Commission is proposing to amend Exchange Act Rule 3b–16 regarding what ''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' as those terms are used'' in the statutory definition of ''exchange'' under Exchange Act Section 3(a)(1).[18] The proposed amendments to Exchange Act Rule 3b–16(a) would include Communication Protocol Systems that make available for trading any type of security, including, among others, government securities, corporate bonds, municipal securities, NMS stocks, equity securities that are not NMS stocks, private restricted securities, repurchase agreements and reverse repurchase agreements, foreign sovereign debt, and options. Including Communication Protocol Systems within the definition of ''exchange'' would appropriately regulate a market place that brings together buyers and sellers of securities, extend the benefits of the exchange regulatory framework to investors that use such systems, and reduce regulatory disparities among like markets.

In addition, because the Commission is proposing to amend Exchange Act Rule 3b–16 to include Communication Protocol Systems within the definition of exchange and taking into consideration comments received in response to the 2020 Proposal and the Concept Release, the Commission is re-proposing and revising previously proposed amendments to Regulation ATS and Regulation SCI for Government Securities ATSs that include the following: [19] (1) Re-proposing to eliminate the exemption from compliance with Regulation ATS for an ATS that trades only government securities or repos and is operated by a broker-dealer or is a bank; (2) re-proposing, with certain revisions, to require a Government Securities ATS that has significant volume for U.S. Treasury Securities or Agency Securities to comply with the Fair Access Rule under Regulation ATS and Regulation SCI; [20] (3) re-proposing to apply the enhanced disclosure and filing requirements of Rule 304 of Regulation ATS, which are currently applicable to NMS Stock ATSs, to all Government Securities ATSs; (4) proposing to require Government Securities ATSs to file Form ATS–N, as revised, instead of previously proposed Form ATS–G; [21] (5) proposing several changes to Form ATS–N that would be applicable to both Government Securities ATSs and NMS Stock ATSs, including questions about the ATS's interaction with related markets, liquidity providers, and activities the ATS undertakes to surveil and monitor its market; (6) proposing amendments to Form ATS–N that would require existing NMS Stock ATSs to file an amendment to their existing disclosures on Form ATS–N; (7) proposing to add a new type of amendment to Form ATS–N to report changes to fee disclosures; (8) proposing to amend the Form ATS–N review and effectiveness process to permit the Commission to extend the review period for Form ATS–N amendments; [22] (9) proposing to make certain changes to the Fair Access Rule that would apply to all ATSs that are subject to the rule; [23] and (10) re-proposing electronic filing of Form ATS–R and Form ATS and proposing certain changes to the categories of securities reported on Form ATS–R.[24]

II. Proposed Amendments Regarding the Definition of Exchange

A. Exchange Regulatory Framework

Exchange Act Section 3(a)(1) states that the term ''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 as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.[25]

Section 5 of the Exchange Act [26] requires an organization, association, or

[17] *See infra* Section VIII.C.3.a.

[18] 17 CFR 240.3b–16(a).

[19] U.S. Treasury Securities and Agency Securities are not classes of securities for purposes of Exchange Act Rule 3a1–1(b).

[20] The Commission is re-proposing to amend Regulation ATS to require that Form ATS and Form ATS–R be filed with the Commission electronically through EDGAR and to modernize both forms; eliminate confidential treatment of the types of securities that an ATS trades as disclosed on the ATS's Form ATS and Form ATS–R; and remove the exclusion from compliance with the Fair Access Rule and Rule 301(b)(6) under Regulation ATS for an ATS that matches non-displayed customer orders using prices disseminated by an effective transaction reporting plan. Covered ATSs would not be required to post on their websites the most recently disseminated Form ATS–N, but would be required to provide pursuant to Rule 304(b)(3)(i) a direct URL hyperlink to the Commission's website that contains the documents made public by the Commission under Rule 304(b)(2).

[21] In the 2020 Proposal, the Commission proposed that Government Securities ATSs file proposed Form ATS–G. Given the significant overlap between proposed Form ATS–G and existing Form ATS–N, the Commission is now proposing that Government Securities ATSs file Form ATS–N, which is currently filed by NMS Stock ATSs, and proposing to revise Form ATS–N to apply disclosures for Government Securities ATSs that would fall under the proposed definition of ''exchange.'' *See* Appendix A for the proposed revisions to Form ATS–N. The Commission believes that this would limit the number of unique forms and simplify filing requirements.

[22] The Commission is also re-proposing to change the reasons for which the Commission could extend the initial Form ATS–N review period. *See infra* Section IV.A.

[23] *See infra* Section V.A.

[24] *See infra* Section V.B.

[25] *See* 15 U.S.C. 78c(a)(1).

[26] 15 U.S.C. 78e.

group of persons that meets the definition of ''exchange'' under Section 3(a)(1) of the Exchange Act,[27] unless otherwise exempt, to register with the Commission as a national securities exchange pursuant to Section 6 of the Exchange Act.[28] As discussed further below, registered national securities exchanges are self-regulatory organizations (''SROs''),[29] and must comply with regulatory requirements applicable to both national securities exchanges and SROs.[30]

In the Exchange Act, Congress provided a broad definition of the term ''exchange,'' permitting the Commission to apply the definition flexibly as the securities markets evolve over time.[31] In 1998, the Commission adopted Regulation ATS.[32] At that time, the Commission recognized that advances in technology had increasingly blurred the line between exchange and broker-dealer activities [33] and that ATSs that existed then were used by market participants as functional equivalents of exchanges.[34] To more accurately describe the range of markets that performed exchange functions at that time, the Commission concurrently adopted Exchange Act Rule 3b–16 to define terms [35] used in the statutory definition of ''exchange'' under Exchange Act Section 3(a)(1).

In Exchange Act Rule 3b–16(a), the Commission defined these terms, in light of the markets that existed at that time, to include any organization, association, or group of persons that: (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.[36] Rule 3b–16(b) explicitly excluded certain systems that the Commission believed were not exchanges.[37] 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 [38] the system from the definition.

When the Commission adopted Exchange Act Rule 3b–16, the Commission also adopted Exchange Act Rule 3a1–1(a) to exempt ATSs from the definition of ''exchange'' under Section 3(a)(1) of the Exchange Act. Exchange Act Rule 3a1–1(a)(2) [39] exempts from the Exchange Act Section 3(a)(1) definition of ''exchange'' an organization, association, or group of persons that complies with Regulation ATS,[40] which requires, among other things, meeting the definition of an ATS and registering as a broker-dealer.[41] Rule 300(a) of Regulation ATS defines an ATS as 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; 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.[42] Governing the conduct of or disciplining subscribers are functions performed by an SRO that the Commission believed should be regulated as such.[43] Accordingly, pursuant to Rule 300(a), a trading system that performs SRO functions or 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, be operated by a national securities association, or seek another exemption.[44]

As a result of the exemption, an ATS that complies with Regulation ATS is not required by Section 5 of the Exchange Act to register as a national securities exchange, is not an SRO, and, therefore, is not required to comply with regulatory requirements applicable to national securities exchanges and SROs.[45] 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.[46]

[27] *See infra* note 31.

[28] 15 U.S.C. 78f. A ''national securities exchange'' is an exchange registered as such under Section 6 of the Exchange Act.

[29] 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 (''MSRB''). *See* 15 U.S.C. 78c(a)(26). *See also* Securities Exchange Act Release No. 76474 (November 18, 2015), 80 FR 80998, 81025 (December 28, 2015) (''NMS Stock ATS Proposing Release'') at 81000–01 nn.20–26 and accompanying text (discussing certain differences between certain obligations and benefits applicable to national securities exchanges and those applicable to ATSs).

[30] *See, e.g.,* 15 U.S.C. 78f and 78s.

[31] *See* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70850 and 70898 (December 22, 1998) (''Regulation ATS Adopting Release''). *See also* 15 U.S.C. 78e and 78f. The Commission noted that it was recognized at the time the Exchange Act was enacted that a regulatory structure for securities exchanges would ''be of little value tomorrow if it is not flexible enough to meet new conditions immediately as they arise and demand attention in the public interest.'' *See* Regulation ATS Adopting Release at 70898, n.520 (citing Commission, Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 1 (1963) at 6 and S. Rep. No. 792, 73rd Cong., 2d Sess. (1934) at 5 (noting that ''exchanges cannot be regulated efficiently under a rigid statutory program,'' and that ''considerable latitude is allowed for the exercise of administrative discretion in the regulation of both'')).

[32] *See* Regulation ATS Adopting Release, *supra* note 31, at 70850.

[33] *See id.* at 70847.

[34] *See id.*

[35] The Commission adopted Exchange Act Rule 3b–16 under Section 3(b) of the Exchange Act (power to define terms). 15 U.S.C. 78c(b).

[36] *See* 17 CFR 240.3b–16(a).

[37] *See* Regulation ATS Adopting Release, *supra* note 31, at 70852. Specifically, Rule 3b–16(b) excludes from the definition of exchange systems that perform only traditional broker-dealer activities, including: Systems that route orders to a national securities exchange, a market operated by a national securities association, a broker-dealer for execution, or systems that allow persons to enter orders for execution against the bids and offers of a single dealer if certain additional conditions are met.

[38] *See* 17 CFR 240.3b–16(e).

[39] *See* 17 CFR 240.3a1–1(a)(2).

[40] *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 31, at 70857–58.

[41] *See* 17 CFR 242.300(a); 17 CFR 242.301(a); and 17 CFR 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.''

[42] *See* 17 CFR 242.300(a).

[43] *See* Regulation ATS Adopting Release, *supra* note 31, at 70859.

[44] *See id.*

[45] *See generally* Sections 5, 6, and 19 of the Exchange Act, 15 U.S.C. 78e, 78f, and 78s.

[46] *See* 15 U.S.C. 78e.

B. Adopting the Definition of Exchange for Evolving Market Places

1. Orders-Focused Markets Under Current Rule 3b–16

When the Commission adopted Exchange Act Rule 3b–16(a), the Commission sought to more accurately describe the range of markets that performed exchange functions as those were understood at that time.[47] In the Regulation ATS Adopting Release, the Commission observed that ATSs at that time provided services more akin to exchange functions than broker-dealer functions, such as matching counterparties' orders, executing trades, operating limit order books, and facilitating active price discovery.[48]

In the Regulation ATS Adopting Release, the Commission identified two elements of Exchange Act Rule 3b–16 that most accurately reflected the functions and uses of exchange markets at that time. These elements were the bringing together of orders of multiple buyers and sellers of securities and that trading takes place according to established, non-discretionary rules or procedures.[49] When considering what constituted an exchange at that time, the Commission focused on the expectations of the participants regarding how an execution would occur without the discretion of the operator. Because orders instruct a trading system to carry out the intention of participants in accordance with programmed trading procedures, orders, along with established, non-discretionary methods, contribute to how trading system participants could understand and expect to receive an execution.[50] In addition, the Commission stated that ''an essential indication of the non-discretionary status of rules and procedures is that those rules and procedures are communicated to the systems users'' and ''[t]hus, participants have an expectation regarding the manner of execution—that is, if an order is entered, it will be executed in accordance with those procedures and not at the discretion of a counterparty or intermediary.'' [51]

Further, at the time Exchange Act Rule 3b–16(a) was adopted, most ATSs operating met the criteria of the rule in that they offered the use of orders and algorithms that matched orders.[52] ATSs at that time allowed broker-dealers to place and execute orders on the system and the systems functioned as limit order books where orders are executed according to time, price, and size priority.[53] Accordingly, orders and established, non-discretionary methods undergirded Exchange Act Rule 3b–16 to reflect functions of exchange markets at that time. When discussing orders in the Regulation ATS Adopting Release, however, the Commission stated that systems that displayed bona fide, non-firm trading interest [54] or did not establish rules or operate a trading facility [55] would not fall within Rule 3b–16(a).

2. Prevalence of Systems Offering Non-Firm Trading Interest and Structured Protocols

Advances in technology have facilitated innovations and more efficient or diverse methods to bring together buyers and sellers of securities.[56] In the Commission's experience, Communication Protocol Systems, which can use various technologies and connectivity, generally offer the use of non-firm trading interest and establish protocols to prompt and guide buyers and sellers to communicate, negotiate, and agree to the terms of the trade without relying solely on the use of orders. Below is a non-exhaustive list of some Communication Protocol Systems.

One example of a Communication Protocol System is a ''Request-for-Quote'' (''RFQ'') system. RFQ systems are designed to allow market participants to obtain quotes for a particular security by sending messages to one or multiple potential respondents on the system simultaneously. RFQ systems may be ''disclosed,'' in which case the participants with established relationships interact only with each other, or anonymous, in which case the parties may not have established relationships. The system provider requires a participant to enter information in a message, which may include the name of the initiator, Committee on Uniform Securities Identificalion Procedures (CUSIP) number, side, and size. The system provider also provides protocols for participants to communicate with each other and negotiate a price or size of a trade. For example, participants receiving an RFQ message can choose to interact with the initiator by responding within a time period designated by the system provider with a priced quote. These methods can serve the same function as auctions where the respondents compete to offer the best price. The initiator can then select among the quote responses that it wishes to interact with through the system by either accepting one of multiple responses or rejecting all responses within a period of time set by the system provider. The match of the request and response results in an agreement to the terms of the trade between a buyer and a seller, which then proceeds to post-trade processing.[57] An RFQ list protocol (''RFQ List''), which is a form of RFQ protocol used commonly to trade U.S. Treasury Securities, may include a collection of RFQ inquiries that are submitted as a group but priced as individual items.[58] The RFQ List (defined by each system provider but generally more than two listed items) may be executed in its entirety, in pieces, or not at all. A liquidity provider that is responding to the list request may apply a ''good for'' time that is associated with the executable prices provided.

A Communication Protocol System could also include a system that electronically displays continuous firm or non-firm trading interest, or ''stream axes,'' in a security or type of security to participants on the system. Axes typically represent an indication of

[47] *See* Regulation ATS Adopting Release, *supra* note 31, at 70900.

[48] *See id.* at 70848.

[49] *See id.* at 70900.

[50] For example, the Commission stated in the Regulation ATS Adopting Release that ''an alternative trading system that posts firm orders to buy and sell a security does raise a certain expectation of execution at those quoted prices'' and that ''[t]he expectation is based on the life of the outstanding orders in the system, rather than continuous two sided quotations published by specialist and market makers.'' *See id.* at 70899, n.532.

[51] *See id.* at 70900.

[52] *See id.* at 70899–900, n.536.

[53] *See id.* at 70899, n.525.

[54] *See id.* at 70850. In the Regulation ATS Adopting Release, the Commission stated, ''[g]enerally, however, a system that displays *bona fide,* non-firm indications of interest—including, but not limited to indications of interest to buy or sell a particular security without either prices or quantities associated with those indications—will not be displaying ''orders'' and, therefore, not fall within Rule 3b–16.'' *See id.*

[55] *See id.* The Commission also stated that ''[u]nless a system also establishes rules or operates a trading facility under which subscribers can agree to the terms of their trades, the system will not be included within Rule 3b–16, even if it brings together 'orders.' '' *See id.*

[56] *See id.* at 70848.

[57] Communication Protocol Systems also may offer a workup functionality or blotter scraping functionality to gather non-firm trading interest and facilitate the negotiation and execution of trades. In a workup, a system may have a private phase, where the two original contra-parties submitting orders can negotiate, and a public phase where all subscribers can submit orders at the workup price.

[58] An RFQ List may be referred to as a Bid Wanted in Competition (''BWIC'') or Offer Wanted in Competition (''OWIC'') in the corporate bond market. Both serve a similar purpose to the RFQ List in allowing the submitter to solicit bids and offers on a number of securities at one time.

interest to sell or buy a bond (but can include firm quotes), and can either serve as a starting point for negotiation between participants or be executed immediately. Systems that stream axes take many forms. Some system providers provide connectivity and protocols for participants to electronically communicate and negotiate the terms of a trade. Other system providers offer participants more automated processes, whereby participants auto-execute against a streamed quote and agree upon the terms of a trade without negotiation. Typically, the system is programmed with permission options to allow participants to decide who can or cannot receive their axes. In such a case, the trading interest exchanged between the parties is typically firm and functions as orders.

Conditional order systems may be Communication Protocol Systems that offer the use of trading interest that may not be executable until after a user takes subsequent action. For example, a system provider may require conditional orders to contain a symbol, side, and size and provide protocols for participants to send and receive invitation messages to trade. The system would be designed for conditional orders to match with other trading interest, which can either be a firm order or another non-firm conditional order.[59] Upon a match, the system may send a firm-up invitation messages to both participants. The system protocols may permit a participant using a conditional order to either decline the firm-up invite, accept the firm-up invite, or counter the response to firm up.[60] During the time that the parties' trading interest is matched until the invitation to firm-up expires, is canceled, is executed, or is declined, the system protocols may require that the non-firm trading interest be committed and the shares cannot trade elsewhere.[61] Using the system protocols, the matched parties can modify the attributes of the non-firm trading interest (*i.e.,* price, size) before accepting the firm-up invitation. To the extent either a seller or buyer changes the attributes, an execution will only occur if each contra-party's corresponding attributes will still be met. If both matching parties accept the firm-up invite, the parties would agree upon the terms of the trade and an execution would occur.

Other systems have developed to bring together buyers and sellers of securities through the use of bilateral negotiation protocols and non-firm trading interest. Negotiation systems focus on providing a forum for buyers and sellers to see displayed non-firm trading interest, access liquidity, find a counterparty, and negotiate a trade through the use of their communication technology. The system may allow participants to select certain pre-approved participants and then exchange messages for purposes of agreeing to the terms of a trade. Negotiation systems may have fewer parameters for communicating trading interest than RFQ protocols; for example, negotiation systems provide features that are designed to prompt participants to interact with each other and provide parameters around that interaction, such as time for responses or requirements on the content of the message. A system may ''scrape'' or obtain the symbol of trading interest that a participant is seeking from the participant's order management or execution management system and use that to alert other participants on its system about potential contra-side interest in seeking to initiate a negotiation. The market participants using negotiation systems may complete a transaction outside of the system.

As trading in securities has become more electronic, Communication Protocol Systems perform the function of a market place and have become a preferred method for market participants to discover prices, find a counterparty, and execute a trade, particularly for government securities and other fixed income markets. One commenter on the 2020 Proposal and Concept Release, for example, stated that multilateral trading venues using RFQ protocols are some of the most significant multilateral trading venues operating in fixed income markets regulated by the Commission, including the U.S. Treasury market.[62] This commenter stated that RFQ trading venues dominate the dealer-to-customer segment of the U.S. Treasury market and in the aggregate account for approximately 50 percent of total electronic trading volume on multilateral U.S. Treasury trading venues.[63] Another large electronic trading venue for fixed income products estimated that its average daily volume using an RFQ protocol increased from $223 million in the second quarter of 2017 to $1.17 billion in the second quarter of 2021.[64] Systems offering conditional order protocols have increased over the past several years, particularly for trading NMS stocks. Today, 26 NMS Stock ATSs have disclosed on their public Form ATS–N that they send or receive messages indicating trading interest, such as conditional orders.

Communication Protocol Systems, like registered exchanges and ATSs, offer their participants several benefits, including reducing counterparty search costs, bringing together diverse market participants, and making it efficient and simple to find a counterparty and agree upon the terms of a trade. These systems improve price discovery from the voice protocols that were used more widely in the fixed income market in the past by offering participants systems and protocols that are specifically designed to allow participants to contact, and receive responses from, multiple potential counterparties at one time, as opposed to the more time-consuming process of calling each potential counterparty individually. RFQ protocols, for example, allow an initiator to share and attempt to trade its entire trading interest all at once. In contrast, under a limit order book model, for example, the seeker of liquidity may find it can only execute its trading interest in a piecemeal fashion. RFQs also allow initiators to more easily demonstrate that they attempted to achieve best execution by showing that the initiator sent requests for quotes to multiple dealers for a security. In addition, participants may find conditional orders attractive when seeking to trade at size or to avoid information leakage.

While Communication Protocol Systems may bring together buyers and sellers for all types of securities and allow participants to negotiate a trade,

[59] Based on Commission staff experience, some NMS Stock ATSs disclose protocols to allow conditional orders to interact with the ATS's limit order book, thereby increasing the interaction among potential buyers and sellers and access to liquidity.

[60] An order resting on an ATS limit order book that can interact with a conditional order does not receive a firm-up invite and therefore does not send firm-up responses.

[61] Many conditional order and RFQ systems monitor their participants' firm-up rates and may limit or deny the use of the system by a participant if the participant's firm-up rate falls below a certain percentage. While the system provider typically monitors these firm-up rates to help ensure that participants do not abuse the system, such monitoring and actions taken against participants for not firming-up may incentivize participants to not back away. Thus, conditional orders or RFQs can be firm in practice and in this way may meet the definition of order under current Regulation ATS. *See* 17 CFR 242.300(e) (''any firm indication of a willingness to buy or sell a security'').

[62] *See* Citadel Letter at 1–2.

[63] *See id.* This commenter noted that multilateral RFQ trading venues are formally registered in other asset classes and jurisdictions, and that there are ''well-established precedents'' to delineate the scope of multilateral trading venues subject to regulation.

[64] Tradeweb Investor Presentation, July 2021, *available at: https://investors.tradeweb.com/static-files/e63caabf-d71d-46c0-9589-353fb8b93388.*

they are particularly useful to market participants to trade less liquid securities, find counterparties for large size trades, and minimize information leakage and adverse impact of large size trades. For example, market participants can use Communication Protocol Systems to post and see non-firm trading interest on several trading venues simultaneously, thereby increasing their ability to find a counterparty and reduce search costs. When resting non-firm trading interest on a trading venue, market participants can use non-firm trading interest as a tool to avoid the risk of double-execution.[65] Participants that use conditional orders, for example, may place the same trading interest at various trading centers in search of liquidity because it would allow them to accept or decline responses if they receive more than one. Participants may find locating a counterparty on a limit order book system for less liquid securities more difficult and choose instead to use a Communication Protocol System, such as an RFQ system, because such system allows the initiating participant to use non-firm trading interest to solicit quotes from multiple market participants for less liquid securities and negotiate a size or price for such securities.

3. Lack of Investor Protections and Disparate Regulation Among Market Places

Given the changes in methods for bringing buyers and sellers together over the past couple of decades, the contrast between market place functions of exchanges that offer the use of orders and trading facilities and systems that offer the use of trading interest and protocols has become increasingly blurred. Both types of systems share the same business objectives and engage in similar market activities; however, one type of system is subject to the exchange regulatory framework while the other is not.[66] Today, Communication Protocol Systems perform similar market place functions as registered exchanges and ATSs and have become venues for investors to discover prices, find a counterparty, and agree upon the terms of a trade. Because Communication Protocol Systems do not fall within the definition of ''exchange'' and are thus not required to register as national securities exchanges, they are not required to comply with the same Federal securities laws and regulations applicable to registered exchanges[67] or ATSs.[68] Market participants use Communication Protocol Systems for certain advantages that these market places offer for trading securities; however, when doing so, market participants cannot avail themselves of the same investor protections, fair and orderly market principles, and Commission oversight that apply to today's registered exchanges or ATSs.[69] This regulatory gap also creates disparities that affect competitive balances among like market places for securities.[70] Consistent with the statutory definition of ''exchange'' in Exchange Act Section 3(a)(1), and as discussed above, today Communication Protocol Systems provide a ''market place'' for bringing together purchasers and sellers of securities.[71] The current proposal will use the flexibility granted to the Commission by Congress to update Exchange Act Rule 3b–16 to address these developments in the markets for securities, the corresponding lack of investor protections, and disparate regulation among these markets.[72]

Including Communication Protocol Systems within the definition of ''exchange'' would provide market participants that use these market places with the investor protections, fair and orderly market principles, and Commission oversight provided by the exchange regulatory framework.[73] A Communication Protocol System that chooses to register as an exchange would be an SRO and be subject to the requirements of Section 6 of the Exchange Act, as discussed further below.[74] However, the Commission expects that many Communication Protocol Systems would choose instead to comply with the conditions of the Regulation ATS exemption, which includes registering as a broker-dealer.[75] As discussed further below, Communication Protocol Systems complying with Regulation ATS would also be subject to the Regulation ATS investor protection provisions, including the requirement to establish written safeguards and procedures to protect confidential subscriber trading information[76] and operational transparency requirements of Form ATS–N for ATSs that trade NMS stocks or government securities or repos.[77] They would also be subject to fair and orderly markets provisions under the Fair Access Rule.[78] Registering as a broker-dealer would subject a Communication Protocol System to Commission and Financial Industry Regulatory Authority (''FINRA'') oversight.[79] As a FINRA member, the Communication Protocol System would be subject to FINRA's investor protection and examination and market surveillance programs and would be required to comply with FINRA's trade reporting rules.

The proposal to include Communication Protocol Systems within the definition of exchange would promote competition by reducing cost disparities and creating a more level competitive landscape.[80] Several commenters in response to the Concept

[65] For example, a market participant that rests the same non-firm trading interest on two trading venues has the ability to back away from one if both are lifted (*i.e.,* preliminarily matched). In such case, the market participant is able to complete one trade and cancel or back away from the other.

[66] *See* U.S. Securities and Exchange Commission Fixed Income Market Structure Advisory Committee (''FIMSAC''), Recommendation for the SEC to Review the Framework for the Oversight of Electronic Trading Platforms for Corporate and Municipal Bonds (July 16, 2018), *available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-electronic-trading-platforms-recommendation.pdf* (expressing concern about regulatory harmonization among fixed income trading platforms, recognizing that some firms were regulated as ATSs, while some were regulated as broker-dealers or not regulated at all).

[67] *See infra* Section II.D.1.

[68] *See infra* Section II.D.2.

[69] *See infra* Section II.D.

[70] *See infra* Section VIII.C.3.a.

[71] *See supra* Section II.A.

[72] The Commission is not proposing to amend Exchange Act Rule 3b–16(b), which excludes from the definition of ''exchange'' systems that perform only traditional broker-dealer activities, including: Systems that route orders to a national securities exchange, a market operated by a national securities association, a broker-dealer for execution, or systems that allow persons to enter orders for execution against the bids and offers of a single dealer if certain additional conditions are met. These systems would continue to not fall within the definition of ''exchange.'' As discussed below, and consistent with the Commission's views expressed in the Regulation ATS Adopting Release, a broker-dealer's exercise of discretion and judgment over its customers' orders or trading interest does not make the broker-dealer an exchange. *See* Regulation ATS Adopting Release, *supra* note 31, at 70851. *See also infra* Section II.C.3. The Commission is proposing to add an exclusion to Rule 3b–16(a) for systems that allow issuers to sell their own securities to investors. *See infra* Section II.C.2. Further, as explained below, the Commission is not proposing to include within the definition of ''exchange'' a system that unilaterally displays trading interest without offering a trading facility or communication protocols to bring together buyers and sellers. Also, systems that provide general connectivity for persons to communicate without protocols, such as utilities or electronic web chat providers, would not fall within the definition of exchange. *See id.*

[73] *See infra* Section II.D.

[74] *See infra* Section II.D.1.

[75] *See infra* Section II.D.2.

[76] *See infra* note 170 and accompanying text.

[77] *See infra* notes 139–142 and accompanying text. A Communication Protocol System that operates as an ATS but trades securities other than NMS stocks or government securities would file Form ATS.

[78] *See infra* notes 154–155 and accompanying text.

[79] *See infra* notes 131–133 and accompanying text.

[80] *See infra* Section VIII.C.3.a.

Release expressed concerns regarding the disparity in regulatory treatment between exchanges, ATSs, and other fixed income platforms.[81] In addition, FIMSAC expressed concern about the lack of regulatory harmonization among fixed income electronic trading platforms, recognizing that some firms are regulated as ATSs, while others are regulated as broker-dealers or not at all, and stated that these distinctions in regulatory oversight complicate efforts to improve the efficiency and resiliency of the fixed income electronic trading markets.[82] In response to the Concept Release, one commenter stated that the current regulatory framework puts ATSs at a competitive disadvantage to non-ATS trading platforms, which are not subject to the same regulatory obligations designed to protect investors and the integrity of the fixed income markets.[83] Another commenter stated its belief that disparate regulatory treatment across trading platforms impacts market efficiency and competition and introduces potential resiliency risks.[84] Another commenter stated that electronic platforms for bringing together buyers and sellers of fixed income securities for the purpose of effecting transactions should generally be regulated the same regardless of how they are structured internally.[85] The Commission recognizes that the regulatory costs associated with registering and operating as a registered exchange are higher than the regulatory costs associated with registering as a broker-dealer and complying with Regulation ATS. However, Communication Protocol Systems operating outside the exchange regulatory framework are subject to neither national securities exchange nor ATS regulatory costs and therefore have an advantage when competing against other markets that also bring together buyers and sellers of securities.[86] As discussed further in Section VIII, a trading system that performs an exchange market function but is not subject to the exchange regulatory regime could receive a competitive advantage because such systems are not subject to the compliance costs to which regulated exchanges are subject.

Amending Exchange Act Rule 3b–16(a) to include non-firm trading interest would eliminate the possibility that systems may offer the use of non-firm trading interest that, in practice, functions as firm orders, so as to avoid exchange registration or complying with Regulation ATS. In the Regulation ATS Adopting Release, the Commission expressed concern that system providers may label trading interest that is firm in practice as non-firm.[87] The providers of such systems may take the position that their systems arguably do not use ''orders'' and thus do not fall within the criteria of Rule 3b–16. For example, systems that offer the use of non-firm trading interest may monitor participants' firm-up rates in response to a quote they received and may penalize a participant with a low firm-up rate either economically or by limiting its ability to use features of its system. Such activities could cause participants on the systems to believe that trading interest that they submit or receive is effectively firm and affect their behavior on the system. The difference between what is a firm order and what is not requires careful scrutiny of the design of the system, the trading interest offered, and what actually takes place among buyers and sellers interacting on the systems. The Commission believes, however, that the use of firm or non-firm trading interest by a system should no longer be a factor in determining whether a system performs the function of a market place because both firm and non-firm trading interest can be used by a system with the same purpose and effect to bring together buyers and sellers of securities.[88]

Finally, for clarity, Exchange Act Rule 3b–16(a) would continue to encompass systems that make available for trading any type of security. The definition of ''exchange'' under Section 3(a)(1) of the Exchange Act and current Exchange Act Rule 3b–16(a) applies to all securities, including government securities, corporate bonds, municipal securities, NMS stocks, equity securities that are not NMS stocks, private restricted securities, repurchase agreements and reverse repurchase agreements, foreign sovereign debt, and options, and does not exempt or exclude any security or type of securities. The Commission believes that it is important for any system that falls within the criteria of Rule 3b–16(a) to be subject to the exchange regulatory framework, notwithstanding how thinly traded or novel a security may be, and participants on such systems should be able to avail themselves of the same benefits that participants on registered exchanges or ATSs receive. Accordingly, the proposed amendments to Rule 3b–16(a) do not change the Commission's interpretation of the statutory definition of ''exchange''—that is, it applies to all securities.

The Commission received several comments in response to the Concept Release expressing reservations about revising Exchange Act Rule 3b–16 to include certain fixed income markets within the definition of exchange. One commenter stated that doing so would insert unnecessary intermediation between dealers and their customers and threaten to distort the market structure by creating a one-size-fits-all approach that is biased against the trading of less-liquid instruments, damaging liquidity formation.[89] Another commenter expressed concern about the Commission creating additional regulatory obligations in the fixed income space and believed the Commission should undertake a more in-depth review of fixed income trading, engage in discussion with the industry, and outline the problems that any proposed regulations are intended to solve before moving forward with any such regulatory proposal.[90] Likewise, another commenter stated its belief that the Commission should not impose

[81] *See, e.g.,* ICE Bonds Letter II at 2–4; Citadel Letter at 2; MFA Letter at 6 (suggesting that to ensure that similarly situated entities are treated similarly in the trading of government securities, the Commission should review the appropriateness of similar regulation on multiple-to-multiple trading venues with significant volume); MarketAxess Letter at 1 (stating that there should be a common regulatory framework for all multilateral fixed income electronic trading platforms that requires minimum standards of conduct and oversight in areas such as trade reporting, resiliency, cyber-security, operational reporting, financial standards, examination, surveillance, and confidentiality).

[82] *See supra* note 66. The FIMSAC concerns were highlighted by the Commission in the Concept Release.

[83] *See* ICE Bonds Letter II at 4 (stating that the benefits of subjecting non-ATS trading platforms to the same regulatory obligations as current ATSs will be substantial).

[84] *See* FIA PTG Letter at 2. *See also* Citadel Letter at 2 (stating that excluding multilateral RFQ platforms from the current regulatory framework creates an unlevel regulatory field).

[85] *See* letter from Michael Decker, Senior Vice President for Public Policy, Bond Dealers of America, dated March 1, 2021 (''BDA Letter'') at 2. *See also* FINRA Letter at 6–10 (noting inconsistent regulatory treatment among electronic and hybrid fixed income trading platforms, as well as potential regulatory gaps, flowing in part from the definitions and guidance adopted in 1998 in Regulation ATS). The commenter stated its belief that it would be beneficial for the Commission to provide guidance that specifically addresses the characteristics of RFQ trading systems and evaluate whether they meet the ''exchange'' definition for purposes of Regulation ATS.

[86] *See infra* Section VIII.C.3.a.i.

[87] *See* Regulation ATS Adopting Release, *supra* note 31, at 70850.

[88] *See supra* Section II.B.2.

[89] *See* Bloomberg Letter at 17–20. This commenter specifically cited RFQs as a new protocol that has helped in discovering less liquid instruments.

[90] *See* SIFMA Letter at 11. The commenter stated its belief that systems that merely act as informational conduits should remain outside the scope of Regulation ATS.

Regulation ATS and the current exchange framework on existing and emerging electronic trading protocols and functionalities that do not meet the existing definition of an ATS or an exchange [91] because such rules are better suited for regulating systems and trading practices in the equity markets.[92] In addition, one commenter stated that there are a variety of trading protocols that have developed within the fixed income market—such as those that are primarily order-driven (such as retail-focused order books) and others that are driven by price requests (such as RFQs)—and that the market continues to innovate.[93] This commenter stated its belief that the Commission should take into account these distinctions and apply a lighter regulatory approach in order to avoid stifling innovation.[94]

The Commission notes that these comments focused on the fixed income market exclusively. However, these comments have aided in the formulation of this proposal for revising the Commission interpretation of the definition of ''exchange,'' and the Commission looks forward to receiving more comments to aid in its deliberations. As a preliminary response to the comment letters summarized in this section, the Commission does not believe that the proposed amendments to Exchange Act Rule 3b–16 would create a one-size-fits-all model, imposing unnecessary intermediation between dealers and their customers,[95] or import concepts from the equity markets onto emerging electronic trading protocols that would damage the market structure in the fixed income markets.[96] Form ATS and Form ATS–N do not impose or favor any specific market structure or manner of trading, and the Commission is proposing to amend Form ATS–N to accommodate the operations of Communication Protocol Systems. Further, the Commission preliminarily does not believe that regulating fixed income systems, or systems for other asset classes of securities, under the exchange regulatory framework, particularly Regulation ATS, would stifle innovation or be biased against less-liquid instruments using an RFQ protocol. Regulation ATS is designed to be flexible enough to accommodate the evolving technology of ATSs and allow for systems to continue to innovate without the regulatory obligations of registered exchanges, which are SROs.[97] In the years since its adoption in 1998, many systems that chose to operate under the Regulation ATS exemption have had varied business models, including offering RFQ protocols as part of their overall ATS services, for trading different types of securities, including, among others, government securities, corporate bonds, municipal securities, NMS stocks, equity securities that are not NMS stocks, private restricted securities, repurchase agreements and reverse repurchase agreements, foreign sovereign debt, and options.

The Commission seeks public comment on all aspects its proposal to amend Exchange Act Rule 3b–16(a), the Communication Protocol Systems that would fall within the definition of ''exchange,'' and the existing exchange regulatory requirements that would apply to a Communication Protocol System.

C. Proposed Amendments to Exchange Act Rule 3b–16

Today, Exchange Act Rule 3b–16 provides that an organization, association, or group of persons meets the definition of ''exchange'' if it doesn't meet one of the exceptions of the rule and it: (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 the trade.

The Commission is proposing to amend Exchange Act Rule 3b–16 to, among other things, include non-firm indications of a willingness to buy or sell a security, in addition to orders, within the interpretation, define ''trading interest,'' add ''communication protocols'' as an established method that an organization, association, or group of persons can provide to bring together buyers and sellers of securities, simplify and align the rule text with the statutory definition of exchange under Section 3(a)(1) of the Exchange Act, and add an exclusion under Exchange Act Rule 3b–16(b). Accordingly, the Commission is proposing to amend Exchange Act Rule 3b–16 to provide that an organization, association, or group of persons would be considered to constitute, maintain, or provide an exchange if it is not subject to an exception under Rule 3b–16(b) and it: (1) Brings together buyers and sellers of securities using trading interest; and (2) makes available established, non-discretionary methods (whether by providing a trading facility or communication protocols, or by setting rules) under which buyers and sellers can interact and agree to the terms of a trade.

1. Trading Interest; Brings Together Buyers and Sellers

The Commission is proposing to add a definition of the term ''trading interest'' to Exchange Act Rule 3b–16 and amend the rule to replace ''orders'' with ''trading interest.'' The definition of trading interest would allow for clear and consistent application of the revised functional test for ''exchange'' under Rule 3b–16.

Under the proposal, Exchange Act Rule 3b–16(a) would continue to apply to systems that use orders, as that term is currently defined and applied in Rule 3b–16(c), to bring together buyers and sellers because the term ''orders'' would be included in the definition of ''trading interest.'' ''Trading interest,'' as proposed, would include ''orders,'' as the term is defined under Rule 3b–16(c), or any non-firm indication of a willingness to buy or sell a security that identifies at least the security and either quantity, direction (buy or sell), or price.[98] Based on Commission staff experience, generally, trading systems have offered non-firm trading interest that included the symbol and one of the following: Quantity, direction, or price. For example, a message that is sent to system participants for an NMS stock that only identifies the NMS stock symbol and quantity that the participant seeks to trade would be considered trading interest. A message sent by a participant of a corporate bond system to five potential counterparties that only identifies the CUSIP for a bond and an instruction to buy would be considered trading interest, as proposed, because it contains the symbol and direction. If the same initiating participant only provided the symbol and requested a two-sided quote in response, the response would constitute trading interest as it would identify the symbol

[91] *See* ICI Letter at 2, 7. This commenter stated that, for example, tools that facilitate trade-related communications between market participants should not be subject to rules that are better-suited for order book protocols.

[92] *See id.* at 8.

[93] *See* MarketAxess Letter at 2–4.

[94] *See id.*

[95] *See* Bloomberg Letter at 17–20.

[96] *See* ICI Letter at 8.

[97] *See* Regulation ATS Adopting Release, *supra* note 31, at 70846.

[98] In conjunction with adding the defined term ''trading interest'' to Rule 3b–16, the Commission is proposing to add the definition of ''trading interest'' to Rule 300 of Regulation ATS. *See* proposed Rule 300(q). In addition, to encompass persons who transact in trading interest, and not only orders, the Commission is also proposing to change the definition of ''Subscriber'' in Rule 300(b) to include any person submitting, disseminating, or displaying ''trading interest.'' *See* Rule 300(b), as proposed to be revised.

and a price. Indeed, Commission staff has observed that ATSs that offer a negotiation functionality to bring together buyers and sellers offer the use of non-firm trading interest that includes the symbol and one of the following: Quantity, direction, or price. In addition, there are instances where systems offer the use of non-firm trading interest, such as an indication of interest, that includes the symbol and direction but does not explicitly include a quantity or price, which can be inferred from the facts and circumstances accompanying the trading interest.[99] The Commission believes that a system that offers the use of a message that identifies the security and either the quantity, direction, or price would provide sufficient information to bring together buyers and sellers of securities because it allows a market participant to communicate its intent to trade and a reasonable person receiving the information to decide whether to trade or engage in further communications with the sender.[100]

On the other hand, the Commission preliminarily believes that a message that only indicates the security to be traded without more information would not be trading interest and a system that only offers the use of such messages would be unlikely to bring together buyers and sellers and does not warrant the regulatory oversight accompanying classification as an exchange. Nevertheless, if a system is designed to permit an initiating participant to submit a message that only contains a symbol, yet a responding participant can submit a message that contains a symbol and either quantity, direction, or price that the initiator can accept, the message by the responding participant and acceptance by the initiator would be trading interest because each of these contain the symbol and at least direction, size, or price. As proposed, the revised criteria of Exchange Act Rule 3b–16(a) that include ''trading interest,'' as defined herein, would capture the vast majority of systems that bring together buyers and sellers to agree to the terms of a trade despite not including systems where solely the security is identified. If adopted, however, the Commission would continue to monitor market developments to ascertain whether such systems may warrant further regulation in the future.

The Commission is also proposing to amend Rule 3b–16(a)(1) to change the reference to a system that ''brings together the orders'' to ''brings together buyers and sellers of securities using trading interest.'' Systems that use non-firm trading interest allow participants to communicate their trading intentions, either on a bilateral or multilateral basis, to negotiate a trade. Unlike orders, non-firm trading interest typically does not interact with other non-firm trading interest without further action by the potential counterparties. Rather, the potential counterparties submitting non-firm trading interest interact with each other through the use of communication protocols. To provide for the use of both firm order interaction and participants' interaction through non-firm trading interest, the Commission is proposing to amend Rule 3b–16(a) to replace ''brings together orders'' with ''brings together buyers and sellers of securities using trading interest.'' The phrase ''brings together buyers and sellers of securities using trading interest'' still captures systems that use orders. The Commission is not proposing to change the meaning of ''to bring together'' as defined in the Regulation ATS Adopting Release[101] nor is the Commission proposing to exclude from Rule 3b–16(a) systems that use orders to bring together buyers and sellers of securities—such systems would still be subject to Rule 3b–16.

The Commission is proposing to amend Exchange Act Rule 3b–16(a)(2) to simplify the rule text and align the rule text with the proposed changes to Rule 3b–16(a)(1). Specifically, the Commission is proposing to replace ''under which such orders interact with each other and the buyers and sellers entering such orders agree to the terms of a trade'' with ''under which buyers and sellers can interact and agree to the terms of a trade.'' As explained above, because the Commission is proposing to amend Rule 3b–16(a) to include trading interest, and is no longer limiting the application of the rule to orders, the focus on ''interaction'' should be between buyers and sellers rather than orders. For similar reasons, the Commission is proposing to delete from the rule text the phrase ''the buyers and sellers entering such orders.'' This proposed change is designed to simplify the rule text and remove the reference to orders because the proposed amendments to Rule 3b–16(a) also include non-firm trading interest in addition to orders.

2. Multiple; Exclusion for Issuer Systems

The Commission is proposing to remove the reference to securities of ''multiple'' buyers and sellers from Exchange Act Rule 3b–16(a)(1) and is proposing to codify in Rule 3b–16(b)(3) an example the Commission provided in the Regulation ATS Adopting Release for systems that allow issuers to sell their own securities to investors. These proposed changes are not intended to change the existing scope of Rule 3b–16(a) but only to clarify its application.

The term ''multiple'' was added to Rule 3b–16(a) to help reinforce that single counterparty systems were not included in the definition of ''exchange.''[102] These systems primarily included systems used by issuers to sell their own securities and systems used by market makers registered with an SRO, which are currently specifically excluded from Rule 3b–16(a) under Rule 3b–16(b)(2). The Commission believes that the term ''multiple'' could be misconstrued to mean that RFQ systems, for example, do not meet the criteria of Rule 3b–16(a) because a *transaction* request typically involves one buyer and multiple sellers or one seller and multiple buyers.[103]

Under current Rule 3b–16(a), whether a system meets the ''multiple'' prong depends on whether the system, when viewed in its entirety, includes more than one buyer and more than one seller and is not determined on a transaction-by-transaction basis. A system, such as an RFQ system, that is designed to provide the ability of more than one buyer to request quotes from more than one seller in securities at the same or different times would meet the ''multiple'' prong of Rule 3b–16(a) because such systems do not include a single counterparty.[104] Because RFQ systems have more than one buyer and more than one seller, such systems do not have a single counterparty and thus

[99] *See* Regulation ATS Adopting Release, *supra* note 31, at 70850.

[100] A system that uses trading interest to bring together buyers and sellers would not meet the definition of ''exchange,'' however, unless it also met all the elements of Rule 3b–16(a), including the element ''makes available established, non-discretionary methods (whether by providing a trading facility or communication protocols, or by setting rules) under which buyers and sellers can interact and agree to the terms of a trade.''

[101] *See id.* at 70849.

[102] *See id.*

[103] One commenter on the 2020 Proposal and Concept Release stated its belief that RFQ platforms do not meet the criteria of Rule 3b–16 because such platforms do not offer ''multiple-to-multiple'' order interaction among participants and that the RFQ platforms instead facilitate trading between an individual market participant (requester) and potential liquidity providers (responders). *See* ICI Letter at 2, 7.

[104] The mere interpositioning of a designated counterparty to provide for the anonymity of counterparties to a trade or for settlement purposes after the purchasing and selling counterparties to a trade have been matched would not, by itself, mean the system does not have multiple buyers and sellers. *See* Regulation ATS Adopting Release, *supra* note 31, at 70849.

would meet the standard of ''multiple buyers and sellers'' under Rule 3b–16(a)(1). Nevertheless, removing the term ''multiple'' would mitigate confusion and the potential to misconstrue the application of Rule 3b–16(a) to systems with non-firm trading interest, including RFQ systems, and aligns the rule with the statutory definition of ''exchange.'' [105]

The Commission is proposing to amend Rule 3b–16(b) to add an exclusion from Rule 3b–16(a) for systems that allow an issuer to sell its securities to investors. The Commission stated in the Regulation ATS Adopting Release that systems for issuers to sell their own securities would not fall within Rule 3b–16(a) because such systems have a single counterparty that is selling its securities.[106] The Commission continues to believe that such systems do not meet the criteria of Rule 3b–16(a) because the systems do not bring together multiple buyers and multiple sellers. Given the proposal to remove the term ''multiple'' from Rule 3b–16(a)(1), adding the exclusion for issuer systems would clarify that such systems do not fall within the criteria of Rule 3b–16(a).

3. Established Methods; Communication Protocols

The Commission is proposing to amend Rule 3b–16(a)(2) to replace ''uses established, non-discretionary methods'' with the phrase ''makes available established, non-discretionary methods.'' The proposed change to use the word ''makes available'' rather than ''uses'' is designed to capture established, non-discretionary methods that an organization, association, or group of persons may provide, whether directly or indirectly, for buyers and sellers to interact and agree upon terms of a trade. In contrast to the term ''uses,'' the Commission believes the term ''makes available'' would be applicable to Communication Protocol Systems because such systems take a more passive role in providing to their participants the means and protocols to interact, negotiate, and come to an agreement.

The term ''makes available'' is also intended to make clear that, in the event that a party other than the organization, association, or group of persons performs a function of the exchange, the function performed by that party would still be captured for purposes of determining the scope of the exchange under Exchange Act Rule 3b–16. In the Regulation ATS Adopting Release, the Commission stated that it will attribute the activities of a trading facility to a system if that facility is offered by the system directly or indirectly (such as where a system arranges for a third party or parties to offer the trading facility).[107] The Commission has further recognized how 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), and how, in some circumstances, these various functionalities, mechanisms, or protocols may be offered or performed by another business unit of the registered broker-dealer or government securities broker or government securities dealer that operates the ATS (''broker-dealer operator'') or by a separate entity.[108] These principles equally apply to an organization, association, or group of persons that arranges with another party to provide, for example, a trading facility or communication protocols, or parts thereof, to bring together buyers and sellers and perform a function of a system under Rule 3b–16. Using the term ''makes available'' will help ensure that the investor protection and fair and orderly markets provisions of the exchange regulatory framework apply to all the activities that consist of the system that meets the criteria of Rule 3b–16(a), notwithstanding whether those activities are performed by a party other than the organization that is providing the market place.[109]

The Commission is not proposing to delete the term ''non-discretionary'' from Rule 3b–16(a)(2). The term ''non-discretionary'' was added to Rule 3b–16(a)(2) to modify ''methods'' to distinguish the activities of an exchange from the activities of a broker-dealer.[110] As discussed in the Regulation ATS Adopting Release, broker-dealers exercise control, judgement, or discretion over their customers' orders or trading interests [111] while an exchange operates pursuant to programmed procedures or set rules and does not exercise discretion over orders or trading interest entered into the system.[112] The Commission continues to believe that the distinction between an exchange and a broker-dealer explained in the Regulation ATS Adopting Release is appropriate and the Commission is not proposing to amend Exchange Act Rule 3b–16(a) to include activities of broker-dealers within the definition of ''exchange.'' [113]

The term ''non-discretionary'' should not be misconstrued to mean that a system does not meet the definition of exchange if it permits buyers or sellers using the system to exercise discretion with regard to the use of the system. Under current Rule 3b–16(a)(2), the phrase ''uses established, non-discretionary methods'' applies to the organization, association, or group of persons that provides the means—the trading facility or rules—under which orders interact. Thus, an organization that meets the definition of ''exchange'' does not exercise any discretion in the matching of buyers and sellers or their orders and buyers and sellers participating on an exchange can use their own discretion in finding and selecting a counterparty.[114] The phrase

[105] The use of plural terms in ''buyers and sellers'' in Rule 3b–16(a) and ''purchasers and sellers'' (emphasis added) in the statutory definition of ''exchange'' makes sufficiently clear that an exchange need only have more than one buyer and more than one seller participating on the system to meet this prong.

[106] *See supra* note 102 and accompanying text.

[107] *See* Regulation ATS Adopting Release, *supra* note 31, at 70852.

[108] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38844 (citing Regulation ATS Adopting Release, 63 FR 70852).

[109] Depending on the activities of the persons involved with the market place, a group of persons, who may each perform a part of the 3b–16 system, can together provide, constitute, or maintain a market place or facilities for bringing together purchasers and sellers of securities and together meet the definition of exchange. In such a case, the group of persons would have the regulatory responsibility for the exchange.

[110] *See* Regulation ATS Adopting Release, *supra* note 31, at 70863.

[111] *See id.* at 70851.

[112] *See id.* at 70850.

[113] If a system meets the criteria of Exchange Act Rule 3b–16(a) but includes in that system the ability of the system operator to apply its discretion for handling trading interest, these activities employing discretion by the system operator would be included in the system that meets the criteria of Rule 3b–16(a) and be subject to Federal securities laws and rules applicable to a registered exchange or ATS (including, for example, requirements to provide disclosures about the system operator's activities on Form ATS or ATS–N and, if the ATS is subject to the Fair Access Rule, include in its written standards why the activities of the system operator that result in the different treatment of subscribers are fair and not unreasonably discriminatory).

[114] One commenter on the 2020 Proposal and Concept Release stated their belief that ''unlike an ATS on which trading takes place on a non-discretionary basis, trading discretion is a defining feature of these protocols; a requesting participant can choose the number and identity of participants that will receive the RFQ, while participants who receive an RFQ can choose whether to respond.'' *See* ICI Letter at 7. *See also* Bloomberg Letter at 23 (describing that an RFQ ''consists of discretionary directed order communication network messaging'' and stating its belief that such messaging is not an ATS function because RFQs lack a non-discretionary commitment to trade) and MarketAxess Letter at n.2 (stating its belief that an RFQ trading requestor's trading discretion puts the protocol outside the requirement that the platform use ''established, non-discretionary methods under which such orders interact with each other''). The ''established, non-discretionary methods'' element

''established, non-discretionary methods'' continues to convey that the system provider is providing the trading facility or communication protocols or setting rules and is not applying its discretion in matching counterparties on the system.[115]

The Commission is proposing to amend Rule 3b–16(a)(2) to add ''communication protocols'' as an established method that an organization, association, or group of persons can provide to bring together buyers and sellers of securities. Systems that bring together buyers and sellers of securities may function as exchange market places of securities without orders or a trading facility for orders to interact. In the Commission's experience, communication protocols, which can be applied to various technologies and connectivity, generally use non-firm trading interest as opposed to orders to prompt and guide buyers and sellers to communicate, negotiate, and agree to the terms of the trade. For example, if an entity makes available a chat feature, which requires certain information to be included in a chat message (*e.g.,* price, quantity) and sets parameters and structure designed for participants to communicate about buying or selling securities, the system would have established communication protocols.

While Communication Protocol Systems may not match counterparties' trading interest, buyers and sellers using these can be brought together to interact, either on a bilateral or multilateral basis, and agree upon the terms of the trade. Protocols that a system offers may take many forms and could include: Setting minimum criteria for what messages must contain; setting time periods under which buyers and sellers must respond to messages; restricting the number of persons a message can be sent to; limiting the types of securities about which buyers and sellers can communicate; setting minimums on the size of the trading interest to be negotiated; or organizing the presentation of trading interest, whether firm or non-firm, to participants. These examples are not exhaustive, and the determination of whether the system meets Rule 3b–16(a)(2) would depend on the particular facts and circumstances of each system. Nevertheless, as proposed, the Commission would take an expansive view of what would constitute ''communication protocols'' under this prong of Rule 3b–16(a).[116]

The Commission preliminarily believes that certain systems would not fall within the criteria of Exchange Act Rule 3b–16(a), as proposed to be amended, because the organization, association, or group of persons would not be considered to be providing a trading facility or communication protocol and therefore would not be considered to be making available established, non-discretionary methods under Rule 3b–16(a)(2).[117] The Commission continues to believe that systems that passively display trading interest, such as systems referred to in the industry as bulletin boards, but do not provide means for buyers and sellers to contact each other and agree to the terms of the trade on the system would not be encompassed by Rule 3b–16(a) as proposed to be amended.[118] For example, the Commission does not believe that a system that unilaterally displays trading interest without offering a trading facility or communication protocols to bring together buyers and sellers would be considered to be making available established, non-discretionary methods.[119] In the Regulation ATS Adopting Release, the Commission stated that ''[u]nless a system also establishes rules and operates a trading facility under which subscribers can agree to the terms of their trades, the system will not be included within Rule 3b–16 even if it brings together 'orders.' '' [120] These systems may display trading interest to potential buyers and sellers, but the system provider is not making available established methods for buyers and sellers to interact and agree upon terms of a trade. If adopted, however, the Commission would continue to monitor market developments to ascertain whether such systems may warrant further regulation in the future.

Similarly, a system that displays trading interest and provides only connectivity among participants without providing a trading facility to match orders or providing protocols for participants to communicate and interact would not meet the criteria of Rule 3b–16(a) because such system would not be considered to be making available established, non-discretionary methods. For example, systems that only provide general connectivity for persons to communicate without protocols, such as utilities or electronic web chat providers, would not fall within the communication protocols prong of the proposed rule because such providers are not specifically designed

of Rule 3b–16(a)(2) pertains to the discretion applied by the system provider to bring together buyers and sellers and not discretion that participants may apply. For example, a system provider that matches buyers and sellers using its judgement or discretion would not be using established, non-discretionary methods. As the Commission stated in the Regulation ATS Adopting Release, where customers of a broker-dealer exercise control over their own orders in a trading system operated by the broker-dealer, that broker-dealer is unlikely to be viewed as using discretionary methods in handling the order. *See* Regulation ATS Adopting Release, *supra* note 31, at 70851.

[115] *See id.* (describing that, for example, the Commission does not believe that block trading desks, which generally retain some discretion in determining how to execute a customer's order, and frequently commit capital to satisfy their customers' needs, use established, non-discretionary methods).

[116] One commenter suggested a litmus test to assist the Commission in determining whether a fixed-income trading platform for corporate bonds and municipal securities meets the criteria that warrant registration as an exchange or ATS. According to the commenter, the most relevant criteria were: Whether the system provides multilateral trading, whether the technology provider has any influence on picking the counterparties, whether the system enables any sharing of real-time information across multiple counterparties, whether the system provider has any access to real-time information, and whether the transactions happen on the technology platform. *See* letter from Vijay Kedia, President and CEO, FlexTrade Systems, dated March 1, 2021 (''FlexTrade Systems Letter'') at 2. As discussed above, the Commission believes that conditions have changed whereby systems that offer the use trading interest and protocols to bring together buyers and sellers of securities perform an exchange market place function similar to systems that offer the use of orders and trading facilities. As proposed, a Communication Protocol System can still meet the criteria of Exchange Act Rule 3b–16 even if it has no role in matching counterparties nor displays trading interest. In addition, neither the current rule nor the proposed amendments require that, for a system to be an exchange, an execution occur on the system; rather, that the buyers and sellers agree to the terms of the trade on the system is sufficient. *See* Regulation ATS Adopting Release, *supra* note 31, at 70852 (stating ''whether or not the actual execution of the order takes place on the system is not a determining factor of whether the system falls under Rule 3b–16''). Also, applying some of the criteria that the commenter suggested (whether system provider have any access to real-time information; whether the transactions happen on the technology platform) could result in the exclusion of certain RFQ platforms from the definition of exchange.

[117] To the extent that a system is currently operating consistently with the circumstances described in a staff no-action letter, a system that falls within the scope of Rule 3b–16(a) and seeks to rely on the ATS exemption would need to register as a broker-dealer to comply with the broker-dealer registration requirement under Regulation ATS, regardless of any prior staff statement. Upon the adoption of any final rule, some letters and other staff statements, or portions thereof, may be moot, superseded, or otherwise inconsistent with the final rule and, therefore, would be withdrawn or modified.

[118] *See* Regulation ATS Adopting Release, *supra* note 31, at 70850. *See also* FINRA Letter at 9–10 (requesting the Commission provide additional guidance on the regulatory classification of bulletin boards).

[119] *See* SIFMA Letter at 11 (stating that systems that merely act as informational conduits should remain outside the scope of Regulation ATS); FlexTrade Systems Letter at 2–4 (stating that software vendors that provide functionality for displaying prices do not meet the definition of an exchange).

[120] *See* Regulation ATS Adopting Release, *supra* note 31, at 70850.

to bring together buyers and seller of securities or provide procedures or parameters for buyers and sellers for securities to interact. To the extent that such systems are designed for securities and provide communication protocols for buyers and sellers to interact and agree to the terms of a trade, such systems would fall within the criteria of Exchange Act Rule 3b–16(a) as proposed to be revised.

D. Exchange Registration or ATS Exemption for Communication Protocol Systems Under the Proposed Rules

The proposed amendments to Exchange Act Rule 3b–16(a) would scope Communication Protocol Systems into the definition of ''exchange,'' in which case, the systems may decide between registering as a national securities exchange or registering as a broker-dealer and complying with Regulation ATS. The Commission believes that many Communication Protocol Systems would likely choose to be regulated as an ATS because of the lighter regulatory requirements imposed on them, as compared to the regulatory requirements of registered exchanges, which are SROs. Unlike a national securities exchange, an ATS can trade any type of security and its users are not limited to broker-dealers. In addition, an ATS is not an SRO, is not subject to Section 6 of the Exchange Act, and does not require Commission approval for its activities. Complying with Regulation ATS would therefore allow Communication Protocol Systems more flexibility in the operation of their business than registering as an exchange.[121]

Further, many Communication Protocol Systems make available for trading fixed income securities that are only traded over-the-counter and are not typically registered and approved for listing on an exchange.[122] Unless a national securities exchange receives an exemption to trade unregistered debt securities,[123] it may only list and trade registered debt securities, whereas Communication Protocol Systems need not receive such an exemption to trade unregistered debt securities. Notwithstanding, the Commission discusses the regulatory requirements for both regulatory alternatives below. The Commission is not proposing to make changes to the regulatory structure for exchanges or the requirements for national securities exchanges. The proposed changes to the regulatory requirements under Regulation ATS are discussed in more detail below.[124]

1. National Securities Exchange Registration

A Communication Protocol System that chooses to register as a national securities exchange would be required to do so pursuant to Sections 5 and 6 of the Exchange Act. A national securities exchange is an SRO and must set standards of conduct for its members, administer examinations for compliance with these standards, coordinate with other SROs with respect to the dissemination of consolidated market data, and generally take responsibility for enforcing its own rules and the provisions of the Exchange Act and the rules and regulations thereunder. Before a national securities exchange may commence operations, the Commission must approve its application for registration filed on Form 1.[125] 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.[126] Pursuant to Section 6 of the Exchange Act, national securities exchanges must establish rules that generally: (1) Are designed to prevent fraud and manipulation, promote just and equitable principles of trade, and protect investors and the public interest; (2) provide for the equitable allocation of reasonable fees; (3) do not permit unfair discrimination; (4) do not impose any unnecessary or inappropriate burden on competition; and (5) with limited exceptions, allow any broker-dealer to become a member.[127]

After approval of its application for registration, a national securities exchange must file with the Commission any proposed changes to its rules.[128] 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 trading services and fees. The Commission's order approving the application is also public. The Commission oversees the exchanges under the Exchange Act through, among other things, its examination authority under Section 17, its enforcement authority under Sections 19(h)(1) and 21C, its authority to approve and disapprove rules under Section 19(b), and its rulemaking authority under various Exchange Act provisions. Under the Exchange Act, securities traded on a national securities exchange must be registered with the Commission and approved for listing on an exchange. National securities exchanges can only have broker-dealer members. As an SRO, a national securities exchange enjoys certain unique benefits, such as limited immunity from private liability with respect to its regulatory functions and the ability to receive consolidated revenue under the national market system plans for equity market data (*i.e.,* Consolidated Tape Association (CTA)/ Consolidated Quotation (CQ) and Unlisted Trading Privilege (UTP)),[129] among others.

2. Regulation ATS Exemption; Broker-Dealer Registration

A Communication Protocol System may choose to operate as an ATS pursuant to Regulation ATS, which exempts an ATS from the definition of ''exchange'' on the condition that the ATS is in compliance with the requirements of Regulation ATS. An ATS that fails to comply with the requirements of Regulation ATS would

[121] ATSs have more flexibility in the operation of their business than exchanges insofar as ATSs are not subject to Section 6 of the Exchange Act and are not required to comply with the statutory standards with respect to unfair discrimination, burdens on competition, and the equitable allocation of reasonable fees.

[122] Section 12(a) of the Exchange Act makes it unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration statement has been filed with the Commission and is in effect as to such security for such exchange in accordance with the provisions of the Exchange Act and the rules and regulations thereunder. 15 U.S.C. 78l(a). Section 12(b) of the Exchange Act, 15 U.S.C. 78l(b), contains procedures for the registration of securities on a national securities exchange. Section 12(a) does not apply to an exchange that the Commission has exempted from registration as a national securities exchange. *See, e.g.,* Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377 (February 29, 1991). *See also* Regulation ATS Adopting Release, *supra* note 31, at 70886.

[123] *See, e.g.,* Securities Exchange Act Release No. 54767 (November 16, 2006), 71 FR 67680 (November 22, 2006) (SR–NYSE–2004–69) (issuing exemption permitting NYSE to trade unregistered debt securities on its bonds platform, now known as NYSE Bonds).

[124] *See infra* Section III.B.2 (discussing proposed changes to Rule 301(b)(1) of Regulation ATS), Section IV (discussing proposed changes to Rule 304 and Form ATS–N), Section V.A (discussing proposed changes to Rule 301(b)(5) and 301(b)(6)), and Section V.C (discussing proposed changes to Rule 301(b)(2)(vii)).

[125] *See* 15 U.S.C. 78f.

[126] *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).

[127] *See* Section 6(b) of the Exchange Act.

[128] *See generally* Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b).

[129] Details and the history of each plan can be found at *https://www.ctaplan.com/plans;* and *https://www.utpplan.com.*

no longer qualify for the ATS exemption and thus risks operating as an unregistered exchange in violation of Section 5 of the Exchange Act.

To operate under the exemption, an ATS must register as a broker-dealer under Exchange Act Section 15 or as a government securities broker or government securities dealer under Exchange Act Section 15C(a)(1)(A),[130] and comply with the filing and conduct obligations associated with being a registered broker-dealer, including membership in an SRO, such as FINRA,[131] and compliance with the SRO's rules.[132] Requiring Communication Protocol Systems to register as broker-dealers and be a member of an SRO would ensure that they are subject to SRO examination and market surveillance, trade reporting obligations, and certain investor protection rules. Broker-dealer registration provides important investor protections under the Federal securities laws and FINRA rules, such as: (1) Various disclosure and supervision obligations; (2) anti-money laundering obligations (including suspicious activity reporting); (3) FINRA over-the-counter (OTC) trade reporting requirements, including requirements to maintain membership in, or maintain an effective clearing arrangement with a participant of, a clearing agency registered under the Exchange Act; and (4) Commission examinations and FINRA examinations and surveillance of members and markets that its members operate.

In addition, ATSs are subject to certain reporting and disclosure requirements, as applicable. ATSs other than NMS Stock ATSs or, as proposed, Government Securities ATSs, would be required, pursuant to Rule 301(b)(2) of Regulation ATS, to file an initial operation report with the Commission on Form ATS [133] at least 20 days before commencing operations or, in the case of Newly Designated ATSs,[134] no later than 30 calendar days after the effective date of any final rule.[135] Form ATS provides the Commission with the opportunity to identify problems that might impact investors before the system begins to operate.[136] Unlike a Form 1 filed by a national securities exchange, a Form ATS is not approved by the Commission.[137] Also unlike a Form 1 application, a Form ATS is deemed confidential when filed.[138] Requiring Communication Protocol Systems to file Form ATS and amendments thereto will help the Commission monitor and oversee such ATSs' operations.

NMS Stock ATSs and, as proposed, Government Securities ATSs, would be subject to enhanced filing and disclosure requirements under Rule 304 of Regulation ATS. NMS Stock ATSs or Government Securities ATSs would, in lieu of Form ATS, be required to file public Form ATS–N in EDGAR, in which they must disclose detailed information about the manner in which their trading systems operate and the potential for conflicts of interest and information leakage.[139] Form ATS–N is subject to a Commission review and effectiveness process.[140] An NMS Stock ATS or Government Securities ATS would not be permitted to operate pursuant to the Rule 3a1–1(a)(2) exemption until its Form ATS–N has become effective.[141] In addition, the ATS would be required to file amendments on Form ATS–N to provide notice of changes to its operations and broker-dealer and affiliate relationships.[142] Form ATS–N and the Commission review and effectiveness process, which is described in detail below,[143] would provide operational transparency and regulatory oversight of Communication Protocol Systems that are NMS Stock ATSs or Government Securities ATSs.

In addition, all ATSs are required to periodically, by paper submission, report certain information about transactions in 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 has operated, pursuant to Rule 301(b)(9).[144] Form ATS–R requires quarterly volume information for specified categories of securities, as well as a list of all securities traded in the ATS during the quarter and a list of all subscribers that were participants during the quarter,[145] and for ATSs subject to the Fair Access Rule to provide certain additional

[130] The Commission is proposing to amend Rule 301(b)(1) to allow an ATS to register as a government securities broker or government securities dealer under Exchange Act Section 15C(a)(1)(A). *See infra* notes 272–278 and accompanying text.

[131] *See* Section 15(b)(8) of the Exchange Act; 15 U.S.C. 78*o*(b)(8).

[132] *See* Regulation ATS Adopting Release, *supra* note 31, at 70903.

[133] Form ATS and the Form ATS Instructions are *available at https://www.sec.gov/about/forms/formats.pdf.* Form ATS would require, among other things, that the ATS (other than a Government Securities ATS or NMS Stock 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 entry of trading interest and execution; and trade reporting, clearance and settlement of trades on the ATS. *See infra* Section V.B (describing proposed changes to Form ATS). Regulation ATS provides that a report on Form ATS or Form ATS–R shall be considered filed upon receipt by the Division of Trading and Markets, at the Commission's principal office in Washington, DC (*i.e.,* in paper form), and that information filed by an ATS on Form ATS is deemed confidential when filed. *See* 17 CFR 242.301(b)(2)(vii). *See also infra* Section V.C.

[134] ''Newly Designated ATSs'' would be defined as ATSs operating as of the effective date of any final rule that meet the criteria under Rule 3b–16(a) as of the effective date of any final rule but did not meet the criteria under Rule 3b–16(a) in effect prior to the effective date of any final rule. *See* Rule 300(r).

[135] *See infra* note 180 and accompanying text. The Commission is also proposing changes to Rule 301(b)(2)(i) to clarify that the requirement to file Form ATS does not apply to Covered ATSs or Covered Newly Designated ATSs. *See* proposed Rule 301(b)(2)(i). *See also* proposed Rule 300(s) (defining ''Covered Newly Designated ATS'').

[136] *See* Regulation ATS Adopting Release, *supra* note 31, at 70864.

[137] Form ATS provides the Commission with notice about an ATS's operations prior to commencing operations. An ATS is also required to notify the Commission of any changes in its operations by filing an amendment to its initial operation report. There are three types of amendments to an initial operation report. 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. *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 31, at 70864. 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. *See* 17 CFR 242.301(b)(2)(iii). 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. *See* 17 CFR 242.301(b)(2)(iv). An ATS is required to promptly file a cessation of operations on Form ATS. *See* 17 CFR 242.301(b)(2)(v).

[138] *See* 17 CFR 242.301(b)(2)(vii); Form ATS at 3, General Instructions A.7.

[139] *See* proposed changes to 17 CFR 242.304.

[140] *See infra* Section IV.A.

[141] *See* Rule 304(a)(1)(i).

[142] *See infra* Section IV.A.

[143] *See infra* Section IV.

[144] *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. See also* Section V.B (describing proposed changes to Form ATS–R).

[145] *See* Form ATS–R at 4, Items 1 and 2 (describing the requirements for Exhibit A and Exhibit B of Form ATS–R). 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.

information.[146] Like Form ATS, Rule 301(b)(2)(vii) and the instructions to Form ATS–R provide that Form ATS–R is deemed confidential when filed.[147] The information reported on Form ATS–R by Communication Protocol Systems would permit the Commission to monitor the trading on these ATSs for compliance with the Exchange Act and applicable rules thereunder and enforce the Fair Access Rule.[148]

NMS Stock ATSs must comply with certain order display and execution access obligations [149] under Rule 301(b)(3) if the ATS displays subscriber orders in an NMS stock to any person (other than an employee of the ATS) and meets certain volume requirements.[150] These order display and execution access obligations were adopted by the Commission with the expectation they would promote additional market integration and further discourage two-tier markets when trading in an NMS stock on an ATS reaches a certain level.[151] In addition, an NMS Stock 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 NMS Stock ATS that is required under Rule 301(b)(3)(iii).[152] This requirement is designed to promote equal access to ATSs.

As discussed in more detail below,[153] ATSs are required to comply with the Fair Access Rule [154] under Rule 301(b)(5) if the ATS meets volume thresholds in NMS stocks, equity securities that are not NMS stocks and for which transactions are reported to an SRO, municipal securities, or corporate debt securities.[155] The Commission is proposing to apply the requirements of the Fair Access Rule to trading of U.S. Treasury Securities and Agency Securities on ATSs.[156]

Additionally, under Rule 301(b)(6) (''Capacity, Integrity, and Security Rule''), an ATS that trades only municipal securities or corporate fixed income debt with 20% or more of the average daily volume traded in the U.S. during at least four of the preceding six calendar months would be required to comply with capacity, integrity, and security standards [157] with respect to those systems that support order entry, order routing, order execution, transaction reporting, and trade comparison.[158] Information provided under the Capacity, Integrity, and Security Rule would enable the Commission staff to better understand the operation of certain Communication Protocol Systems and to identify potential problems and trends that may require attention.

NMS Stock ATSs, ATSs that trade non-NMS equity securities that are reported to an SRO, and Government Securities ATSs that meet certain trading thresholds would be subject to Regulation SCI. Regulation SCI superseded and replaced Rule 301(b)(6) requirements with regard to ATSs that trade NMS stocks and non-NMS stocks.[159] The Commission is proposing to apply Regulation SCI to Government Securities ATSs, as discussed below.[160] Regulation SCI is designed to help address the technological vulnerabilities, and improve the Commission's oversight of the core technology of key entities.

All ATSs, regardless of the volume traded on their systems, are required, pursuant to Rule 301(b)(7),[161] 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 the Commission or by an SRO of which such subscriber is a member. Because an ATS subscriber to whom the Commission's inspection authority may not extend could use the ATS to manipulate the market in a security, the requirement is designed to require that ATSs cooperate in all inspections, examinations, and investigations.

ATSs are also required, pursuant to Rule 301(b)(8),[162] to make and keep current the records specified in Rule 302 of Regulation ATS [163] and preserve

[146] 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 a list of all persons granted, denied, or limited access to the ATS during the period covered by the ATS–R and designate for each person each of the following: Whether the person was granted, denied, or limited access; the date the ATS took such action; the effective date of such action; and the nature of any denial or limitation of access. *See* Form ATS–R at 6, Item 7 (explaining requirements for Exhibit C).

[147] *See* 17 CFR 242.301(b)(2)(vii); Form ATS–R at 2, General Instruction A.7.

[148] *See* Regulation ATS Adopting Release, *supra* note 31, at 70874 and 70878.

[149] An ATS that displays orders and meets the volume requirements must provide to a national securities exchange or national securities association the prices and sizes of the orders at the highest buy price and the lowest sell price for such NMS stock, displayed to more than one person in the ATS, for inclusion in the quotation data made available by the national securities exchange or national securities association pursuant to Rule 602 under Regulation NMS. *See* 17 CFR 242.301(b)(3)(ii). With respect to any such displayed order, the ATS must provide to any broker-dealer that has access to the national securities exchange or national securities association to which the ATS provides the prices and sizes of displayed orders pursuant to Rule 301(b)(3)(ii), the ability to effect a transaction with such orders that is equivalent to the ability of such broker-dealer to effect a transaction with other orders displayed on the exchange or by the association; and at the price of the highest priced buy order or lowest priced sell order displayed for the lesser of the cumulative size of such priced orders entered therein at such price, or the size of the execution sought by such broker-dealer. *See* 17 CFR 242.301(b)(3)(iii).

[150] An ATS that displays subscriber orders in an NMS stock must comply with Rule 301(b)(3) if, during at least four of the preceding six calendar months, it 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. *See* 17 CFR 242.301(b)(3)(i).

[151] *See* Regulation ATS Adopting Release, *supra* note 31, at 70867.

[152] *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 (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.*

[153] *See infra* Section III.B.4 and Section V.A.

[154] An ATS subject to the Fair Access Rule, as proposed to be revised, must: Establish and apply reasonable written standards for granting, limiting, and denying access to the services of the ATS; make and keep records of all grants of access including, for all participants, the reasons for granting such access, and all denials or limitations of access and reasons, for each applicant and participant, for denying or limiting access; and report on Form ATS–R a list of persons granted, denied, and limited access to the ATS. *See infra* Section V.A.

[155] *See* 17 CFR 242.301(b)(5).

[156] *See infra* Section III.B.4.

[157] An ATS that meets the volume requirements must, with respect to those systems that support order entry, order routing, order execution, transaction reporting, and trade comparison, establish reasonable current and future capacity estimates; conduct periodic capacity stress tests of critical systems to determine such system's ability to process transactions in an accurate, timely, and efficient manner; develop and implement reasonable procedures to review and keep current its system development and testing methodology; review the vulnerability of its systems and data center computer operations to internal and external threats, physical hazards, and natural disasters; establish adequate contingency and disaster recovery plans; on an annual basis, perform an independent review, in accordance with established audit procedures and standards, of the ATS's controls for ensuring that the above requirements are met, and conduct a review by senior management of a report containing the recommendations and conclusions of the independent review; and promptly notify the Commission and its staff of material systems outages and significant systems changes. *See* 17 CFR 242.301(b)(6)(ii).

[158] *See* 17 CFR 242.301(b)(6)(i).

[159] Regulation SCI does not apply to ATSs that trade only municipal securities or corporate debt securities. *See infra* notes 351–356 and accompanying text. *See also* Regulation SCI Adopting Release, *supra* note 3, at 72262.

[160] *See infra* Section III.C.

[161] *See* 17 CFR 242.301(b)(7).

[162] *See* 17 CFR 242.301(b)(8).

[163] *See* 17 CFR 242.302. Rule 302 requires all ATSs to make and keep current certain records,

the records specified in 17 CFR 242.303.[164] The Commission is proposing to amend Rule 302 of Regulation ATS to require recordkeeping related to ''trading interest.'' Rule 302 requires that an ATS shall make and keep certain records, which the rule enumerates. Communication Protocol Systems that choose to comply with Regulation ATS would be required to keep the records enumerated in Rule 302. The Commission is proposing to revise certain of these enumerated records that relate to ''orders'' to require such records related to ''trading interest,'' which would include both firm orders and non-firm trading interest.[165] This would include time-sequenced records of trading interest information in the ATS.[166] The recordkeeping requirements would require Communication Protocol Systems to make and keep certain records for an audit trail of trading activity that would allow the Commission to detect and investigate potential market irregularities, examine whether the ATS is in compliance with Federal securities laws, and ensure investor protections.[167]

In addition, ATSs are required to establish adequate written safeguards and written procedures[168] to protect confidential trading information and to separate ATS functions from other broker-dealer functions, including principal and customer trading pursuant to Rule 301(b)(10).[169] Furthermore, all ATSs must adopt and implement adequate written oversight procedures to ensure that the above written safeguards and procedures are followed.[170] These requirements are designed to help prevent the potential for abuse of subscriber confidential trading information.[171]

In addition, an ATS must not use in its name the word ''exchange,'' or any derivation of the word ''exchange'' pursuant to Rule 301(b)(11).[172] The Commission believes that the use of the word ''exchange'' by an ATS would be deceptive and could lead investors to believe incorrectly that such ATS is registered as a national securities exchange.[173]

The Commission is proposing amendments to facilitate an orderly transition for Communication Protocol Systems to comply with the applicable conditions of the Regulation ATS exemption.[174] The Commission understands that some Communication Protocol Systems are not currently registered as broker-dealers.[175] To become a registered broker-dealer, these Communication Protocol Systems would be required to file Form BD with the Commission and complete FINRA's processes for new members.[176] The Commission is proposing to allow Communication Protocol Systems that are not registered as broker-dealers at the time the proposed rule would be effective, if adopted, to provisionally operate pursuant to the Rule 3a1–1(a)(2) exemption while their broker-dealer registration is pending until the earlier of (1) the date the ATS registers as a broker-dealer under Section 15 of the Exchange Act or Section 15C(a)(1)(A) of the Exchange Act and becomes a member of a national securities association or (2) the date 210 calendar days after the effective date of any final rule.[177] The 210 calendar day period is designed to provide time for a Communication Protocol System to submit its broker-dealer registration application, or continuing membership application, as applicable, and for FINRA to conduct its review of new member application and continuing member application. The proposed transition period is designed to provide a Communication Protocol System that is not a registered broker-dealer adequate time to comply with the necessary broker-dealer registration requirements under Regulation ATS without disrupting its market or its participants.

Proposed Rule 301(b)(2)(i) requires ATSs (other than Covered ATSs)[178] to file an initial operation report on Form ATS at least 20 days before commencing operations; however, Communication Protocol Systems that seek to operate as ATSs already will be operating when the proposed rule, if adopted, becomes effective. To avoid disruption of the services of the ATS, the Commission is proposing to amend Rule 301(b)(2)(i) to require Communication Protocol Systems (other than those that are Covered ATSs)[179] to file an initial operation report on Form ATS no later than 30 calendar days after the effective date of any final rule.[180] The Commission is also proposing changes, as discussed below, to Rule 301(b)(2)(viii) and Rule 304 to facilitate the transition for Communication Protocol Systems that are Covered ATSs to file Form ATS–N.[181] Requiring Communication Protocol Systems to file a Form ATS with the Commission at the proposed time would provide the Commission with information about its

including: A record of subscribers to the ATS; daily summaries of trading in the ATS; and time-sequenced records of order information in the ATS. *See* 17 CFR 242.302.

[164] *See* Rule 303 of Regulation ATS. 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 31, at 70877–78.

[165] *See supra* note 98 and accompanying text.

[166] Specifically, the Commission is proposing to revise Rule 302(c)(1) (date and time (expressed in terms of hours, minutes, and seconds) that the trading interest was received); (c)(3) (the number of shares, or principal amount of bonds, to which the trading interest applies); (c)(5) (the designation of the trading interest as buy or sell trading interest); (c)(8) (any limit or stop price prescribed by the trading interest); (c)(9) (the date on which the trading interest expires and, if the time in force is less than one day, the time when the trading interest expires); (c)(10) (the time limit during which the trading interest is in force); (c)(11) (any instructions to modify or cancel the trading interest); (c)(12) (the type of account for which the trading interest is submitted); (c)(13) (date and time that the trading interest was executed); (c)(14) (price at which the trading interest is executed); and (c)(15) (size of the trading interest executed).

[167] *See* Regulation ATS Adopting Release, *supra* note 31, at 70878.

[168] These written safeguards and written procedures 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.

[169] *See* 17 CFR 242.301(b)(10); NMS Stock ATS Adopting Release, *supra* note 2, Section VI.

[170] *See* 17 CFR 242.301(b)(10)(ii).

[171] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38864.

[172] *See* 17 CFR 242.301(b)(11); Regulation ATS Adopting Release, *supra* note 31, Section II.C.

[173] *See* Securities Exchange Act Release No. 39884 (April 17, 1998), 63 FR 23504, 23523 (April 29, 1998) (''Regulation ATS Proposing Release'').

[174] For purposes of the rule text, the Commission is proposing to apply the transitional rules to ''Newly Designated ATSs.''

[175] A registered broker-dealer that operates a Communication Protocol System and is currently a FINRA member may, under FINRA rules, be required to file a Continuing Membership Application with FINRA noticing material changes to business operations in connection with its operation of an ATS.

[176] After receiving a substantially complete application package, FINRA must review and process it within 180 calendar days. *See* ''How to Become a Member—Member Application Time Frames'' *available at https://www.finra.org/registration-exams-ce/broker-dealers/how-become-member-membership-application-time-frames. See also* FINRA Rule 1014.

[177] *See* proposed revisions to Rule 301(b)(1). This transition period for the proposed rule, if adopted, would also apply to Currently Exempted Government Securities ATSs (*i.e.,* Legacy Government Securities ATSs formerly not required to comply with Regulation ATS pursuant to the exemption under § 240.3a1–1(a)(3) prior to effective date of any final rule) not registered as a broker-dealer. *See infra* note 283.

[178] ''Covered ATS'' is defined *infra* note 257. The Commission is proposing changes to Rule 301(b)(2)(i) to clarify that the requirement to file Form ATS does not apply to ATSs other than Covered ATSs. *See* proposed Rule 301(b)(2)(i).

[179] The rule text uses the term ''Covered Newly Designated ATS.''

[180] *See* proposed changes to Rule 301(b)(2)(i).

[181] *See infra* note 300 and Section IV.A.

operations and facilitate oversight of the systems.

Request for Comment

1. Should the Commission amend Exchange Act Rule 3b–16 as proposed? Should the Commission adopt a more expansive or limited interpretation of the definition of ''exchange''? Do commenters agree that, in the current market, Communication Protocol Systems function as market places that conduct similar activities as exchanges do? Would any systems that conduct similar activities as exchanges that should be included in proposed Rule 3b–16 be excluded? Are there any asset classes or types of securities that should be excluded from the definition of exchange? If so, why?

2. What are commenters' views on the potential consequences of expanding or limiting the definition of ''exchange'' under Exchange Act Rule 3b–16? What are commenters' views on how changing Rule 3b–16 could benefit or harm investors and market participants? Are new systems that meet the definition of exchange likely to choose to operate as ATSs instead of national securities exchanges?

3. Should the Commission adopt the proposed definition of ''trading interest'' under Exchange Act Rule 3b–16? Should the definition of ''trading interest'' require attributes to be identified in addition to at least the security and either quantity, direction (buy or sell), or price? Alternatively, would only one of the security, quantity, direction (buy or sell), or price be adequate to indicate trading interest? Should the definition of ''exchange'' continue to be limited to systems that use orders? If so, why?

4. Should the Commission revise Exchange Act Rule 3b–16 to focus on bringing together buyers and sellers, rather than bringing together orders (or trading interest)? Would the proposed revisions to the rule appropriately describe systems that use non-firm trading interest to allow participants to communicate their trading interest?

5. Should the Commission revise Exchange Act Rule 3b–16(a)(2) to describe a system that ''makes available established, non-discretionary methods'' under which buyers and sellers interact? Should the Commission revise the language further to clarify that a system provider that makes available a trading facility or communication protocol by way of a third party or affiliate would fall within the criteria of Rule 3b–16(a)(2)? Should there be any minimum or baseline to the established methods a system must have to qualify as an exchange? If so, what are they? Do commenters agree that making available communication protocols, as discussed herein, is sufficient to be an established, non-discretionary method under which buyers and sellers can interact?

6. Should the Commission remove the reference to ''multiple'' in Rule 3b–16(a)(1))? If so, why? If not, why not?

7. Should Communication Protocol Systems that choose to comply with Regulation ATS be subject to all of the requirements of Regulation ATS? Are there certain requirements of Regulation ATS that should or should not be applicable to Communication Protocol Systems, or certain Communication Protocol Systems? For example, are the current Regulation ATS recordkeeping requirements appropriate for Communication Protocol Systems? Should the Commission require a Communication Protocol System that chooses to operate as an ATS to create and maintain records that are not otherwise required by Rule 301(b)(8) of Regulation ATS? Is there anything that is not currently among the conditions to the Regulation ATS exemption that a Communication Protocol System and/or an existing ATS should comply with as part of Regulation ATS? And if so, why?

8. Should the Commission amend Regulation ATS, Form ATS, Form ATS–R, or Form ATS–N in any way to be more tailored to Communication Protocol Systems? If so, how?

9. Are the proposed transition periods for Communication Protocol Systems appropriate? Should the Commission provide Communication Protocol Systems more or less time to comply with any of the requirements of Regulation ATS? Please explain.

10. Is the Commission's proposal that a Newly Designated ATS must file an initial operation report on Form ATS no later than 30 calendar days after the effective date of any final rule, if adopted, appropriate? If not, should the Commission provide more time or less time for a Newly Designated ATS to file an initial Form ATS?

11. Should the Commission allow a Newly Designated ATS that is not registered as a broker-dealer to operate pursuant to the Rule 3a1–1(a)(2) exemption on a provisional basis? Does the proposal to allow such ATSs a maximum 210 calendar days to comply with the broker-dealer registration requirement provide an appropriate amount of time to register as a broker-dealer? If not, what, if any, transition period would be appropriate and why?

III. Proposed Changes Applicable to Government Securities ATSs

A. ATS Markets for Government Securities

Government securities [182] play a critical role in the U.S. and global economies. Among other things, for example, Treasury rates are a fundamental benchmark for pricing virtually all other financial assets.[183] Systems currently operating as ATSs, particularly those that operate in the secondary interdealer markets for the most-recently issued (''on-the-run'') U.S. Treasury Securities, have become a significant location of trading interest for government securities.[184] Specifically, most interdealer trading takes place on electronic platforms provided by interdealer brokers that operate limit order books, with electronic interdealer trading being

[182] Under the Exchange Act, government securities are defined as, among other things, securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States. *See* 15 U.S.C. 78c(42)(A). Government securities include U.S. Treasury securities, debt securities issued or guaranteed by a U.S. executive agency, as defined in 5 U.S.C. 105, or government-sponsored enterprise, as defined in 2 U.S.C. 622(8), and Agency Mortgage-Backed Securities (''MBSs''). Government securities also include securities which are issued or guaranteed by the Tennessee Valley Authority or by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors; securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission; and any put, call, straddle, option, or privilege on one of the aforementioned (subject to limited exceptions). 15 U.S.C. 78c(42)(B)–(C).

[183] *See* Group of Thirty Working Group on Treasury Market Liquidity, *U.S. Treasury Markets: Steps Toward Increased Resilience. Group of Thirty* at 1 (2021) (''G30 Report''), *available at https://group30.org/publications/detail/4950.*

[184] *See* Recent Disruptions and Potential Reforms in the U.S. Treasury Market: A Staff Progress Report, at 32, *available at https://home.treasury.gov/system/files/136/IAWG-Treasury-Report.pdf* (''November 2021 IAWG Report''). The November 2021 IAWG Report is a joint report issued by the Inter-Agency Working Group for Treasury Market Surveillance (''IAWG''), which consists of staff from the U.S. Department of the Treasury, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, the Commission, and the Commodity Futures Trading Commission. Among other things, the November 2021 IAWG report provides an overview of the current structure of the Treasury market and a detailed analysis of the recent disruptions to the Treasury market at the onset of the COVID–19 pandemic in March 2020 as well as other recent disruptions to the Treasury market. The report also sets forth what the IAWG believes are the six guiding principles for the Treasury market and provides an update about the work streams for specific policy analysis being undertaken by the members of the IAWG.

concentrated in on-the-run Treasury securities.[185] In July 2021, average daily trading in government securities totaled $978 billion, or roughly 95 percent of all fixed income trading volume in the U.S.[186]

Legacy Government Securities ATSs now operate with complexity similar to that of markets that trade NMS stocks in terms of use of technology and speed of trading, the use of limit order books, order types, algorithms, connectivity, data feeds, and the active participation of principal trading firms (''PTFs'').[187] For example, based on the Commission's review of Form ATS filings by ATSs that trade government securities and discussions with market participants, the Commission believes that Legacy Government Securities ATSs often offer subscribers a variety of order types to pursue both aggressive and passive trading strategies and low latency, high-speed connectivity to the ATS. These ATSs frequently use automated systems to match orders anonymously on a price/time priority basis. Some Legacy Government Securities ATSs also segment orders into categories by participants or allow participants the ability to interact with specific counterparty groups in the ATS and facilitate order interaction and execution.[188] Likewise, Communication Protocol Systems are increasingly used as electronic means to bring together buyers and sellers for government securities and are particularly prevalent in the dealer-to-customer market for U.S. Treasury and markets for off-the-run[189] U.S. Treasury Securities, Agency Securities,[190] and repos.

The most liquid and commonly traded government securities are U.S. Treasury Securities, which are direct obligations of the U.S. Government issued by the U.S. Department of the Treasury (''Treasury Department''). The Treasury Department issues several different types of securities, including Treasury bills, nominal coupons notes and bonds, Floating Rate Notes, and Treasury Inflation Protected Securities. Treasury nominal coupon notes and bonds, as well as Treasury Inflation Protected Securities, may also be separated into principal and interest payments and traded as STRIPS.[191] For each security type, the on-the-run securities are generally considered the most liquid in the secondary market.[192] Market participants commonly refer to securities issued prior to ''on-the-run'' securities as ''off-the-run'' securities.[193] Market participants use U.S. Treasury Securities as an investment instrument, hedging vehicle, and to source orders and trading interest, among other things. U.S. banks commonly own U.S. Treasury Securities due to their low risk and strong liquidity characteristics. Additionally, U.S. Treasury Securities are often used as collateral in lending arrangements or as margin on other financial transactions.

For U.S. Treasury Securities, the secondary market is bifurcated between the dealer-to-customer market, in which dealers trade with their customers (*e.g.,* investment companies, pension funds, insurance companies, corporations, or retail), and the interdealer market, in which dealers and specialty firms trade with one another.[194] Customers, also referred to as ''end users,'' have not traditionally traded directly with other end users.[195] Rather, end users primarily trade with dealers, and dealers use the interdealer market as a source of liquidity to help facilitate their trading with clients in the dealer-to-customer market. Trading in the U.S. Treasury Securities dealer-to-customer market is generally—and has historically been—conducted bilaterally using voice, and more recently, electronically through the use of Communication Protocol Systems, most commonly using an RFQ protocol. Broker-dealers also internalize a portion of their customer flow, although the extent to which broker-dealers internalize is unclear.[196]

In the interdealer market, the majority of trading in on-the-run U.S. Treasury Securities currently occurs on ATSs using limit order books supported by advanced electronic trading technology.[197] Furthermore, interdealer trading for on-the-run U.S. Treasury Securities is generally concentrated within a very small number of ATSs, especially when compared to the market for NMS stocks, which is dispersed among many trading venues.[198] While

[185] *See id.* at 3.

[186] *See* SIFMA Fixed Income Trading Volume, *available at https://www.sifma.org/resources/research/us-fixed-income-trading-volume/.* This includes U.S. Treasury Securities, Agency Mortgage-Backed Securities, and Federal Agency Securities.

[187] *See* November 2021 IAWG Report, *supra* note 184, at 31. *See also* NMS Stock ATS Adopting Release, *supra* note 2, at 38771 for a discussion about the current operational complexities of NMS Stock ATSs.

[188] *See also* November 2021 IAWG Report, *supra* note 184, at 31; Joint Staff Report: The U.S. Treasury Market on October 15, 2014, at 11, 35–36, *available at https://www.sec.gov/files/treasury-market-volatility-10-14-2014-joint-report.pdf* (''October 15 Staff Report''); Department of the Treasury Release No. 2015–0013 (January 22, 2016), Notice Seeking Public Comment on the Evolution of the Treasury Market Structure, 81 FR 3928 (January 22, 2016) (''Treasury Request for Information''). This evolution in the interdealer secondary cash markets for U.S. Treasury Securities was also highlighted in the October 15 Staff Report, the Treasury Request for Information, and public comment received by the Commission. The October 15 Staff Report is a joint report about the unusually high level of volatility and rapid round-trip in prices that occurred in the U.S. Treasuries market on October 15, 2014. Among other things, the October 15 Staff Report provides an overview of the market structure, liquidity, and applicable regulations of the U.S. Treasury market, as well as the broad changes to the structure of the U.S. Treasury market that have occurred over the past two decades.

[189] *See infra* note 193 for a description of ''off-the-run'' securities.

[190] *See* James Collin Harkrader and Michael Puglia, *Fixed Income Market Structure: Treasuries* vs. *Agency MBS,* Board of Governors of the Federal Reserve System: FEDS NOTES (August 25, 2020), *available at https://www.federalreserve.gov/econres/notes/feds-notes/fixed-income-market-structure-treasuries-vs-agency-mbs-20200825.htm* (''August 25th FEDS Notes'') (explaining the recent evolution of the government securities market structure).

[191] STRIPS is the acronym for Separate Trading of Registered Interest and Principal of Securities. STRIPS let investors hold and trade the individual interest and principal components of eligible Treasury notes and bonds as separate securities. STRIPS are Treasury securities that don't make periodic interest payments. Market participants create STRIPS by separating the interest and principal parts of a Treasury note or bond. STRIPS can only be bought and sold through a financial institution, broker, or dealer and held in the commercial book-entry system. *See* TreasuryDirect, STRIPS, *available at https://www.treasurydirect.gov/instit/marketables/strips/strips.htm.*

[192] On-the-run U.S. Treasury Securities are the most recently issued nominal coupon securities. Nominal coupon securities pay a fixed semi-annual coupon and are currently issued at original maturities of 2, 3, 5, 7, 10, 20, and 30 years. These standard maturities are commonly referred to as ''benchmark'' securities because the yields for these securities are used as references to price a number of private market transactions.

[193] Off-the-run or ''seasoned'' U.S. Treasury Securities are the issues that preceded the current on-the-run securities. The U.S. Treasury Securities market also comprises futures and options on U.S. Treasury Securities, and securities financing transactions in which U.S. Treasury Securities are used as collateral. *See* Treasury Request for Information, *supra* note 188, at 3928. For the purpose of this proposal, the Commission focuses on the secondary cash market.

[194] *See id.*

[195] *See id.*

[196] *See id.* For the purposes of this proposal, internalization refers to a broker filling a customer order either from the firm's own inventory or by matching the order with other customer order flow, instead of sending the order to an interdealer market for execution. *See id.* at 3928 n.5.

[197] *See* October 15 Staff Report, *supra* note 188, at 11, 35–36. *See also* Bloomberg Letter at 5, stating that liquid on-the-run government securities are mostly traded on limit order books.

[198] The growth of electronic trading has contributed to a marked shift in the composition of the interdealer cash market for U.S. Treasury Securities over time. Traditionally, interdealer brokers only allowed primary dealers to access their trading venues. After 1992, however, interdealer brokers expanded access to all entities that were netting members of the Government Securities Clearing Corporation (which is now the Fixed Income Clearing Corporation's Government Securities Division). Thereafter, other entities gained access to these trading venues through their

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trading in the most liquid NMS stocks occur on a variety of trading venues (*e.g.,* exchanges, ATSs, single-dealer broker platforms), the majority of overall trading in the interdealer secondary market for on-the-run U.S. Treasury Securities occurs on ATSs.[199] For example, during the first nine months of 2021, one ATS accounted for $14.9 trillion in total dollar volume in all government securities, the majority of which were on-the-run U.S. Treasury Securities.[200] For off-the-run U.S. Treasury Securities,[201] the majority of interdealer trading occurs via transactions through traditional voice-assisted interdealer broker platforms and Communication Protocol Systems that offer various trading protocols to bring together buyers and sellers,[202] though some interdealer trading of off-the-run U.S. Treasury Securities does occur on ATSs.[203]

Another type of government securities is Agency Securities. Agency Securities include securities issued by or guaranteed by U.S. Government corporations or U.S. Government sponsored enterprises (''GSEs'').[204] Agency Securities, which may not be backed by the full faith and credit of the U.S. Government, are generally considered to be very liquid and offer state and local tax advantages to the holder. Market participants can use ATSs to buy and sell Agency Securities, although, based on the Commission's review of Form ATS–R filings, transaction volume of Agency Securities is not as large as that of U.S. Treasury Securities on ATSs.[205] Investors, banks, and other market participants often acquire Agency Securities in the secondary market to support various investing strategies, such as hedging against other more risky investments in a given portfolio. Agency Securities also trade on Communication Protocol Systems where buyers and sellers can use RFQ protocols, for example, to engage in price discovery, find a counterparty, and negotiate and execute a transaction.

Repos provide short-term financing (often overnight) to help fund the borrower's (usually a broker-dealer) trading or lending activities. However, the collateral is sold to the lender, and the repo obligates the borrower to repurchase the collateral. U.S. Treasury Securities are frequently used as the underlying collateral of a repo. Several ATSs have provided notice on their Form ATS disclosures that they facilitate the trading of repos. Much like the markets for U.S. Treasury Securities and Agency Securities, repo trading has historically been conducted bi-laterally by voice; however, over the past decade, electronic trading of repos on Communication Protocol Systems has increased significantly. Electronic trading of repos is primarily conducted via RFQ protocols, and many systems for trading in repos now offer electronic trading options.

With regard to the interdealer secondary markets for on-the-run U.S. Treasury Securities, the continued growth of electronic trading has contributed to an increased presence of PTFs in the market place.[206] Currently, PTFs account for the majority of trading and provide top-of-the-book liquidity for on-the-run U.S. Treasury Securities on electronic interdealer trading venues.[207] From January 1, 2021 to June 30, 2021, PTFs traded on 13 Government Securities ATSs accounting for approximately 48.6 percent of total on-the-run Government Securities ATS trading volume.[208] PTFs usually have direct access to electronic interdealer trading venues for U.S. Treasury Securities, and as is the case with the equity markets, PTFs trading on the electronic interdealer trading venues for on-the-run U.S. Treasury Securities often employ automated algorithmic trading strategies that rely on speed and allow the PTFs to cancel or modify quotes in response to perceived market events.[209] Furthermore, most PTFs trading U.S. Treasury Securities on these trading venues for on-the-run U.S. Treasury Securities also restrict their activities to principal trading and do not hold positions long term, while dealers use the interdealer market as a source of orders and trading interest to help facilitate their trading with clients in the dealer-to-customer market.[210] As explained in the October 15 Staff Report, the increase in trading by PTFs in the interdealer market may affect the amount of liquidity available to end users in the dealer-to-customer market.[211]

In response to the 2020 Proposal, the Commission received several comments that broadly supported expanding the regulatory framework under Regulation ATS with respect to Government Securities ATSs.[212] Commenters stated that ATSs have become increasingly important in the government securities market.[213] One commenter stated that, given that Government Securities ATSs closely resemble NMS Stock ATSs, it would be appropriate to impose similar regulatory oversight, including regulatory oversight by the Commission

prime brokers, who themselves had access, and in recent years the trading venues granted direct access to an even wider range of participants, including non-dealers, which account for more than half of the trading activity in the futures and electronically brokered interdealer cash markets. *See* October 15 Staff Report, *supra* note 188, at 36. *See also* Treasury Request for Information, *supra* note 188, at 3928.

[199] *See infra* Table VIII.2 and accompanying text.

[200] For an additional discussion of trading volume in the U.S. bond market as a whole and U.S. Treasury Securities, *see infra* Section VIII.B.2.

[201] Also, as noted in the October 15 Staff Report issued by the Treasury Department, Board of Governors of the Federal Reserve System, Federal Reserve Bank of New York, the Commission, and U.S. Commodity Futures Trading Commission, trading in off-the-run U.S. Treasury Securities has always been less active than trading in on-the-run U.S. Treasury Securities, and price discovery in the cash markets primarily occurs in on-the-run securities. *See* October 15 Staff Report, *supra* note 188 at n.7.

[202] *See* November 2021 IAWG Report, *supra* note 184, at 3. *See also* Bloomberg Letter at 5, stating that less liquid off-the-run government securities are mostly traded using methods other than limit order books.

[203] While trading in on-the-run securities likely accounts for more than half of total daily trading volumes, off-the-run U.S. Treasury Securities make up over 95 percent of the outstanding marketable U.S. Treasury Securities. *See* G30 Report, *supra* note 183, at 1, n.2.

[204] *See* U.S. Department of the Treasury Resource Center, ''Fixed Income: Agency Securities,'' *available at https://www.treasury.gov/resource-center/faqs/Markets/Pages/fixedfederal.aspx.* For example, the Government National Mortgage Association (''Ginnie Mae'') is a U.S. Government corporation that issues mortgage-backed securities guaranteed by the full faith and credit of the U.S. Government. The assets collateralized into the securities issued by Ginnie Mae are federally insured and guaranteed mortgage loans. Agency Securities issued by GSEs include those issued by the Federal Home Loan Banks (''FHLBs''), the Federal National Mortgage Association (''Fannie Mae''), the Federal Home Loan Mortgage Corporation (''Freddie Mac''), and the Student Loan Marketing Association (''Sallie Mae''). Agency Securities issued by GSEs are not normally backed by the full faith and credit of the U.S. Government and therefore, may present some default and credit risk.

[205] Additionally, repos on government securities are also traded on some ATSs.

[206] PTFs are not, however, very active in the electronic markets for Agency Securities. *See* August 25th FEDS Notes, *supra* note 190 (''Though parts of the agency MBS market have moved from voice-based to screen-based trading since the early 2000s, algorithmic high-frequency electronic trading still does not comprise a meaningful share of average daily volume and the market remains devoid of PTF participation.'').

[207] *See* November 2021 IAWG Report, *supra* note 184, at 5. *See also* October 15 Staff Report, *supra* note 188, at 36; Remarks of Deputy Secretary Justin Muzinich at the 2019 U.S. Treasury Market Structure Conference (September 23, 2019), *available at https://home.treasury.gov/news/press-releases/sm782.*

[208] *See infra* Table VIII.2. (ATS PTF volume/ATS volume) × 100 = PTF share of ATS volume (%).

[209] *See* October 15 Staff Report, *supra* note 188, at 32, 35–36, 39.

[210] *See* November 2021 IAWG Report, *supra* note 184, at 5; October 15 Staff Report, *supra* note 188, at 38.

[211] *See* October 15 Staff Report, *supra* note 188, at 37.

[212] *See, e.g.,* BrokerTec Letter, SIFMA Letter, AFREF Letter.

[213] *See* FINRA Letter.

and FINRA.[214] Likewise, another commenter stated that many of the concerns surrounding potential conflicts of interest that arise between an ATS and the activities of its bank/broker-dealer operator and affiliates—and the transparency of an ATS's operations—are equally relevant with respect to ATSs that transact in government securities as to NMS Stock ATSs.[215] In addition, one commenter stated that critical intermediaries in the U.S. Treasury market are ''effectively unregulated'' as trading venues or dealers, and this hampers availability of information concerning trading in these critical markets, and that oversight of the core ''plumbing'' of these critical markets, which determines their resiliency, is lacking.[216] This commenter stated that several ATSs now dominate the trading of U.S. Treasury Securities and agency mortgage backed securities, and that ensuring that Regulation ATS and Regulation SCI apply to these entities will provide for additional data and create more transparency into the trading around those critical markets.[217] This commenter also stated that expanding Regulation ATS with respect to ATSs that trade U.S. Treasuries has also become important as the role of PTFs has become more significant in the U.S. Treasury markets and related repo markets.[218]

B. Heightened Regulatory Requirements Under Regulation ATS for Government Securities ATSs

The vast majority of ATSs that operate today do so pursuant to the exemption provided by Exchange Act Rule 3a1–1(a)(2), which requires the ATSs to be in compliance with Regulation ATS, which includes, among other things, registering as broker-dealers. Currently Exempted Government Securities ATSs, however, operate pursuant to Exchange Act Rule 3a1–1(a)(3)[219] and Rule 301(a)(4)(ii)(A).[220] These provisions currently exempt an ATS from compliance with the requirements in Rule 301(b) of Regulation ATS[221] if, in relevant part, the ATS (1) is registered as a broker-dealer under Sections 15(b)[222] or 15C[223] of the Exchange Act, or is a bank, and (2) limits its securities activities to government securities (as defined in Section 3(a)(42) of the Exchange Act), repos, any puts, calls, straddles, options, or privileges on government securities, other than puts, calls, straddles, options, or privileges that: (i) Are traded on one or more national securities exchanges; or (ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association, and commercial paper.[224] Accordingly, such Currently Exempted Government Securities ATSs are not required to register as a national securities exchange or comply with Regulation ATS.[225] To the Commission's knowledge, most Currently Exempted Government Securities ATSs operating pursuant to this exemption register as broker-dealers with the Commission.[226]

ATSs that do not limit their securities activities solely to government securities or repos, trading for example corporate bonds or municipal securities, cannot use this exemption. Such ATSs must either register as an exchange or comply with Regulation ATS pursuant to Exchange Act Rule 3a1–1(a)(2), which includes, among other things, registering as a broker-dealer under Section 15 of the Exchange Act.[227] Government Securities ATSs that are currently subject to Regulation ATS must report transactions in U.S. Treasury Securities and Agency Securities to the Trade Reporting and Compliance Engine (''TRACE''),[228] and FINRA publicly disseminates data about these transactions. Currently, FINRA publishes weekly aggregated transaction information on U.S. Treasury Securities and disseminates certain transaction information on Agency Securities immediately upon receipt of a transaction report.[229] Today, Legacy Government Securities ATSs are subject only to certain provisions of Regulation ATS because not all the provisions are applicable to trading in government securities.[230] In particular, government securities are not included in any category of securities under the Fair Access Rule.[231] Today, the categories of securities under the Fair Access Rule only include NMS stocks, equity securities that are not NMS stocks and for which transactions are reported to an SRO, municipal securities, and corporate debt securities.[232] In addition, Regulation SCI does not apply to ATSs with respect to their trading in

[214] *See* SIFMA Letter at 2.

[215] *See also* MFA Letter at 4.

[216] *See* AFREF Letter at 1.

[217] *See id.*

[218] *See id.* at 2 (stating that the growing role of PTFs means that much trading activity is not coming from long-term investors but rather proprietary trading firms who may trade in-and-out of their positions several times in a day and are likely to react sharply to market volatility).

[219] 17 CFR 240.3a1–1(a)(3).

[220] 17 CFR 242.301(a)(4)(ii)(A).

[221] 17 CFR 242.301(b).

[222] *See* 15 U.S.C. 78o(b) (pertaining to the registration and regulation of brokers and dealers).

[223] *See* 15 U.S.C. 78o–5 (pertaining to the registration and regulation of government securities brokers and dealers).

[224] *See* 15 U.S.C. 78c(a)(42). The definition of ''government securities'' in Section 3(a)(42) of the Exchange Act (and, therefore, references to ''government securities'' throughout this proposal) includes certain puts, calls, straddles, options, or privileges on government securities, other than puts, straddles, options, or privileges that: Are traded on one or more national securities exchanges; or for which quotations are disseminated through an automated quotation system operated by a registered securities association. *See supra* note 182.

[225] *See* 17 CFR 242.301(a)(4)(i) and (a)(4)(ii)(A). Although not required to register as a national securities exchange or comply with Regulation ATS, a Currently Exempted Government Securities ATS may need to register as a broker-dealer under Section 15(b) or as a government securities broker or government securities dealer pursuant to Exchange Act Section 15C, and comply with the associated regulatory requirements. *See, e.g.,* 17 CFR chapter IV, subchapter A—Regulations under Section 15C of the Securities Exchange Act of 1934.

[226] Some ATSs that are eligible for the exemption voluntarily comply with Regulation ATS, even though ATSs that trade only government securities are not required to comply with Regulation ATS at all.

[227] *See supra* notes 130–131 and accompanying text.

[228] *See* FINRA Rule 6730(a)(1) requires FINRA members to report transactions in TRACE-Eligible Securities, which FINRA Rule 6710 defines to include U.S. Treasury Securities and Agency Securities. For each transaction in U.S. Treasury Securities and Agency Securities, a FINRA member would be required to report the CUSIP number or similar numeric identifier or FINRA symbol; size (volume) of the transaction; price of the transaction (or elements necessary to calculate price); symbol indicating whether transaction is a buy or sell; date of trade execution (''as/of'' trades only); contra-party's identifier; capacity (principal or agent); time of execution; reporting side executing broker as ''give-up'' (if any); contra side introducing broker (in case of ''give-up'' trade); the commission (total dollar amount), if applicable; date of settlement; if the member is reporting a transaction that occurred on an ATS pursuant to FINRA Rule 6732, the ATS's separate Market Participant Identifier (''MPID''); and trade modifiers as required. For when-issued transactions in U.S. Treasury Securities, a FINRA member would be required to report the yield in lieu of price. *See* FINRA Rule 6730(c).

[229] FINRA Rule 6750(a) requires FINRA to disseminate information on all transactions on certain securities, including Agency Securities (but excluding U.S. Treasury Securities), immediately upon receipt of the transaction report. FINRA is permitted to publish or distribute weekly aggregated transaction information and statistics on U.S. Treasury Securities, and has stated that it intends to publish weekly volume information aggregated by U.S. Treasury subtype (*e.g.,* Bills, Floating Rate Notes, Treasury Inflation-Protected Securities, and Nominal Coupons). *See* Securities Exchange Release No. 87837 (December 20, 2019), 84 FR 71986 (December 30, 2019) (approving a proposed rule change to allow FINRA to publish or distribute aggregated transaction information and statistics on U.S. Treasury Securities).

[230] *See* 17 CFR 242.301(b)(1), (2), and (7) through (11). The order display and execution access provisions under Rule 301(b)(3) and the related fee restrictions of Rule 301(b)(4) of Regulation ATS only apply to an ATS's NMS stock activities. *See* 17 CFR 242.301(b)(3) and (4). *See also supra* Section II.D.2 (discussing the requirements for compliance with the Regulation ATS exemption).

[231] 17 CFR 242.301(b)(5). *See also supra* notes 153–157 and accompanying text.

[232] *See* 17 CFR 242.301(b)(5).

government securities.[233] The Capacity, Integrity, and Security Rule under Rule 301(b)(6)[234] also does not apply to the government securities activities of an ATS.[235]

Finally, Government Securities ATSs are not required to comply with rules applicable to ATSs that trade NMS stocks, including the obligation to file a public Form ATS–N pursuant to Rule 304 of Regulation ATS.[236] ATSs that transact in government securities or repos are also not required to comply with the order display and execution access provisions under Rule 301(b)(3)[237] and the related fee restrictions of Rule 301(b)(4),[238] both of which only apply to an ATS's NMS stock activities.

Despite the critical role of government securities in the U.S. and global economy, the significant volume in government securities transacted on ATSs, and these ATSs' growing importance to investors and overall securities market structure, Currently Exempted Government Securities ATSs are exempt from exchange registration and are not required to comply with Regulation ATS. In addition, Communication Protocol Systems that transact in government securities and/or repos, but do not currently meet the definition of ''exchange,'' are not subject to exchange registration requirements and are likewise not required to comply with Regulation ATS.[239] Furthermore, ATSs that trade both government securities and non-government debt securities (*e.g.,* corporate bonds) are not subject to all the provisions of Regulation ATS. Market participants today have limited access to information that permits them to adequately compare and contrast how they can use a Government Securities ATS or how their trading interest would be handled by Government Securities ATSs.[240] In addition, Government Securities ATSs are not currently subject to the Fair Access Rule and Regulation SCI, which would help ensure the fair treatment of subscribers and address technological vulnerabilities, and improve the Commission's oversight, of the core technology of key entities in the markets for government securities.[241] Given these concerns, and comments received on the 2020 Proposal, the Commission is re-proposing and revising the amendments described below.

1. Proposed Definition of Government Securities ATS

The Commission is re-proposing to amend Rule 300 of Regulation ATS to define ''Government Securities ATS'' to mean an alternative trading system, as defined in Rule 300(a), that trades government securities, as defined in section 3(a)(42) of the Exchange Act (15 U.S.C. 78c(a)(42)), or repurchase and reverse repurchase agreements on government securities.[242] To meet the definition of a Government Securities ATS, the organization, association, person, group of persons, or system must meet the definition of an alternative trading system under Rule 300(a) of Regulation ATS.[243] The Commission is also re-proposing that a Government Securities ATS shall not trade securities other than government securities or repos[244] and that trading of securities other than government securities or repos would require the separate filing of a Form ATS or a Form ATS–N, depending on the types of securities traded.[245] Other than complying with Rule 304 and filing Form ATS–N, this amendment would not, however, impose new compliance requirements on ATSs that currently trade government securities in addition to non-government securities.[246] Under the proposal, if a broker-dealer operator currently operates an ATS for government securities and non-government securities (for example, corporate bonds), the broker-dealer operator would separately be required to comply with Regulation ATS for: (1) A Government Securities ATS that would trade government securities, which would be subject to Rule 304, and file disclosures on Form ATS–N, as proposed to be revised and (2) a non-Government Securities ATS (that, for example, would trade corporate bonds), which would not be subject to Rule 304, and file disclosures on its existing Form ATS, as amended to remove references to government securities.

In response to the 2020 Proposal, the Commission received one comment letter opposing the proposed definition of Government Securities ATS.[247] This commenter stated that separating trading activity in government securities and repos from non-NMS stock trading activity could impose administrative and operational burdens on both Government Securities ATSs and subscribers.[248] The commenter stated that the Commission did not explain why requiring a Government Securities ATS to separate its operations from other non-NMS Stock ATS trading activity would improve Commission oversight or other regulatory goals.[249]

The proposed definition of Government Securities ATS, however, would not require operational separation by a Government Securities ATS, and the operational costs that the commenter described would therefore not apply.[250] The proposed definition would not, for example, require the Government Securities ATS to develop a new matching engine nor require changes with regard to how subscribers enter trading interest into the ATS. Other than requiring the Government Securities ATS to separately comply with the requirements of Regulation ATS (and, as applicable, Regulation SCI), the proposed definition does not create new compliance requirements on

[233] *See infra* Section III.C (describing the types of entities that are currently subject to the requirements of Regulation SCI).

[234] 17 CFR 242.301(b)(6).

[235] *See supra* notes 157–158 and accompanying text.

[236] 17 CFR 242.304. *See also supra* notes 139–143 and accompanying text.

[237] *See supra* notes 149–151 and accompanying text.

[238] *See supra* note 152 and accompanying text.

[239] *See supra* Section II.A.

[240] *See, e.g.,* 2020 Proposal, *supra* note 4, at 87125.

[241] *See id.* at Section III.B.4 (discussing the Fair Access Rule) and III.C (discussing Regulation SCI).

[242] *See* proposed Rule 300(l).

[243] 17 CFR 242.300(a). *See* Regulation ATS Adopting Release, *supra* note 31, at 70851–52.

[244] *See* proposed Rule 300(l).

[245] An ATS that does not trade NMS stocks or government securities, as proposed, must file Form ATS. If the broker-dealer operates an ATS that trades NMS stocks and an ATS that trades government securities, it would be required to file a separate Form ATS–N for each of the NMS Stock ATS and Government Securities ATS.

[246] Broker-dealers that operate Government Securities ATSs that are currently subject to Regulation ATS already must have established written safeguards and written procedures to protect subscribers' confidential trading information, pursuant to Rule 301(b)(10), and already must make and keep records pursuant to Rule 301(b)(8) that are tailored to the types of securities the ATS trades and the subscribers that trade those securities on the ATS. The Commission believes the proposal is broadly consistent with the manner in which broker-dealers that operate NMS Stock ATSs and non-NMS Stock ATSs currently comply with Regulation ATS. For further discussion, *see infra* Section III.B.3.

[247] *See* ICE Bonds Letter I at 5.

[248] *See id.* The commenter stated that the initial set-up of a new Government Securities ATS would require, among other things, the development of a matching engine, separate connectivity for subscribers, new clearing connectivity, additional personnel to support trading operations of the Government Securities ATS, and regulatory controls (*e.g.,* Rule 15c3–5). The commenter further stated that these requirements would ultimately lead to fewer venues for subscribers to trade and hedge and concentrate trading among a few large Government Securities ATSs, as smaller Legacy Government Securities ATSs may determine that this separation requirement is cost prohibitive. In addition, the commenter stated that if a subscriber has to execute a corporate bond on one ATS and sell the treasury on a different ATS, there is an administrative and operational burden placed on the subscriber, as well as additional economic and market risk to the subscriber as the price on the other venue may move by the time the hedge trade is initiated.

[249] *See id.*

[250] *See id.*

Government Securities ATSs.[251] Under the proposed rule, a broker-dealer operator for an ATS that currently trades both government securities and corporate debt securities, for example, would be required to file a Form ATS–N for the trading of government securities on a Government Securities ATS and a separate Form ATS for trading of corporate debt securities on an ATS. In this example, the broker-dealer operator for a Government Securities ATS and non-Government Securities ATS may be required to disclose certain information on Form ATS–N about the non-Government Securities ATS. For example, to the extent that any persons support both the operation of the Government Securities ATS and the ATS that trades corporate debt securities and have access to subscriber confidential trading information for the Government Securities ATS, the Government Securities ATS would need to disclose that on Part II, Item 7 of Form ATS–N.[252] In addition, the Government Securities ATS would be required to provide under Part III, Item 11 information about interaction with non-government securities markets (*e.g.,* futures, currencies, swaps, corporate bonds).[253]

Further, the Commission believes that by stating that a Government Securities ATS trades only government securities, the definition of Government Securities ATS clarifies which regulatory requirements are applicable for trading activity in government securities and non-government securities. For example, a Government Securities ATS would file a Form ATS–N specifically disclosing information regarding its trading in government securities, which would enable market participants to understand the ATS's government securities operations and readily compare the ATS against other Government Securities ATSs.

To provide that the same approach applies to broker-dealers that operate NMS Stock ATSs and non-NMS Stock ATSs, and to clarify requirements applicable to NMS Stock ATSs, the Commission is proposing to amend the definition of ''NMS Stock ATS'' to state that an NMS Stock ATS shall not trade securities other than NMS stocks.[254] Today, securities other than NMS stocks are not traded in any NMS Stock ATS and the proposed amendment to the definition of NMS Stock ATS would have no impact on any existing ATS nor on the requirements applicable to existing NMS Stock ATSs. Broker-dealer operators of NMS Stock ATSs are currently required to file a Form ATS–N for NMS Stock ATS operations and a separate Form ATS for any non-NMS Stock ATS operations.[255] This would not change under this proposal. In addition, to facilitate the orderly transition to the heightened requirements for Government Securities ATSs that are currently operating, the Commission is defining such ATSs as Legacy Government Securities ATSs.[256]

To help specify which ATSs are subject to Rule 304 requirements, the Commission is proposing to define ''Covered ATS'' as an NMS Stock ATS or Government Securities ATS, as applicable.[257] The Commission is also proposing to define ''Covered Newly Designated ATS'' to mean a Newly Designated ATS that is a Government Securities ATS or NMS Stock ATS, which the Commission believes would facilitate the transition of Communication Protocol Systems that are NMS Stock ATSs or Government Securities ATSs to the regulatory requirements of Regulation ATS.[258]

The Commission is also proposing to add definitions of ''U.S. Treasury Security'' and ''Agency Security'' for purposes of Regulation ATS.[259] ''U.S. Treasury Security'' would mean a security issued by the U.S. Department of the Treasury. ''Agency Security'' would mean a debt security issued or guaranteed by a U.S. executive agency, as defined in 5 U.S.C. 105, or government-sponsored enterprise, as defined in 2 U.S.C. 622(8). The proposed definitions are designed to provide the scope of securities a Government Securities ATS must include when calculating whether the fair access requirements set forth in Rule 301(b)(5) are applicable and to facilitate compliance with the Fair Access Rule.[260]

Request for Comment

12. Should the Commission adopt a more limited or expansive definition of Government Securities ATS than the definition that is being proposed? Given that, unlike the 2020 Proposal, the definition of Government Securities ATS would now include Communication Protocol Systems that transact in government securities and/or repos, do commenters believe that the definition of Government Securities ATS should be limited or expanded?

13. Should the Commission cite to the section 3(a)(42) (15 U.S.C. 78c(a)(42)) definition of government securities for purposes of defining Government Securities ATS? Should the securities encompassed by the definition (*e.g.,* certain options on government securities) be considered ''government securities'' for purposes of this regulation?

14. Should the Commission modify the proposed definitions of U.S. Treasury Securities and Agency Securities in any way? For example, should the proposed definitions of U.S. Treasury Securities and Agency Securities be based on definitions in any other existing rules?

15. The proposed amendments to the definitions of NMS Stock ATS and Government Securities ATS are not designed to limit a broker-dealer operator for an NMS Stock ATS or Government Securities ATS with respect to other types of securities that the broker-dealer operator may make available for trading in an ATS that is subject to Rule 301(b)(2) of Regulation ATS or how the broker-dealer operator may structure the operations of its ATS businesses. Would the proposed amendments to the definitions of NMS Stock ATS and Government Securities ATS impose any operational or other burdens on the broker-dealer operator, other than those related to filing Form ATS, Form ATS–R, or Form ATS–N, as applicable?

16. Should the Commission require an ATS that currently trades government securities and non-government securities, such as corporate bonds, to comply with Rule 304, including filing a Form ATS–N, with respect to the ATS's corporate bond activities as well as its government securities activities?

2. Proposed Elimination of the Exemption for ATSs That Limit Securities Activities to Government Securities and Repos

The Commission is re-proposing amendments to Regulation ATS that would require a Currently Exempted Government Securities ATS that seeks to operate pursuant to the exemption from the definition of an ''exchange'' under Exchange Act Rule 3a1–1(a)(2), and thus not be required to be registered as a national securities exchange, to comply with Regulation ATS. The Commission is proposing to eliminate the exemption under Rule 301(a)(4) of

[251] *See supra* note 246.

[252] *See infra* Section IV.D.4.f.

[253] *See infra* Section IV.D.5.k.

[254] *See* proposed Rule 300(k).

[255] *See* current Rule 301(b)(2)(viii).

[256] *See* proposed Rule 300(n). *See also supra* note 5. *See infra* notes 433–439 and accompanying text for a description of the filing and effectiveness rules applicable to Legacy Government Securities ATSs.

[257] *See* proposed Rule 300(m).

[258] *See* proposed Rule 300(s).

[259] *See* proposed Rule 300(o)–(p).

[260] *See infra* Section III.B.4. The proposed definitions are similar to those in FINRA's rules. *See* FINRA Rules 6710(l) and 6710(p).

Regulation ATS, which exempts from the definition of an ''exchange'' under Section 3(a)(1) of the Exchange Act an ATS that is operated by a registered broker-dealer or a bank that solely trades government securities or repos.[261] As a result, Currently Exempted Government Securities ATSs would either have to register as an exchange or operate pursuant to an exemption to such registration, such as the exemption under Regulation ATS.[262] A Currently Exempted Government Securities ATS that opts to comply with Regulation ATS would then be subject to the conditions to the exemption from exchange registration that are designed to provide its subscribers with investor protections and enable Commission oversight, including the surveillance and examination of ATSs, and to help assure fair and orderly markets.[263] The Commission is also proposing to subject Currently Exempted Government Securities ATSs to the enhanced public transparency requirements of Rule 304 and Form ATS–N.

In response to the 2020 Proposal, several commenters expressed support for eliminating the exemption for ATSs that both (1) limit their securities activities to government securities or repos and (2) either register as broker-dealers or are banks.[264] Commenters stated such requirements would help impose regulatory oversight,[265] and one commenter stated that the requirements could promote market transparency, resiliency, and integrity.[266] One commenter stated that requiring Currently Exempted Government Securities ATSs to adopt written safeguards and procedures to protect subscriber confidential trading information could help protect the integrity of a subscriber's confidential trading information that could otherwise be at risk of unauthorized disclosure and subject to potential misuse.[267] In addition, commenters specifically expressed support for the requirement that all Government Securities ATSs register as broker-dealers, stating that such requirement would provide regulatory oversight with regard to risk management and regulatory controls.[268]

One commenter suggested the Commission consider subjecting ATSs for a class of securities to an enhanced regime if the ATSs trading in that asset class are ''significant''; the commenter suggested that the Commission may recognize 30 percent as the threshold for ''significant'' threshold, and noted that equity-NMS Stock ATSs were matching about 30 percent of the total share volume when Regulation ATS was implemented.[269] The commenter suggested that the Commission apply this test when considering removing the exemption for Currently Exempted Government Securities ATSs and that the Commission make proposed Form ATS–G public when the ATSs are ''significant'' with respect to trading volume.[270] The Commission is not, however, proposing a specific trading volume test to determine whether to remove the exemption for Currently Exempted Government Securities ATSs. In addition to the significant volume in government securities transacted on ATSs (as well as Communication Protocol Systems),[271] the Commission also recognizes that government securities have a critical role in the U.S. and global economy and ATSs have grown in importance to investors and overall securities market structure for purposes of the execution and pricing of government securities.

The Commission is also proposing to amend Rule 301(b)(1) of Regulation ATS, which currently requires an ATS to register as a broker-dealer under Section 15 of the Exchange Act,[272] to allow an ATS to register either as a broker-dealer under Exchange Act Section 15 or a government securities broker or government securities dealer under Exchange Act Section 15C(a)(1)(A).[273] Registration pursuant to Section 15C(a)(1)(A) specifically applies to government securities brokers and dealers other than registered broker-dealers or financial institutions.[274] Registration as a broker-dealer under Section 15 or government securities broker or government securities dealer under Section 15C(a)(1)(A) of the Exchange Act is important because, among other things, it requires membership in an SRO, such as FINRA.[275] Because ATSs that register as broker-dealers or government securities brokers or dealers do not have self-regulatory responsibilities, the Commission believes it is important for these ATSs to be members of an SRO and thus subject to SRO examination and market surveillance,[276] trade reporting obligations,[277] and certain investor protection rules.[278] Like ATSs registered as broker-dealers under Section 15, an ATS registered as a government securities broker or government securities dealer under Section 15C(a)(1)(A) would be subject to oversight and market surveillance by an SRO.[279]

[261] *See* 17 CFR 240.3a1–1(a)(3) and 17 CFR 242.301(a)(4).

[262] The Commission is proposing to delete the text of Rule 301(a)(4)(ii)(A)–(C) and replace each paragraph with the term ''Reserved.'' Based on Commission staff experience, ATSs generally do not trade commercial paper, and the Commission is not proposing to eliminate Rule 301(a)(4)(ii)(D), which exempts an ATS from compliance with Regulation ATS if the ATS limits its securities activities to commercial paper. Accordingly, the only ATSs that would continue to be exempt under Rule 301(a)(4) would be ATSs that are registered broker-dealers or are banks and limit their securities activities to commercial paper.

[263] *See* Regulation ATS Adopting Release, *supra* note 31, at 70878. *See also infra* notes 287–297 and accompanying text.

[264] *See, e.g.,* SIFMA Letter at 2 (stating that given that Government Securities ATSs closely resemble ATSs that trade NMS stocks, it would be appropriate to impose similar regulatory oversight over such trading venues); FINRA Letter at 2; BrokerTec Letter at 2; ICE Bonds Letter I at 2.

[265] *See* SIFMA Letter at 2; FINRA Letter at 2; MFA Letter at 3; ICE Bonds Letter I at 2; and AFREF Letter at 2–3 (stating that the regulatory extension would help to discourage some of the deceptive and manipulative trading practices that occur in government securities markets).

[266] *See* Citadel Letter.

[267] *See* MFA Letter at 3.

[268] *See* SIFMA Letter at 2.

[269] *See* Bloomberg Letter at 4.

[270] *See id.*

[271] *See, e.g., supra* note 197 and accompanying text (describing that, on the interdealer market, the majority of trading currently occurs on ATSs). *See also infra* note 840 and accompanying text (describing that Communication Protocol Systems account for approximately 30 to 40 percent of total electronic trading volume on multilateral U.S. Treasury trading venues).

[272] 15 U.S.C. 78o.

[273] *See* 15 U.S.C. 78o–5. Exchange Act Section 15C(a)(1)(A) makes it unlawful for a government securities broker or government securities dealer (other than a registered broker or dealer or a financial institution) to make use of the mails or any means or instrumentality of interstate commerce to effect a transaction in any government securities unless the government securities broker or government securities dealer is registered with Commission pursuant to Exchange Act Section 15C(a)(2). *See* 15 U.S.C. 78o–5(a)(1)(A). Section 15C(e) in turn generally requires that a government securities broker or government securities dealer that is registered or required to be registered under Section 15C(a)(1)(A) must be a member of a registered national securities exchange or registered securities association such as FINRA.

[274] Broker-dealers that limit their activity to government securities require specialized registration under Section 15C of the Exchange Act and do not have to register as general-purpose broker-dealers under Section 15(b). *See* 15 U.S.C. 78o–5.

[275] *See* Regulation ATS Adopting Release, *supra* note 31, at 70863 (discussing the importance of an ATS being a member of an SRO because ATSs registered as broker-dealers will not have self-regulatory responsibilities). As noted above, Section 15C(e) generally requires SRO membership for a government securities broker or government securities dealer that is registered or required to be registered under Section 15C(a)(1)(A). Similarly, Section 15(b)(8) generally requires a registered broker-dealer to be a member of a registered securities association such as FINRA.

[276] *See, e.g.,* FINRA Rule 1000 Series, FINRA Rules 4140, 4510, 4520, 4530, and 8210.

[277] *See, e.g.,* FINRA Rule 6730.

[278] *See, e.g.,* FINRA Rules 3110, 4370, 5210, 5220, 5230, 5310, and 5340.

[279] *See* Regulation ATS Adopting Release, *supra* note 31, at 70863.

In contrast, SRO membership is not required for a bank or other financial institution that registers as a government securities broker or dealer.[280] Accordingly, the amendment to Regulation ATS would not permit a bank or other financial institution to satisfy the broker-dealer registration requirement by registering as a government securities broker or government securities dealer under Section 15C(a)(1)(B) of the Exchange Act.[281] The Commission believes it is important for an ATS to be a member of an SRO, and unlike registrants under Sections 15 and 15C(a)(1)(A), a bank or other financial institution that registers under Section 15C(a)(1)(B) is not required to be a member of an SRO.[282]

As a result, a bank-operated ATS that trades only government securities or repos would be unable to rely on the exemption provided by Regulation ATS, as proposed to be amended, and could not otherwise operate unless registered as a national securities exchange as required by Section 5 of the Exchange Act. However, this is the case currently with respect to bank-operated ATSs that trade securities other than government securities, and it is the Commission's understanding that these ATSs often are operated by bank affiliates that are themselves registered broker-dealers, rather than by the banks themselves. The Commission believes that a bank that operates an ATS that trades only government securities might adopt a similar registered affiliate structure for its government securities operations, such as by moving its ATS operations into a new or existing broker-dealer affiliate of the bank.

In addition to Rule 301(b)(1) of Regulation ATS, which most Currently Exempted Government Securities ATSs already satisfy,[283] a Currently Exempted Government Securities ATS would be required to comply with other conditions of the Regulation ATS exemption, as proposed to be amended. This includes Rule 304, which would require that Government Securities ATSs file Form ATS–N. Government Securities ATSs would not, however, be subject to the order display and execution access provisions under Rule 301(b)(3) or the fees provision of Rule 301(b)(4) that are applicable only to NMS Stock ATSs.[284] The Commission is proposing to require Government Securities ATSs that meet a certain volume threshold to comply with the Fair Access Rule with respect to trading in U.S. Treasury Securities and Agency Securities.[285] Because the Commission is proposing to apply Regulation SCI to certain Government Securities ATSs that trade U.S. Treasury Securities and/or Agency Securities, the Capacity, Integrity, and Security Rule under Rule 301(b)(6) would not apply to the trading of government securities on ATSs.[286]

The Commission believes that it is important that all Government Securities ATSs, including Currently Exempted Government Securities ATSs, be subject to the conditions of the Regulation ATS exemption, which are designed to protect investors and to facilitate Commission oversight. Accordingly, the Commission is re-proposing that a Currently Exempted Government Securities ATS must:

- Permit the examination and inspection of its premises, systems, and records, and cooperate with the examination, inspection, or investigation of subscribers, whether such examination is being conducted by the Commission or by an SRO of which such subscriber is a member, pursuant to Rule 301(b)(7).[287] The Commission believes that because subscribers to whom the Commission's inspection authority may not extend could use a Currently Exempted Government Securities ATS to manipulate the market in a security, it is important that these ATSs cooperate in all inspections, examinations, and investigations.[288]
- Make and keep certain records specified in Rule 302 [289] and preserve records specified in Rule 303,[290] pursuant to Rule 301(b)(8).[291] The recordkeeping requirements would require the Currently Exempted Government Securities ATSs to make and keep certain records for an audit trail of trading activity that would allow the Commission to examine whether the ATS is in compliance with Federal securities laws.[292]
- Periodically report certain information about transactions in 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 has operated pursuant to Rule 301(b)(9).[293] The information reported on Form ATS–R by Currently Exempted Government Securities ATSs will permit the Commission to monitor the trading on these ATSs for compliance with the Exchange Act and applicable rules thereunder and enforce the Fair Access Rule.[294]
- Adopt written safeguards and written procedures to protect confidential trading information and to separate ATS functions from other broker-dealer functions, including principal and customer trading pursuant to Rule 301(b)(10).[295] The Commission believes that applying the requirements of Rule 301(b)(10) to Currently Exempted Government Securities ATSs will help prevent the potential for abuse

[280] Unlike registered broker-dealers (Section 15(b)(8)) and government securities brokers or government securities dealers that are registered or required to be registered under Section 15C(a)(1)(A) (Section 15C(e)), there is no statutory requirement of SRO membership for banks. Because banks typically operate in reliance on exceptions from broker or dealer status, they are not required to become a member of an SRO, such as FINRA. In this regard, Exchange Act Section 3(a)(4)(B)(iii)(II) excludes from the definition of ''broker'' a bank that effects transactions in ''exempted securities'' such as government securities. 15 U.S.C. 78c(a)(4)(B)(iii)(II). *See* Exchange Act Section 3(a)(12) (defining ''exempted securities'' to include ''government securities'' as defined in Section 3(a)(42) of the Exchange Act). Exchange Act Section 3(a)(5)(C)(i)(II) similarly excepts from the definition of ''dealer'' a bank that buys or sells exempted securities. 15 U.S.C. 78c(a)(5)(C)(i)(II).

[281] Exchange Act Section 15C(a)(1)(B) makes it unlawful for any government securities broker or government securities dealer that is a registered broker or dealer or a financial institution to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security unless such government securities broker or government securities dealer has filed with the appropriate regulatory agency written notice that it is a government securities broker or government securities dealer. 15 U.S.C. 78o–5(a)(1)(B)(i).

[282] *See* Exchange Act Sections 3(a)(6) (defining ''bank'') and 3(a)(46) (defining ''financial institution'').

[283] *See supra* text accompanying note 226 (stating that most Currently Exempted Government Securities ATSs register as broker-dealers with the Commission). For those Currently Exempted Government Securities ATSs that are operating as banks and not registered broker-dealers, the Commission is proposing to amend Rule 301(b)(1) to provide a transition period to allow them to operate without interruption while their broker-dealer registration is pending until the earlier of the date the alternative trading system registers as a broker-dealer under section 15 of the Act or section 15C(a)(1)(A) of the Act and becomes a member of a national securities association; or the date 210 calendar days after effective date of any final rule. *See supra* note 177.

[284] *See* 17 CFR 242.301(b)(3)–(4).

[285] *See infra* Section III.B.4.

[286] *See infra* Section III.C.

[287] *See* 17 CFR 242.301(b)(7). *See also* Regulation ATS Adopting Release, *supra* note 31, Section IV.A.2.f.

[288] *See* Regulation ATS Adopting Release, *supra* note 31, at 70877.

[289] *See supra* note 163.

[290] *See supra* notes 164 and 166.

[291] *See* 17 CFR 242.301(b)(8). *See also* Regulation ATS Adopting Release, *supra* note 31, Section IV.A.2.g.

[292] *See* Regulation ATS Adopting Release, *supra* note 31, at 70878.

[293] *See* 17 CFR 242.301(b)(9). *See also supra* notes 144–148 and *infra* Section III.B.4.

[294] *See* Regulation ATS Adopting Release, *supra* note 31, at 70874 and 70878.

[295] *See* 17 CFR 242.301(b)(10); *infra* note 168; NMS Stock ATS Adopting Release, *supra* note 2, Section VI.

of subscriber confidential trading information.[296]

• Not use in its name the word ''exchange,'' or any derivation of the word ''exchange'' pursuant to Rule 301(b)(11).[297] The Commission believes that the use of the word ''exchange'' by an ATS, including a Currently Exempted Government Securities ATS, would be deceptive and could lead investors to believe incorrectly that such ATS is registered as a national securities exchange.[298]

Request for Comment

17. Should the Commission amend Regulation ATS to eliminate the exemption from compliance with Regulation ATS under Rule 301(a)(4)(ii)(A) for all Currently Exempted Government Securities ATS, including those operated by banks?

18. Should the proposed elimination of the exemption from compliance with Regulation ATS only apply to Government Securities ATSs that trade a certain type of government security (*e.g.,* only U.S. Treasury Securities or only Agency Securities)? Should the proposed elimination of the exemption from compliance with Regulation ATS only apply to Government Securities ATSs that trade government securities (and not repos)? If so, for which type of Government Securities ATS should the exemption be eliminated?

19. Should Government Securities ATSs seeking to operate pursuant to the exemption provided by Regulation ATS have the alternative option to satisfy broker-dealer registration with the Commission pursuant to Section 15C(a)(1)(A)?

20. Should the Commission adopt any alternatives to requiring Government Securities ATSs to register with the Commission as broker-dealers under Section 15 or Section 15C(a)(1)(A)? For example, should the Commission amend Rule 301(b)(1) of Regulation ATS to include an alternative for a bank to register as a government securities broker or dealer pursuant to Section 15C(a)(1)(B), which would not require the bank to become a member of an SRO?

21. Should there be a transition period for Currently Exempted Government Securities ATSs that are currently operated by banks to comply with the proposed amendments to Rule 301(b)(1), including ATSs provided and operated by an affiliate of the bank? Should the Commission allow a Currently Exempted Government Securities ATS that is not registered as a broker-dealer to operate pursuant to the Rule 3a1–1(a)(2) exemption on a provisional basis? Does the proposal to allow such ATSs a maximum 210 calendar days from the effective date to comply with the broker-dealer registration requirement provide an appropriate amount of time to register as a broker-dealer? If not, what, if any, transition period would be appropriate? For Currently Exempted Securities ATSs that are currently operated by banks, should there be a different transition period? If so, why?

22. Should there be a transition period for Currently Exempted Government Securities ATSs or Covered Newly Designated ATSs to comply with all or some of the requirements of Regulation ATS? If so, which requirements would require such a transition period, and how long should such transition period be?

23 Should the Commission amend Regulation ATS to remove the exemption from Regulation ATS for ATSs that limit their securities activities to commercial paper? Do market participants use ATSs to trade commercial paper? If so, how is commercial paper traded on an ATS? Should the Commission remove any other exemption from Regulation ATS available under Rule 301?

24. Should the Commission require Currently Exempted Government Securities ATSs to comply with all of the requirements of Regulation ATS applicable to all ATSs that are currently required to comply with Regulation ATS? If not, which requirements should a Currently Exempted Government Securities ATS not be required to comply with and why?

3. Filing Requirements for Broker-Dealers That Operate ATSs That Trade Government Securities and Non-Government Securities

The Commission is re-proposing to revise Rule 301(b)(2)(viii)[299] of Regulation ATS to provide that a Legacy Government Securities ATS that is operating pursuant to a Form ATS as of the effective date of any final rule will continue to be subject to the Rule 301(b)(2) requirements to file a Form ATS. However, once the ATS files a Form ATS–N, it will no longer be subject to Rule 301(b)(2)(i) through (vii) and will instead be subject to the reporting requirements under Rule 304, which provides the rules for filing of Form ATS–N. The Commission is also proposing to provide that as of the effective date of any final rule, an entity seeking to operate as a Government Securities ATS will not be subject to the requirements of Rule 301(b)(2)(i) through (vii) and will instead be required to file reports under Rule 304. In addition, the Commission is proposing rules to make clear that a Currently Exempted Government Securities ATS would be subject to Rule 304 and would not be subject to Rule 301(b)(2)(i) through (viii). These rules are designed to prevent Government Securities ATSs from being subject to potentially duplicative requirements in Rule 304 and Rule 301(b)(2).

The Commission is proposing to amend Rule 301(b)(2)(viii) to make clear that Covered ATSs are required to file reports pursuant to § 242.304 and ATSs that are not Covered ATSs are subject to Rule 301(b)(2).[300] Today, there are some broker-dealers that operate multiple types of ATSs that trade different types of securities (*e.g.,* NMS Stock ATS and non-NMS Stock ATS) or operate multiple ATSs that trade the same type of securities but are separate and distinct from each other (*e.g.,* a broker-dealer registered for, and operates, two NMS Stock ATSs, each of which maintains a separate book of orders that is governed by distinct priority and order interaction rules for one type of security).[301] In both instances, each of the ATSs must comply with Regulation ATS.[302] The Commission is proposing to add to Rule 301(b)(2)(viii) to provide that each NMS Stock ATS or Government Securities ATS that is operated by a broker-dealer that is the

[296] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38864.

[297] *See* 17 CFR 242.301(b)(11); Regulation ATS Adopting Release, *supra* note 31, Section II.C.

[298] *See* Regulation ATS Proposing Release, *supra* note 173.

[299] 17 CFR 242.301(b)(2)(viii). Current Rule 301(b)(2)(viii) provides that NMS Stock ATSs must file with the Commission the reports and amendments required by Rule 304 and that NMS Stock ATSs are not subject to Rule 301(b)(2). NMS Stock ATSs or entities seeking to operate as NMS Stock ATSs would continue to file reports pursuant to Rule 304. Because the Commission review period for all Forms ATS–N filed by Legacy NMS Stock ATSs ended in October 2019, the Commission is proposing to delete references in Rule 301(b)(2)(viii) to Legacy NMS Stock ATSs. The Commission is also proposing to consolidate the current provisions of Rule 301(b)(2)(viii) applicable to NMS Stock ATSs to state that NMS Stock ATSs or entities seeking to operate as an NMS Stock ATS shall not be subject to the requirements of Rule 301(b)(2)(i) through (vii) and would be subject to Rule 304.

[300] The Commission is also proposing to amend Rule 301(b)(2)(viii) to state that Covered Newly Designated ATSs will be subject to Rule 304.

[301] The Commission is proposing that, for the purposes of calculating volume thresholds for the Fair Access Rule, the average trading volume of ATSs that are operated by a common broker-dealer, or ATSs operated by affiliated broker-dealers, will be aggregated. *See infra* Section V.A.2.

[302] *See* Rule 3a1–1(a)(2) (providing that an organization, association, or group of persons shall be exempt from the definition of ''exchange'' if it is in compliance with Regulation ATS) and Rule 301(a) (providing that an ATS shall comply with the requirements of Rule 301(b)).

registered broker-dealer for more than one ATS must comply with Regulation ATS, including the filing requirements of Rule 304. The Commission believes that the proposed language makes clear that the proposal would not require compliance with the heightened transparency requirements of Regulation ATS for ATSs that are not NMS Stock ATSs or Government Securities ATSs. Under the proposal, a broker-dealer operator, for example, for an ATS that noticed on its initial operation report on Form ATS that the ATS trades government securities and corporate debt securities would be the broker-dealer operator for two types of ATSs that would be separate from each other with regard to trading these types of securities and each would comply with Regulation ATS. These two types of ATSs would be (1) a Government Securities ATS that would file a Form ATS–N with respect to government securities and (2) a non-Government Securities ATS that would file a Form ATS with respect to corporate debt.[303] In addition, each of the two ATSs would be required to comply with the conditions to Regulation ATS, including, among other things, adopting written safeguards and written procedures to protect subscriber confidential trading information for the ATS pursuant to Rule 301(b)(10) and making and keeping records for the ATS pursuant to Rule 301(b)(8).[304]

The Commission also is proposing to amend Rule 301(b)(9) of Regulation ATS.[305] This rule requires an ATS to report transaction volume in various types of securities, including government securities and repos, on Form ATS–R on a quarterly basis and within 10 calendar days after it ceases operation.[306] As discussed above, the Commission is proposing to define ''Government Securities ATS'' and to clarify the definition of ''NMS Stock ATS'' to make clear that a Government Securities ATS cannot trade securities other than government securities or repos and that an NMS Stock ATS cannot trade securities other than NMS stocks.[307] For example, a Government Securities ATS operated by a broker-dealer that is also the registered broker-dealer for a non-Government Securities ATS would be required to file a Form ATS–R for the Government Securities ATS and a separate Form ATS–R for the non-Government Securities ATS. The Commission is proposing to amend Rule 301(b)(9) by removing language stating that an ATS must ''separately file'' a Form ATS–R for transactions in NMS stocks and for transactions in securities other than NMS stocks to simplify the text and convey that each ATS, even if operated by a broker-dealer that operates other ATSs, must file a Form ATS–R. This is consistent with the current Form ATS–R filing process for a broker-dealer that operates an NMS Stock ATS and non-NMS Stock ATS.[308]

Request for Comment

25. Should an NMS Stock ATS or Government Securities ATS that is operated by a broker-dealer that is a registered broker-dealer for more than one ATS be subject to Rule 304 independent of any other ATS operated by its broker-dealer?

26. Should a broker-dealer that is the registered broker-dealer for more than one ATS be required to file separate Forms ATS–R for each of the ATSs it operates?

27. Should a broker-dealer that is the registered broker-dealer for an ATS that trades government securities or repos and an ATS that trades NMS stocks be required to file separate Forms ATS–N for each of the ATSs it operates?

28. Should the Commission allow a broker-dealer operator of an NMS Stock ATS or a Government Securities ATS to disclose on its Form ATS–N its non-government securities or non-NMS stock activities, in addition to its government securities or NMS stock activities, on a voluntary basis?

29. Do commenters believe that additional changes or requirements to the ATS framework are needed? For example, should the Commission propose amendments to Regulation ATS to require ATSs that trade equity securities other than NMS stocks, corporate debt securities, municipal securities, or any other category of securities to comply with Rule 304, including filing with the Commission public Form ATS–N and requiring their Forms ATS–N to be subject to Commission review and effectiveness processes?

4. Application of Fair Access to Government Securities ATSs

The Fair Access Rule, as proposed to be amended and as described in detail below,[309] requires an ATS to, among other things, establish and apply reasonable written standards for granting access on its system. Today, the Fair Access Rule only applies if an ATS's trading volume for certain securities or a certain type of securities exceeds an average daily volume threshold during a period time set forth in the rule. Currently, the Fair Access Rule only applies to the trading of NMS stocks, equity securities that are not NMS stocks and for which transactions are reported to an SRO, municipal securities, and corporate debt securities, but not to trading in government securities.[310]

The Fair Access Rule was designed to ensure that qualified market participants have fair access to the significant sources of liquidity in the U.S. securities markets. When Regulation ATS was adopted, the Commission explained that the fair treatment by ATSs of potential and current subscribers is particularly important when an ATS captures a large percentage of trading volume in a security, because viable alternatives to trading on such a system are limited.[311] The Commission further explained that if an ATS has a significantly large percentage of the volume of trading in a security or type of security, unfairly discriminatory actions can hurt investors lacking access to that ATS.[312] Currently, however, Regulation ATS does not provide a mechanism to prevent unfair denials or limitations of access by ATSs that trade U.S. Treasury Securities or Agency Securities or regulatory oversight of such denials or limitations of access. Today, the principles undergirding the Fair Access Rule are equally relevant to a Government Securities ATS, and amending the Fair Access Rule to include the trading of U.S. Treasury Securities and Agency Securities would help ensure the fair treatment of potential and current subscribers to ATSs that consist of a large percentage

[303] Under the proposed rules, a broker-dealer operator for an ATS that currently trades government securities and corporate bonds, for example, would file a Form ATS–N to disclose its government securities activities for the Government Securities ATS. The broker-dealer operator would disclose the corporate bond activities of its existing ATS by filing with the Commission a material amendment to its Form ATS pursuant to Rule 301(b)(2)(ii) of Regulation ATS to remove information regarding government securities activities. *See* Regulation ATS Adopting Release, *supra* note 31, at 70864 (discussing circumstances under which an ATS would file a material amendment to Form ATS pursuant to Rule 301(b)(2), which, among other things, includes changes to the operating platform, the types of securities traded, or types of subscribers).

[304] *See supra* note 246 and accompanying text.

[305] *See* 17 CFR 242.301(b)(9).

[306] The information filed on Form ATS–R permits the Commission to monitor trading on an ATS. *See* Regulation ATS Adopting Release, *supra* note 31, at 70878.

[307] *See supra* notes 244 and 254 and accompanying text.

[308] *See* NMS Stock ATS Adopting Release, *supra* note 2, Section III.B.5.

[309] *See infra* Section V.A. *See also* proposed Rule 301(b)(5)(iii).

[310] *See* 17 CFR 242.301(b)(5)(i).

[311] *See* Regulation ATS Adopting Release, *supra* note 31, at 70872.

[312] *See id.*

of trading volume in these two types of securities.[313]

In the 2020 Proposal, the Commission proposed that a Government Securities ATS would be subject to the Fair Access Rule if during at least four of the preceding six calendar months, the Government Securities ATS had: (1) With respect to U.S. Treasury Securities, five percent or more of the average weekly dollar volume traded in the United States as provided by the SRO to which such transactions are reported; or (2) with respect to Agency Securities, five percent or more of the average daily dollar volume traded in the United States as provided by the SRO to which such transactions are reported.

In response to the 2020 Proposal, commenters generally supported amending Regulation ATS to apply the Fair Access Rule for Government Securities ATSs that meet certain trading thresholds.[314] Some commenters stated that the proposed amendments would ensure that market participants are not unreasonably denied access from important sources of liquidity for a particular security,[315] and prevent discriminatory actions that could hurt investors, and potentially result in higher trading costs and a reduction in trading efficiency.[316] One commenter stated that the Commission should, as was proposed in the 2020 Proposal, apply the thresholds to all types of U.S. Treasury Securities and Agency Securities, each on an aggregate basis.[317] One commenter, however, suggested that the Commission may apply the fair access thresholds to on-the-run securities that are ''likely'' to trade on an ATS as off-the-run securities are less liquid and tend to trade using other methods.[318]

The Commission is re-proposing to apply the Fair Access Rule to the trading of government securities on an ATS with certain revisions. After considering comments received, proposed changes to Exchange Act Rule 3b–16, and further analysis of the U.S. Treasury Securities markets, as explained further below, the Commission is proposing to revise the average weekly trading volume percentage for ATSs trading U.S. Treasury Securities from the threshold proposed in the 2020 Proposal. Accordingly, the Commission is proposing that a Government Securities ATS will be subject to the Fair Access Rule if, during at least four of the preceding six calendar months: (1) It had three percent or more of the U.S. Treasury Securities average weekly dollar volume traded in the United States as provided by the SRO to which such transactions are reported; or (2) it had five percent or more of the Agency Securities average daily dollar volume traded in the United States as provided by the SRO to which such transactions are reported.

First, the Commission is re-proposing that the thresholds include only securities for which transactions are reported to an SRO, and the volume thresholds are based on how the SRO subsequently reports that volume to the public. FINRA publishes weekly aggregate data on U.S. Treasury Securities based on the mandatory transaction reports of its members to TRACE, and disseminates transaction data about Agency Securities immediately upon receipt of a transaction report.[319] Currently, FINRA neither provides individual trade reports nor aggregates daily volume data for U.S. Treasury Securities transactions to TRACE subscribers (or to the public). FINRA, however, provides individual trade reports for all Agency Securities transactions to TRACE subscribers.[320] Accordingly, because weekly dollar volume data about transactions in U.S. Treasury Securities and daily dollar volume data about transactions in Agency Securities are publicly available via TRACE, Government Securities ATSs will be able to readily calculate whether they meet the applicable thresholds.[321]

Second, the Commission continues to believe that separate volume thresholds for U.S. Treasury Securities and Agency Securities would best advance the investor protection goals of the Fair Access Rule.[322] The proposed volume thresholds would help ensure that the Fair Access Rule is appropriately tailored so that it only applies to the category of security for which an ATS has significant trading volume.[323] The Commission believes that it would be unnecessary and overly burdensome to require a Government Securities ATS to comply with the Fair Access Rule for a category of government security for which that ATS does not have significant volume. Furthermore, the Commission now proposes different trading volume thresholds for U.S. Treasury Securities and Agency Securities. As such, the Commission believes it would be impractical for the Fair Access Rule to combine trading volume in these two types of securities to determine whether a Government Securities ATS has triggered its requirements.

Third, the Commission believes that it is appropriate to determine these volume thresholds on a category basis.[324] Given that U.S. Treasury

[313] Under the proposal, the Fair Access Rule would not apply to trading of repos, including repos on U.S. Treasury Securities and Agency Securities. The Commission notes FINRA does not require ATSs to report transactions for repos. The Commission is requesting comment on its preliminary assessment and on whether the Commission should amend Regulation ATS to require Government Securities ATSs that meet certain volume thresholds for the trading of repos, including repos on U.S. Treasury Securities and Agency Securities, to be subject to the requirements of the Fair Access Rule.

[314] *See, e.g.,* SIFMA Letter; MFA Letter; ICE Bonds Letter I; and Healthy Markets Letter.

[315] *See* SIFMA Letter at 4. *See also* ICI Letter at 4 (stating that funds generally are not able to directly access liquidity on most of these platforms, and that applying the fair access requirements would enhance the ability of funds to onboard and participate on these platforms directly and would generally enhance market structure for U.S. Treasury Securities and benefit fund shareholders); FIA PTG Letter at 2 (stating that the requirements will ensure qualified market participants have access to the government securities market).

[316] *See* MFA Letter at 4. *See also* ICI Letter at 4 (stating that the fair access requirements would enable the Commission to evaluate ATS standards and determine whether they are being applied in an unfair or discriminatory manner).

[317] *See* Tradeweb Letter at 3 (stating that the Commission should not, for example, distinguish between on-the-run and off-the-run U.S. Treasury Securities, and that a broader measure of market significance is preferable in order to provide for more stable application of the Fair Access Rule); ICE Bonds Letter I at 5.

[318] *See* Bloomberg Letter at 5 (noting that FINRA's aggregated weekly data report currently segments the data into on-the-run/off-the-run and dealer-to-dealer and dealer-to-customer transactions).

[319] *See supra* note 229.

[320] The Commission believes that the vast majority—and likely, all—broker-dealer operators of Legacy Government Securities ATSs that trade Agency Securities currently subscribe to TRACE. Communication Protocol Systems that are not currently FINRA members, however, are not required to report to TRACE. The Commission is requesting public comment on the extent to which Government Securities ATSs (which may include Legacy Government Securities ATSs and Communication Protocol Systems) have access to TRACE trade reports for Agency Securities.

[321] In response to the 2020 Proposal, one commenter stated that the proposal would need to be based on ''weekly par value traded'' because FINRA publishes volume data on a weekly basis. *See* Bloomberg Letter at 6. The Commission believes that data to calculate the proposed threshold, which is based on dollar volume published by FINRA on a weekly basis, would be readily available.

[322] In response to the 2020 Proposal, one commenter stated that it supports applying the Fair Access Rule to all types of U.S. Treasury Securities and all types of Agency Securities, each on an aggregate basis. *See* Tradeweb Letter at 3.

[323] For example, suppose a Government Securities ATS has significant trading volume in U.S. Treasury Securities but not Agency Securities. In this example, the proposed rule would help ensure that investors receive fair access to the ATS's services with respect to U.S. Treasury Securities, but it would not require the ATS to provide fair access for its Agency Securities services.

[324] In response to the 2020 Proposal, some commenters stated that they support applying the thresholds on an aggregate basis. *See* ICE Bonds Letter at 6 and Tradeweb Letter at 3. One

Securities and Agency Securities are types of debt securities, doing so would be consistent with the Fair Access Rule's application to other categories of fixed income securities (*i.e.,* corporate bonds and municipal securities). The Fair Access Rule applies on a security-by-security basis for NMS stocks and equity securities that are not NMS stocks, and on a category basis for corporate bonds and municipal securities.

Fourth, the Commission is proposing that a Government Securities ATS would be required to comply with the Fair Access Rule only if it has met at least one of the applicable volume thresholds during at least four of the preceding six calendar months.[325] For ATSs that trade Agency Securities, this is the same time period for evaluating the applicability of the Fair Access Rule that is currently applied to ATSs that trade NMS stocks, equity securities that are not NMS stocks and for which transactions are reported to an SRO, municipal securities, and corporate debt securities.

Fifth, the Commission is proposing a three percent threshold to apply the Fair Access Rule for Government Securities ATSs that trade U.S. Treasury Securities. The Commission received several comments on the threshold proposed in the 2020 Proposal, which expressed differing opinions. One commenter stated that it would support a threshold of three percent of daily market volume, observing that such a threshold would apply the Fair Access Rule to only four ATSs for U.S. Treasury Securities and one for Agency Securities, and stating that these ATSs are ''leading exchanges'' whose customers deserve fair access.[326] On the other hand, one commenter stated that an ATS should be subject to the Fair Access Rule only if it is a ''significant'' source of liquidity and that it believed that most market participants view 10 percent of the par value traded in the asset class as the market share threshold where an ATS's liquidity is significant.[327] Another commenter supported the previously-proposed five percent thresholds.[328]

While public comment on what constitutes a significant market center for U.S. Treasury Securities is split, the Commission believes that a three percent average weekly trading volume threshold would encompass the significant markets for and advance the policy goals of the Fair Access Rule. The Commission believes that the policy goals behind the Fair Access Rule are of particular importance in the U.S. Treasury Securities market. Market participants must have reasonable access to significant sources of liquidity in the secondary markets for U.S. Treasury Securities because, among other things, U.S. Treasury Securities play a vital and irreplaceable role in both the U.S. and global economies. In addition, ATSs that operate in the secondary interdealer markets for on-the-run U.S. Treasury Securities have become a significant source of trading interest for government securities. Also, under this proposal, RFQ systems will now be subject to Regulation ATS. Given that RFQ systems make up over half of secondary trading in the U.S. Treasury market,[329] the Fair Access Rule's policy goals would be advanced by requiring RFQs that facilitate a significant percentage of U.S. Treasury trading to provide fair access to market participants. Additionally, when compared to the application of the Fair Access Rule to NMS Stock ATSs, denying fair access to services of an ATS for U.S. Treasury Securities under this proposal would be particularly impactful. The Fair Access Rule would be applied categorically for government securities rather than on a security-by-security basis like in the NMS equities market. Thus, a market participant being denied access to a significant U.S. Treasury Securities ATS could be denied access to the system's entire portfolio of U.S. Treasury Securities operations.

Based on the current market, a three percent volume threshold would help ensure appropriate access for market participants, particularly retail and other non-broker-dealer investors who rely on liquidity in the government securities markets. Specifically, under the proposed three percent threshold, based on volume currently required to be reported to TRACE, the Commission estimates that seven Legacy Government Securities ATSs that trade U.S. Treasury Securities (including four Legacy Government Securities ATSs with greater than three percent market share and three affiliated ATSs with which their volume would be aggregated under the proposed changes to the Fair Access Rule)[330] would be subject to the Fair Access Rule.[331] Under the previously proposed five percent threshold, an estimated three ATSs trading U.S. Treasury Securities (including two Legacy Government Securities ATSs with greater than five percent market share and one affiliated ATS) would be subject to the Fair Access Rule.[332] As such, a three percent threshold would result in market participants having fair access to an estimated nearly eight percent more of the U.S. Treasury Securities market than they would under a five percent threshold, based on volume currently reported to TRACE.[333]

Furthermore, applying the Fair Access Rule to ATSs that meet a three percent threshold in U.S. Treasury Securities would result in the Fair Access Rule applying to Legacy Government Securities ATSs transacting in approximately 32 percent of market volume currently reported to FINRA in U.S. Treasury Securities. ATSs that trade U.S. Treasury Securities that would be subject to the Fair Access Rule under the proposed three percent threshold would comprise approximately 94 percent of U.S. Treasury Securities volume traded on ATSs.[334] Accordingly, the Commission believes that the three percent threshold would provide investors with access to

commenter stated that Commission should not, for example, distinguish between on-the-run and off-the-run Treasuries in applying the Fair Access Rule because a broader measure of market significance is preferable in order to provide for a more stable application of the Fair Access Rule. *See* Tradeweb Letter at 3.

[325] However, if, for example, during the six month period from January to June, the Government Securities ATS met the threshold for U.S. Treasury Securities only during January and April and met the threshold for Agency Securities only during February and May, the Government Securities ATS would not be subject to the Fair Access Rule in July because the ATS would not have met the threshold for either type of security during at least four of the preceding six months in either U.S. Treasury Securities or Agency Securities.

[326] *See* AFREF Letter at 3.

[327] *See* Bloomberg Letter at 6.

[328] *See* SIFMA Letter at 5.

[329] *See* Treasury Market Practices Group (TMPG), *White Paper on Clearing and Settlement in the Secondary Market for U.S. Treasury Securities* (July 2019), *available at https://www.newyorkfed.org/medialibrary/Microsites/tmpg/files/CS_FinalPaper_071119.pdf.*

[330] *See infra* Section V.A. *See also infra* Table VIII.1. For purposes of estimating the number of unique affiliated ATSs that would meet the proposed three percent threshold, the data in Table VIII.1 (stating a total of nine ''grouped-affiliated ATSs'' would be affected) has been adjusted based on the Commission's knowledge of current ATS operations.

[331] Based on Coalition Greenwich's Greenwich MarketView data from April 2021 through September 2021, approximately two currently operating Communication Protocol Systems would be subject to the Fair Access Rule using a three percent threshold in U.S. Treasury Securities. This would remain unchanged if the Commission used the previously-proposed five percent threshold.

[332] *See infra* Table VIII.1. For purposes of estimating the number of unique affiliated ATSs that would meet a five percent threshold, the data in Table VIII.1 (stating a total of five ''grouped-affiliated ATSs'' would be affected) has been adjusted based on the Commission's knowledge of current ATS operations.

[333] *See id.*

[334] Data is based on the regulatory version of TRACE for U.S. Treasury Securities from April 1, 2021 through September 30, 2021.

markets that are important venues for trading in U.S. Treasury Securities.

Sixth, the five percent threshold set forth in the 2020 Proposal for Agency Securities is being re-proposed unchanged. Because the U.S. Treasury Securities market is one of the deepest and most liquid in the world, and because of the vital role that U.S. Treasury Securities play in the U.S. and global economies, it is particularly important to ensure that investors have access to ATSs with significant volume in U.S. Treasury Securities. The Agency Securities market, however, does not share the unique qualities of the U.S. Treasury Securities market, and accordingly, the Commission is re-proposing for Agency Securities a five percent threshold that is consistent with the current volume threshold applicable to corporate bonds and municipal securities.[335] Furthermore, based on volume currently reported to TRACE, the estimated one Legacy Government Securities ATS that would exceed the proposed five percent threshold for Agency Securities accounts for nearly 12 percent of volume reported in TRACE in Agency Securities.[336]

The Commission is proposing a compliance period for Communication Protocol Systems, which seek to operate as ATSs, and Legacy Government Securities ATSs that become subject to the Fair Access Rule. Under the proposal, a Communication Protocol System or a Legacy Government Securities ATS that becomes subject to the Fair Access Rule would be required to comply with the Fair Access Rule one month from the date that the Communication Protocol System or the Legacy Government Securities ATS initially triggers any of the fair access thresholds.[337] The Commission believes that it is appropriate to provide the one-month compliance period to allow the Communication Protocol System or the Legacy Government Securities ATS to establish and apply reasonable written standards for granting, limiting, and denying access to the ATS services, as proposed, and, for those that would be NMS Stock ATSs and Government Securities ATSs, to prepare responses to Item 24 of Form ATS–N.[338] The additional compliance period is designed to provide the Communication Protocol Systems and the Legacy Government Securities ATSs sufficient time to transition into the new ATS regulatory regime and prevent any disruptions to the operation of these systems and their participants.

Request for Comment

30. Should any other type of government securities be included as a category of securities under Rule 301(b)(5)? Should the Commission apply Rule 301(b)(5) to all Government Securities ATSs? What would be the costs and benefits associated with such a requirement?

31. Should the proposed three percent fair access threshold for U.S. Treasury Securities be applied to all types of U.S. Treasury Securities or to subset categories of U.S. Treasury Securities? For example, should the three percent fair access threshold be applied to transaction volume in only on-the-run U.S. Treasury Securities? Should the five percent fair access threshold be applied to all Agency Securities or to subset categories? If so, why or why not?

32. Should the proposed three percent fair access threshold for U.S. Treasury Securities be set higher or lower than three percent? Should the proposed five percent fair access threshold for Agency Securities be set higher or lower than five percent? If so, what should the percentage thresholds be? Should there be no thresholds so that the Fair Access Rule would apply to all Government Securities ATSs that trade U.S. Treasury Securities or Agency Securities regardless of volume transacted on the ATS? Please support your views. Are the five percent and three percent thresholds appropriate thresholds to capture ATSs that are significant markets for trading in U.S. Treasury Securities and Agency Securities, respectively? Would the proposed thresholds capture ATSs that are not significant markets for U.S. Treasury Securities and Agency Securities? If there should be a percent threshold for a category finer than all U.S. Treasury Securities, for example on-the-run U.S. Treasury Securities or off-the-run U.S. Treasury Securities, what should that threshold should be?

33. Should the fair access threshold be based on average weekly dollar volume traded in the United States for U.S. Treasury Securities and daily dollar volume traded in the United States for Agency Securities?

34. Would the proposed four out of six month period be an appropriate period to measure the volume thresholds for U.S. Treasury Securities and Agency Securities? With respect to calculating the appropriate thresholds, would Government Securities ATSs have available appropriate data with which to determine whether the proposed thresholds have been met? Would ATSs that trade U.S. Treasury Securities be able to readily calculate whether they meet the volume thresholds in at least four out of the preceding six months, given that U.S. Treasury Securities are disseminated on a weekly, rather than daily basis? Would it be appropriate for the Commission to change the proposed four out of six month period to a time period measured in weeks (*e.g.,* at least 16 out of the preceding 24 weeks) with respect to U.S. Treasury Securities? What effect would any such change have on the likelihood that ATSs trading U.S. Treasury Securities would meet the volume thresholds?

35. If the average weekly dollar volumes were to include transactions for U.S Treasury Securities by non-FINRA members, which currently are not reported to, or collected by, the SRO that makes public average weekly dollar volume statistics, should the fair access threshold change? If so, what should be the appropriate threshold?

36. Would it be appropriate to use five percent of average daily dollar volume traded in the United States as a fair access threshold for Agency Securities? Do ATSs that trade Agency Securities currently subscribe to TRACE and, therefore, receive TRACE trade reports for Agency Securities? If not, what percentage of these ATSs do not currently subscribe to TRACE?

37. Should the requirements under the Fair Access Rule be amended specifically for Government Securities ATS? If so, how?

38. Are there any unique challenges for ATSs that would be required to comply with the requirements under the Fair Access Rule for the first time? If so, please explain.

39. Do commenters believe that it is appropriate to provide to Communication Protocol Systems and Legacy Government Securities ATSs a one-month compliance period to comply with the Fair Access Rule? Should the proposed compliance period be longer or shorter? Should the eligibility for the compliance period be expanded to ATSs that are currently operating or limited in any way? Please explain.

[335] *See* Rule 301(b)(5)(i)(A)–(D).

[336] This ATS would also meet the proposed threshold for trading in U.S. Treasury Securities.

[337] *See* proposed Rule 301(b)(5)(i)(G). The rule text uses the term ''Newly Designated ATS'' to refer to a Communication Protocol System. *See supra* note 134. Under this proposal, an ATS that triggers the fair access threshold for a security (for NMS stocks or equity securities that are not NMS stocks) or a category of security (for municipal securities, corporate debt securities, U.S. Treasury Securities, or Agency Securities) would not be able to avail itself to the one-month compliance period for triggering the fair access threshold for another security or another category of securities.

[338] *See infra* Section V.A.3.

C. Application of Regulation SCI to Government Securities ATS

The Commission is re-proposing to amend Regulation SCI to expand the definition of ''SCI alternative trading system'' to include Government Securities ATSs that meet a specified volume threshold. A Government Securities ATS that meets the proposed amended definition of ''SCI alternative trading system'' would fall within the definition of ''SCI entity'' and, as a result, would be subject to the requirements of Regulation SCI.

Because the proposed amendments to Exchange Act Rule 3b–16(a) would cause Communication Protocol Systems to fall within the definition of ''exchange,'' [339] Communication Protocol Systems that transact in U.S. Treasuries or Agency Securities that choose to register as a broker-dealer and comply with Regulation ATS would, if they meet the proposed volume threshold, also meet the proposed amended definition of ''SCI alternative trading system'' and become subject to the requirements of Regulation SCI. The proposed amendments to Exchange Rule 3b–16(a) likewise would cause Communication Protocol Systems that transact in NMS stocks and equity securities that are not NMS stocks to fall within the current definition of SCI alternative trading system if they reached the current volume thresholds within the definition, and become subject to the requirements of Regulation SCI.[340] As discussed in detail below, the Commission believes that extending the requirements of Regulation SCI to Government Securities ATSs that trade a significant volume in U.S. Treasury Securities or Agency Securities would help to address any technological vulnerabilities, and improve the Commission's oversight, of the core technology of key entities in the markets for government securities.

The Commission adopted Regulation SCI in November 2014 to strengthen the technology infrastructure of the U.S. securities markets.[341] As discussed in the Regulation SCI Adopting Release, a number of factors contributed to the Commission's proposal and adoption of Regulation SCI. These factors included: The evolution of the markets becoming significantly more dependent upon sophisticated, complex, and interconnected technology; the successes and limitations of the Automation Review Policy (''ARP'') Inspection Program; a significant number of, and lessons learned from, systems issues at exchanges and other trading venues; [342] and increased concerns over the potential for ''single points of failure'' in the securities markets.[343] Regulation SCI is designed to strengthen the infrastructure of the U.S. securities markets, reduce the occurrence of systems issues in those markets, improve their resiliency when technological issues arise, and implement an updated and formalized regulatory framework, thereby helping to ensure more effective Commission oversight of such systems.[344]

The key market participants that are currently subject to Regulation SCI are called ''SCI entities'' and include certain SROs (including stock and options exchanges, registered clearing agencies, FINRA and the MSRB) (''SCI SROs''), alternative trading systems that trade NMS and non-NMS stocks exceeding specified volume thresholds (''SCI ATSs''), the exclusive SIPs (''plan processors''), certain exempt clearing agencies, and SCI competing consolidators.[345] ATSs trading NMS or non-NMS stocks that are currently subject to Regulation SCI are heavily reliant on trading technology and represent a significant pool of liquidity for NMS and non-NMS stocks. As discussed in further detail below, Regulation SCI requires these SCI entities to, among other things, establish, maintain, and enforce written policies and procedures reasonably designed to ensure that their key automated 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 such systems operate in accordance with the Exchange Act and the rules and regulations thereunder and the entities' rules and governing documents, as applicable.[346] Broadly speaking, Regulation SCI also requires SCI entities to take appropriate corrective action when systems issues occur, provide certain notifications and reports to the Commission regarding systems problems and systems changes, inform members and participants about systems issues, conduct business continuity and disaster recovery testing, conduct annual reviews of their automated systems, including penetration testing, and make and keep certain books and records.[347]

Regulation SCI applies primarily to the systems of SCI entities, whether operated by SCI entities or on their behalf, that directly support any one of six key securities market functions—trading, clearance and settlement, order routing, market data, market regulation, and market surveillance (''SCI systems'').[348] With respect to security, Regulation SCI also applies to systems that, if breached, would be reasonably likely to pose a security threat to SCI systems (''indirect SCI systems'').[349] In addition, certain systems whose functions are critical to the operation of the markets, including those that represent single points of failure (defined as ''critical SCI systems''), are subject to certain heightened requirements.[350]

When the Commission adopted Regulation SCI, the Commission departed from its proposal to apply Regulation SCI to fixed income ATSs that trade municipal and corporate debt.[351] Explaining this departure, the Commission differentiated ATSs trading

[339] *See supra* Section II.

[340] A Communication Protocol System that chooses to register as a national securities exchange would also be subject to Regulation SCI under the definition of ''SCI entity'' which includes SROs such as national securities exchanges. As discussed above, Communication Protocol Systems, such as RFQ systems, that use trading interest and protocols to bring together buyers and sellers perform an exchange market place function similar to systems that offer the use of orders and trading facilities. These systems allow market participants to use non-firm trading interest to seek and negotiate a trade. Accordingly, the Commission preliminarily believes that such systems, whether they are systems of a registered national securities exchange or an ATS that is an SCI entity, would be covered by the definition of ''SCI systems'' under Regulation SCI because they directly support trading. *See* 17 CFR 242.1000 and *infra* note 348 and accompanying text. As detailed further below, the Commission is requesting comment on whether Communication Protocol Systems of SCI entities would meet the definition of ''SCI systems'' under Regulation SCI.

[341] *See* Regulation SCI Adopting Release, *supra* note 3, at 72252–56 for a discussion of the background of Regulation SCI.

[342] *See id.* at 72253–56.

[343] *See id.* at 72277–79.

[344] *Id.* at 72253, 72256.

[345] *See* 17 CFR 242.1000.

[346] *See* 17 CFR 242.1001; *infra* notes 397–398.

[347] *See* 17 CFR 242.1002–1007; *infra* notes 400–411.

[348] *See* 17 CFR 242.1000.

[349] *Id.*

[350] *Id. See also* Regulation SCI Adopting Release, *supra* note 3, at 72277. Paragraph (1) of the definition of ''critical SCI systems'' in Rule 1000 of Regulation SCI specifically enumerates certain systems to be within its scope, including those that directly support functionality relating to: Clearance and settlement systems of clearing agencies; openings, reopenings, and closings on the primary listing market; trading halts; initial public offerings; the provision of consolidated market data; or exclusively-listed securities. The second prong of the definition provides a broader catch-all for systems that ''[p]rovide functionality to the securities markets for which the availability of alternatives is significantly limited or nonexistent and without which there would be a material impact on fair and orderly markets.'' 17 CFR 242.1000 (definition of ''critical SCI system'').

[351] *See* Regulation SCI Proposing Release, Securities Exchange Act Release No. 69077 (Mar. 8, 2013), 78 FR 18084, 18093–95 (Mar. 25, 2013).

municipal and corporate debt securities from those trading equity securities, stating generally that fixed income markets rely much less on automation and electronic trading than markets that trade NMS stocks or non-NMS stocks.[352] The Commission also stated that the municipal and corporate debt markets tend to be less liquid than the equity markets, with slower execution times and less complex routing strategies.[353] At the same time, the Commission stated that it would ''monitor and evaluate the implementation of Regulation SCI, the risks posed by the systems of other market participants, and the continued evolution of the securities markets, such that it may consider, in the future, extending the types of requirements in Regulation SCI to additional categories of market participants.'' [354]

In the 2020 Proposal, where the Commission was addressing Government Securities ATSs specifically, the Commission stated that, in light of the increasing automation of the government securities market and the operational similarities between many Government Securities ATSs and NMS Stock ATSs, it believed that it was appropriate to propose to apply the requirements of Regulation SCI to Government Securities ATSs that meet certain volume thresholds, and noted again that while technological developments provide many benefits to the U.S. securities markets, they also have increased the risk of operational problems that have the potential to cause a widespread impact on the securities market and its participants.[355] Therefore, the Commission stated in the 2020 Proposal that application of Regulation SCI to Government Securities ATSs that trade a significant volume of U.S. Treasury Securities or Agency Securities would further help to address those technological vulnerabilities, and improve the Commission's oversight, of the core technology used by key U.S. securities markets participants.[356]

A number of commenters on the 2020 Proposal supported applying the requirements of Regulation SCI to Government Securities ATSs above a specified volume threshold.[357] These commenters stated that such requirements could promote the integrity and resiliency of the key automated systems of Government Securities ATSs and ensure Commission oversight.[358] One commenter added that extending Regulation SCI to Government Securities ATSs could reduce the potential for systems issues, as well as reduce the frequency, severity, and duration of any systems issues that may occur.[359] As support for the 2020 Proposal, some commenters cited the increased automation in the government securities markets and/or operational similarities with NMS stock ATSs,[360] with one commenter stating that the distinctions that the Commission made between stock market ATSs and fixed income ATSs in its adoption of Regulation SCI have not ''stood up well against the rapid evolution of the markets.'' [361] One commenter asserted that the government securities markets are more systemically significant than the equity markets, to which Regulation SCI already applies.[362]

Other commenters on the 2020 Proposal opposed requiring Government Securities ATSs above a volume threshold to comply with Regulation SCI.[363] These commenters advocated for applying the narrower technology and resiliency requirements of Rule 301(b)(6), rather than Regulation SCI.[364] Some of these commenters expressed concerns regarding the costs and burdens of complying with Regulation SCI.[365] One commenter distinguished the equities markets from the market for government securities, asserting that the government securities markets do not have the same type of linkages among trading venues that increase the risk of a systems issue in one market spreading to another and causing significant market impact.[366] As such, this commenter argued that applying Regulation SCI would only increase costs without materially increasing the integrity or security of the government securities markets. Another commenter, while focusing its comments on the corporate and municipal bond markets, argued that, when the Commission adopted Regulation SCI, it did not include fixed-income ATSs within the scope of the regulation out of a concern that it could discourage greater automation in the fixed-income markets and that this concern still exists today.[367]

Acknowledging comment letters on the 2020 Proposal, the Commission continues to believe that the inclusion of Government Securities ATSs meeting specified volume thresholds in Regulation SCI would be appropriate because such Government Securities ATSs (inclusive of Communication Protocol Systems, as proposed), are heavily reliant on technology and represent significant pools of liquidity, as the Commission has determined to be the case for current SCI ATSs.[368] The Commission believes that, particularly in light of the evolution of the government securities markets, it is important to impose the requirements of Regulation SCI to help ensure that the technology systems of such Government Securities ATSs are reliable and resilient.[369]

The focus of the Commission's discussion in the Regulation SCI

[352] *See* Regulation SCI Adopting Release, *supra* note 3, at 72270.

[353] *See id.*

[354] *See id.*

[355] *See* 2020 Proposal, *supra* note 4, at 87152. *See also supra* Section II.B; Regulation SCI Adopting Release, *supra* note 3, at 72253.

[356] *See* 2020 Proposal, *supra* note 4, at 87152.

[357] *See* SIFMA Letter at 5; MFA Letter at 5; AFREF Letter at 2, 4; Healthy Markets Letter at 9–11; and ICE Bonds Letter II at 5 (stating that it would support application of Regulation SCI to fixed income ATSs if the threshold was set at the 20% volume threshold test currently used under Rule 301(b)(6)). Commenters on the 2020 Proposal that generally supported the application of Regulation SCI expressed varying views as to the appropriate threshold level that the Commission should adopt. *See* discussion *infra* regarding comments pertaining to threshold levels.

[358] *See* SIFMA Letter at 5; MFA Letter at 5; AFREF Letter at 2, 4; and Healthy Markets Letter at 10–11.

[359] *See* MFA Letter at n.13.

[360] *See* MFA Letter at 5; and Healthy Markets Letter at 9.

[361] *See* Healthy Markets Letter at 10. *See also infra* note 367 and accompanying text (discussing MarketAxess's comment with respect to stock market ATSs and fixed income ATSs).

[362] *See* AFREF Letter at 2.

[363] *See* Tradeweb Letter at 3, 11; BrokerTec Letter at 5–9; and MarketAxess Letter at 11. The Commission notes that MarketAxess focused its comments specifically on corporate and municipal bonds, rather than government securities, but we have included such comments here for completeness.

[364] *See* Tradeweb Letter at 11; BrokerTec Letter at 5–9; and MarketAxess Letter at 11.

[365] *See* Tradeweb Letter at 3, 11; and BrokerTec Letter at 8–9.

[366] *See* Tradeweb Letter at 3, 11.

[367] *See* MarketAxess Letter at 11.

[368] Some commenters on the 2020 Proposal also provided views on whether the Commission should extend application of Regulation SCI to additional entities beyond Government Securities ATSs. *See, e.g.,* Healthy Markets Letter at 9 (stating that the Commission should expand the scope of Regulation SCI to include not just government securities ATSs, but other essential market participants in equities, futures, and fixed income markets); and SIFMA Letter at 5 (arguing that the Commission should not extend Regulation SCI to broker-dealers more generally at this time). As the Commission stated in the Regulation SCI Adopting Release, the Commission will continue to monitor and evaluate the risks posed by the systems of other market participants and the continued evolution of the securities markets to determine whether it would be appropriate to extend the requirements of Regulation SCI to additional categories of entities in the future. *See* Regulation SCI Adopting Release, *supra* note 3, at 72259.

[369] As discussed in detail above and as commenters have stated, the structure of the U.S. Treasury market has evolved in recent years and electronic trading has become an increasingly important feature of the interdealer market for U.S. Treasury Securities. *See supra* Section II.B and notes 62–63, 187 and accompanying text.

Adopting Release regarding the fixed income markets was on the corporate and municipal bond markets, not the government securities markets.[370] As discussed in detail below, given the evolution of the government securities markets, the Commission now believes that there are Government Securities ATSs that operate with similar complexity as SCI ATSs that are currently subject to Regulation SCI, and that Government Securities ATSs with significant trading volume play an important role in the government securities markets and face similar technological vulnerabilities as existing SCI entities. Several commenters on the 2020 Proposal stated that [371] the application of Regulation SCI would help the Commission improve its oversight of the market for government securities, thereby continuing its efforts to address technological vulnerabilities of the core technology systems of key U.S. securities markets entities.

The Commission explained in the Regulation SCI Adopting Release that it adopted Regulation SCI to expand upon, update, and modernize the requirements of Rule 301(b)(6) for those ATSs trading NMS stocks and non-NMS stocks that it had identified as playing a significant role in the securities markets.[372] As stated above, because Government Securities ATSs with significant trading volume play an important role in the government securities markets and present similar risks to the market as SCI ATSs, the re-proposal of the broader set of requirements and safeguards of Regulation SCI is more appropriate for such entities than proposing to amend the older and more limited requirements of Rule 301(b)(6).[373]

In discussing the costs and burdens of Regulation SCI, one commenter on the 2020 Proposal characterized the requirements of Regulation SCI as being prescriptive and ''one size fits all.'' [374] This commenter argued that many Government Securities ATSs already align with industry standards that are more flexible and achieve many of the same goals of Regulation SCI without additional compliance costs. Regulation SCI specifically incorporates, and provides that SCI entities can look to, industry standards to comply with the policies and procedures requirement under Regulation SCI.[375] As the Commission emphasized at the time of adoption, Regulation SCI is not intended to be a ''one-size-fits-all'' regulation, but rather takes a risk-based approach pursuant to which an SCI entity's policies and procedures could be tailored to a particular system's criticality and risk, and includes other rules and definitions that similarly incorporated risk-based considerations.[376]

Accordingly, the Commission is re-proposing to expand the definition of ''SCI ATSs'' to include Government Securities ATSs that meet certain volume thresholds with respect to U.S. Treasury Securities and/or Agency Securities.[377] Specifically, the definition of ''SCI ATS'' would be revised to include those ATSs which, during at least four of the preceding six calendar months, had, with respect to U.S. Treasury Securities, five percent or more of the average weekly dollar volume traded in the United States as provided by the SRO to which such transactions are reported; or had, with respect to Agency Securities, five percent or more of the average daily dollar volume traded in the United States as provided by the SRO to which such transactions are reported.

Several commenters on the 2020 Proposal discussed the specific proposed volume thresholds for Government Securities ATSs to become subject to Regulation SCI. One commenter stated that the five percent threshold level represents a reasonable level for the systemic integrity issues targeted by Regulation SCI,[378] while other commenters expressed support for the application of Regulation SCI as proposed without specifically commenting on the threshold level.

Other commenters offered alternative standards for determining which Government Securities ATSs should be included within the scope of Regulation SCI. For example, one commenter recommended that the Commission adopt a lower (*i.e.,* more stringent) threshold level and incorporate a threshold based on a dollar amount.[379]

Other commenters on the 2020 Proposal suggested adoption of a higher threshold level for the application of Regulation SCI to Government Securities ATSs. For example, one commenter stated that it would support the application of Regulation SCI instead of Rule 301(b)(6) to fixed income ATSs if the Commission adopted the 20 percent volume threshold test currently used under Rule 301(b)(6).[380] One commenter who generally opposed the 2020 Proposal also urged the Commission to adopt a higher threshold if it, in fact, extended application of Regulation SCI to Government Securities ATSs.[381] Another commenter suggested that application of Regulation SCI should depend on whether the ATS itself is a ''significant'' source of liquidity, recommending that this determination could, for example, be based on whether the ATS's par value traded in the asset class, for four months over the prior six months, averaged at least 10 percent of par value traded in the asset class.[382]

[370] *See* Regulation SCI Adopting Release, *supra* note 3, at 72270.

[371] *See generally* SIFMA Letter at 5, MFA Letter at 5, and AFREF Letter at 2.

[372] *See* Regulation SCI Adopting Release, *supra* note 3, at 72264.

[373] *See* 17 CFR 242.301(b)(6). At the same time, as specified below, the Commission continues to request comment on whether Government Securities ATSs that meet the proposed volume thresholds for SCI ATSs should be governed by Rule 301(b)(6) instead of being defined as SCI entities. The requirements of Rule 301(b)(6) are less rigorous than the requirements of Regulation SCI. Among other things, Rule 301(b)(6) requires an ATS to notify the Commission staff of material systems outages and significant systems changes and that the ATS establish adequate contingency and disaster recovery plans. *See id.* Regulation SCI expanded upon these requirements, by, for example, expanding the requirements to a broader set of systems, imposing new requirements for information dissemination regarding SCI events, and requiring Commission notification for additional types of events, among others. Rule 301(b)(6) currently applies to an ATS that trades only municipal securities or corporate debt securities with 20 percent or more of the average daily volume traded in the United States during at least four of the preceding six calendar months. Currently, there are no ATSs that are subject to requirements of Rule 301(b)(6) of Regulation ATS.

[374] *See* BrokerTec Letter at 6.

[375] Specifically, 17 CFR 242.1001(a)(4) (Rule 1001(a)(4)) provides that the policies and procedures required under Rule 1001(a) shall be deemed to be reasonably designed if they are consistent with current SCI industry standards. *See* Rule 1001(a)(4) of Regulation SCI. ''SCI industry standards'' are those standards comprising information technology practices that are widely available to information technology professionals in the financial sector and issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or agencies, or widely recognized organization.

[376] *See* Regulation SCI Adopting Release, *supra* note 3, at 72259–60, 72290–91.

[377] *See* paragraphs (3) and (4) of the definition of ''SCI ATS'' under Rule 1000 of Regulation SCI.

[378] *See* AFREF Letter at 2 and 4.

[379] Specifically, this commenter stated that Regulation SCI should apply to any family of related trading venues for government or agency securities with combined notional average daily values over the lesser of one percent of the overall market share on an appropriate dollar threshold, *e.g.,* $25 billion. *See* Healthy Markets Letter at 10–11. In contrast, two commenters advocated for the application of Rule 301(b)(6) rather than Regulation SCI to Government Securities ATSs, but stated that the current 20 percent threshold in Rule 301(b)(6) is too high. *See* MarketAxess Letter at 10 (noting that 20 percent is not an appropriate threshold to capture ATSs with a significant percentage of trading volume in corporate or municipal debt); and BrokerTec Letter at 8 (recommending that Rule 301(b)(6) should apply to all Government Trading Securities regardless of trading volume).

[380] *See* ICE Bonds Letter II at 5.

[381] *See* Tradeweb Letter at 3, 11. This commenter stated that the threshold should be raised to a ''more material percentage'' such as 25 percent.

[382] *See* Bloomberg Letter at 5.

The Commission is re-proposing the five percent thresholds for Government Securities ATSs, consistent with the 2020 Proposal. Although some commenters provided suggestions for different thresholds or recommended applying Rule 301(b)(6) instead, the Commission believes that the proposed five percent thresholds for applying Regulation SCI to Government Securities ATSs (inclusive of Communication Protocol Systems, as now proposed) would be appropriate measures to identify those ATSs that have the potential to significantly impact investors and the market should a systems issue occur and thus warrant the protections and requirements of Regulation SCI.[383] At the same time, as detailed further below, the Commission is requesting additional comment on whether these proposed volume thresholds should be set higher or lower for ATSs trading government securities.

The Commission has analyzed the number of entities it believes are likely to be covered by the thresholds it is proposing and believes that, currently, approximately two Legacy Government Securities ATSs trading U.S. Treasury Securities would be subject to Regulation SCI under the five percent volume thresholds, one of which would also meet the volume thresholds for trading Agency Securities.[384] In addition, the Commission believes that approximately two currently operating Communication Protocol Systems would likely be subject to Regulation SCI under the proposed five percent threshold in U.S. Treasury Securities.

The Commission believes that the proposed volume thresholds to apply Regulation SCI to a Government Securities ATS that trades U.S. Treasury Securities and Agency Securities are reasonable compared to volume thresholds that would subject an ATS to Rule 301(b)(6) under Regulation ATS for the ATS's trading of corporate bonds and municipal securities. Currently, an ATS that trades corporate bonds or municipal securities is subject to Rule 301(b)(6) if its trading volume reaches 20 percent or more of the average daily volume traded in the United States for either corporate bonds or municipal securities. As discussed in detail above, when the Commission adopted Regulation SCI, it decided not to apply Regulation SCI and its lower volume thresholds to the fixed income markets, concluding that a systems issue in fixed income markets would not have had as significant or widespread an impact as in the equities market.[385] Among other things, the Commission reasoned that the fixed income markets at the time relied much less on electronic trading than the equities markets, and that the municipal securities and corporate bond fixed income markets tended to be less liquid than the equity markets, with slower execution times and less complex routing strategies.[386] As explained above, however, ATSs for government securities now operate with complexity similar to that of markets that trade NMS stocks in terms of use of technology and speed of trading, the use of limit order books, order types, algorithms, connectivity, data feeds, and the active participation of PTFs, and Communication Protocol Systems are increasingly used as electronic means to bring together buyers and sellers using non-firm trading interest for government securities, being particularly prevalent in the dealer-to-customer market for off-the-run U.S. Treasury securities, Agency Securities, and repos.[387] Given the critical role government securities play in the U.S. and global economies,[388] the Commission believes that, due to their increased reliance on electronic trading and the important role played by Government Securities ATSs in today's markets, an ATS whose government securities volume falls between five percent and 20 percent of trading volume could significantly impact investors and the market should a systems issue occur. By proposing to apply Regulation SCI to Government Securities ATSs with a threshold of five percent, the Commission seeks to impose the protections of Regulation SCI to these ATSs because of their importance and potential technological risks to the U.S. securities markets.[389]

While the Commission acknowledges that, as one commenter on the 2020 Proposal suggested,[390] the government securities markets may not have the same type of linkages between trading venues as exists in the equities markets today, as described above, Government Securities ATSs with significant trading volume have the potential to significantly impact investors, the overall market, and the trading of individual securities should an SCI event occur, similar to SCI ATSs currently subject to Regulation SCI. In addition, a system outage at a significant Government Securities ATS could disrupt trading at another significant Government Securities ATS even if these Government Securities ATSs are not connected. For example, if a significant Government Securities ATS is experiencing a system outage, there could be a sudden surge in message traffic (*e.g.,* quoting activities) and trading at another significant Government Securities ATS, which could exceed the system capacity of such Government Securities ATS and potentially result in a systems issue and/or a disruption of trading on that ATS as well. Further, the Commission did not base its determination regarding which entities played a significant role in the market and should be included within the scope of the regulation on the linkages that exist in the equities markets. In adopting Regulation SCI, the Commission acknowledged that a temporary outage at an ATS might not lead to a widespread systemic disruption and stated that ''Regulation SCI is not designed to solely address

[383] Regulation SCI would not apply to Government Securities ATSs that trade repos, including repos on U.S. Treasury Securities and Agency Securities. The Commission notes FINRA does not require ATSs to report transactions for repos. *See supra* note 313. Based on information available to the Commission, the Commission does not believe that ATSs today capture a significant market share for trading repos nor do they rely on the same use of technology as ATSs that trade U.S. Treasury Securities or Agency Securities, but below requests comment on whether Government Securities ATSs that trade repos, including repos on U.S. Treasury Securities and Agency Securities should be subject to Regulation SCI.

[384] *See supra* Section II.D and *infra* Section X.B.1a. As discussed above with regard to the Fair Access Rule, the ATS with the largest market volume in U.S. Treasury Securities has approximately 14 percent of market volume, while the second largest has approximately six percent of market share, and the third and fourth largest both have a little less than four percent market share. The one Legacy Government Securities ATS that would also exceed the threshold for Agency Securities accounts for roughly 11 percent of volume in Agency Securities. *See infra* Table VIII.1. If the proposed volume thresholds were ten percent, only one Legacy Government Securities ATS would be subject to Regulation SCI, meeting the threshold levels for both U.S. Treasury Securities and Agency Securities. However, the Commission believes that there would still be approximately two currently operating Communication Protocol Systems subject to Regulation SCI using a ten percent threshold in U.S. Treasury Securities. *See id.*

[385] *See* Regulation SCI Adopting Release, *supra* note 3, at 72270.

[386] *See id.*

[387] *See supra* notes 187–190 and accompanying text.

[388] *See supra* notes 182–186 and accompanying text. One commenter, while arguing that Government Securities ATSs should be subject to Rule 301(b)(6) in lieu of expanding Regulation SCI, in fact similarly emphasized the fundamental importance of the U.S. Treasury market and the need to take appropriate steps to enhance the resilience of the market, arguing that all Government Securities ATSs should be subject to technology and resiliency requirements regardless of volume. *See* BrokerTec Letter at 8.

[389] The Commission also recognizes that ATSs for corporate bonds and municipal securities are becoming increasingly electronic and as part of the 2020 Proposal, the Commission requested comment on, among other things, whether the 20 percent volume threshold under Rule 301(b)(6) of Regulation ATS should be amended to capture ATSs that might be critical markets for those securities.

[390] *See* Tradeweb Letter at 3, 11.

systems issues that cause widespread systemic disruption, but also to address more limited systems malfunctions that can harm market participants.'' [391] The Commission believes that, without appropriate safeguards in place for these Government Securities ATSs, technological vulnerabilities could lead to the potential for failures, disruptions, delays, and intrusions, which could place government securities market participants at risk and interfere with the maintenance of fair and orderly markets.

The Commission believes that the proposed volume thresholds to apply Regulation SCI to a Government Securities ATS that trades U.S. Treasury Securities and Agency Securities are reasonable as compared to the volume thresholds for applying Regulation SCI to ATSs that trade NMS stocks and ATSs that trade equities that are not NMS stocks. First, an ATS that trades NMS stocks is subject to Regulation SCI if its trading volume reaches: (i) Five percent or more in any single NMS stock and one-quarter percent or more in all NMS stocks of the average daily dollar volume reported by applicable transaction reporting plans; or (ii) one percent or more in all NMS stocks of the average daily dollar volume reported by applicable transaction reporting plans. With respect to non-NMS equity securities, an ATS is subject to Regulation SCI if its trading volume is five percent or more of the average daily dollar volume (across all non-NMS equity securities) as calculated by the SRO to which such transactions are reported. These thresholds reflect the Commission's determination as to what constitutes a material pool of liquidity traded by ATSs in the respective asset classes: One percent for NMS stocks and five percent for non-NMS equity securities. The proposed five percent SCI volume thresholds for Government Securities ATSs would be similar to those for ATSs that trade non-NMS equity securities. Basing the thresholds on volume as provided to the SRO to which such transactions are reported is reasonable given that there is no transaction reporting plan for government securities and thus, the trading figures are based on dollar volume traded in the United States as provided by the SRO to which such transactions are reported.

With regard to one commenter's suggestion that the threshold should be based on combined notional average daily values of any family of related trading venues, the Commission requests comment, as set forth below, on whether it would be appropriate to aggregate the volumes of ATSs that trade the same security or category of securities and are operated by a common broker-dealer, or operated by affiliated broker-dealers, and treat the ATSs market places as a single ATS for purposes of determining whether the ATSs meet the threshold levels in the definition of SCI ATS.[392]

One commenter on the 2020 Proposal urged the Commission to apply the deferred compliance period in the current definition of ''SCI ATS'' to Government Securities ATSs and asked for clarification as to whether this provision would be applicable.[393] Specifically, the definition of SCI ATS currently provides that an SCI ATS shall not be required to comply with the requirements of Regulation SCI until six months after satisfying the thresholds for NMS or non-NMS stocks for the first time. The Commission believes that it is appropriate to provide Government Securities ATS that meet the volume threshold in the definition of ''SCI ATS'' for the first time a period of time before they are required to comply with the requirements of Regulation SCI. Thus, the Commission is providing clarification that the deferred compliance period would be applicable to Government Securities ATSs.[394] Accordingly, Rule 1000 would provide that, like ATSs trading NMS stocks and non-NMS stocks, a Government Securities ATS would not be required to comply with the requirements of Regulation SCI until six months after satisfying the U.S. Treasury Securities or Agency Securities thresholds in the definition for the first time.[395] The Commission believes that this six-month additional compliance period is appropriate to allow a Government Securities ATS the time needed to take steps to meet the requirements of the rules, rather than requiring compliance immediately upon meeting the threshold level.

Government Securities ATSs trading U.S. Treasury Securities and/or Agency Securities that meet the volume thresholds under the proposed revised definition of SCI ATS would be subject to the requirements of Regulation SCI, as broadly described below.[396] The provision at 17 CFR 242.1001(a) requires SCI entities to establish, maintain, enforce and periodically update policies and procedures reasonably designed to ensure that their SCI systems and, for purposes of security standards, indirect SCI 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 includes certain minimum requirements for those policies and procedures relating to capacity planning, stress tests, systems development and testing methodology, the identification of vulnerabilities, business continuity and disaster recovery plans (including geographic diversity and resumption goals), market data, and monitoring.[397]

Rule 1001(b) of Regulation SCI requires that each SCI entity establish, maintain, enforce and periodically update written policies and procedures reasonably designed to ensure that its SCI systems operate in a manner that complies with the Exchange Act and the rules and regulations thereunder and the entity's rules and governing documents, as applicable, and specifies certain minimum requirements for such policies and procedures.[398]

Rule 1001(c) of Regulation SCI requires SCI entities to establish, maintain, enforce periodically update reasonably designed written policies and procedures that include the criteria for identifying responsible SCI personnel, the designation and documentation of responsible SCI personnel, and escalation procedures to quickly inform ''responsible SCI personnel'' of potential SCI events.[399]

Under 17 CFR 242.1002, SCI entities have certain obligations related to SCI events. Specifically, when any responsible SCI personnel has a reasonable basis to conclude that an SCI event has occurred, the SCI entity must

[391] *See* Regulation SCI Adopting Release, *supra* note 3, at 72263.

[392] *See supra* note 379.

[393] *See* BrokerTec Letter at 9–10.

[394] As in the 2020 Proposal, the Commission is proposing to amend the last paragraph in the definition of ''SCI alternative trading system or SCI ATS'' (newly redesignated paragraph (5)), which provides for the 6-month deferred compliance period, to apply it to Government Securities ATSs.

[395] *See* Rule 1000 of Regulation SCI.

[396] In the 2020 Proposal, the Commission requested comment on whether all of the obligations in Regulation SCI should apply to Government Securities ATSs that would be SCI ATSs, or whether only certain requirements should be imposed, such as those requiring written policies and procedures, notification of systems problems, business continuity and disaster recovery testing (including testing with subscribers of ATSs), and penetration testing. While, as discussed above, some commenters argue that Rule 301(b)(6) would be more appropriate framework for Government Securities ATSs (*see supra* note 364), no commenters advocate for applying only a subset of the requirements of Regulation SCI to Government Securities ATSs.

[397] 17 CFR 242.1001(a) (Rule 1001(a) of Regulation SCI).

[398] 17 CFR 242.1001(b)(1)–(2).

[399] 17 CFR 242.1001(c).

begin to take appropriate corrective action which must include, at a minimum, mitigating potential harm to investors and market integrity resulting from the SCI event and devoting adequate resources to remedy the SCI event as soon as reasonably practicable.[400] Rule 1002(b) provides the framework for notifying the Commission of SCI events including, among other things, to: Immediately notify the Commission of the event; provide a written notification within 24 hours that includes a description of the SCI event and the system(s) affected, with other information required to the extent available at the time; provide regular updates regarding the SCI event until the event is resolved; and submit a final detailed written report regarding the SCI event.[401] Rule 1002(c) of Regulation SCI also requires that SCI entities disseminate information to their members or participants regarding SCI events.[402] These information dissemination requirements are scaled based on the nature and severity of an event. [403]

The provison at 17 CFR 242.1003(a) requires SCI entities to provide quarterly reports to the Commission relating to system changes.[404] Rule 1003(b) of Regulation SCI also requires that an SCI entity conduct an ''SCI review'' not less than once each calendar year.[405] ''SCI review'' is defined in Rule 1000 of Regulation SCI to mean a review, following established procedures and standards, that is performed by objective personnel having appropriate experience to conduct reviews of SCI systems and indirect SCI systems, and which review contains: A risk assessment with respect to such systems of an SCI entity; and an assessment of internal control design and effectiveness of its SCI systems and indirect SCI systems to include logical and physical security controls, development processes, and information technology governance, consistent with industry standards.[406] Under Rule 1003(b)(2)–(3), SCI entities are also required to submit a report of the SCI review to their senior management, and must also submit the report and any response by senior management to the report, to their board of directors as well as to the Commission.[407]

The provision at 17 CFR 242.1004 sets forth the requirements for testing an SCI entity's business continuity and disaster recovery plans with its members or participants.[408]

SCI entities are required by 17 CFR 242.1005 to make, keep, and preserve certain records related to their compliance with Regulation SCI [409] and by 17 CFR 242.1006 to make required filings electronically, on Form SCI.[410] Finally, 17 CFR 242.1007 contains requirements relating to a written undertaking when records required to be filed or kept by an SCI entity under Regulation SCI are prepared or maintained by a service bureau or other recordkeeping service on behalf of the SCI entity.[411]

Request for Comment

40. Should Regulation SCI apply to Government Securities ATSs that meet the proposed definition of SCI ATS? If so, are the proposed revisions to the definition of SCI ATS appropriate? If not, please specifically explain how the policy goals of Regulation SCI would be achieved for such systems without application of the regulation.

41. What are the risks associated with systems issues at a significant Government Securities ATS? What impact would a systems issue have on the trading of government securities and the maintenance of fair and orderly markets? Do the government securities markets have the same types of linkages between trading venues as the equities markets? If not, what kind of linkages between trading venues exist in the government securities markets? How does this impact the risk of an SCI event at a Government Securities ATS on the market and/or market participants? Should all of the requirements set forth in Regulation SCI apply to Government Securities ATSs that meet the proposed definition of SCI ATS?

42. Should Government Securities ATSs that meet the proposed volume thresholds for SCI ATSs be governed by the Capacity, Integrity, and Security Rule instead of being defined as SCI entities? Are there Government Securities ATSs that play a significant role in the secondary market for U.S. Treasury Securities but do not meet the proposed volume thresholds for SCI ATSs for which a different threshold should be established to mandate compliance with the Capacity, Integrity, and Security Rule? If yes, what additional regulatory requirements, if any, should be imposed on such ATSs? What would be the costs and benefits associated with applying Rule 301(b)(6) to Government Securities ATSs that are not SCI ATSs?

43. Should the Commission amend Regulation ATS to require Government Securities ATSs to comply with Rule 301(b)(6) but adopt a threshold that is lower or higher than 20 percent? For example, should the Commission amend Rule 301(b)(6) to subject Government Securities ATSs, or certain Government Securities ATSs, to the requirements of the rule if the Government Securities ATS reaches a 5 percent, 7.5 percent, 10 percent, or 15 percent volume threshold?

44. Should the volume threshold to meet the definition of SCI ATS include trading in U.S. Treasury Securities and Agency Securities? Should Regulation SCI be applied to ATSs for any other type of government securities? Should Regulation SCI be applied to ATSs that trade repos or reverse repos on government securities, including repos or reverse repos on U.S. Treasury Securities, Agency Securities, or both?

45. Should the proposed five percent threshold test for U.S. Treasury Securities be applied to all types of U.S. Treasury Securities or to a subset of U.S. Treasury Securities? For example, should the five percent volume test only be applied to transaction volume in on-the-run U.S. Treasury Securities? Should the five percent threshold be applied to transaction volume in all Agency Securities or to a subset of Agency Securities? If so, why or why not?

46. Is the proposed five percent threshold an appropriate threshold to apply Regulation SCI to Government Securities ATSs (inclusive of

[400] *See* 17 CFR 242.1002(a) (Rule 1002(a) of Regulation SCI).

[401] *See* 17 CFR 242.1002(b). For any SCI event that ''has had, or the SCI entity reasonably estimates would have, no or a de minimis impact on the SCI entity's operations or on market participants,'' Rule 1002(b)(5) provides an exception to the general Commission notification requirements under Rule 1002(b). Instead, an SCI entity must make, keep, and preserve records relating to all such SCI events, and submit a quarterly report to the Commission regarding any such events that are systems disruptions or systems intrusions.

[402] *See* 17 CFR 242.1002(c).

[403] *See id.*

[404] *See* 17 CFR 242.1003(a) (Rule 1003(a) of Regulation SCI).

[405] *See* 17 CFR 242.1003(b).

[406] *See* 17 CFR 242.1000. Rule 1003(b)(1) of Regulation SCI also states that penetration test reviews of an SCI entity's network, firewalls, and production systems must be conducted at a frequency of not less than once every three years, and assessments of SCI systems directly supporting market regulation or market surveillance must be conducted at a frequency based upon the risk assessment conducted as part of the SCI review, but in no case less than once every three years. *See* 17 CFR 242.1003(b)(1)(i)–(ii).

[407] *See* 17 CFR 242.1003(b)(2)–(3).

[408] *See* 17 CFR 242.1004 (Rule 1004 of Regulation SCI).

[409] *See* 17 CFR 242.1005 (Rule 1005 of Regulation SCI). Rule 1005(a) of Regulation SCI relates to recordkeeping provisions for SCI SROs, whereas Rule 1005(b) relates to the recordkeeping provision for SCI entities other than SCI SROs.

[410] *See* 17 CFR 242.1006 (Rule 1006 of Regulation SCI).

[411] *See* 17 CFR 242.1007 (Rule 1007 of Regulation SCI).

Communication Protocol Systems, as proposed), as significant markets for trading in U.S. Treasury Securities or Agency Securities? If commenters believe that there should be a percent threshold for a subset of U.S. Treasury Securities, such as on-the-run U.S. Treasury Securities or off-the-run U.S. Treasury Securities, what should that threshold be?

47. Should the Commission adopt a percent volume threshold that is lower than five percent for U.S. Treasury Securities, Agency Securities, or both? If so, what percent threshold should the Commission adopt for U.S. Treasury Securities and Agency Securities? For example, should the Commission adopt a threshold that is four percent, three percent, two percent, or one percent for U.S. Treasury Securities? Should the Commission adopt a threshold that is four percent, three percent, two percent, or one percent for Agency Securities? Should there be no threshold for U.S. Treasury Securities? Should there be no threshold for Agency Securities? Please support your views.

48. Should the Commission adopt a percent volume threshold that is higher than five percent for U.S. Treasury Securities, Agency Securities, or both? For example, should the Commission adopt a threshold that is 7.5 percent, 10 percent, 15 percent, or 20 percent for U.S. Treasury Securities? Should the Commission adopt a threshold that is 7.5 percent, 10 percent, 15 percent, or 20 percent for Agency Securities?

49. Is it appropriate to use five percent of average weekly dollar volume traded in the United States as a threshold for application of Regulation SCI requirements to U.S. Treasury Securities? If the average weekly dollar volumes were to include transactions in the secondary cash market for U.S Treasury Securities by non-FINRA members, which currently are not reported to, or collected by, the SRO that makes public average weekly dollar volume statistics, should the Regulation SCI threshold change? If so, what should be the appropriate threshold? Please support your views.

50. Is it appropriate to use five percent of average daily dollar volume traded in the United States as a threshold for the application of Regulation SCI requirements to Agency Securities?

51. Would the proposed four out of six month period be an appropriate period to measure the volume thresholds for U.S. Treasury Securities and Agency Securities for purposes of Regulation SCI? With respect to calculating the appropriate thresholds, would Government Securities ATSs have available appropriate data with which to determine whether the proposed thresholds have been met? Would ATSs that trade U.S. Treasury Securities be able to readily calculate whether they meet the volume thresholds in at least four out of the preceding six months, given that U.S. Treasury Securities are disseminated on a weekly, rather than daily basis? If not, what data or information is missing? Would it be appropriate for the Commission to change the proposed four out of six month period to a time period measured in weeks (*e.g.,* at least 16 out of the preceding 24 weeks) with respect to U.S. Treasury Securities? What effect would any such change have on the likelihood that ATSs trading U.S. Treasury Securities would meet the volume thresholds?

52. Should the proposed Regulation SCI volume threshold measurement for Government Securities ATSs take into account whether Government Securities ATSs are operated by a common broker-dealer, or operated by affiliated broker-dealers? [412] For example, should the Commission aggregate the Treasury volume of two Government Securities ATSs that are each operated by a common broker-dealer, or operated by affiliated broker-dealers, for purposes of determining whether the threshold test has been satisfied and, if it has, apply Regulation SCI to each ATS? Why or why not?

53. Should only certain provisions of Regulation SCI apply to Government Securities ATSs that meet the proposed definition of SCI ATS? For example, should they only be subject to certain aspects of Regulation SCI? If so, which provisions should apply? Do commenters believe that different or unique requirements should apply to the systems of such Government Securities ATSs? What should they be and why?

54. In what instances, if at all, should the systems of Government Securities ATSs that meet the proposed definition of SCI ATS be defined as ''critical SCI systems''? Please describe.

55. Which subscribers or types of subscribers should Government Securities ATSs that meet the proposed definition of SCI ATS consider as ''designated members or participants'' that should be required to participate in the annual mandatory business continuity and disaster recovery testing? Please describe.

56. Should Government Securities ATSs that meet the proposed definition of SCI ATS not be defined as SCI entities but instead be required to comply with provisions comparable to provisions of Regulation SCI?

57. What are the current practices of Government Securities ATSs with respect to the subject matter covered by Regulation SCI? To what extent do Government Securities ATSs have practices that are consistent or inconsistent with the requirements under Regulation SCI? Please describe and be specific. Would the application of Regulation SCI or the Capacity, Integrity, and Security Rule weaken ATSs' existing capacity, integrity, and security programs?

58. Are there characteristics specific to the government securities market that would make applying Regulation SCI broadly or any specific provision of Regulation SCI to Government Securities ATSs unduly burdensome or inappropriate?

59. As commenters think about whether and how to apply Regulation SCI to Government Securities ATSs, are there any lessons commenters can draw from the market stress during Spring 2020, including, for example, lessons learned regarding business continuity or capacity planning?

60. Are there characteristics specific to Communication Protocol Systems that would make applying Regulation SCI broadly or any specific provision of Regulation SCI to such systems unduly burdensome or inappropriate? For these entities, do commenters believe that Communication Protocol Systems would have systems that meet the definition of ''SCI systems''? Why or why not? Are there certain types of Communication Protocol Systems that would have systems that meet the definition while others would not, for example, RFQ, BWIC, or conditional order systems? Please describe. Are there certain features or systems functionalities of Communication Protocol Systems that would not meet the definition of SCI systems, but that should be subject to Regulation SCI as SCI systems? Please describe. Should only certain provisions of Regulation SCI apply to Communication Protocol Systems? If so, which provisions should apply? Do commenters believe that different or unique requirements should apply to Communication Protocol Systems? What should they be and why?

[412] *See* Section V.A.2, *infra,* discussing the proposed aggregation of volume of affiliated ATSs for purposes of application of the Fair Access Rule.

IV. Revised Form ATS–N: Changes Applicable to Government Securities ATSs and NMS Stock ATSs

A. Proposed Filing and Effectiveness Requirements for Government Securities ATSs and NMS Stock ATSs

The Commission is re-proposing to amend Rule 304(a) to require that a Covered ATS, which would include a Government Securities ATS, must comply with Rules 300 through 304 of Regulation ATS, as applicable, to be exempt from the definition of ''exchange'' pursuant to Rule 3a1–1(a)(2).[413] Rule 304, as proposed to be amended, would require all Government Securities ATSs to file Form ATS–N, as revised. In addition, Communication Protocol Systems that choose to comply with Regulation ATS would be required to meet all applicable requirements of Regulation ATS, including filing a Form ATS–N if they trade NMS stocks, government securities, or repos. The Commission is proposing to make changes to current Form ATS–N, including by adding questions about interaction with related markets, liquidity providers, and surveillance and monitoring, and by making organizational and other changes that would make the form more relevant for Government Securities ATSs inclusive of Communication Protocol Systems, as proposed.[414] These changes would be applicable to both Government Securities ATSs and NMS Stock ATSs and would require NMS Stock ATSs to file amendments to their existing form.[415]

Each Form ATS–N would be subject to an effectiveness process, which would allow the Commission to review disclosures on Form ATS–N and declare the Form ATS–N ineffective if the Commission finds, after notice and opportunity for hearing, that such action is necessary and appropriate in the public interest and the protection of investors. The effectiveness process is not merit-based, but is designed to facilitate the Commission's oversight of Covered ATSs, and address, for example, material deficiencies with respect to the accuracy, currency, and completeness of disclosures on Form ATS–N.[416] The Commission is proposing to apply the same filing and effectiveness process to Government Securities ATSs that is applicable to NMS Stock ATSs filing Form ATS–N. However, the Commission is proposing changes, as described below, to the processes that would apply to both NMS Stock ATSs and Government Securities ATSs, including with regard to extensions of the Commission review period for initial Form ATS–N and Form ATS–N amendments and the filing of amendments related to fees.

Commenters on the 2020 Proposal generally supported the requirement that Government Securities ATSs file Form ATS–G.[417] Although one commenter stated that the requirement to file Form ATS–G is unnecessarily burdensome for Government Securities ATSs with limited volume,[418] another commenter stated it does not support requiring different levels of public disclosure by Government Securities ATSs depending on their trading volume, as it could result in a complex and confusing system of disclosure for market participants.[419] The Commission is proposing the requirement to file a public Form ATS–N, as revised, for all Government Securities ATSs, regardless of their volume, as this requirement is designed to allow market participants to compare Government Securities ATSs, and excluding low volume Government Securities ATSs from this requirement would undermine the goal of transparency and the ability of market participants to use Form ATS–N to assess Government Securities ATSs to select the most appropriate trading venue for their needs.

The Commission is proposing to apply to Government Securities ATSs the existing provisions of current Rule 304(a) for the filing and Commission review of an initial Form ATS–N with a modification to the circumstances under which the Commission can extend the review period for an initial Form ATS–N.[420] The Commission believes that the review process is appropriate for the same reasons stated in the NMS Stock ATS Adopting Release,[421] will facilitate the Commission's oversight of Government Securities ATSs, and will help ensure that information is disclosed in a complete and comprehensible manner. The differences between Form ATS–N filed by Government Securities ATSs and Form ATS–N filed by NMS Stock ATSs should not warrant a different review and effectiveness process and hence the Commission is proposing to apply the same provisions that are applicable to NMS Stock ATSs to Government Securities ATSs, which include the following:

- No exemption is available to a Government Securities ATS pursuant to Exchange Act Rule 3a1–1(a)(2) unless the Government Securities ATS files with the Commission an initial Form ATS–N,[422] and the initial Form ATS–N is effective.[423]
- The Commission will, by order, declare ineffective an initial Form ATS–N no later than 120 calendar days from the date of filing with the Commission, or, if applicable, the end of the extended Commission review period.[424] During the Commission review period, the Government Securities ATS shall amend its initial Form ATS–N by filing updating amendments, correcting amendments, and fee amendments[425] as applicable.[426]
- An initial Form ATS–N 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 Commission review period, or, if applicable, the end of the extended review period.[427]
- The Commission will, by order, declare an initial Form ATS–N

[413] As proposed, references to ''NMS Stock ATSs'' throughout Rule 304 would be changed to refer to ''Covered ATSs,'' which would encompass Government Securities ATSs. *See supra* Section III.B.

[414] *See infra* Section IV.D.

[415] *See infra* Section IV.D.1.

[416] In the NMS Stock ATS Adopting Release, the Commission stated that, while it will review Form ATS–N filings, its 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.'' *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38851. This would equally apply to the Commission's review of Forms ATS–N filed by Government Securities ATSs, as proposed.

[417] *See, e.g.,* MFA Letter at 5; AFREF Letter, at 3; BrokerTec Letter at 2. One commenter, which expressed general support for the enhanced filing requirements and urged the Commission to move forward with finalization and implementation of the proposal, stated that applying Regulation ATS to Government Securities ATSs that meet certain volume thresholds would increase public operational transparency. *See* FIA PTG Letter at 2.

[418] *See* ICE Bonds Letter I at 4–5.

[419] *See* MFA Letter at 5.

[420] *See infra* notes 430–432 and accompanying text. The proposed amendment to Rule 304(a) would also apply to the review of initial Form ATS–N filed by NMS Stock ATSs.

[421] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38782.

[422] The Commission staff may reject a Form ATS–N filing that is defective because, for example, it is missing sections or missing responses to any sub-questions, or does not comply with the electronic filing requirements. This is a separate process from the determination to declare a Form ATS–N ineffective. *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38791.

[423] *See* Rule 304(a)(1)(i).

[424] *See* proposed Rule 304(a)(1)(ii). *See* also *infra* note 430.

[425] *See infra* note 451.

[426] As proposed, to make material changes to its initial Form ATS–N during the Commission review period, the Government Securities ATS shall withdraw its filed initial Form ATS–N and may refile an initial Form ATS–N pursuant to Rule 304(a)(1). *See* Rule 304(a)(1)(ii)(B).

[427] *See* proposed Rule 304(a)(1)(iii)(A).

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.[428] If the Commission declares an initial Form ATS–N ineffective, the Government Securities ATS shall be prohibited from operating as a Government Securities ATS pursuant to Exchange Act Rule 3a1–1(a)(2). An initial Form ATS–N declared ineffective does not prevent the Government Securities ATS from subsequently filing a new Form ATS–N.[429]

The Commission is re-proposing to amend Rule 304(a)(1)(ii)(A)(*1*), which currently provides that the Commission may extend the initial Form ATS–N review period for 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, to provide that the Commission may extend the review period if it finds that an extension is appropriate.[430] The proposed standard is the same standard for extending the Commission review period for SRO rule filings under Section 19 of the Exchange Act.[431] This would apply to Form ATS–N filed by Government Securities ATSs as well as NMS Stock ATSs. The Commission believes that extending the Commission review period for Form ATS–N if it finds that an extension is appropriate would facilitate an effective review process.[432] For example, if an ATS's disclosures on an initial Form ATS–N are difficult to understand or appear to be incomplete, the Commission may need additional time to discuss the disclosures with the ATS to ascertain whether to declare the Form ATS–N ineffective, even if the form is not unusually lengthy or does not raise novel or complex issues. Rather than moving to declare an initial Form ATS–N ineffective because of material deficiencies with respect to completeness and comprehensibility, the Commission could extend the review period to allow the filer to resolve the deficiencies. As under current Rule 304(a)(1)(ii)(A)(*1*), in such case, the Commission will notify the Covered 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.

The Commission is also re-proposing a process for Legacy Government Securities ATSs that have a Form ATS on file with the Commission as of the effective date of any final rule to continue to operate during the Commission's review period.[433] In addition, to allow a Currently Exempted Government Securities ATS or Covered Newly Designated ATS to continue to operate without disruption while its initial Form ATS–N is under Commission review, the Commission is proposing to amend Rule 304(a)(1)(i) to provide that a Currently Exempted Government Securities ATS or Covered Newly Designated ATS may continue to operate pursuant to Regulation ATS until its initial Form ATS–N becomes effective. The Commission believes that all Legacy Government Securities ATSs—whether they are operating pursuant to a Form ATS or whether they have operated as a Currently Exempted Government Securities ATS—should be permitted to continue to operate during the Commission review period. The Commission further believes Covered Newly Designated ATSs should be permitted to operate without disruption to their participants and the market. A Government Securities ATS or Covered Newly Designated ATS would file with the Commission an initial Form ATS–N no later than the date 90 calendar days after the effective date of any final rule. An initial Form ATS–N filed by a Legacy Government Securities ATS would supersede and replace a previously filed Form ATS of the Legacy Government Securities ATS. A Legacy Government Securities ATS that fails to comply with the requirements of Regulation ATS by filing Form ATS–N by the 90th calendar day from the effective date of any final rule and continues operating as a Government Securities 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. If a Legacy Government Securities ATS that has a Form ATS on file with the Commission seeks to trade, for example, government securities and corporate bonds fails to file a Form ATS–N by the 90th calendar day, the ATS must either file a cessation of operations report on Form ATS or file a material amendment on Form ATS to remove information related to government securities. A Legacy Government Securities ATS or Newly Designated Covered ATS would be permitted to operate, on a provisional basis, pursuant to the filed initial Form ATS–N, and any amendments thereto, while the Commission reviews the initial Form ATS–N.

The Commission is proposing the initial Commission review period (not including any extension) for an initial Form ATS–N filed by a Legacy Government Securities ATS or Newly Designated Covered ATS to be 180 calendar days. Based on Commission staff experience reviewing initial Form ATS–N filings during the transition period for Form ATS–N, the Commission believes it would be appropriate to provide a 180 calendar day review period rather than the 120 calendar day review period that was applicable to initial filings by Legacy NMS Stock ATSs and that would be applicable to a new Covered ATSs under Rule 304(a)(1)(ii)(A).[434] The 180 calendar day review period is designed to provide Commission staff with adequate time to review filings, discuss

[428] Like the review process for Form ATS–N for NMS Stock ATSs, the Commission's review of Form ATS–N for Government Securities ATSs would not be merit-based; instead it would focus on the completeness and comprehensibility of the disclosures. *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38790. In the NMS Stock ATS Adopting Release, the Commission discussed the circumstances under which the Commission would declare a Form ATS–N amendment ineffective. Such circumstances would also apply to the Commission's review of an amendment to Form ATS–N filed by a Government Securities ATS. For example, the Commission believes 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 a hearing, the Form ATS–N was filed by an entity that does not meet the definition of a Government Securities 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. For further discussion, *see infra* Section IV.B.2.

[429] *See* Rule 304(a)(1)(iii)(B).

[430] *See* Rule 304(a)(1)(ii)(A)(*1*). The rule provides that the Commission extends the review period, it will notify the Government Securities 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. The Commission may also extend the initial Form ATS–N review period for any extended review period to which a duly authorized representative of the Form ATS–N agrees in writing. *See* Rule 304(a)(1)(ii)(A)(*2*).

[431] *See* 15 U.S.C. 78s(b)(2)(A)(ii).

[432] In the Commission staff's experience reviewing Form ATS–N filed by NMS Stock ATSs, the Commission review period was extended (either by the Commission or by the agreement of a duly authorized representative of the ATS) for 33 of the 43 Forms ATS–N that the Commission has reviewed and published. In its review of each Form ATS–N, the Commission staff engaged in extensive conversations with the NMS Stock ATS with regard to the NMS Stock ATS's disclosures on its initial Form ATS–N.

[433] *See* proposed Rule 304(a)(1)(iv). Other than the differences discussed below, the proposed process is similar to the process currently provided under Rule 304(a)(1)(iv) for Legacy NMS Stock ATSs. ''Legacy NMS Stock ATSs'' are NMS Stock ATSs that were operating pursuant to an initial operation report on Form ATS on file with the Commission as of January 7, 2019. The Commission is proposing to delete references to Legacy NMS Stock ATSs throughout the rule text, as the transition period for such ATSs has ended.

[434] *See supra* note 424 and accompanying text.

disclosures with Covered ATSs, and address any deficiencies.

For the same reasons discussed above,[435] the Commission is proposing to amend Rule 304(a)(1)(iv)(B) to provide that the Commission can extend the initial Form ATS–N review period for Legacy Government Securities ATSs by an additional 120 calendar days[436] if it determines that a longer period is appropriate.

Other than the proposed changes to the circumstances under which the Commission may extend the Commission review period, the Commission is also proposing that the process for the Commission to review and declare ineffective, if necessary, an initial Form ATS–N filed by a Legacy Government Securities ATS would be the same as the process for an initial Form ATS–N filed by a Legacy NMS Stock ATS.[437] Given the proposed intended uses of Form ATS–N to allow the Commission to monitor developments and carry out its oversight functions over Government Securities ATSs and to enable market participants to make more informed decisions about how their trading interest will be handled by the ATSs, the Commission believes that it is important for a Government Securities ATS to maintain an accurate, current, and complete Form ATS–N.[438] Providing the Commission with the opportunity to review Form ATS–N disclosures helps ensure that information is disclosed in a complete and comprehensible manner.[439]

As the intended uses of Form ATS–N filed by Government Securities ATS and Form ATS–N disclosures filed by NMS Stock ATSs are similar, the Commission is proposing the same filing requirements that are currently applicable to Form ATS–N amendments filed by NMS Stock ATSs to Form ATS–N amendments filed by Government Securities ATSs. Like an NMS Stock ATS, a Government Securities ATS would be required to amend Form ATS–N:

- At least 30 calendar days, or the length of any extended review period, prior to the date of implementation of a material change to the operations of the Government Securities ATS or to the activities of the broker-dealer operator or its affiliates that are subject to disclosure on the Form ATS–N, other than changes related to order display or fair access, which will be contingent amendments reported pursuant to Rule 304(a)(2)(i)(D), or fees, which will be fee amendments reported pursuant to Rule 304(a)(2)(E) (''material amendment'').[440]
- 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 material amendment, correcting amendment, contingent amendment, or fee amendment (''updating amendment'').[441]
- Promptly to correct information in any previous disclosure on the Form ATS–N, after discovery that any information previously filed on a Form ATS–N was materially inaccurate or incomplete when filed (''correcting amendment'').[442]
- No later than the date that information required to be disclosed in Part III, Item 23 on Form ATS–N, which addresses fair access, has become inaccurate or incomplete (''contingent amendment''). Because the order display and execution access rule under Rule 301(b)(3) does not apply to Government Securities ATSs, Government Securities ATSs would not be required to disclose information pertaining to order display and execution access. Accordingly, for Government Securities ATSs, Rule 304(a)(2)(i)(D) would only apply to the fair access disclosure on Form ATS–N.[443]
- No later than after the date that information required to be disclosed in Part III, Item 18 on Form ATS–N has become inaccurate or incomplete (''fee amendment'').

In the NMS Stock ATS Adopting Release, the Commission provided examples of scenarios that are particularly likely to implicate a material change.[444] In consideration of Commission staff's experience with Form ATS–N, the proposed change to include Communication Protocol Systems in the definition of ''exchange,'' and the proposed changes to Form ATS–N, the Commission is reiterating and adding to the list of scenarios particularly likely to implicate a material change, which would include, but are not limited to: (1) A broker-dealer operator or its affiliates beginning to trade on the Covered 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, including types of persons that have access to confidential trading information;[445] (3) a change to the types of participants on the Covered ATS or the eligibility to participate in the ATS; (4) the introduction or removal of, or change to, an order type or type of message that subscribers can receive or send; (5) the introduction of, or change to, requirements, conditions, or restrictions to send, receive, or view trading interest; (6) a change to the interaction of trading interest (including, for example, procedures related to how participants send, receive, respond to, counter, and firm-up trading interest) and priority

[435] *See supra* notes 430–432 and accompanying text.

[436] Consistent with the process for Legacy NMS Stock ATSs today, Rule 304(a)(1)(iv) would permit the Commission to extend the initial Form ATS–N review period for Legacy Government Securities ATSs for an additional 120-calendar days. *See infra* note 437.

[437] *See* Rule 301(b)(2)(viii). Rule 304(a)(1)(iv)(B), as proposed, would provide that the Commission may, by order, as provided in Rule 304(a)(1)(iii), declare an initial Form ATS–N filed by a Legacy Government Securities ATS or Covered Newly Designated ATS ineffective no later than 180 calendar days from the date of filing with the Commission, or, if applicable, the end of the extended review period. As proposed, the Commission may extend the initial Form ATS–N review period for a Legacy Government Securities ATS or Covered Newly Designated ATS for: An additional 120 calendar days if the Commission determines that a longer period is appropriate, in which case the Commission will notify the Legacy Government Securities ATS or Covered Newly Designated ATS in writing within the initial 180-calendar day review period and will briefly describe the reason for the determination for which additional time for review is required; or any extended review period to which a duly-authorized representative of the Legacy Government Securities ATS agrees in writing.

[438] *See* NMS Stock ATS Proposing Release, *supra* note 29 (discussing the proposed process for amendments to, and Commission review of, Form ATS–N filed by NMS Stock ATSs).

[439] *See* NMS Stock ATS Adopting Release, *supra* note 2, Section IV.A.3.

[440] *See* Rule 304(a)(2)(i)(A). The Commission is proposing revisions to Rule 304(a)(2)(i)(A) to reference fee amendments and to clarify the language of the provision. *See also infra* note 451.

[441] *See* Rule 304(a)(2)(i)(B). *See also infra* note 451.

[442] *See* Rule 304(a)(2)(i)(C). For a discussion of when an ATS should file a correcting amendment, *see* NMS Stock ATS Adopting Release, *supra* note 2, at 38806.

[443] The Commission is re-proposing to revise Rule 304 to replace references to ''Order Display and Fair Access Amendments'' with ''Contingent Amendments.'' The term ''Contingent Amendment'' would apply to amendments related to Form ATS–N disclosures regarding order display and fair access, as applicable, under Rule 304(a)(2)(i)(D) to Form ATS–N filed by both NMS Stock ATSs and Government Securities ATSs.

[444] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38803.

[445] In the Commission's experience, a change in ownership of the broker-dealer operator that does not result in the change in the registered entity nevertheless may be likely to implicate a material change, in that, among other things, it may result in a change to the persons who have access to confidential trading information. A change in the broker-dealer operator, however, would require the Covered ATS to cease operations and file a new Form ATS–N. *See infra* notes 527–528 and accompanying text.

procedures; (7) any change to ATS functionalities or procedures that affect pricing of trading interest; (8) a change that would impact a subscriber's ability to send or interact with trading interest, including a change to the segmentation of orders and participants; (9) a change to the manner in which the Covered ATS displays or makes known trading interest, including to limit or expand the trading interest that subscribers can view or interact with; (10) a change of a service provider to the operations of the Covered ATS that has access to subscribers' confidential trading information; and (11) a change to introduce or stop routing or sending away trading interest. A Covered ATS that notifies subscribers, or certain subscribers, about potential changes to ATS operations or ATS activities of the broker-dealer operator or its affiliates in advance of filing a Form ATS–N amendment demonstrates that the ATS determines such information to be important to subscribers and may likely be material. In addition, from the Commission staff's experience, if a Covered ATS removes an important functionality or no longer makes a functionality available to subscribers or certain groups of subscribers, the removal of such functionality could be a material change.

This list is not intended to be exhaustive, and does not mean to imply that other changes to the operations of a Covered ATS or the activities of the broker-dealer operator or its affiliates would not constitute material changes. Further, the Covered ATS should generally consider whether the cumulative effect of a series of changes to the operations of the Covered ATS or the activities of the broker-dealer operator or its affiliates with regard to the Covered 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 nature or composition of counterparties with which any subscriber or category of subscribers interact; and (4) the relative speed of access or execution of any subscriber or group of subscribers.[446]

The Commission is proposing a new amendment type—fee amendments—that is not currently provided for under Rule 304(a)(2), but would be filed by both NMS Stock ATSs and Government Securities ATSs. The Covered ATS would be required to file a fee amendment no later than the date it makes a change that makes information reported on Part III, Item 18, inaccurate or incomplete.[447] Part III, Item 18 of Form ATS–N would require disclosure of fee-related information, including, among other things, a description of the types of fees, structure of fees, variables that impact fees, differentiation among fees among types of subscribers, the range of fees, and rebates or discounts, for use of ATS services or services that are bundled with the subscriber's use of non-ATS services or products offered by the broker-dealer operator or its affiliates.[448] Changes that would trigger a fee amendment would include, among other things, a change to the range of fees, a change to the factors that affect the fees that the ATS charges, or any other change to the fee disclosure in Part III, Item 18. In the Commission staff's experience reviewing Form ATS–N amendments, NMS Stock ATSs have taken varied approaches to the reporting of fees. In some cases, NMS Stock ATSs have treated fee changes as material changes, and filed amendments on Form ATS–N at least 30 calendar days before implementing the changes. In other cases, NMS Stock ATSs have filed updating amendments no later than 30 days from the end of the calendar quarter in which the ATS implemented the fee change. The Commission believes that fee changes should be transparent and that both potential and current subscribers and customers of subscribers, generally, should be timely informed of a change to a Covered ATS's fees, as required to be reported on Form ATS–N. The Commission notes that today, pursuant to Section 19(b) of the Exchange Act,[449] national securities exchanges file proposed rule changes with the Commission that may take effect upon filing with the Commission if the rule change is ''establishing or changing a due, fee, or other charge applicable only to a member,'' no matter the materiality of the rule change.[450] NMS Stock ATSs, which compete with national securities exchanges, are not subject to this provision to the Exchange Act, and are required to file a material amendment to Form ATS–N, and thus wait 30 calendar days before implementing a fee change, if the fee change is material. Given this difference between national securities exchanges and NMS Stock ATSs, the Commission believes that requiring Covered ATSs to file a fee amendment no later than the date it makes a change to a fee or fee disclosure would provide the public with sufficient notice about a fee change while allowing the ATS to act nimbly to make fee changes to respond to, for example, competitive pressures from other trading venues. The Commission is also making conforming changes in Rule 304 that would, among other things, allow Covered ATSs to file fee amendments to initial Form ATS–N while the initial Form ATS–N is under Commission review.[451]

Like Form ATS–N filed by NMS Stock ATSs, the Commission would, by order, declare ineffective any Form ATS–N amendment filed by Government Securities ATSs pursuant to Rule 304(a)(2)(i)(A) through (E) if it finds that such action is necessary or appropriate in the public interest and is consistent with the protection of investors.[452] However, the Commission is proposing to amend Rule 304(a)(2)(ii), which currently provides that the Commission would declare any Form ATS–N amendment ineffective no later than 30 calendar days from filing with the Commission, to permit the Commission to extend the Form ATS–N amendment review period by an additional 30 calendar days if the Commission finds that a longer period is appropriate. The ability to extend the review period for amendments to Form ATS–N by an additional 30 calendar days would allow the Commission additional time to review and discuss the amendment with the filer, and, if necessary, declare the Form ATS–N amendment

[446] For further discussion, *see* NMS Stock ATS Adopting Release, *supra* note 2, Section IV.B.1.a. In the NMS Stock ATS Adopting Release, the Commission stated that in determining whether a change is material, an ATS should generally consider whether such change would affect ''the fees that any subscriber or category of subscribers would pay to access and/or use the ATS.'' *See id.* at 38803. As discussed below, the Commission is proposing a new amendment type for fee amendments, and as a result, changes to information in the fee disclosure in Part III, Item 18 would not be material changes for purposes of Rule 304(a)(2).

[447] If the Covered ATS files a fee amendment in advance to notice a change of a fee, for example, the Covered ATS should provide the effective date for the fee so that subscribers can understand when the fee will be effective and thus impact them. The Covered ATS must subsequently file an updating amendment on Form ATS–N to remove the outdated effective date and any fees no longer in effect to ensure that the disclosures on Form ATS–N are current and accurate.

[448] *See infra* Section IV.D.5.r.

[449] 15 U.S.C. 78s(b).

[450] 17 CFR 240.19b–4(f)(2).

[451] *See* proposed changes to Rule 304(a)(1)(ii)(B) and Rule 304(a)(1)(iv)(C). In addition, the Commission is proposing to revise the definition of ''Material Amendment'' to state that it would not include a fee amendment required to be filed pursuant to Rule 304(a)(2)(i)(E) and to reorder the language in Rule 304(a)(1)(ii)(A) to improve the readability of the provision. *See* Rule 304(a)(2)(i)(A). The Commission is also proposing to revise the definition of ''Updating Amendment'' to state that it would not include a fee amendment. *See* Rule 304(a)(2)(i)(B).

[452] *See* Rule 304(a)(2)(ii).

ineffective. Based on the Commission staff's experience reviewing Form ATS–N amendments, amendments on Form ATS–N vary in length, complexity, as well as comprehensibility and clarity. The Commission staff frequently engages in extensive discussions with NMS Stock ATSs about their disclosures in an amendment, and as a result of these discussions, ATSs often amend a filed amendment to address deficiencies within the Commission review period. To date, NMS Stock ATSs have resolved such deficiencies within the Commission review period, and the Commission has not declared a Form ATS–N amendment ineffective. However, in several circumstances, NMS Stock ATSs have submitted draft amendments to the Commission staff, which has provided the staff and NMS Stock ATSs with additional time to resolve potential deficiencies. NMS Stock ATSs, however, have no obligation to provide such a draft to the Commission, nor does the Commission staff have any obligation to review such a draft.

In the event a Covered ATS is unable to address deficiencies within the initial 30-day review period, the Commission believes that, rather than moving to declare a Form ATS–N amendment ineffective, it would be appropriate to extend the review period and allow the filer more time to address such deficiencies. The Commission believes that 30 additional calendar days will give the Covered ATS sufficient time to address any such concerns. If the Covered ATS is unable to resolve the deficiencies within the extended review period, the Commission will declare the Form ATS–N amendment ineffective if it finds that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors. The Commission is therefore proposing that the Commission may extend the Form ATS–N amendment review period by an additional 30 calendar days if the Commission finds that a longer period is appropriate, or to any extended review period to which a duly-authorized representative of the ATS agrees in writing. The Commission is also proposing to amend Rule 304(a)(2)(i)(A) to provide that a Covered ATS may not implement a material change before the end of the 30 calendar day review period or the length of any extended review period under proposed Rule 301(a)(2)(ii)(A).[453] Today, an NMS Stock ATS may not implement a material change until the expiration of the 30-calendar day Commission review period. Likewise, as a result of the proposed change, in the event of an extension of the Commission review period, the Covered ATS would therefore not implement the material change until the review period has expired. As discussed below, the Commission would disseminate the material amendment following the expiration of the review period or any extended review period.[454]

The Commission is also re-proposing to apply current Rule 304(a)(3) to require a Government Securities ATS to notice its cessation of operations on a Form ATS–N at least 10 business days prior to the date it will cease to operate as a Government Securities ATS.[455] Filing such a notice would cause the Form ATS–N to become ineffective on the date designated by the Government Securities ATS. In addition, the Commission is re-proposing to apply Rule 304(a)(4) to Government Securities ATSs, which would allow the Commission to order to suspend (for a period not exceeding twelve months),[456] limit, or revoke a Covered ATS's exemption pursuant to Rule 3a1–1(a)(2) if the Commission finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest.[457] Rule 304(a)(4)(ii) would provide that if the exemption for a Government Securities ATS is suspended or revoked pursuant to Rule 304(a)(4)(i), the Government Securities ATS would be prohibited from operating pursuant to the Rule 3a1–1(a)(2) exemption.[458] If the exemption for a Government Securities ATS is limited pursuant to Rule 304(a)(4)(i), the Government Securities ATS shall be prohibited from operating in a manner otherwise inconsistent with the terms and conditions of the Commission order.

In addition, Rule 304(a)(4) would provide that prior to issuing an order suspending, limiting, or revoking a Government Securities ATS's exemption pursuant to Rule 304(a)(4)(i), the Commission will provide notice and opportunity for hearing to the Government Securities ATS, and make the findings specified in Rule 304(a)(4)(i) described above, 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.[459]

Request for Comment

61. Should Government Securities ATSs be required to file Form ATS–N, as revised, instead of Form ATS? Should Government Securities ATSs be required to file a form different from Form ATS–N?

62. As an alternative to requiring Government Securities ATSs to file Form ATS–N, should Form ATS, or parts thereof, for Government Securities ATSs be made available to the public? If made available to the public, is current Form ATS sufficient to provide information to the public about the operations of Government Securities ATSs?

63. Do commenters believe that broker-dealers operators of ATS that trade only government securities or repos might choose to modify their business models so that they would not be required to comply with enhanced regulatory or operational transparency requirements for Government Securities ATSs?

64. Should Government Securities ATSs be subject to Rule 304(a), in whole or in part?

65. Should Rule 304(a) be amended to provide that an initial Form ATS–N be made effective by Commission order or any other means instead of upon publication by the Commission?

66. Should Rule 304(a) only apply to Government Securities ATSs that trade a certain type of government security

[453] *See* proposed Rule 304(a)(2)(i)(A) (stating that a Covered ATS shall amend a Form ATS–N at least 30 calendar days, or the length of any extended review period pursuant to Rule 304(a)(2)(ii)(A), prior to the date of implementation of a material change (other than a correcting amendment) to the operations of the Covered ATS or to the activities of the broker-dealer operator or its affiliates that are subject to disclosure on the Form ATS–N).

[454] *See infra* note 463 and accompanying text.

[455] *See* Rule 304(a)(3).

[456] The proposed limitation on the time frame for suspension is consistent with Federal securities law provisions pursuant to which the Commission may suspend the activities or registration of a regulated entity. *See, e.g.,* Exchange Act Section 15(b)(4) (15 U.S.C. 78o(b)(4)) and 15B(c)(2) (15 U.S.C. 78o–4(c)(2)). *See* NMS Stock ATS Proposing Release, *supra* note 29, at 81031 n.322.

[457] *See* proposed Rule 304(a)(4)(i).

[458] *See* Rule 304(a)(4). In making a determination as to whether suspension, limitation, or revocation of a Government Securities ATS's exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors, the Commission would, for example, take into account whether the entity no longer meets the definition of Government Securities ATS under Rule 300(l), does not comply with the conditions to the exemption (in that it fails to comply with any part of Regulation ATS, including Rule 304), or otherwise violates any provision of Federal securities laws. For further discussion of such examples as applied to NMS Stock ATSs, *see* NMS Stock ATS Proposing Release, *supra* note 29, at 81032.

[459] Pursuant to the Commission's current information sharing practices with the Department of the Treasury, the Commission expects to provide the Department of the Treasury with prompt notice in certain cases, such as when the Commission is declaring a Form ATS–N ineffective under Rule 304(a)(1)(iii)(b), or suspending, limiting, or revoking the exemption of a Government Securities ATS under Rule 304(a)(4).

(*e.g.,* U.S. Treasury Securities, Agency Securities)? If so, to which type of Government Securities ATS should Rule 304 apply (*e.g.,* Government Securities ATSs that trade U.S. Treasury Securities or Government Securities ATSs that trade Agency Securities)?

67. Should the Commission require a Currently Exempted Government Securities ATS to file Form ATS–N and comply with the requirements of Rule 304 to qualify for the exemption from the definition of exchange?

68. Would the proposal to require a Currently Exempted Government Securities ATS or Covered Newly Designated ATS to file Form ATS–N by the date 90 calendar days after the effective date of any final rule provide the ATS sufficient time to transition to compliance with Regulation ATS and the proposed requirements under Rule 304? If the Commission were to provide more time for a Covered Newly Designated ATS and/or Currently Exempted Government Securities ATS to file Form ATS–N, should the Commission require the Covered Newly Designated ATS and/or Currently Exempted Government Securities ATS to file an initial operation report on Form ATS to provide notice of its operations to the Commission before it is required to file a Form ATS–N? Would the proposal to require a Current Government Securities ATS to file a Form ATS–N by the date 90 calendar days after the effective date of any final rule provide the ATS sufficient time to transition to compliance with Rule 304?

69. Should the Commission be permitted to extend the initial Form ATS–N review period if it finds that it is appropriate to extend such review period?

70. Should a Legacy Government Securities ATS or Covered Newly Designated ATS be allowed to continue operations during the Commission's review of its initial Form ATS–N?

71. Should the Commission require amendments to Part III, Item 18 of Form ATS–N to be filed no later than the date that the information on such item becomes inaccurate or incomplete? Or should the Commission require amendments to Part III, Item 18, or any specific required disclosure on such Item to be required in advance of implementation of the change? And if so, how far in advance of implementation and why? Alternatively, should the Commission allow Covered ATSs more or less time to file a fee amendment?

72. Should the rule provide that the Commission may extend the Form ATS–N amendment review period by an additional 30 calendar days if the Commission finds that a longer period is appropriate? Should such extended review period be longer or shorter? Should the Commission only extend such review period under certain circumstances? If so, under what circumstances should the Commission extend the review period for a Form ATS–N amendment?

73. Are there any aspects of Rule 304(a)(2) relating to the filing and review of amendments that should be modified specifically for Form ATS–N amendments filed by Government Securities ATSs?

74. What changes or types of changes to a Covered ATS's operations or the activities of the broker-dealer operator or its affiliates do commenters believe are particularly likely to be material so as to require a material amendment to Form ATS–N?

75. Should the Commission consider any other factors in determining whether a Form ATS–N filed by a Government Securities ATS should become effective or ineffective? If so, what are they and why?

76. Should the Commission adopt the current process for the Commission to suspend, limit, or revoke an NMS Stock ATS's exemption from the definition of ''exchange'' for Government Securities ATSs?

B. Public Disclosure of Form ATS–N for Government Securities ATSs and Related Commission Orders

The Commission would make public certain Form ATS–N reports filed by Government Securities ATSs pursuant to Rule 304(b).[460] Commission orders related to the effectiveness of revised Form ATS–N would also be publicly posted on the Commission's website. The Commission would apply to Government Securities ATSs the same rules regarding public disclosure that are currently applicable to NMS Stock ATSs. Applying existing Rule 304(b) to Government Securities ATSs would mandate greater public disclosure of the operations of these ATSs through the publication of Form ATS–N and related filings available on the Commission's website. Accordingly, the Commission is proposing that Form ATS–N filed by Government Securities ATSs would be subject to the following:

- 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.[461]
- The Commission will make public via posting on the Commission's website, each: (1) Effective initial Form ATS–N, as amended; (2) order of ineffective initial Form ATS–N; (3) Form ATS–N amendment to an effective Form ATS–N; (4) order of ineffective Form ATS–N amendment; (5) notice of cessation; and (6) order suspending, limiting, or revoking the exemption for a Government Securities ATS from the definition of an ''exchange'' pursuant to Exchange Act Rule 3a1–1(a)(2).[462]

The Commission is proposing to make amendments to current Rule 304(b), which would apply to all Covered ATSs. As the Commission is proposing to amend Rule 304(a)(2)(i)(A) to allow extensions of the Commission review period, the Commission is proposing to amend Rule 304(b)(2)(iii) to state that material amendments would be made public following the expiration of the review period ''or any extended review period.''[463] As a result, the entire Form ATS–N amendment would not be made public until the review period has expired, at which time the ATS may implement the change described in the amendment. The Commission is also proposing to amend Rule 304(b)(2)(iii)(B) to provide that fee amendments would be made public by the Commission upon filing, consistent with the treatment of updating, correcting, and contingent amendments, all of which are intended to describe the ATS as it currently operates.

The Commission received several comments on the 2020 Proposal supporting public disclosure of Form ATS–G and amendments thereto.[464] For example, one commenter stated that public disclosure could improve investors' ability to select trading venues and as a result, lower trading costs and increase execution quality.[465] Another commenter, however, stated that Government Securities ATSs should not be required to make public commercially sensitive information on Form ATS–G, and that similar investor protection benefits can be achieved without negative impact by requiring a

[460] *See* Rule 304(b)(1) (providing 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).

[461] *See* Rule 304(b)(1).

[462] *See* Rule 304(b)(2).

[463] *See* proposed Rule 304(b)(2)(iii).

[464] *See, e.g.,* SIFMA Letter at 3–4; BrokerTec Letter at 2; AFREF Letter at 3; Bloomberg Letter at 7; Healthy Markets Association Letter at 7; MFA Letter at 5 (stating that any alternative that would limit disclosure requirements would be detrimental to achieving the Commission's transparency goals and that requiring different levels of disclosure among Government Securities ATSs based on their trading volume could result in a complex and confusing system of disclosure).

[465] *See* FINRA Letter at 2.

Government Securities ATS to make such information available upon request to subscribers, potential subscribers, and the Commission.[466] The Commission believes that the vast majority of information responsive to Form ATS–N would not be proprietary or commercially sensitive for ATSs to disclose.[467]

The Commission is re-proposing to make Form ATS–N publicly available for all Government Securities ATSs, regardless of their volume. The Commission believes that most market participants have limited access to information to adequately assess ATSs that trade government securities and understand how different ATSs operate. Today, Government Securities ATSs that are currently subject to Regulation ATS file a Form ATS that is deemed confidential when filed under Rule 301(b)(2)(vii) of Regulation ATS,[468] and Currently Exempted Government Securities ATSs are not subject to Regulation ATS and not required to file a Form ATS. The only information the Commission currently makes publicly available regarding Government Securities ATSs that are currently subject to Regulation ATS is a monthly list of the names and locations of ATSs with a Form ATS on file with the Commission.[469] In the case Government Securities ATSs make information about their operations voluntarily available, such information is limited, and the lack of uniformity or standardization makes it difficult to compare disclosures across ATSs. Accordingly, through Form ATS–N, the Commission is proposing disclosures that will provide information that market participants can use to evaluate an ATS as a potential trading venue. Requiring public disclosure, rather than Government Securities ATSs responding to individual disclosure requests from subscribers or potential subscribers, will help to ensure uniformity and standardization of the information Government Securities ATSs make available.

As proposed, Government Securities ATSs would also be subject to Rule 304(b)(3), which would require each Government Securities ATS that has a website to post a direct URL hyperlink to the Commission's website that contains the documents enumerated in Rule 304(b)(2), which would include the Government Securities ATS's Form ATS–N filings.[470]

Request for Comment

77. Should the requirements of Rule 304(b) apply to Form ATS–N reports filed by Government Securities ATSs, in whole or in part? Should the Commission modify Rule 304(b) in any way for all Covered ATSs?

78. Should Rule 304(b) only apply to Government Securities ATSs that trade a type of government securities (*e.g.,* U.S. Treasury Securities, Agency Securities)? If so, to which type of Government Securities ATS should Rule 304 apply?

79. Are there any other requirements that should apply to making public a Form ATS–N report filed by a Government Securities ATS? Please support your arguments, and if so, please list and explain such procedures in detail.

80. Should Rule 304(b) apply to Form ATS–N reports filed by a Currently Exempted Government Securities ATS? If not, which aspects of Rule 304(b) should not apply and why?

C. Form ATS–N Requirements

The Commission is not re-proposing the use of Form ATS–G for Government Securities ATSs but is proposing that all Covered ATSs file Form ATS–N as revised. The Commission believes that, instead of proposing Form ATS–G for Government Securities ATSs, given the significant overlap between proposed Form ATS–G and existing Form ATS–N, it is appropriate to require all Covered ATSs to file Form ATS–N, and thus limit the number of unique forms and simplify filing requirements. Accordingly, the Commission is proposing to apply existing Rule 304(c) to Government Securities ATSs, which would require Government Securities ATSs to file a Form ATS–N, as revised, in accordance with the form's instructions. The Commission is proposing to revise the current Form ATS–N instructions by including references to Government Securities ATSs or Covered ATSs, as applicable, replacing references to order display and fair access amendments with references to contingent amendments, revising the relevant compliance dates, adding instructions related to fee amendments, and revising the instructions regarding describing the applicability of amendments. The instructions require, among other things, that a Covered ATS 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.[471] Given that the Commission expects market participants to use Form ATS–N to decide which trading venue is best for them, it is important that Form ATS–N filings comply with the instructions and that the information provided on Form ATS–N is accurate, current, and complete. As it is today, Form ATS–N[472] would be required to be filed electronically through EDGAR.

The Commission is proposing to apply Rule 304(c)(2) to Government Securities ATSs, which provides that any report required under Rule 304 shall be filed on a Form ATS–N, and include all information as prescribed in the Form ATS–N and the instructions to Form ATS–N. Rule 304(c)(2) would provide that a Form ATS–N be executed at, or prior to, the time the Form ATS–N is filed and shall be retained by the Government Securities ATS in accordance with Rules 302 and 303, and the instructions in Form ATS–N. In the Regulation ATS Adopting Release, the Commission stated that the requirements to make and preserve records set forth in Regulation ATS are necessary to make and keep certain records for an audit trail of trading activity and permit surveillance and examination to help ensure fair and orderly markets.[473] Expanding Rule 304(c) to encompass Government Securities ATSs would further these goals.

[466] *See* Tradeweb Letter at 11.

[467] In the Commission staff's experience reviewing disclosures on current Form ATS–N for NMS Stock ATSs and discussing ATS operations and the requirements of the form with NMS Stock ATSs, the Commission staff has observed that the information responsive to the form is not proprietary or commercially sensitive. In the NMS Stock ATS Adopting Release, the Commission stated that it designed Form ATS–N to not seek disclosure of certain information that could be proprietary or commercially sensitive. *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38812. In response to commenter concerns regarding disclosure of proprietary or commercially sensitive information, the Commission revised the wording of relevant requests in originally proposed Form ATS–N to mitigate such concerns or provided guidance regarding the scope of certain disclosure requests and to require ''summary'' information. *See id.* at 38825. The Commission stated that, in a vast majority of cases, the level of detail required by Form ATS–N should not require the public disclosure of commercially sensitive information. *See id.* at 38825. *See also, e.g., infra* Section IV.D.4.d (describing that Form ATS–N requires a ''summary'' narrative of products and services to avoid disclosure of commercially sensitive information).

[468] *See* 17 CFR 240.301(b)(2)(vii).

[469] *See* Alternative Trading System List, *https://www.sec.gov/foia/docs/atslist.htm.*

[470] Unlike the 2020 Proposal, the Commission is not proposing to amend Rule 304(b)(3) to require each Covered ATS to post on its website the most recently disseminated Form ATS–N within one business day after publication on the Commission's website.

[471] *See* Item A.3 of the Instructions to Form ATS–N (as revised).

[472] *See* NMS Stock ATS Adopting Release, *supra* note 2, Section VII.

[473] *See* Regulation ATS Adopting Release, *supra* note 31, at 70877–78.

Request for Comment

81. Should Rule 304(c) be applied, in whole or in part, to Government Securities ATSs?

82. Should Rule 304(c) only apply to Government Securities ATSs that trade a certain type of government security (*e.g.,* U.S. Treasury Securities, Agency Securities)? If so, to which type of Government Securities ATS should it apply and why?

D. Form ATS–N Disclosures

Form ATS–N is a public report that provides detailed information about the ATS-related activities of the broker-dealer operator and its affiliates and the manner of operations of the ATS. Because the Commission is proposing to require Government Securities ATSs to file a Form ATS–N instead of previously proposed Form ATS–G,[474] the Commission is proposing amendments to Form ATS–N to solicit disclosures that may be most relevant to market participants that trade government securities on these markets. In addition, because the Commission is amending Exchange Act Rule 3b–16 to include Communication Protocol Systems, the Commission is proposing to amend Form ATS–N to solicit disclosures about unique operational aspects to those systems. The Commission believes that it is important to revise Form ATS–N to provide investors with important information about the operations of all ATSs that trade NMS stocks and, as proposed, government securities.

The Commission is proposing that the amendments to Form ATS–N be applicable to both NMS Stock ATSs and Government Securities ATSs, and any differences between how the form requirements would apply to these ATSs are noted below. Given the similar level of complexity/sophistication between NMS Stock ATSs and Government Securities ATSs, the Commission believes that requiring both types of ATSs to file Form ATS–N is appropriate; however, as described below, certain requests have been tailored for the differences between NMS Stock ATSs and Government Securities ATSs. The Commission is proposing to revise Form ATS–N to include information it previously proposed on Form ATS–G, including a question requiring information about interaction with related markets.[475] The Commission is also proposing to reorganize certain questions on Form ATS–N and to require disclosure about any surveillance and monitoring that is conducted with respect to the ATS.[476] In response to the 2020 Proposal, one commenter stated that the proposed Form ATS–G disclosures were similar to those on Form ATS–N, in that they would be categorized in a more standardized manner than Form ATS, which would allow for better comparisons between ATSs, and enhance the Commission's and SRO's regulatory oversight of Government Securities ATSs.[477] The proposed revisions to Form ATS–N would continue to allow such comparisons, and applying Form ATS–N to Government Securities ATSs would better help enable market participants to compare Government Securities ATSs.

The Commission is proposing certain amendments to Form ATS–N that would apply globally to Form ATS–N unless otherwise noted below. First, as Form ATS–N would be applicable to both Government Securities ATSs and NMS Stock ATSs, the Commission is proposing to replace references to ''NMS Stock ATSs'' throughout the form to ''Covered ATSs'' or ''ATSs.''[478] Second, the Commission is proposing to replace references to ''orders'' throughout Form ATS–N to reference ''trading interest,'' which would encompass non-firm trading interest.[479] Third, Form ATS–N would include an instruction at the beginning of Part III to require that the Covered ATS identify and explain any differences among and between subscribers, persons whose trading interest is entered into the ATS by a subscriber or the broker-dealer operator, the broker-dealer operator, and any affiliates of the broker-dealer.[480] Because this disclosure would be integrated in each Item, the Commission is proposing to delete the separate sub-questions in Part III that ask about whether services and functionalities and conditions or requirements related to such services and functionalities are the same for all subscribers and the broker-dealer operator.[481] Fourth, the Commission is proposing to change references to ''Trading Centers'' to ''trading venues,'' which would include trading centers, but also include venues relevant to the trading of government securities and repos and Communication Protocol Systems.[482] The term ''trading venue'' encompasses a broader group of entities that could, for example, result in an execution or affect the handling of a subscriber's trading interest. The Commission explains below each requirement of Form ATS–N and why the Commission is proposing to apply that requirement to Government Securities ATSs. To the extent that the Commission is proposing a change to the requirement of Form ATS–N that would affect the reporting obligation of an NMS Stock ATS, the Commission identifies that change and the information the NMS Stock ATS would be required to disclose. In addition, to use consistent terminology throughout Form ATS–N, the Commission is proposing to change certain references to activity ''in'' the ATS to activity ''on'' the ATS.[483]

The Commission believes that Form ATS–N's public disclosures would provide important information to market participants that would help them better understand these operational facets of Covered ATSs and select the best trading venue based on their needs. The Commission believes that the vast majority of responsive information in Form ATS–N, as proposed to be revised, would not be proprietary or commercially sensitive.[484]

1. Amendments to Form ATS–N for NMS Stock ATSs

If the revisions to Form ATS–N were adopted and become effective, an NMS Stock ATS with an effective Form ATS–N or a Form ATS–N that is under Commission review would be required to file an amendment to its Form ATS–N so that its disclosures, as amended, meet all the requirements of Form ATS–N, as revised. If the proposed revisions to Form ATS–N become effective, a NMS Stock ATS would be required, in accordance with the instructions of the form, to amend its Form ATS–N so that it is complete.[485] An NMS Stock ATS is required, pursuant to Rule 304(a)(2)(B), to file an updating amendment no later than 30 days after the end of each calendar quarter to correct information that has become inaccurate or incomplete for any reason. Specifically,

[474] *See* 2020 Proposal, *supra* note 4.

[475] *See infra* Section IV.D.5.k.

[476] *See infra* Section IV.D.5.i.

[477] *See* FINRA Letter at 4.

[478] The Form ATS–N Cover Page (Type of Covered ATS), Part I, Item 8.a, and Part III, Items 23, 24(a), and 24(d)(i) will refer to ''NMS Stock ATSs'' because such requests are applicable only to NMS Stock ATSs.

[479] *See infra* note 496 and accompanying text. *See* proposed revisions to Form ATS–N, Part II, Items 1(a), 1(c), 2(a), 2(c), 3(a), 3(b), 4(a), 5(a), and 5(c); Part III, Items 4, 5(a), 5(b), 10(a), 12, 13(a), 13(c), 13(d), 14(a), 15, 16(a), 16(b), 17, and 22.

[480] *See supra* notes 563–564 and accompanying text.

[481] *See infra* note 565.

[482] *See infra* note 497 and accompanying text. *See* proposed revisions to Form ATS–N Part II, Item 4 and Part III, Item 7.

[483] *See* proposed changes to Part II, Items 1 and 2 and Part III, Items 4(a), Item 22(a), Item 24(d)(ii).

[484] *See infra* Section IV. *See also supra* note 467.

[485] *See* Instruction A.3 of Form ATS–N (requiring that a Form ATS–N filing is accurate, current, and complete).

an NMS Stock ATS with an effective Form ATS–N, or an NMS Stock ATS whose Form ATS–N is under Commission review, would be required to, among other things, amend its Form ATS–N to disclose new identifying information and types of securities traded required by Part I, and to provide information responsive to new requests regarding new categories of types of subscribers (Part III, Item 1), monitoring and surveillance (proposed Part III, Item 9), interaction with related markets (proposed Part III, Item 11), the identity of liquidity providers (Part III, Item 12), and post-trade processing (proposed Part III, Item 21).

In addition, the NMS Stock ATS would be required to amend its Form ATS–N to reorganize responses, including, among others, to move disclosures related to the activities of employees of the broker-dealer operator or its affiliates that service the operations of the ATS and another business unit of the broker-dealer operator or affiliate to proposed Part II, Item 7(a), and move discussion of after-hours use of orders from current Part III, Item 18 to proposed Part III, Item 4(b)–(c). In addition, the NMS Stock ATS would be required to separately discuss information relevant to trading facilities or rules for bringing together orders of buyers and sellers in proposed Part III, Item 7 and information related to use of non-firm trading interest in proposed Part III, Item 8. The NMS Stock ATS would also be required to amend its responses to disclose any differences in treatment among subscribers, persons whose trading interest is entered into the ATS by a subscriber or the broker-dealer operator, the broker-dealer operator, and any affiliates of the broker-dealer operator as relevant throughout the responses to Part III rather than disclosing differences in treatment between any subscribers and the broker-dealer in specific sub-parts of Part III, as required by current Form ATS–N.

2. Definitions

The Commission is proposing to amend certain definitions in the instructions to Form ATS–N. The Commission is re-proposing to replace the current definition of ''person'' in Form ATS–N, which is provided by the Investment Advisers Act of 1940 (''Advisers Act'')[486] with the different definition of ''person'' as defined under the Exchange Act.[487] Because Regulation ATS is a Commission regulation under the Exchange Act, the Commission believes that it is more appropriate to apply the definition of ''person'' under the Exchange Act than the Advisers Act, which is not applicable to ATSs. Although the definitions are not identical, the Commission believes the differences between the definitions are unlikely to result in differences to the disclosures required by Form ATS–N.[488] To the extent ATSs might have found ambiguous the Commission's use of the Advisers Act definition in the context of an Exchange Act rule, the Commission believes that this proposed change will mitigate any such concerns.

The Commission is also proposing to change the definition of ''NMS Stock ATS'' in the instructions to the form to conform to the proposed changes to the definition in Rule 300 and state that NMS Stock ATSs shall not trade securities other than NMS stocks.[489] The Commission is also proposing to add definitions of ''Agency Security,''[490] ''Government Security,''[491] ''Government Securities ATS,''[492] ''Legacy Government Securities ATS,''[493] and ''Trading Interest''[494] and conform the definition of ''Broker-Dealer Operator'' to the proposed revisions in Rule 301(b)(1).[495] As proposed, the term ''Trading Interest'' would be the same definition provided in proposed Rule 300(q) and Rule 3b–16(e), which would include both orders as defined under Rule 3b–16(c) and non-firm trading interest.[496] In addition, the Commission is proposing to replace the term ''Trading Center'' with ''trading venue.'' A ''trading venue'' would mean a national securities exchange or national securities association that operates an SRO trading facility, an ATS, an exchange market maker, an OTC market maker, a futures or options market, or any other broker- or dealer-operated platform for executing trading interest internally by trading as principal or crossing orders as agent.[497] The proposed definition of ''trading venue'' would encompass ''trading centers'' as defined under 17 CFR 242.600(b)(78) (Rule 600(b)(78) of Regulation NMS), futures and options markets, which the Commission believes may be relevant to the trading of government securities and repos, and also would encompass broker- or dealer-operated platforms for executing trading interest by trading as a principal or crossing orders as an agent.[498]

3. Cover Page and Part I; Information About the Broker-Dealer Operator

To make clear that the Commission would not be conducting a merit-based review of Form ATS–N disclosures filed with the Commission, the Form ATS–N cover page states that the Commission has not passed upon the merits or accuracy of the disclosures in the filing. On the cover page of Form ATS–N, the Covered ATS would be required to identify whether it is an NMS Stock ATS or a Government Securities ATS. To indicate whether the ATS is subject to the transitional rules for Legacy Government Securities ATSs and Newly Designated ATSs,[499] the ATS would be required to disclose whether it is a Legacy Government Securities ATS or Newly Designated ATS.[500] In addition, the Covered ATS would indicate the type of filing by marking the appropriate checkbox.[501]

If the Covered ATS is filing an amendment, the ATS would be required to indicate the Part and Item number of the Form ATS–N that is the subject of the change(s), provide a brief summary of the substance of the change(s), and state whether or not the change(s) applies to (1) all subscribers and the

[486] 15 U.S.C. 80a–2(a)(28) (defining ''person'' as ''a natural person or a company'').

[487] 15 U.S.C. 78c(a)(9) (defining the term ''person'' as a natural person, company, government, or political subdivision, agency, or instrumentality of a government).

[488] The Exchange Act's inclusion of a ''government, or political subdivision, agency or instrumentality of a government'' under the definition of ''person'' is unlikely to result in any changes to the disclosures required by the items in Form ATS–N that use the word ''Person'' as, in the Commission's experience, these entities are generally not involved in the operations of ATSs as subscribers or otherwise.

[489] *See supra* note 254 and accompanying text.

[490] *See supra* note 242 and accompanying text.

[491] *See supra* note 259 and accompanying text.

[492] *See id.*

[493] *See supra* note 256 and accompanying text.

[494] *See supra* Section II.C.1.

[495] *See supra* note 273 and accompanying text.

[496] *See* proposed Rule 3b–16(e) and Rule 300(q).

[497] *See* revised Form ATS–N, Explanation of Terms.

[498] This is broader than the definition of ''trading center'' under Rule 600(b)(78), which includes ''any other broker or dealer than executes orders internally by trading as principal orders as agent.''

[499] *See* Rule 304(a)(1)(iv), as proposed to be revised.

[500] The Commission is proposing to delete the checkbox on the cover page of Form ATS–N that requires an NMS Stock ATS to select whether the NMS Stock ATS currently operates pursuant to a Form ATS. Rules 304 and 301(b)(2)(viii) required an NMS Stock ATS to file a Form ATS–N no later than January 7, 2019. After January 7, 2019, this checkbox became obsolete.

[501] The proposed cover page for Form ATS–N would provide that a filing may be an initial Form ATS–N, or a Form ATS–N material amendment, updating amendment, correcting amendment, contingent amendment, or fee amendment. The Commission is proposing to rename ''order display and fair access amendments'' to ''contingent amendments'' throughout the form. In addition, the Commission is proposing a new fee amendment type. *See supra* Section IV.A.

broker-dealer operator; (2) only the broker-dealer operator; (3) only subscribers; (4) only certain subscribers, subsets of subscribers, or customers of subscribers and the broker-dealer operator; or (5) only certain subscribers, subsets of subscribers, or customers of subscribers.[502] In addition, the Covered ATS would be required to provide the EDGAR accession number for the Form ATS–N filing to be amended so that market participants can identify the filing that is being amended. Pursuant to Rule 304(b)(2)(iii), the Commission would 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). For updating, correcting, contingent, and fee amendments, which would be made public upon filing, the Commission believes that the information in the narrative could assist market participants in understanding the general nature of the change that the Covered ATS is implementing.

If the filing is a cessation of operations, the cover page of Form ATS–N would require the Covered ATS to provide the date that the ATS will cease to operate. The cover page includes a checkbox where the ATS could indicate whether it wishes to withdraw a previously-filed Form ATS–N filing and provide the EDGAR accession number for the filing to be withdrawn. The instructions to Form ATS–N state that an ATS may withdraw an initial Form ATS–N or an amendment before the end of the applicable Commission review period. In addition, a Covered ATS could withdraw a notice of cessation of operations at any time before the date that the ATS indicated it intended to cease operating.[503]

Part I of revised Form ATS–N would be substantively the same as that for current Form ATS–N with certain exceptions, as described below. Form ATS–N would require a Covered ATS to identify the registered broker-dealer that operates the ATS and state whether the filer is a broker-dealer registered with the Commission. The Commission is proposing new Part I, Item 1(b) of Form ATS–N to require the Covered ATS to indicate whether the registered broker-dealer is authorized by a national securities association to operate an ATS under the rules of the national securities association. Proposed Part I, Item 1(b) would facilitate compliance with and Commission oversight of the requirement that an ATS must register as a broker-dealer and become a member of an SRO.[504] The Commission is also proposing that the Covered ATS provide the name of the registered broker-dealer or government securities broker or government securities dealer for the ATS (*i.e.,* the broker-dealer operator), as it is stated on Form BD, in Part I, Item 2 of Form ATS–N.[505]

To the extent that a commercial or ''DBA'' (doing business as) name or names are used to identify the Covered ATS to the public, the Commission, or its SRO, or if a registered broker-dealer operates multiple Covered ATSs, Form ATS–N would require the full name(s) of the Covered ATS under which business is conducted, if different, in Part I, Item 3 of Form ATS–N. Part I, Item 4 of Form ATS–N would require the Covered ATS to provide the broker-dealer operator's SEC File Number and Central Registration Depository (''CRD'') Number.

In addition, the Commission is proposing to require Covered ATSs to provide the broker-dealer operator's Legal Entity Identifier (''LEI'') in Part I, Item 4, if the broker-dealer operator has an LEI.[506] If a broker-dealer operator of the ATS has an LEI, the information may be useful to market participants as a globally standardized identifier. The Commission, however, is not proposing to require broker-dealer operators that do not have an LEI to obtain such an identifier. In addition, the Commission is proposing to add a question to Part I, Item 4(d) that would require the ATS to provide the MPID of its broker-dealer operator. Although Part I, Item 5(c) of Form ATS–N requires the *ATS* to disclose the MPID of the ATS, the Commission is also requiring the ATS to provide the MPID of the broker-dealer operator because a broker-dealer operator may have a unique MPID. Because the broker-dealer operator could potentially use such a unique MPID to conduct trading and routing activity that affects the ATS, it would be useful to market participants and regulators to require the ATS to state the broker-dealer operator's MPID as it will help them identify the broker-dealer operator and better understand the scope of activities of the broker-dealer operator.[507]

Part I, Item 5 of Form ATS–N would require the Covered ATS to provide the full name of the national securities association of which the broker-dealer operator is a member, the effective date of the broker-dealer operator's membership with the national securities

[502] *See* Instruction A.7.h of Form ATS–N. If a change subject to the amendment would equally apply to all subscribers and the broker-dealer operator, the Covered ATS would indicate that the change applies to all subscribers and the broker-dealer operator equally. If a change would apply differently among subscribers or types of subscribers, between subscribers and the broker-dealer operator, or between the broker-dealer operator and its affiliates (which may be subscribers to the ATS), the Covered ATS would state so and describe the differences in treatment. This is the same as how NMS Stock ATSs currently describe in Form ATS–N and would be required to describe in Form ATS–N whether or not a change applies to all subscribers and the broker-dealer operator in amendments on Form ATS–N. As required by the instruction, a filer must provide a brief summary of *all* changes to the form. Such summary should enable market participants to understand the nature of the changes being made. For example, if the ATS is adding a new order type, the ATS should state that it is adding a new order type *and* provide a brief description of unique aspects of the order type. The Commission is proposing to clarify in Instruction A.7.h that changes made in Part IV of Form ATS–N should not be described, as Part IV is non-public. *See infra* Section IV.D.6.

[503] *See* Instruction A.9 of Form ATS–N.

[504] *See* 15 U.S.C. 78o(b)(8). *See also* NMS Stock ATS Adopting Release, *supra* note 2, at 38773.

[505] As discussed above, Rule 301(b)(1) currently requires that the ATS register as a broker-dealer under Section 15 of the Exchange Act. As proposed, Rule 301(b)(1) would require an ATS to register as a broker-dealer under Exchange Act Section 15 or a government securities broker or government securities dealer under Exchange Act Section 15C(a)(1)(A). *See supra* note 273 and accompanying text.

[506] Current Form ATS–N does not include this Item, and as proposed, NMS Stock ATSs would also be subject to this proposed requirement. An LEI is a 20-character reference code that uniquely identifies legally distinct entities that engage in financial transactions and is used by numerous domestic and international regulatory regimes. *See* Securities Act Release No. 10425, 82 FR 50988, 51005 (November 2, 2017) (stating that LEIs are intended to improve market transparency by providing clear identification of participants). Although several existing ATS broker-dealer operators currently have an LEI, not all broker-dealer operators have an LEI. In the 2020 Proposal, the Commission asked commenters whether they believe a Government Securities ATS should be required to disclose the broker-dealer operator's LEI. One commenter supported requiring disclosure of the LEI on Form ATS, Form ATS–R, Form ATS–N, and previously proposed Form ATS–G, stating, among other things, that it is a global standard for legal entity identification and that it enables publicly accessible information about an entity's ownership structure. This commenter stated that LEI should not replace the CRD, which serves a purpose in identifying broker-dealers and their affiliates, but should serve as a complimentary identifier. *See* letter from Stephan Wolf, CEO, Global Legal Entity Identifier Foundation, dated March 1, 2021 (''GLEIF Letter''). Another commenter stated that the utility of asking brokers to obtain another identification number is unclear if the LEI does not replace FINRA assigned identification numbers. *See* Bloomberg Letter at 7.

[507] The Commission understands that, in certain instances, a broker-dealer operator for an ATS may use the ATS MPID in connection with its routing activities when the routing functionality is within the ATS. *See* FINRA Trade Reporting Guidance, Example 7, *available at https://www.finra.org/sites/default/files/ATS%20OATS%20and%20Trade%20Reporting%20Guidance%209-2-14_0_0_0_0.pdf.* To the extent that the broker-dealer uses the ATS MPID in connection with its routing activities, or its routing functionality is inside the ATS, such activities and functionality would be subject to Regulation ATS, including the disclosure requirements of Form ATS–N.

association, and the MPID of the ATS. 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 or trading desks operated by the broker-dealer operator.[508] The broker-dealer operator would provide the unique MPID for the Covered ATS and assess the functionalities related to trading under that MPID and describe them, as applicable, in response to the information requests on Form ATS–N. Providing the name of the Covered ATS or DBAs and its MPID would identify the ATS to the public and the Commission. The name, identity of the broker-dealer operator, any ''DBA'' name, and the ATS's MPID are basic information critical to market participants for identifying the ATS and should be disclosed.

Proposed Part I, Item 6 of Form ATS–N would require the Covered ATS to provide a URL address for the website of the ATS. Proposed Part I, Item 7 of Form ATS–N would require the ATS to provide the primary physical street address of the ATS matching system and indicate whether the ATS has a secondary matching system that may be used in the event that the primary matching system is not available. If yes, the ATS would be required to provide the secondary address of the matching system.

To inform market participants about the types of securities that a Covered ATS makes available for trading, the Commission is proposing to require a Covered ATS to disclose in Part I, Item 8 of Form ATS–N the types of securities it trades. Part I, Item 8(a) would require an NMS Stock ATS, but not a Government Securities ATS, to indicate whether the ATS makes available for trading all NMS stocks.[509] If not, the ATS would identify the securities or types of securities that it does not make available for trading.[510] Part I, Item 8(b) would require a Government Securities ATS, but not an NMS Stock ATS, to select the categorical types of government securities the ATS trades (*i.e.,* U.S. Treasury Securities, Agency Securities, repos, or other).[511] If the Government Securities ATS trades U.S. Treasury Securities, it would be required to select whether it trades bills,[512] notes,[513] bonds,[514] TIPS,[515] STRIPS,[516] and/or floating rate notes[517] and indicate whether each type of security traded is on-the-run, off-the-run, and/or when-issued.[518] If the Government Securities ATS trades Agency Securities, it would be required to indicate whether it trades Agency Mortgage-Backed Securities[519] and/or Federal Agency Securities.[520] In addition, if the Government Securities ATS trades repos, the ATS would indicate whether it trades triparty[521] and/or bilateral repos,[522] and whether such securities are repurchase agreements or reverse repurchase agreements and are centrally cleared[523] or non-centrally cleared.[524] If the Government Securities ATS trades any other government securities, it would be required to mark ''other'' via checkbox and identify the types of government securities that the ATS makes available for trading. Requiring a Covered ATS to publicly disclose the types of securities that it trades would identify to potential subscribers and regulators the securities that the ATS offers for trading and help potential subscribers decide whether they would want to engage the ATS.

Proposed Part I, Items 9 and 10[525] would require a Covered ATS to attach the 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 the 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 Covered 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

[508] *See* FINRA Rules 6160, 6170, 6480, and 6720.

[509] If the NMS Stock ATS suspends trading in securities under certain circumstances, the ATS should indicate so under Part III, Item 19. *See infra* Section IV.D.5.r.

[510] The Commission notes that most, if not all, NMS Stock ATSs currently disclose whether they trade all NMS stocks in Part III, Item 11(a) of Form ATS–N.

[511] The types of securities traded would be limited to government securities (15 U.S.C. 78c(a)(42)) and repos. *See* proposed Rule 300(l).

[512] Treasury bills are short-term securities that mature in one year or less from their issue date. Bills are purchased for a price less than or equal to their par (face) value, and when they mature, Treasury Department pays their par value. *See* TreasuryDirect, The Basics of Treasury Securities, *available at https://www.treasurydirect.gov/instit/research/faqs/faqs_basics.htm#tbills* (last visited September 15, 2021).

[513] Treasury notes are securities that pay a fixed rate of interest every six months until the security matures, which is when Treasury Department pays the par value. Treasury notes mature in more than a year, but not more than 10 years from their issue date. *See id.*

[514] Treasury bonds are securities that pay a fixed rate of interest every six months until the security matures, which is when Treasury Department pays the par value. Bonds mature in more than 10 years from their issue date. *See id.*

[515] Treasury Inflation-Protected Securities (''TIPS'') pay interest every six months and the principal value of TIPS is adjusted to reflect inflation or deflation as measured by the Consumer Price Index. The semi-annual interest payments and maturity payment are calculated based on the inflation-adjusted principal value of the security. *See id.*

[516] *See supra* 191.

[517] A floating rate note security that has an interest payment that can change over time. As interest rates rise, the security's interest payments will increase. Similarly, as interest rates fall, the security's interest payments will decrease. This security makes use of an index (or reference) rate (in this case, tied to the most recent 13-week bill rate, prior to the lockout period) and spread (determined at auction) to calculate an interest rate. The index rate changes periodically, in this instance every week, causing the interest rate to change or ''float.'' The notes may be of varying original maturities. *See* TreasuryDirect, Frequently Asked Questions, *available at https://www.treasurydirect.gov/indiv/help/TDHelp/faq.htm.*

[518] A ''when-issued'' transaction is a transaction in a U.S. Treasury Security that is executed before the issuance of the security.

[519] Agency Mortgage-Backed Securities include (i) a type of securitized product issued in conformity with a program of a U.S. executive agency, as defined in 5 U.S.C. 105 or a government-sponsored enterprise, as defined in 2 U.S.C. 622(8), for which the timely payment of principal and interest is guaranteed by the executive agency or GSE, representing ownership interest in a pool (or pools) of mortgage loans structured to ''pass through'' the principal and interest payments to the holders of the security on a pro rata basis; and (ii) a type of securitized product backed by a securitized product described in (i). *See also* FINRA Rules 6710(m), 6710(v), 6710(dd).

[520] Federal Agency Securities include all Agency Securities except Agency Mortgage-Backed Securities. *See supra* note 519.

[521] A triparty repo involves a third party, which is a clearing bank that provides support to both parties in the trade by settling the repo on its books and ensuring that the details of the repo agreement are met. *See* Viktoria Baklanova, Adam Copeland & Rebecca McCaughrin, Federal Reserve Bank of New York Staff Reports, Reference Guide to U.S. Repo and Securities Lending Markets (September 2015) at 5–6, 8–10, *available at https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr740.pdf* (''New York Fed Staff Report'').

[522] A bilateral repo involves two parties agreeing on the terms of trade, including the principal amount of the repo, the interest rate paid by the collateral provider, the type of securities delivered, the haircut to be applied for the collateral pledged, and the maturity of the repo, and each counterparty's custodian bank clears and settles the trade. *See* New York Fed Staff Report, *supra* note 521, at 5–7.

[523] Centrally cleared would mean any transaction that uses a central counterparty, as defined in 17 CFR 240.17Ad–22(a)(2) (Rule 17Ad–22(a)(2) under the Exchange Act).

[524] Non-centrally cleared would mean any transaction that does not use a central counterparty, as defined in Rule 17Ad–22(a)(2) under the Exchange Act. *See id.*

[525] These items are numbered as Part I, Items 8 and 9 in current Form ATS–N, but would be renumbered as Items 9 and 10.

ATS–N.[526] The Commission is proposing to include in Part I, Items 9 and 10 that, if the ATS selects to make the information available on its website in lieu of attaching it to its filing, the ATS will maintain its website in accordance with the rules for amending Form ATS–N pursuant to Rule 304(a)(2)(i) to reflect any changes to Schedule A or Schedule B, as applicable, to the Form BD of the broker-dealer operator. This would require an ATS checking the box to update its website as if it were Form ATS–N, and therefore, to update the information no later than 30 calendar days after the end of any calendar quarter in which its broker-dealer operator's Schedule A or Schedule B of Form BD becomes inaccurate or incomplete.

When an ATS is purchased by another entity and operated by a broker-dealer that is not the ATS's current broker-dealer operator, the new broker-dealer typically commences operating the ATS using its personnel, processes, and procedures. To avoid disruptions to operations of the ATS or its subscribers, the existing Covered ATS would file a Notice of Cessation at least 10 business days prior to the official change of broker-dealer operator (*e.g.,* the date of closing for an acquisition) pursuant to Rule 304(a)(3) [527] and the new broker-dealer operator would file an initial Form ATS–N in advance of the Notice of Cessation, which must become effective before it may operate the Covered ATS pursuant to Rule 304(a)(1)(i).[528]

In addition, Part I, Item 11 of Form ATS–N would require the Covered 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 and additions or deletions from any Item in Part I, Part II, and Part III, as applicable.[529] The Commission is proposing to revise Part I, Item 11 to state that the ATS must include in such marked document any changes to Exhibits 1, 2, and 5. The requirement for the ATS to provide a marked document or ''redline'' showing changes helps market participants and regulators easily review changes the ATS is making in an amendment. The Commission is not proposing Form ATS–N to require a marked document showing changes to Exhibit 4, which includes aggregate platform-wide order flow and execution statistics of the ATS, because such statistics may frequently change, and showing such changes could be burdensome for ATSs and would not be particularly useful for market participants or regulators. However, the ATS should be required to provide a marked document to show changes to the list and explanation of categories or metrics for such aggregate platform-wide order flow and execution statistics on Exhibit 5, as highlighting such changes would be useful for market participants in understanding any aggregate platform-wide order flow and execution statistics the ATS provides. In addition, to ensure the changes in the marked document are clear and readily identifiable, the Commission is proposing to clarify that the ATS must indicate the Part and Item number for all Items that are changing.

Request for Comment

83. Should Covered ATSs be required to provide any additional identifying information on Part I of Form ATS–N? Are the proposed information requests on Part I of Form ATS–N necessary, or are certain information requests not necessary and why?

84. Should the Commission require Covered ATSs to provide types of securities that they trade (or do not trade) in Part I, Item 8 of Form ATS–N? Would the proposed categories and classifications of government securities in Part III, Item 8(b) be helpful to market participants? What, if any, additional or alternative categories or classifications would commenters suggest? Is there any other information about types of securities an ATS trades that should be required by Form ATS–N?

4. Part II: Broker-Dealer Operator and Its Affiliates Activities

The Commission believes that the disclosures on Form ATS–N about the conflicts of interest that might arise from the business structures of the Covered ATS and the ATS-related activities of the broker-dealer operator and its affiliates are designed to help participants protect their interests when using the services of the ATS.[530] As the Commission has previously stated, the broker-dealer operator controls all aspects of the ATS's operations and the broker-dealer operator's non-ATS and ATS functions may overlap.[531] Currently, market participants have limited information about conflicts of interest that might arise from the non-ATS activities of the broker-dealer operator of a Government Securities ATS or a Communication Protocol System, and different classes of participants may have different levels of information about the operations of the ATS or the Communication Protocol System.[532] Because of potential 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. The Commission believes that some market participants would want to consider the trading activity of the broker-dealer operator, or its affiliates, when evaluating potential conflicts of interest on a Covered ATS and may also want to be aware of the range of services and products that the broker-dealer operator or its affiliates offer for use in the ATS because such services or products may have an impact on access to, or trading on, the ATS. In addition, disclosures on Form ATS–N would better inform the Commission and other regulators about the activities of Covered ATSs and their role in the government securities and NMS stock markets, which would facilitate better oversight of these ATSs to the benefit of investors.

The Commission continues to believe that the interests of the broker-dealer operator or its affiliates can sometimes compete against the interests of those that use the Covered ATS's services. These competing interests, at times, 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. For example, trading by the broker-dealer operator or its affiliates on a Covered ATS controlled and operated by the broker-dealer operator presents a conflict of interest whereby the broker-dealer operator has the opportunity to place its interest ahead of participants

[526] Part I, Items 9 and 10 and Part III, Item 25 (*see infra* Section IV.D.5.y) are the only requests for information that would allow a Covered ATS to cross-reference to information on the ATS's website instead of providing it in the form disclosures. Form ATS–N disclosures would be the vehicle for disseminating to the public information about the operations of the ATS and the ATS-related activities of the broker-dealer operator and its affiliates under Rule 304, which are required to be kept current, accurate, and complete by the ATS. Accordingly, ATSs would be required to provide information required by the form in the Form ATS–N disclosures and not cross-reference to other sources.

[527] *See supra* note 455 and accompanying text.

[528] *See supra* Section IV.A. To facilitate the review of the initial Form ATS–N for the new Covered ATS, the broker-dealer operator for the new ATS may provide a draft initial Form ATS–N to the staff for consideration.

[529] This Item is currently numbered as Part I, Item 10, but would be renumbered as Item 11. The Commission proposes to make a minor change to this Item to clarify that ''II'' refers to Part II.

[530] *See infra* Section IV.D.4.

[531] *See* NMS Stock ATS Proposing Release, *supra* note 29, at 81010, 81041.

[532] *See id.* at 81010.

trading in the ATS that the broker-dealer controls and operates. Part II of Form ATS–N is designed to provide market participants with information about these competing interests, and inform them about: (1) The operation of the Covered ATS—regardless of the corporate structure of the 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 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. The public disclosure about potential conflicts of interest on Covered ATSs would advance the same policy and investor protection objectives.

Furthermore, Part II of Form ATS–N does not require public disclosure of activities or affiliate relationships of the broker-dealer operator that do not relate to the Covered ATS. Many broker-dealer operators of NMS Stock ATSs, and, to a lesser extent, Government Securities ATSs, engage in broker-dealer or other activities that are unrelated to their operations of the ATS. The Commission believes that Form ATS–N should exclude requests that would solicit information about a broker-dealer operator's activities unrelated to its ATS operations.

The Commission is proposing to use the same definitions of ''affiliate'' and ''control'' in revised Form ATS–N as are used in current Form ATS–N.[533] These terms are intended to encompass all relevant affiliate relationships between the broker-dealer operator and other entities that the Commission believes would help market participants' evaluation of potential conflicts of interest.[534]

a. Items 1 and 2: Broker-Dealer Operator and Its Affiliate Trading Activities in the Covered ATS

Part II, Items 1(a) and 2(a) of Form ATS–N are designed to disclose information about whether business units of the broker-dealer operator or its affiliates,[535] respectively, are permitted to enter or direct the entry of trading interest into the Covered ATS. If the person that operates and controls a Covered ATS is also able to trade on that ATS, there may be an incentive to design the operations of the ATS to favor the trading activity of the operator of the ATS or affiliates of the operator. An operator of a Covered ATS that also trades in the ATS it operates would likely have informational advantages over others trading in the ATS, such as a better understanding of the manner in which the system operates or who is trading in the ATS. In the most egregious case, the operator of the ATS might use the confidential trading information of other traders to advantage its own trading on or off of the ATS.[536]

If a Covered ATS permits the broker-dealer operator or its affiliates to enter trading interest in the ATS, whether on an agency, principal, or riskless principal basis, the ATS would be required to only list the business units or affiliates that actually enter or direct the entry of trading interest into the ATS. Part II, Items 1(a) and 2(a) of Form ATS–N would require the ATS to list the business unit or affiliate if, for example, a trading desk of the broker-dealer operator or an affiliate uses a direct connection to the ATS or algorithm to submit trading interest into the ATS. Likewise, if an affiliated asset manager of the broker-dealer operator uses the services of a third-party broker-dealer to direct trading interest to the ATS (*i.e.,* the asset manager instructs the third-party broker-dealer to send its trading interest to the ATS), the ATS would be required to list that affiliated asset manager under Item 2(a). However, if that affiliated asset manager submits trading interest to a third-party broker-dealer, and that third-party broker-dealer, using its own discretion, directs the trading interest of the asset manager into the affiliated ATS, the ATS would not be required to list the affiliated asset manager under Item 2(a); under such circumstances, the affiliate would not be ''directing'' trading interest to the ATS because the third-party broker-dealer is using its discretion to direct the affiliate's trading interest.

Currently, Part II, Items 1(a) and 2(a) only require an NMS Stock ATS to list business units or affiliates, respectively, that enter or direct the entry of orders and trading interest into the ATS.[537] Based on the Commission staff's experience, some NMS Stock ATSs have opted to list all of the internal business units and affiliates that could trade in the ATS and not only the internal business units and affiliates that actively enter orders and trading interest into the ATS. This additional information can also help market participants evaluate the types of potential conflicts of interest on an NMS Stock ATS by providing the entire universe of potential contra-side trading interest that users of the ATS might view as a conflict of interest. Accordingly, while not required to do so, a Covered ATS would meet the respective requirements of Part II, Items 1(a) and 2(a) by listing all of the internal business units and affiliates that could trade in the ATS.

The Commission is proposing that Form ATS–N specify the types of information that a Covered ATS must provide with regard to business units or affiliates of the broker-dealer operator. Specifically, Item 1(a) would require the ATS to name and describe each type of business unit of the broker-dealer operator that enters or directs the entry of trading interest into the ATS (*e.g.,* another Covered 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 trading interest (*e.g.,* principal, agency, riskless principal). Item 2(a) would require the Covered ATS to name and describe each type of affiliate that enters or directs the entry of trading interest into the ATS (*e.g.,* broker-dealers, another Covered ATS, investment companies, hedge funds, market makers, PTFs) and, for each of those affiliates, provide the applicable MPID and list the capacity of its trading interest (*e.g.,* principal, agency, riskless principal). The disclosures in Items 1(a) and 2(a) would help market participants understand both the types of broker-

[533] Form ATS–N would define ''affiliate'' as, 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. ''Control'' would be defined to mean the power, directly or indirectly, to direct the management or policies of the broker-dealer operator of an alternative trading system, whether through ownership of securities, by contract, or otherwise. In this proposal, the Commission is proposing to update the definition of ''person'' for the purposes of Form ATS–N. A ''person'' is presumed to control the broker-dealer operator of an alternative trading system if that person: Is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); 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 operator of the alternative trading system; or 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 operator of the alternative trading system. *See infra* Section V.D.

[534] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38818–19.

[535] In Part II, Item 1(a), the Commission is proposing to delete examples of trading interest—quotes, conditional orders, and indications of interest—as the proposed definition of trading interest would encompass these examples.

[536] For a further discussion about how a conflict of interest related to trading by the broker-dealer operator on its own ATS could be harmful to other subscribers, *see* NMS Stock ATS Adopting Release, *supra* note 2, at 38771, 38824–29.

[537] As explained above, Form ATS–N will remove references to ''orders,'' and its disclosures will focus on ''trading interest.''

dealer operator business units and affiliates that can trade in a Covered ATS, and their trading activities.[538]

In addition to what is required under current Form ATS–N, the Commission proposes to add an additional disclosure request to Part II, Items 1(a) and 2(a) of Form ATS–N that would require a Covered ATS to explain any circumstance when the broker-dealer operator or an affiliate, respectively, would be a counterparty to an ATS trade. Based on Commission experience, the broker-dealer operator may act as a counterparty to both sides of a trade to maintain the anonymity of each counterparty or to facilitate clearance and settlement of the trade. To the extent the broker-dealer operator or affiliate of the broker-dealer operator of a Covered ATS intermediates between two counterparties, the ATS should publicly disclose to its subscribers when and how it does so and the capacity of the broker-dealer operator or its affiliates.[539]

Part II, Items 1(b) and 2(b) of Form ATS–N would require a Covered ATS to disclose whether the services that the ATS offers and provides to the business units or affiliates required to be identified in Item 1(a) and 2(a), respectively, are the same for all subscribers and persons whose trading interest is entered into the ATS by a subscriber.[540] This request would be in the form of a ''yes'' or ''no'' question, and if the ATS answers ''no,'' it would be required to explain any differences in response to the applicable Item number(s) in Part III of Form ATS–N and list the applicable Item number(s). If there are differences that are not applicable to Part III of Form ATS–N, the ATS must explain those differences in detail under Part II, Items 1 and 2.

Part II, Items 1(c) and 2(c) would require a Covered ATS to disclose the broker-dealer operator's or any of its affiliates' role as a liquidity provider in the ATS, if applicable. These Items would require the ATS to disclose—in the form of a ''yes'' or ''no'' response—whether there are any formal or informal arrangements with any of the sources of trading interest of the broker-dealer operator or affiliates identified in Item 1(a) and Item 2(a), respectively, to provide trading interest to the ATS (*e.g.,* undertaking to buy or sell continuously, or to meet specified thresholds of trading or quoting activity). If the ATS answers ''yes,'' it must identify the business unit(s) or affiliate(s) and respond to the Item with information about liquidity providers in the ATS.[541] Based on the Commission staff's experience with Form ATS–N filed by NMS Stock ATSs, highlighting whether the broker-dealer operator or affiliate acts as a liquidity provider on a Covered ATS would help market participants evaluate the potential for conflicts of interest or information leakage on the trading platform.

Finally, the Commission proposes to relocate the Part II, Items 1(d) and 2(d) disclosure requests to proposed Part III, Item 16(c). Currently, these request an NMS Stock ATS to disclose information about sending orders and trading interest to a trading center operated or controlled by the broker-dealer operator or any of its affiliates, respectively in the form of a ''yes'' or ''no'' question. The related narrative is currently required to be provided in Part III, Item 16, which requires disclosures about external routing from the NMS Stock ATS. The Commission continues to believe that this disclosure is important when evaluating potential conflicts of interest and how trading interest may be handled in the ATS. The Commission originally included subpart (d) in Part II, Items 1 and 2 to highlight conflicts of interest related to routing. The Commission believes that it would be more efficient for market participants and filers to consolidate this disclosure with the responses to the request soliciting information about the routing or sending of trading interest from the ATS. As such, the Commission is proposing to delete Items 1(d) and 2(d) from Part II, and relocate the disclosure requirements therein to Part III, Item 16(c).

Request for Comment

85. What information about trading by the broker-dealer operator and its affiliates related to Government Securities ATSs is important to market participants? Are there any additional relevant points of information about NMS Stock ATSs that Form ATS–N does not solicit and should be asked?

86. Are there potential conflicts of interest for broker-dealer operators of Government Securities ATSs or their affiliates that may justify greater operational transparency for Government Securities ATSs than for NMS Stock ATSs, or vice versa?

87. Should the Commission require separate disclosures for different types of trading by the broker-dealer operator on the Covered ATS, such as trading by the broker-dealer operator for the purpose of correcting error trades executed in the ATS, as compared to other types of principal trading? If so, what types of principal trading should be addressed separately and why? What disclosures should the Commission require about principal trading and why?

88. Should the Commission limit or expand in any way the proposed disclosure requirements to require disclosure of arrangements regarding access by the broker-dealer operator or its affiliates to both other trading venues and affiliates of those other trading venues?

89. Should the Commission require ATSs to provide information about when the broker-dealer or affiliate of the broker-dealer would be a counterparty to an ATS trade? What type of information about such arrangements would be useful to market participants?

90. Form ATS–N currently requires that an NMS Stock ATS name the affiliate(s) of the broker-dealer operator permitted to enter or direct the entry of trading interest into the ATS. A Government Securities ATS would also be required to describe the type of affiliates on Form ATS–N. Should the Commission continue to require NMS Stock ATSs, but not Government Securities ATSs, to disclose the name(s) of affiliate(s) in Form ATS–N?

91. Should the Commission require Covered ATSs to disclose the percentage of trading in the ATS attributable to

[538] Although the narrative responses to Items 1(a) and 2(a) could typically be kept up-to-date via updating amendments to Form ATS–N, the Commission also notes that in most cases, if the ''yes'' or ''no'' response to Items 1(a) or 2(a) changes (*e.g.,* the Covered ATS changes its operations to allow affiliates to trade whereas they could not do so prior, or vice versa), the ATS would be required to file a material amendment. *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38826.

[539] Depending on how the Covered ATS operates, it is possible that disclosures about the broker-dealer operator's (or its affiliate's) role as an intermediary between two other counterparties would be required disclosures elsewhere on the Form ATS–N *(e.g.,* Part III, Item 7 (Order Types and Sizes; Trading Facilities), Part III, Item 21 (Post-Trade Processing, Clearance, and Settlement)). Accordingly, the Commission is proposing that this information would be required to be publicly disclosed in Part II. However, to decrease redundancy in the form, the ATS could note in Part II, Item 1(a) and/or 2(a) disclosures that the broker-dealer operator or its affiliates could be counterparties to a trade, state the capacity in which broker-dealer operator or its affiliate is a counterparty to the trade, and provide a more detailed responses to other requests for information as required in the form.

[540] The Commission is proposing to revise Part II, Items 1(b) and 2(b) to specifically ask about treatment of persons whose trading interest is entered into the ATS by a subscriber or the broker-dealer operator. In the Commission's experience, ATS services could vary among not only subscribers, but also non-subscriber participants to the ATS. The Commission is therefore proposing to broaden the scope of these questions to apply to differing treatment among non-subscriber participants whose trading interest is entered into the ATS by a subscriber or the broker-dealer operator.

[541] This request is contained in Part III, Item 12. *See infra* Section V.D.5.l.

each or all of the broker-dealer operator's business units, affiliates or both? Should Form ATS–N require a Covered ATS to disclose specific trade volume data for its trading with business units of the broker-dealer operator or its affiliates? If so, how should that volume be measured (*e.g.,* executed trades, dollar volume)?

92. Would the disclosure of information about trading by the broker-dealer operator and its affiliates in the Covered ATS be sufficient to address potential conflicts of interest? If disclosure alone is insufficient, are there other measures the Commission could take to mitigate potential conflicts of interest regarding trading? Should the Commission prohibit some or all trading by the broker-dealer operator and its affiliates in the ATS to address potential conflicts of interest?

b. Item 3: Interaction of Trading Interest With Broker-Dealer Operator; Affiliates

Proposed Part II, Item 3 of Form ATS–N is designed to solicit information about the interaction of trading interest between unaffiliated subscribers to a Covered ATS and trading interest of the broker-dealer operator and its affiliates in the ATS. As proposed, Part II, Item 3(a) of Form ATS–N would require a Covered ATS to disclose whether a subscriber can opt out of interacting with trading interest of the broker-dealer operator in the ATS, and Part II, Item 3(b) would require the ATS to disclose whether a subscriber can opt out of interacting with the trading interest of an affiliate of the broker-dealer operator in the ATS.[542] Part II, Item 3(c) of Form ATS–N would require the ATS to disclose whether the requirements [543] 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. Proposed Part II, Item 3 would be important to unaffiliated market participants trading on an ATS because, given the potential for informational advantages by the broker-dealer operator or its affiliates,[544] some unaffiliated subscribers may not wish to interact with the order flow of the broker-dealer operator or its affiliates. This disclosure could also help subscribers 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 Covered ATS.

Request for Comment

93. Should Form ATS–N request more or less information about how a market participant can limit its interaction on a Covered ATS with the broker-dealer operator or its affiliates? If commenters believe Form ATS–N should request more information, please provide specific information that would be useful along with an explanation of its utility.

c. Item 4: Arrangements With Other Trading Venues

Part II, Item 4 of Form ATS–N is designed to disclose information about formal or informal arrangements (*e.g.,* mutual, reciprocal, or preferential access arrangements) [545] between the broker-dealer operator or an affiliate of the broker-dealer operator and a trading venue (*e.g.,* ATS, broker-dealer, exchange, OTC market maker, futures or options market) to access the ATS services (*e.g.,* arrangements to effect transactions or to submit, disseminate, or display orders and trading interest in the ATS).

Part II, Item 4 would require a Covered ATS to disclose an arrangement between the broker-dealer operator for the ATS or affiliate of the broker-dealer operator and a broker-dealer operator of an unaffiliated ATS under which the broker-dealer operator would send trading interest to the unaffiliated ATS for possible execution before sending it to any other destination. Item 4 would also require disclosure of the inverse arrangement pursuant to which any subscriber trading interest sent out of the unaffiliated Covered ATS would be sent first to the ATS before any other trading venue. In addition, Item 4 would require a summary of the terms and conditions of the arrangement such as, for example, whether the broker-dealer operator of the Covered ATS is providing monetary compensation or some other brokerage service to the unaffiliated ATS.[546] If a broker-dealer operator has an arrangement with another trading venue operated by the broker-dealer operator or an affiliate, or an unaffiliated trading venue, market participants are likely to consider information about such arrangements relevant to their evaluation of an ATS as a potential trading venue and such an arrangement may raise concerns about conflicts of interest or information leakage. The Commission is therefore proposing disclosure of such arrangements in Part II, Item 4 of Form ATS–N.[547]

Request for Comment

94. What type of arrangements might a broker-dealer operator of a Covered ATS have with a trading venue for government securities or repos? Please explain and describe what information, if any, market participants may wish to know about such an arrangement.

d. Item 5: Other Products and Services

Part II, Item 5(a) is designed to disclose whether the broker-dealer operator offers any products or services for the purpose of effecting transactions or submitting, disseminating, or displaying trading interest in the Covered 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, order hedging or aggregation functionality, post-trade processing),[548] and if applicable, to

[542] For example, if a broker-dealer operator uses algorithms to submit subscriber orders into the Covered ATS, any steps that either the broker-dealer operator or the subscriber needs to take so that the ATS prevents those orders from trading with the broker-dealer operator or its affiliates would be required disclosures under Items 3(a) and 3(b), respectively.

[543] The Commission is proposing to replace the phrase ''terms and conditions'' with ''requirements.'' In the Commission staff's experience reviewing Form ATS–N and discussing the requirements of the form with NMS Stock ATSs, the Commission has observed that some NMS Stock ATSs have read ''terms and conditions'' to mean all legal or contractual terms, rather than terms relevant to the scope of the question (*i.e.,* what is required for a subscriber to opt out). Using the term ''requirements'' will clarify that the Item is soliciting information specifically related to requirements related to the opt-out process. Substantively, the Commission does not believe that the proposed change would change information that is being solicited in this Item.

[544] *See supra* Section IV.D.3.a.

[545] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38831 nn.769–70 and accompanying text. As the Commission discussed in the NMS Stock ATS Adopting Release, the disclosures required by Part II, Item 4 of revised Form ATS–N are not so broad as to require the Covered ATS to list each unaffiliated subscriber that accesses its system. *See id.* at 38831.

[546] In addition, in Part II, Item 4(b) of Form ATS–N, the Commission is proposing to delete the phrase ''if yes to Item 4(a).'' This phrase was included in Form ATS–N in error. The NMS Stock ATS would be required to respond to Part II, Item 4(b) regardless of its response to Part II, Item 4(a).

[547] In the NMS Stock ATS Adopting Release, the Commission provided examples of when potential conflicts of interest and information leakage could occur as a result of preferential routing arrangements (*e.g.,* an affiliate is contractually obligated to route all unexecuted orders to ATS) or routing arrangements with affiliates (*e.g.,* all orders routed by the NMS Stock ATS must first be routed to an the affiliate(s)). Specifically, the former might result in information leakage should the arrangement provide that all orders not executed by the affiliate are to be sent to the NMS Stock ATS and the latter could provide incentive for the NMS Stock ATS to route orders to an affiliate instead of trying to execute the order in the ATS. These issues could arise in the government securities markets, as well, so those examples are also applicable to both NMS Stock ATSs and Government Securities ATSs. *See id.* at 38831 n.771.

[548] In Part II, Item 5, the Commission is proposing to add ''order hedging or aggregation functionality'' and ''post-trade processing'' as examples of

indicate whether the requirements of use[549] for these services or products required to be identified in Part II, Item 5(a) are the same for all subscribers, persons whose trading interest is entered into the ATS by a subscriber or the broker-dealer operator, and the broker-dealer operator.[550]

Customers of a broker-dealer operator could be both subscribers to its ATS and customers of the broker-dealer operator and the broker-dealer operator may offer its customers trading products and services in addition to its ATS services. In certain cases, the product or service offered might be used by the customer in conjunction with the customer's use of the ATS. Broker-dealer operators may, directly or indirectly through an affiliate, offer products or services for the purpose of, for example, submitting trading interest, or receiving information about displayed interest, in the ATS.[551] The Commission is proposing to delete the term ''Subscribers'' from Items 5(a) and 5(c) so that all products and services that the broker-dealer operator or affiliate of the broker-dealer operator offers for the purpose of effecting transactions or submitting, disseminating, or displaying trading interest in the ATS, would be required to be disclosed on Form ATS–N, regardless of whether they are offered to subscribers or non-subscribers (*e.g.,* customers of ATS subscribers). For example, a Government Securities ATS would be required to disclose any aggregation functionality that the broker-dealer operator or its affiliate(s) offers, which, for example, could be used by subscribers to interface with the ATS to send or receive trading interest to and from other markets, including U.S. Treasury Securities markets, over-the-counter spot markets, or futures markets. The Commission believes that participants would be interested in understanding the use of an aggregation functionality with the ATS and how it can help achieve their trading strategies. If the broker-dealer operator or its affiliate offered a product for effecting transactions or submitting, disseminating, or displaying trading interest in the Government Securities ATS using related financial markets for non-government securities (*e.g.,* futures, currencies, swaps, corporate bonds), the ATS could summarize the requirements for use of such a product in this Item and explain the product's use under proposed Part III, Item 11.[552]

The Commission believes the information required by Part II, Item 5 of revised Form ATS–N is important because participants 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 trading interest in the ATS because such products or services may impact the participants' access to, or trading on, the ATS.[553] In some cases, if subscribers also use other products or services that the broker-dealer operator offers, they could receive more favorable terms from the broker-dealer operator with respect to their use of the ATS. For example, if a participant purchases a service offered by the broker-dealer operator of a Covered ATS, the broker-dealer operator might also provide that subscriber more favorable terms for its use of the ATS than other participants who do not purchase the service. Such favorable terms could include fee discounts or access to a faster connection line to the ATS. Additionally, a broker-dealer operator of a Covered ATS may offer certain products and services only to certain participants or may offer products and services on different terms to different categories of participants. The Commission believes that participants would want to know, when assessing a Covered ATS as a potential trading venue, the range of services or products that the broker-dealer operator or its affiliates offers participants of the ATS, and any differences in treatment among participants, because such services or products may impact the participants' access to, or trading on, the ATS.

To the extent that a participant on a Covered ATS 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 trading interest in the ATS, Part II, Item 5 of Form ATS–N would require disclosures about those products or services. For example, if a broker-dealer operator offers its customers an order management system that can also be used by participants to the ATS to manage orders in the ATS (*e.g.,* adjust the pricing or size of trading interest in relation to trading interest resting in or outside the ATS, or modify order instructions to execute or cancel at a specified time or under certain market conditions), the ATS would be required to identify the order management system, provide a summary of the requirements for its use, and identify the Part and Item number in Form ATS–N where the order management system is explained. In addition, any services offered by the broker-dealer operator for subscribers to mitigate risk, such as limits on gross or net notional exposures by a subscriber, identification of duplicative orders in the ATS, or other checks offered related to order entry or authorizations to trade in the ATS, would be identified in this Item and explained further in proposed Part III, Items 7(b) and 8(b), as applicable. However, the 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 trading interest in the ATS.

To alleviate any concerns regarding the potential disclosure of commercially sensitive information in this disclosure request, the proposed disclosure request

products or services for the purpose of effecting transactions or submitting, disseminating, or displaying trading interest in a Covered ATS, and which could be particularly relevant to Government Securities ATSs. ''Order hedging or aggregation functionality'' would include any aggregation functionality that, for example, could be used by subscribers to interface with the ATS to send or receive orders and trading interest to and from other markets, including U.S. Treasury Securities markets, over-the-counter spot markets, or futures markets. ''Post-trade processing'' would include any functionality that could be used by subscribers in connection with post-trade processing to manage routing, enrichment, allocations, matching, confirmation, affirmation, or notification of ATS trades.

[549] The Commission is proposing to replace the phrase ''terms and conditions'' with the phrase ''requirements'' throughout this Item. *See* note 543 and accompanying text. The Commission is also proposing to require the Covered ATS to disclose any differences in treatment as they apply to persons whose trading interest is entered into the ATS by a subscriber or the broker-dealer operator. In the Commission staff's experience, broker-dealer operators and their affiliates may, for example, disclose products and services offered to customers of subscribers. *See* proposed revisions to Part II, Items 5(b) and 5(d).

[550] For example, if a broker-dealer operator offers subscribers alternative algorithms to handle orders, including sending such orders to the Covered ATS, and there is a difference in the latency in which each of the alternatives transmits information, such differences in latency would need to be disclosed in Part II, Item 5 of revised Form ATS–N.

[551] *See* NMS Stock ATS Proposing Release, *supra* note 29, at 81048. *See also* NMS Stock ATS Adopting Release, *supra* note 2, at 38832 n.779. For example, order hedging functionalities could encompass a product or service offered by the broker-dealer operator to a customer that the customer may use as a subscriber to the broker-dealer operator's ATS to hedge exposures of trading interest in or outside the ATS. A broker-dealer operator that offers such a functionality for use with the ATS would describe the requirements for a subscriber to use the functionality in Part II, Item 5 and explain its use with regard to the ATS in Part III of Form ATS–N. For example, if the order hedging functionality affects order interaction in the ATS, the ATS would explain the functionality in proposed Part III, Item 7. If the order hedging functionality involves futures and trading interest in the ATS, the ATS would explain the related procedures under proposed Part III, Item 11.

[552] *See infra* Section IV.D.5.l.

[553] Services for the purpose of effecting transactions, or submitting, disseminating, or displaying trading interest in the ATS that are offered by a person other than the broker-dealer operator would also be responsive to this Item.

would require only a summary of the requirements for the products and services disclosed and an explanation of how the product or service is used with the ATS in the applicable Item number in Part III of Form ATS–N. The Commission believes that requiring only a summary narrative would normally not require the broker-dealer operator to disclose commercially sensitive information.

Request for Comment

95. What types of products and services do broker-dealer operators of Covered ATSs or affiliates of broker-dealer operators offer to subscribers and how are such products and services used in connection with the ATSs?

96. What information about the products and services offered by broker-dealer operators would be helpful to market participants?

97. Should the Commission expand Part II, Item 5 of Form ATS–N to require disclosure of products or services offered by the broker-dealer operator or its affiliates to subscribers, but not necessarily offered in connection with transacting on the Covered ATS?

98. Would the information required by Part II, Item 5 require disclosure of commercially sensitive information? If so, how could the Commission revise the information request to limit the disclosure of commercially sensitive information?

e. Item 6: Activities of Service Providers

Part II, Item 6(a) of Form ATS–N is designed to provide disclosures relating to any entity, other than the broker-dealer operator, that supports the services or functionalities of the Covered ATS.[554] Information about the roles and responsibilities of service providers to the ATS is important because it could inform market participants about the potential for information leakage on the ATS.[555] The Commission is not proposing that the third-party service provider requests encompass purely administrative items, such as human resources support, or basic overhead items, such as phone services and other utilities. As it is with Part II, Item 6(b) in current Form ATS–N, 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) and allow the Commission to monitor the third party's role and operations in the ATS.[556] For example, any service provider for clearance and settlement of transactions in the ATS, consulting relating to the trading systems or functionality, regulatory compliance, and recordkeeping for the ATS would be responsive to this request.[557]

The Commission recognizes that an ATS may engage an entity other than the broker-dealer operator to perform an operation or function of the ATS or a subscriber may be directed to use an entity to access a service of the ATS, such as order entry, disseminating market data, or display, for example. In such instances, the ATS must ensure that the entity performing the ATS function complies with Regulation ATS with respect to the ATS activities performed. For example, with respect to an ATS that is subject to the Fair Access Rule, if participants are required to enter orders in the ATS through an order entry firm or to access displayed orders from another entity, the ATS must ensure that its written fair access standards address these entities' activities because of the affect these entities' activities can have on participants' ability to access the ATS services.[558] Likewise, to the extent an entity, such as a service provider, performs a function of the ATS, and as a result has access to subscriber confidential trading information, the ATS's written safeguards and procedures to protect its subscribers' confidential trading information would also include the service provider's safeguards and procedures to protect the ATS's subscriber confidential trading information that is accessible to the service provider.[559] In addition, as part of the ATS's oversight procedures, the ATS must ensure that the service provider, for example, follows the service provider's safeguards and procedures to protect the ATS's subscriber confidential trading information.

Disclosures about the activities of service providers, for example, would inform the Commission about the scope of the ATS's operations and therefore the extent to which the ATS's Regulation ATS obligations would apply to the service provider's activities. In addition, as discussed above, the Commission will consider as part of its review of the Form ATS–N whether the entity filing Form ATS–N, or entities involved in the operations of the ATS, meets the definition of a Covered ATS, including whether the Covered ATS meets the criteria of Exchange Act Rule 3b–16.[560] The information provided on Form ATS–N about the role of service providers with regard to the ATS's operations would help inform the Commission's review.

Furthermore, the requests under Part II, Items 6(b) through (c) would require disclosure about whether any service providers or their affiliates use the services of the ATS. If they do, the Covered ATS would be 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, for example, a Covered 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 that use its services under its current recordkeeping obligations. The Commission believes that market participants, when analyzing potential conflicts of interest or information leakage, would find it very useful to understand whether potential counterparties with whom they are trading, and who also service the operation of the ATS, have access to different or unique ATS-related services. Part II, Item 6(c) of Form ATS–N would require the Covered ATS to

[554] As explained further below, the Commission is relocating the disclosure request about shared employees in Part II, Item 6(a) of current Form ATS–N to Part II, Item 7(a) of revised Form ATS–N. Accordingly, Part II, Item 6(a) of revised Form ATS–N corresponds to Part II, Item 6(b) of current Form ATS–N.

[555] Legacy Government Securities ATSs that operate pursuant to a Form ATS on file with the Commission are currently subject to the 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. *See* Item 7 of Form ATS (describing the requirements for Exhibit E of Form ATS). Proposed Part II, Item 6(b) would expand upon this requirement.

[556] *See* Bloomberg Letter at 8 (stating, in response to the 2020 Proposal, that disclosure of outsourced technology provider relationships is appropriate for the Commission and FINRA to determine that the regulated entity, the broker-dealer operator, is monitoring its third-party service provider(s)).

[557] If a summary of the role and responsibilities of the service provider is disclosed in response to Part III of Form ATS–N, the ATS need only list the applicable Item number in response to this Item. If there are services or functionalities that are not applicable to Part III, the ATS would identify the service provider, the services and functionalities, and also provide a summary of the role and responsibilities of the service provider in proposed Part II, Item 6(a).

[558] *See* Regulation ATS Adopting Release, *supra* note 31, 63 FR 70873 n.252. *See also infra* Section V.A.

[559] In such a case, a description of the written safeguards and procedures to protect subscribers' confidential trading information of the ATS and service provider would be required to be disclosed in Part II, Item 7 of Form ATS–N. *See infra* Section IV.D.4.f.

[560] See *supra* note 109.

identify and explain any differences in ATS services to a service provider and all other subscribers and persons whose trading interest is entered into the ATS by a subscriber or the broker-dealer operator.[561] Additionally, depending on the role and responsibilities of the service provider, market participants may wish to consider evaluating the robustness of the ATS's safeguards and procedures to protect confidential subscriber information.

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 ATS. The purpose of this disclosure is to provide information that subscribers can use to better understand whether the service provider might be able to access subscriber confidential trading information, so ATSs should draft their disclosure with the goal of conveying such information. Simply stating that a third party provides technology or hardware to the ATS would not be responsive to the required summary of the service provider's role, but, on the other hand, the ATS would not have to provide information about the manufacturer of its hardware components.

Request for Comment

99. Are there any critical services or functionalities (*e.g.,* matching engine, market data) that, if provided by a third party, should be required to be described in a higher level of detail than the proposed ''summary'' level? If so, which services and functionalities?

f. Item 7: Protection of Confidential Trading Information

Part II, Item 7(a) of Form ATS–N is designed to provide information about a Covered ATS's written safeguards and written procedures to protect the confidential trading information of subscribers to the ATS, including, (1) 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, the basis for the access, and whether any shared employees (defined below) have access to confidential trading information; (2) written standards controlling employees of the ATS that trade for employees' accounts; and (3) written oversight procedures to ensure that the safeguards and procedures described above are implemented and followed.

The protection of confidential trading information is an important component of the regulation of ATSs and is essential to ensuring the integrity of ATSs as execution venues. The Commission believes that disclosures about any employee of the ATS's broker-dealer operator or employee of its affiliate that provides services for both the operations of the ATS and any other business unit or any affiliate of the broker-dealer operator (''shared employee'') with access to subscriber confidential trading information would help market participants evaluate circumstances when there is the potential for information leakage. For example, the Commission believes that market participants would likely want to know if an employee of the broker-dealer operator (or employee of an affiliate of the broker-dealer operator) that is responsible for the operations of a system containing subscriber confidential trading information from the ATS is also responsible for supporting, for instance, the principal trading activity of the broker-dealer operator, or another trading venue operated by the broker-dealer, or a trading venue that is an affiliate of the broker-dealer operator. In addition, if confidential trading information is not protected, many of the advantages or purposes for which a subscriber may choose to send its trading interest to an ATS (*e.g.,* to 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, 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, the Commission believes that disclosures informing market participants about broker-dealer operators' written safeguards and written procedures to protect confidential trading information are necessary so market participants can independently evaluate the robustness of the safeguards and procedures and decide for themselves whether they wish to do business with a particular Covered ATS.

Part II, Item 7(a) of revised Form ATS–N contains, in part, the same disclosure requests as Part II, Item 7(a) of current Form ATS–N. The Commission is proposing to amend Part II, Item 7(a) of Form ATS–N by adding the disclosure requests in Part II, Items 6(a) and 7(d) of current Form ATS–N. Item 6(a) of current Form ATS–N solicits information about ''shared employees.'' Part II, Item 7(d) of current Form ATS–N requires an 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.

The Commission is relocating and consolidating these disclosure requests based on its experience with Form ATS–N filings by NMS Stock ATSs. In the Commission staff's experience, the disclosures in Part II, Items 6(a), 7(a), and 7(d) in current Form ATS–N solicit similar information and thus, the structure of Form ATS–N often resulted in redundant disclosures within these Items. For example, in responding to Part II, Item 7(d) of current Form ATS–N, the ATS initially needs to describe what it considers to be confidential trading information, such as whether only pre-trade order information would be considered confidential trading information, or whether post-trade information would also be treated as confidential trading information, and for what period of time. To explain the basis for the access, the ATS currently needs to explain why the person would have access to the confidential trading information in Part II, Item 7(d). Similarly, Part II, Item 6(a) of current Form ATS–N requires the ATS to disclose whether and how shared employees can access confidential trading information. The Commission believes that consolidating these information requests into a single Item request in Part II, Item 7(a) on Form ATS–N would make the form easier to use because the reader will be able to find all the information previously spread across three items in a single item.

Part II, Items 7(b) and (c) of Form ATS–N are designed to disclose information about 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 ATS who are operating the system or responsible for its compliance with applicable rules). Subscribers should be

[561] The Commission is also proposing to require the Covered ATS to disclose any differences in services as they apply to persons whose trading interest is entered into the ATS by a subscriber or the broker-dealer operator (*e.g.,* customers of subscribers). *See* proposed revisions to Part II, Item 6(c).

able to give consent if they so choose to share their confidential trading information.[562] Covered ATSs vary in terms of the types of orders, indications of interest (IOIs), or other forms of trading interest that 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). For this example, Part II, Items 7(b) and 7(c) of Form ATS–N would require the Covered 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.[563] For example, a subscriber can consent to its open trading interest being displayed to certain subscribers that the subscriber believes are less likely to misuse or exploit such information, or that have open trading interest on the contra side in the same symbol. If the Covered ATS allows subscribers to consent in this manner, the ATS would mark ''yes'' to Part II, Item 7(b). Continuing the example, if the subscriber can subsequently withdraw its consent to this display of its open trading interest, the Covered ATS would mark ''yes'' to Part II, Item 7(c).

Request for Comment—Part II

100. Should the Commission expand the proposed disclosures in proposed Part II, Item 7(a)(i) to other employees, personnel, or independent contractors of the broker-dealer operator? If so, which employees, personnel, or independent contractors should be included and what information about such persons should be solicited?

101. Should the Commission require Covered ATSs to disclose the information in Part II of Form ATS–N? If so, what level of detail should be disclosed?

102. Would Part II of Form ATS–N capture the information that is most relevant to understanding the Covered ATS and its relationship with the broker-dealer operator and the broker-dealer operator's affiliates? Please support your arguments.

103. Would the proposed disclosures in Part II require broker-dealer operators of Covered ATSs to reveal too much (or not enough) information about their structure and operations?

104. Is there other information about the activities of the broker-dealer operator and its affiliates that market participants might find relevant or useful in their assessment or use of the Covered ATS? If so, describe such information and explain whether or not such information should be required to be provided on Form ATS–N.

105. Should Covered ATSs not be required to provide the proposed disclosures in Part II on Form ATS–N due to concerns regarding confidentiality, business reasons, trade secrets, burden, or any other concerns? If so, what information and why?

106. Are there ways to obtain the same information as would be required from Covered ATSs by Part II other than through disclosure on Form ATS–N? If so, how else could this information be obtained and would such alternative means be preferable to the disclosures in Part II?

107. Should Covered ATSs be required to publicly disclose in their entirety on Form ATS–N their written safeguards and written procedures to protect the confidential trading information of subscribers? Should the Commission require less information be disclosed about the written safeguards and procedures?

108. Would the information about written safeguards and written procedures to protect the confidential trading information of subscribers described in Form ATS–N be sufficient for subscribers to independently evaluate such safeguards and procedures and thus evaluate the ATS as a destination for their orders? Should the Commission prohibit the disclosure of confidential subscriber information in some circumstances? If so, please describe.

5. Part III: Manner of Operations

Part III of Form ATS–N is designed to provide public disclosures to help market participants understand, among other things, how they may use a Covered ATS to buy and sell securities and find a counterparty to a trade. The Commission is proposing amendments to Part III that would apply to both NMS Stock ATSs and Government Securities ATSs. Government Securities ATSs would be required to respond to Part III of Form ATS–N in the same manner as NMS Stock ATSs, and the below description summarizes the types of disclosures Form ATS–N would solicit for both NMS Stock ATSs and Government Securities ATSs.

As proposed, Form ATS–N would include an instruction at the beginning of Part III to require that the Covered ATS identify and explain any differences among and between subscribers, persons whose trading interest is entered into the ATS by a subscriber or the broker-dealer operator, the broker-dealer operator, and any affiliates of the broker-dealer.[564] Current Form ATS–N is structured to include separate questions throughout the Items that require the ATS to identify and explain any differences in the treatment of subscribers and the broker-dealer operator. Based on its experience reviewing Form ATS–N filed by NMS Stock ATSs, the Commission believes that discussion of these differences is integral to the responses to each of the Items, and that requiring the discussion to be included in the response to each Item, rather than requiring separate, potentially disjointed disclosures, would improve the readability of the disclosures. By requiring Covered ATSs to disclose differences in treatment of persons whose trading interest is entered into the ATS by a subscriber or the broker-dealer operator, which would include, for example, sponsored access clients of subscribers, and affiliates of the broker-dealer operator, market participants will be able to discern any benefit or disadvantage they may receive in comparison to a broader, more comprehensive group of potential users of the ATS.[565] The disclosure about differences in treatment of subscribers, other persons whose trading interest is entered into the ATS by a subscriber or the broker-dealer operator, the broker-dealer operator, and the broker-dealer operator's affiliates is important to market participants and would better allow them to decide whether submitting trading interest to the Covered ATS aligns with their trading objectives. Accordingly, the Commission is proposing to restructure Part III to delete separate questions regarding whether subscribers and the

[562] *See* Regulation ATS Adopting Release, *supra* note 31, at 70879.

[563] *See id.* The Commission believes that there may be some Covered ATSs that might not offer any means by which a subscriber could consent to the dissemination of its confidential trading information. A Covered ATS would be required to disclose this fact pursuant to Item 7(a). *See id.* at 70891 n.437.

[564] For example, in Part III, Item 5, if a Covered ATS designed its operations to allow only certain types of subscribers to enter trading interest into the ATS through direct means (*e.g.,* Financial Information eXchange (FIX) protocol) and other types of subscribers to enter trading interest into the ATS through indirect means (*e.g.,* SOR or algorithm), the ATS would describe these differences in means of entry in Part III, Item 5(a).

[565] *See* current Form ATS–N Part III, Items 2(c), 3(b), 4(b), 5(b), 5(d), 6(b), 6(d), 6(f), 7(b), 8(b), 8(d), 8(f), 9(b), 10(b), 10(d), 11(b), 11(d), 13(b), 13(e), 14(b), 15(c), 17(b), 18(c), 19(b), 21(b), 22(b), and 23(b). The Commission is proposing to delete these Items for Form ATS–N and re-number Items throughout Part III.

broker-dealer operator are treated the same, and instead, proposing to include the instruction for the Covered ATS to disclose any differences in treatment in the applicable responses to Part III. To be clear, this proposed change would not relieve Covered ATSs from their obligation to disclose any differences in treatment that were required to be disclosed in current Form ATS–N.

a. Item 1: Types of ATS Subscribers

Part III, Item 1 of Form ATS–N is designed to provide information on the type(s) of subscribers that can use the Covered ATS services. The Item would provide market participants with information about the type of trading interest in the Covered ATS based on the types of subscribers that use it. Covered ATSs may design their system for trading by retail investors, institutional investors, dealers, or any other type of market participant.

The Commission is proposing to revise the list of types of market participants in Part III, Item 1 of Form ATS–N that, in the Commission staff's experience, are commonly used for Government Securities ATSs and NMS Stock ATSs.[566] The list would include: Retail investors, issuers, asset managers, brokers, dealers, investment companies, hedge funds, market makers, PTFs, insurance companies, pension funds, corporations, and banks. The list is non-exhaustive and a Covered ATS would be required to list any type of subscriber that can use the ATS's services.[567] In addition to disclosing its subscribers, a Covered ATS may use Part III, Item 1 to disclose any types of participants whose trading interest may reach the ATS. For example, for an ATS that only allows brokers or dealers as subscribers, the ATS could identify the types of customers from which the brokers or dealers send trading interest to the ATS.

Request for Comment

109. Should Form ATS–N require a Covered ATS to include information about the types of subscribers to the ATS? Based on Commission staff experience, some ATSs only accept broker-dealers as subscribers to the ATS and various types of market participants send trading interest into the ATS through the broker-dealer subscriber. Should the Commission require the identification of the types of market participants whose trading interest may be sent to the ATS, whether directly or indirectly, by a broker-dealer subscriber to a Covered ATS? Would this information be useful to understanding the type of trading interest in the ATS?

110. Should the Commission add any other categories of subscribers commonly applicable to Government Securities ATSs or NMS Stock ATSs, or both, to Form ATS–N?

b. Item 2: Eligibility for ATS Services

Part III, Item 2 of Form ATS–N is designed to provide market participants with information about whether the Covered ATS requires subscribers to be registered broker-dealers or enter a written agreement to use the ATS services, and whether there are any conditions that the ATS requires a person to satisfy before accessing the ATS services.[568] This Item would require disclosure of the conditions a person must satisfy ''*before* accessing the ATS services'' (emphasis added). On the other hand, Part III, Item 3 of Form ATS–N (discussed *infra*), would require disclosures about any conditions that would exclude a subscriber, in whole or in part, from using the Covered ATS as a result of subscriber behavior while already actively participating in the ATS.[569]

The disclosures required by Part III, Item 2 would allow market participants to understand the conditions that they would need to satisfy to participate on the Covered ATS. If the Covered ATS indicates that it does have conditions that a person must satisfy before accessing the ATS services, the request would require the ATS to list and provide a ''summary'' of those conditions. Some Covered ATSs may only have the eligibility requirement that a person be a client of the broker-dealer operator. In that case, any eligibility requirements to become a client of the broker-dealer operator would be responsive to this Item. For example, if a subscriber must be a customer of the broker-dealer operator, the Covered ATS would provide a summary of conditions the subscriber, as a customer, would need to satisfy (*e.g.,* know your customer) before its trading interest can be entered into the ATS. If the Covered ATS requires subscribers to contract with or become a member of a third party, for example, for purposes of clearance and settlement, such as, for Government Securities ATSs, the Fixed Income Clearing Corporation's Government Securities Division, such information would be responsive.

Request for Comment

111. What eligibility requirements to access a Covered ATS are important to a potential subscriber or participant to the ATS and why? Are there any eligibility requirements that are particularly relevant to Government Securities ATSs (inclusive of Communication Protocol Systems, as proposed) or Communication Protocol Systems that trade NMS stock that should also be required to be disclosed on Form ATS–N?

c. Item 3: Exclusion From ATS Services

Based on Commission staff's experience, ATSs often disclose rules governing subscribers' participation in the ATS, and if a subscriber fails to comply with these rules, the ATS may limit or deny access to the ATS.[570] Part III, Item 3 of Form ATS–N would require information about whether a Covered ATS can exclude, in whole or in part, any subscriber from the ATS services, and if so, to list and provide a summary of the conditions for excluding (or limiting) a subscriber from using the ATS. The disclosures are designed to provide information about when the Covered ATS can exclude, in whole or in part, a subscriber from the services of the ATSs and help subscribers reasonably anticipate the

[566] In Part III, Item 1 of Form ATS–N, the Commission is modifying the checkboxes listing types of subscribers to add insurance companies, pension funds, and corporations. The Commission believes that adding these checkboxes will provide more granular information on the types of subscribers participating on an ATS in an easier-to-read format. The Commission is also proposing to remove the checkbox ''NMS Stock ATS'' under the list of types of subscriber in Form ATS–N. A broker-dealer operator of an NMS Stock ATS seeking to access another NMS Stock ATS would involve the broker-dealer operator for the NMS Stock ATS becoming a subscriber to the ATS, not the ATS that the broker-dealer operates. In this scenario, an NMS Stock ATS that accepts a broker-dealer operator for another NMS Stock ATS would mark the checkbox for broker and/or dealer in Part III, Item 1 on Form ATS–N as appropriate.

[567] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38820–21 (discussing the definition of ''subscriber'' and the persons encompassed thereunder).

[568] In Part III, Item 2(b), the Commission is proposing to delete the word ''other'' and ask whether there any conditions, rather than any ''other'' conditions, that the ATS requires a person to satisfy before accessing the ATS services. The Commission believes it would be accurate to use the phrase ''any conditions'' rather than ''any other conditions'' in circumstances where a Covered ATS indicates that the ATS does not require subscribers to be registered broker-dealers in Part III, Item 2(a).

[569] For example, if a Covered ATS has a practice of excluding subscribers that do not meet certain percentage thresholds for submitting firm-up orders in response to receiving an IOI, conditional order, or RFQ sent to them by the ATS, then this practice would be subject to disclosure under Part III, Item 3 of Form ATS–N (''Exclusion from ATS Services'') and not Part III, Item 2 (''Eligibility for ATS Services'').

[570] 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 staff's experience, some ATSs exclude subscribers that frequently fail to respond with a firm-up order after receiving an IOI or request for quote.

types of activities that may cause them to be excluded (or limited) from using the services of the ATS. The question, which allows Covered ATSs to provide a ''summary'' of conditions for excluding (or limiting) a subscriber, is designed to solicit information to alert subscribers about the types of activities that may cause them to be excluded (or limited) from using the services of the ATS while protecting sensitive information to allow the ATS to reasonably control the activities and quality of flow on its platform and prevent subscribers from using the disclosures to potentially misuse or game the system. To the extent that the ATS monitors and surveils trading activity on the ATS that could result in excluding subscribers from ATS services, to avoid duplicative disclosures, the response to this Item could reference the monitoring and surveillance practices described in response to Part III, Item 9.[571]

Request for Comment

112. Is there any subscriber behavior for which Covered ATSs, particularly Government Securities ATSs (inclusive of Communication Protocol Systems, as proposed) or Communication Protocol Systems that trade NMS stock, commonly exclude a subscriber in whole or in part? What is that behavior(s) and what form of exclusion is commonly employed (*e.g.,* disqualification from ATS, limitation of services)?

d. Item 4: Hours of Operations and Trading Outside of Regular Trading Hours

Part III, Item 4 is intended to provide market participants with information about the days and hours of operation of the Covered ATS, including the times when trading interest can be entered in the ATS, and ATS services available outside of the ATS's regular trading hours. Part III, Item 4(a) would require a Covered ATS to provide the hours when it is operating, which would include functions such as accepting trading interest or allowing participants to use communication protocols to message other participants.[572] The disclosure required is not limited to only those hours when the ATS matches trading interest or allows participants to submit trading interest.

The Commission is proposing to revise Part III, Item 4 to include as Part III, Item 4(b) a question about whether the ATS services are available outside of the ATS's regular trading hours (*e.g.,* after-hours trading) and with respect to services available outside of the ATS's regular trading hours, whether there are any differences between the services during the ATS's regular trading hours and outside of the ATS's regular hours. Part III, Item 4(a) of current Form ATS–N asks about hours of operations outside of regular trading hours, and Part III, Item 18 of current Form ATS–N asks about whether the ATS conducts trading outside of regular trading hours, and whether there are any differences between trading outside regular trading hours and trading during regular trading hours. The Commission is proposing to streamline and combine the current questions, and, recognizing that ATSs, including Communication Protocol Systems, may provide other services beyond ''conduct[ing] trading,'' to ask about ATS services available outside of the ATS's regular trading hours. The Commission believes that it is important for market participants and the Commission to understand when a Covered ATS operates, when trading interest can be entered, including when the ATS will accept trading interest outside of its regular trading hours, and whether any other ATS services are available outside the ATS's regular hours of operations.

To the extent that there are differences with respect to any services the Covered ATS provides during and outside of its regular trading hours, the Covered ATS must describe those differences. Similar to Item 17 (requesting differences between any closing session(s) and regular trading hours), a Covered ATS would be required to disclose differences between trading outside of its regular trading hours and during regular trading hours with respect to the relevant information disclosed in Part III Items, including, among others, order types and sizes, and trading facilities (Item 7), use of non-firm trading interest, and communication protocols and negotiation functionality (Item 8), segmentation and notice (Item 13), and display and visibility of trading interest (Item 15). Many of the disclosures discussed elsewhere in Form ATS–N will relate to the ATS's regular trading hours so the ATS can simply discuss any differences between trading during its regular hours and trading outside its regular trading hours in Part III, Item 4(c), if applicable.

e. Item 5: Means of Entry

Part III, Item 5 of Form ATS–N is intended to disclose the means that can be used to directly enter trading interest into the Covered ATS and any other means of entering trading interest into the ATS (*e.g.,* smart order router, algorithm, order management system, sales desk, direct market access, web-enabled system, or aggregation functionality). The Commission is proposing to revise Part III, Item 5 of Form ATS–N to include examples of means of entry that it believes may be relevant to Government Securities ATSs, as well as Communication Protocol Systems. These examples, which are not exhaustive, would include direct market access, web-enabled systems, and aggregation functionalities. Part III, Item 5 of Form ATS–N would require the Covered ATS to identify and explain means of entering trading interest, including whether the means are provided through the broker-dealer operator itself, through a third-party contracting with the broker-dealer operator, or through an affiliate of the broker-dealer operator,[573] and list and provide a summary of the requirements [574] for entering trading interest into the ATS through these means.

Based on Commission staff experience, trading interest may be submitted into the Covered ATS both directly and indirectly. A direct method of sending trading interest to an ATS, for example, may include the use of a direct market access platform or FIX protocol connection, which allows subscribers to enter trading interest into the ATS without an intermediary. An example of an indirect method of submitting trading interest to an ATS could include the use of a smart order

[571] *See infra* Section IV.D.5.i.

[572] The Commission is proposing to make minor changes to this Item in Form ATS–N to replace ''operation'' with ''operations'' and to clarify that ''regular trading hours'' refers to the ATS's regular trading hours.

[573] In Part III, Item 5(b), the Commission is proposing to make a minor revision to this Item and change the word ''indicate'' to ''including,'' so the Covered ATSs would identify and explain the means for entering trading interest, ''including'' who provides the means, rather than identify and explain the means for entering trading interest and ''indicate'' who provides the means. The Commission believes identifying and explaining the means for entering trading interest encompasses describing who is providing the means of entry, and for that reason, this revision would clarify what information this Item is requesting. The Commission is also proposing to add clarifying text to Part III, Item 5(b) of Form ATS–N (renumbered from Part III, Item 5(c) of current Form ATS–N) to more clearly contrast such question from Part III, Item 5(a). The question would read whether there are ''means of entering trading interest into the ATS not otherwise disclosed in Part III, Item 5(a)'' rather than asking whether there are any ''other means for entering orders and trading interest into the NMS Stock ATS.''

[574] Current Form ATS–N requires a summary of the ''terms and conditions'' for entering orders or trading interest into the ATS through these means. The Commission is proposing to revise the question to require a summary of the ''requirements'' for entering trading interest in the ATS. *See supra* note 543 and accompanying text.

router (''SOR''), algorithm or similar functionality, website, graphical user interface (''GUI''), aggregation interface, or front-end system. The means of entry into an ATS (*e.g.,* direct or indirect) could impact the speed with which a subscriber's trading interest is handled and potentially executed and could increase the risk of information leakage. Today, the government securities markets are not interconnected markets like those for NMS stocks and therefore SOR technology may not be applied in the same manner by broker-dealer operators of Government Securities ATSs as it may for broker-dealer operators of NMS Stock ATSs. The Commission believes, however, that similar functionality may be used to send or receive trading interest to and from a Government Securities ATS to reduce latency or send trading interest to markets with better prices for certain government securities, and to the extent it does, the ATS should be required to provide information about that functionality as required.

The Commission believes that the disclosures regarding the direct or indirect means of trading interest entry would inform market participants about the functionalities that their trading interest pass through on their way to the ATS and help them assess any potential advantages that trading interest sent through the broker-dealer operator may have as opposed to other methods used by other subscribers. A Covered ATS would be required to identify the functionality that directly connects to the ATS (*e.g.,* algorithm, GUI, aggregation interface) and, if present, any intermediate functionality that trading interest passes through on its way to the functionality that directly connects to the ATS.[575] Conversely, if ATS trading interest submitted through an algorithm is sent to another intermediate functionality, and then submitted to the ATS by that functionality, such information would need to be disclosed pursuant to this Item.[576]

The proposed disclosure requirements would only require the Covered ATS to ''list and provide a summary of the requirements for entering trading interest into the ATS'' through these sources. Therefore, the Covered ATS would not need to provide a detailed description of the programming of the indirect means for entering trading interest that could put the ATS at a competitive disadvantage with competitors. However, if, for example, an ATS ''throttled'' the number of messages allowed for a given type of connection, that information would be responsive to this Item.

Although the Commission is proposing to delete Part III, Items 5(b) and 5(d) of current Form ATS–N, which asks the Covered ATS to disclose whether the protocols required to be identified in Part III, Item 5 and the requirements for any means of entry are the same for all subscribers and the broker-dealer operator, a Covered ATS would be required to disclose such differences in Part III, Item 5 pursuant to the proposed instruction in Part III in Form ATS–N.[577] For example, a Covered ATS would be required to disclose any differences in the latency of the alternative means for entering trading interest into the ATS. The Commission understands that there might be different latencies associated with each alternative. For instance, in some cases, a direct connection to the ATS may have reduced latencies as compared to indirect means where trading interest passes through an intermediate functionality. A broker-dealer operator could also, for example, configure the ATS to provide reduced latencies for certain means of entry used by itself or its affiliates.[578]

The Commission also believes that it is important for subscribers to understand if a means of entry is provided by an affiliate, even if it does not provide an advantage to a particular entity.

Disclosures about a broker-dealer operator's use of its or an affiliate's direct or indirect functionality to enter trading interest into the Covered ATS are important to market participants to allow them to assess the potential for information leakage. The indirect means of access (*e.g.,* SOR or algorithm) may obtain information about subscriber trading interest that is sent to the ATS (and may now be resting in the ATS) and subscriber trading interest that is sent out of the ATS. The potential that an indirect means of accessing the Covered ATS could lead to leakage of subscribers' confidential trading information necessitates disclosure of certain information about the use of such indirect means to send subscriber trading interest in or out of the ATS. In addition, there may be instances where an ATS uses an intermediate functionality or entity as the means to bring together buyers and sellers or provide established methods (such as providing means to enter, display, communicate, or execute trading interest) and that intermediate functionality or entity would be considered part of the ATS for purposes of Regulation ATS and Form ATS–N.[579] For example, if the broker-dealer operator arranges for trading interest to be entered into the ATS by another party, the activities of that party with respect to the ATS would be subject to the disclosure requirements of Form ATS–N. Likewise, if an ATS is subject to the Fair Access Rule under Regulation ATS and its participants must use an entity other than the broker-dealer operator to enter or receive information about trading interest in the ATS, the ATS must establish reasonable written standards governing the granting, denial, or limitation of access to ensure that those participants are not treated in an unfair and unreasonably discriminatory manner by the entity.[580]

Request for Comment

113. Are there any means of entering trading interest into the Covered ATS where more or should be required to explain their operation? Are there any aspects of those means of entry that are particularly important?

f. Item 6: Connectivity and Co-Location

Part III, Item 6(a) of Form ATS–N would request information about whether the Covered ATS offers co-location and related services, and if so, would require a summary of the requirements for use of such services, including the speed and connection (*e.g.,* fiber, copper) options offered. Part

[575] If an intermediate application or functionality has access to information related to a subscriber's trading interest, the Covered ATS must take appropriate measures to protect the confidentiality of such information pursuant to Rule 301(b)(10) of Regulation ATS. If the ATS arranges for an intermediate application to be provided by another party, the Covered ATS's obligations under Rule 301(b)(10) would apply to the activities that that party is performing for the ATS and the ATS's written safeguards and procedures should be designed to protect subscriber confidential trading information with regard to that party.

[576] If a broker-dealer operator permits subscribers to send trading interest to the ATS by excluding all other trading venues from where such trading interest could be sent, this procedure in effect allows a subscriber to direct an order to the ATS and would be responsive to Part III, Item 5.

[577] *See supra* note 564 and accompanying text.

[578] Covered ATSs would not be required to calculate and disclose precise latencies for each means of entry for purposes of Form ATS–N.

[579] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38832 and 38844. Depending on the activities of the persons involved with the market place, a group of persons can together provide, constitute, or maintain a market place or facilities for bringing together purchasers and sellers of securities and together meet the definition of exchange. In such a case, the group of persons would have the regulatory responsibility for the exchange.

[580] *See* Regulation ATS Adopting Release, *supra* note 31, at 70873. *See infra* Section V.A.3.a.

III, Item 6(b) of Form ATS–N[581] would require a Covered ATS to indicate whether it provides any other means besides co-location and related services described in the Item 6(a) to increase the speed of communication with the ATS, and if so, to explain the means and provide a summary of the requirements for its use. Part III, Item 6(c) would require the Covered ATS to indicate whether it offers any means to reduce the speed of communication with the ATS and if so, to provide a summary of the requirements for its use.[582]

Latency is an important feature of trading in certain government securities and NMS stocks, and market participants are interested in understanding the functionalities employed by Covered ATSs to influence it.[583] The Item would require a summary of the requirements where a trading venue employs mechanisms to increase the latency or the length of time for trading interest or other information to travel from a user to the system. Users of co-location services can experience faster or slower connection speeds to a Covered 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 equalize connection speeds among subscribers, among others. Such differences in connection speed or latency would be required to be disclosed under Part III, Item 6. If, for example, the ATS offers means that would allow certain subscribers a competitive advantage, then the ATS should disclose such means on the Form ATS–N. The Commission believes that the information disclosed in Item 6 would help market participants understand their connectivity options to the ATS and expedite the order entry process for subscribers.

Request for Comment

114. Are there any aspects of the means for increasing or reducing the speed of communication with Covered ATSs that the Commission should specifically require under this Item?

g. Item 7: Order Types and Sizes; Trading Facilities

Part III, Item 7 of Form ATS–N is designed to disclose whether the Covered ATS provides trading facilities or sets rules for bringing together orders of buyers and sellers (*e.g.,* crossing system, auction market, limit order matching book, click-to-trade functionality). The request is intended to capture Covered ATSs that offer the use of firm trading interest and a trading facility or rules for buyers and sellers to interact and agree upon the terms of a trade. The Commission believes that systems that typically offer the use of orders and trading facilities and systems that offer the use of non-firm trading interest and communication protocols operate distinctively. Systems that offer the use of orders and trading facilities typically match orders of buyers and sellers pursuant to pre-determined rules programmed into an algorithm, while systems that offer the use of trading interest and communication protocols allow buyers and sellers to interact directly to find a counterparty and negotiate a trade. To facilitate market participants' understanding of these systems and their unique aspects, the Commission is proposing that Covered ATSs disclose information about the use of orders and trading facilities or rules in Part III, Item 7 and disclose the use of trading interest and communication protocols in Part III, Item 8. These questions would apply to both NMS Stock ATSs and Government Securities ATSs. If a Covered ATS provides both a trading facility and communication protocol (*e.g.,* provides both a limit order book and RFQ protocol), the Covered ATS would respond affirmatively to and explain the protocols separately under Items 7 and 8. To the extent the trading facility and Communication Protocol Systems interact in any way, the Covered ATS would explain that interaction in response to each question.

A Covered ATS that answers affirmatively to Part III, Item 7 of revised Form ATS–N would be required to explain the trading facilities and rules for bringing together the orders of buyers and sellers in the ATS. In this response, the ATS would be expected to disclose the information responsive to Part III, Items 7 (Order Types and Attributes), 8 (Order Sizes), and 11 (Trading Services, Facilities, and Rules) of current Form ATS–N. Based on Commission staff experience reviewing Form ATS–N filings, and particularly disclosures related to order types, order size, and the ATSs' rules, procedures, and facilities to bring buyers and sellers together, ATS are linked and intertwined. Allowing the Covered ATS to provide a narrative of these topics together in Part III, Item 7 of Form ATS–N would provide for more streamlined disclosures for market participants to understand and reduce redundancy. This proposed change would result in clearer, more readable narrative disclosures, and potentially reduce the burden to Covered ATSs of drafting repetitive disclosures in multiple responses in the form.

Part III, Item 7 of Form ATS–N would require that ATSs provide a description of each order type offered by the Covered ATS, and provide a list of items that the ATS should include in its description. To provide transparency to market participants, the Item would require a complete and detailed description of the order types available on the Covered ATS, their characteristics, operations, and how they are handled.[584] All market participants should have full information about the operations of order types available on a Covered ATS to comprehensively understand how their orders will be handled and executed in the ATS. Order types are a primary means by which users of a Covered ATS communicate their instructions to trade on an ATS. Given the importance, diversity, and complexity of order types, the Commission is proposing to require Covered ATSs to disclose the information called for by Part III, Item 7 on Form ATS–N.

Market participants should have sufficient information about all aspects of the operations of order types

[581] The Commission is proposing to re-number Part III, Item 6(c) of current Form ATS–N to Item 6(b) and Part III, Item 6(e) of current Form ATS–N to Part III, Item 6(c).

[582] To clarify that the Commission is soliciting information about any requirements the ATS imposes on subscribers or persons that submit trading interest to use co-location, related services, and other means to increase or reduce the speed of communication with the ATS, rather than the legal or contractual terms of such services, the Commission is proposing to replace the current requirement for a summary of the ''terms and conditions'' with ''requirements for use'' for such services in Part III, Items 6(a), 6(b), and 6(c). *See supra* note 543.

[583] *See* October 15 Staff Report, *supra* note 188, at 36–37; Treasury Request for Information, *supra* note 193, at 3928. *See also* Letter from Dan Cleaves, Chief Executive Officer, BrokerTec Americas, and Jerald Irving, President, ICAP Securities USA LLC, to David R. Pearl, Office of the Executive Secretary, Treasury Department, dated April 22, 2016 (''BrokerTec/ICAP Letter''), at 3–4, *available at https://www.treasurydirect.gov/instit/statreg/gsareg/ICAPTreasuryRFILetter.pdf;* Letter from C. Thomas Richardson, Managing Director, Head of Electronic Trading Service, Wells Fargo Securities, and Cronin McTigue, Managing Director, Head of Liquid Products, Wells Fargo Securities, to Treasury Department, dated April 21, 2016, at 6–7, *available at https://www.treasurydirect.gov/instit/statreg/gsareg/RFIcommentWellsFargo.pdf.*

[584] In the instruction to Part III, Item 7 of Form ATS–N, the Commission is proposing to make certain changes and clarify the examples provided in this Item regarding order types. Particularly, the Commission proposes to clarify the example provided regarding ''how price conditions affect the rank and price at which it can be executed'' by replacing ''it'' with ''the order type.'' In addition, the Commission is proposing to add ''store orders'' as an example of order types designed not to remove liquidity. The Commission recognizes that ''store orders'' may be more relevant to Government Securities ATSs than to NMS Stock ATSs.

available on a Covered ATS to understand how to use order types to achieve their trading objectives, as well as to understand how order types used by other market participants could affect their trading interest. A detailed description of order type characteristics would assist subscribers in better understanding how their orders would interact with other trading interest in the ATS. It also would allow market participants to see what order types could be used by other market participants, which could affect the probability, timing, and quality of their own executions. For example, if the time priority of a pegged order changes in response to changes in the reference price, that would affect the likelihood of execution for such an order. The Commission is also proposing to require that Covered ATSs disclose any order size requirements (*e.g.,* minimum or maximum size, odd-lot, mixed-lot, trading increments) and related handling procedures (*e.g.,* handling of residual trading interest) in Part III, Item 7 of Form ATS–N. This incorporates the requirements of Part III, Item 8 of current Form ATS–N, with modifications.[585] This information would inform subscribers about the permissible size of orders and trading interest that a subscriber could enter in the ATS. For example, if a Covered ATS has minimum or maximum order sizes, or a minimum increment size requirement for order modifications, those requirements and related handling procedures would be responsive to the Item. The Commission is also proposing to add the example of how residual or unexecuted orders are handled to the types of related handling procedures that a Covered ATS would be required to include in Part III, Item 7. Broker-dealer operators employ market access and risk management controls and procedures that prevent the entry of erroneous orders and orders that are above a subscriber's predetermined threshold. If order size requirements are imposed on subscribers as part of a risk management procedure, an explanation of those procedures as they relate to the ATS would be responsive to this Item. An explanation of how a Covered ATS's requirements and conditions related to the size of trading interest differ among subscribers and persons would also provide a market participant with information regarding how its trading interest would be handled in relation to other market participants.

Covered ATSs may offer the use of various types of trading facilities to bring together the orders of buyers and sellers and for such orders to interact. These types of systems would be disclosed in Part III, Item 7 of Form ATS–N. For example, many Covered ATSs bring together multiple buyers and sellers using limit order matching systems. Other Covered ATSs offer the use of 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.[586] Some Covered ATSs offer the 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. Certain Covered ATSs may use a voice system to bring together orders as well, or a combination of voice and electronic systems. Part III, Item 7, would require Covered ATSs to provide disclosure of how these facilities operate.

In addition, Part III, Item 7 would require a Covered ATS to disclose its rules and procedures under which orders interact and buyers and sellers agree upon the terms of a trade.[587] Form ATS–N sets forth a non-exhaustive list of such rules and procedures, which includes order interaction, priority,[588] pricing methodologies, allocation, matching, and execution of orders and other procedures for trading, such as price improvement functionality, price protection mechanisms, short sales, functionality to adjust or hedge orders, locked-crossed markets, the handling of execution errors, the time-stamping of messages and executions, and any conditions or processes for terminating a counterparty match.[589]

The Commission is also proposing that a Covered ATS disclose pricing methodologies used for each type of security traded by the ATS under Part III, Item 7.[590] For example, orders may be priced using spreads off a benchmark price, or spreads between two different maturities of a security. A Covered ATS may also restrict the allowable deviation from a benchmark price, or allow for indicative pricing of certain securities. If a transaction has more than one leg, the ATS may price both legs according to a price derived from one of the securities traded. In response to this request, a Covered ATS would be required to describe the ATS's procedures for determining all pricing methodologies and to the extent the pricing methodologies differ among subscribers and the broker-dealer operator, the ATS must disclose those differences.

In addition, Item 7 would require Covered ATSs to disclose how orders may interact with non-firm trading interest or separate trading functionalities within the ATS or offered by the broker-dealer operator. Item 7 would also require Covered ATSs to disclose the various procedures under which orders interact and match. Some Covered ATSs may offer price-time priority to determine how to match orders (potentially with various exceptions), while others may offer midpoint-only matching with time priority. Some Covered ATSs might also take into account other factors to determine priority. For example, a Covered ATS may assign either a lower or higher priority to an order entered by a subscriber in a certain class (*e.g.,* orders of principal traders or retail investors) or sent from a particular source (*e.g.,* orders sent by an algorithm or similar functionality) when compared to an equally priced order entered by a different subscriber or via a different source. Also, if applicable, the Item would require an explanation of which party to a trade would receive any price improvement depending on the priority, order type, and prices of the matched orders and the percentage of price improvement the party would receive. A broker-dealer operator could also act as the counterparty for each side of a transaction that matches on its ATS.

Pursuant to the proposed instruction at the beginning of Part III, Covered ATSs would be required to disclose any differences in treatment among subscribers, the broker-dealer, and other participants in the ATS as they relate to

[585] As discussed above, to streamline the format of responses, the Commission is proposing to consolidate current Form ATS–N Part III, Items 8(a) through (f) in Part III, Item 7 of revised Form ATS–N. The Commission believes that the information requested is the same, and the information requests covered by these sub-items (odd-lot orders and mixed-lot orders) would be covered in Part III, Item 7 of revised Form ATS–N.

[586] *See* Regulation ATS Adopting Release, *supra* note 31, at 70849 n.37.

[587] The Commission is proposing to add examples of functionalities used in the government securities market for which a Government Securities ATS would be required to explain the ATS's rules and procedures, if applicable.

[588] The Commission is making a non-substantive change to Part III, Item 7 of Form ATS–N to state that a Covered ATS would be required to disclose the order type's priority ''in relation to'' (rather than ''vis-à-vis'') other orders on the book due to changes in the NBBO or other reference price.

[589] This non-exhaustive list is the same as what is in current Form ATS–N, Part III, Item 11.

[590] Part III, Item 7 would require Government Securities ATSs and, to the extent applicable, NMS Stock ATSs, to describe any functionality to adjust or hedge orders.

the means and facilities for bringing together the orders of buyers and sellers.

Request for Comment

115. What are the most prevalent order types on Government Securities ATSs? Are there more important means than order types for subscribers to communicate the handling of their trading interest on Government Securities ATSs? Does Form ATS–N capture all of the means for subscribers of Government Securities ATSs to communicate the handling of their orders? Are there any aspects of order types on Government Securities ATSs that should be specifically addressed in the Item? If yes, please explain.

116. Are there any operations or procedures, either of an ATS or a broker-dealer operator, which could limit the entry, or size of, a subscriber's orders submitted to the ATS? If so, please describe these operations or procedures and explain why they are important to subscribers.

117. Are there any specific means or facilities used to bring together multiple buyers and sellers on Covered ATSs that should be specifically included as an example in this Item? Are there any rules and procedures that govern trading of government securities and repos that should be specifically included as examples in this Item?

h. Item 8: Use of Non-Firm Trading Interest; Communication Protocols and Negotiation Functionality

As discussed above, the proposed definition of ''exchange'' would include systems that make available the use of non-firm trading interest and communication protocols to bring together buyers and sellers of securities. Form ATS–N currently includes questions about NMS Stock ATSs' use of conditional order functionality and indications of interest,[591] which can be forms of communication protocols. Current Form ATS–N, however, does not contain comprehensive disclosure requests about systems that solely offer the use of non-firm trading interest and communication protocols because, as discussed above, such systems typically do not fall within the criteria of current Exchange Act Rule 3b–16(a) and, therefore, do not operate pursuant to the ATS exemption. The Commission is proposing to revise Part III, Item 8 to request information about the operations of these systems and the requests would be applicable to both NMS Stock ATSs and Government Securities ATSs. With respect to conditional orders and indications of interest, Part III, Item 8 of revised Form ATS–N incorporates and expands on the current disclosure requirements of Part III, Item 9 (Conditional Orders and Indications of Interest) and Part III, Items 7 (Order Types) and 8 (Order Sizes) of current Form ATS–N as they relate to conditional orders and indications of interest in the ATS.

Proposed Part III, Item 8 of revised Form ATS–N would require Covered ATSs to disclose whether they make available communication protocols for buyers and sellers to communicate non-firm trading interest, solicit interest to buy or sell a security, discover prices, find a counterparty, or negotiate a trade. Such systems could offer, for example, RFQ or workup protocols, stream axes, or conditional order functionalities.[592]

If the Covered ATS provides communication protocols and negotiation functionalities, it would be required to identify and explain the protocols and functionalities in the response to Part III, Item 8. The Commission believes that identifying and explaining these functionalities would provide transparency regarding how buyers and sellers can interact with each other on the system. This would require the Covered ATS to provide a narrative description of how participants in the ATS send and receive messages, how such messages interact, and the rules, procedures, and protocols governing the use of non-firm trading interest in the Covered ATS. To facilitate this disclosure, the Commission is proposing to include in Form ATS–N a description of the types of information that should be explained in this Item. The Commission recognizes, however, that each system operates differently and may offer unique protocols, and has designed Part III, Item 8 to allow ATSs the flexibility to provide a narrative response that will help market participants understand the protocols governing their systems.

First, the Covered ATS would be required to explain the use of messages in the ATS. Messaging is a primary tool by which Communication Protocol Systems bring together buyers and sellers. Use of messaging is critical to how buyers and sellers can use the system to find one another and negotiate a transaction. The Commission believes that ATSs offer diverse types of messaging that facilitate communication and negotiation, including non-firm trading interest that subscribers expose to other subscribers, communications that subscribers send to other subscribers to negotiate transactions, messages that subscribers use to communicate to the ATS how they want their trading interest to be handled, as well as messages the ATS sends to subscribers to communicate the presence of trading interest. The Commission believes that this information will help market participants understand how they can use messages in the ATS to interact with potential counterparties and to communicate how they want their trading interest to be handled by the ATS.

The Commission is proposing to provide a non-exhaustive list of what this explanation would include, as applicable to the Covered ATS's protocols and functionalities. The Covered ATS would be required to describe and explain each type of message the ATS permits participants to send and receive and the types of persons that can send and receive each type of messages (*e.g.,* the ATS, types of subscribers, specific subscribers, customers of subscribers, trading venues). The ATS would also be required to disclose the information contained in messages (*e.g.,* symbol, price, direction (*i.e.,* buy or sell), or size minimums) and any other information that a participant may choose to include in a message. If terms in messages can vary based on potential recipients (*e.g.,* different subscribers may receive varying priced messages for the same security), the Covered ATS would be required to disclose that.

The Commission is proposing that the Covered ATS disclose whether messages are attributed to their sender or anonymous, and whether a subscriber may elect to disclose its identity to other participants, and if so, what is disclosed and how, when, and to whom. The Commission understands that some Communication Protocol Systems allow participants to negotiate trades on an attributed basis so that certain counterparties may know the identity of other counterparties pre-trade. In some cases, subscribers on the ATS have established relationships and may choose to share their identity with a pre-selected list of potential counterparties or potential counterparties that meet certain criteria. Even while the subscriber discloses its identity to others, the identity of potential counterparties may be either known or anonymous. The Covered ATS would be required to describe when, and under what conditions, the subscriber or the

[591] Part III, Item 9 of current Form ATS–N asks about conditional orders and indications of interest. Part III, Item 8 of current Form ATS–N asks about order sizes. The Commission is proposing to incorporate the requirements of Part III, Item 8 into Part III, Items 7 and 8. In addition, the Commission is proposing to incorporate the requirements in Part III, Item 9 of current Form ATS–N in Part III, Item 8 of revised Form ATS–N.

[592] *See supra* Section II.B.2.

ATS discloses subscribers' identities and how and when messages are transmitted (*e.g.,* order management system, router, or FIX).

The Covered ATS would be required to describe the processes to respond to a message and any parameters around such responses. In the Commission's experience, on negotiation systems, a subscriber or the Covered ATS makes known the existence of trading interest or an interest in negotiation, and potential counterparties have the opportunity to respond. For example, a Covered ATS would be required to explain how the sender of a message would ''firm-up'' a conditional or other non-firm message to execute a trade. The ATS would also be required to describe the processes to respond to a request to negotiate, and for subscribers who initiate an RFQ to respond to any responses. In addition, if the ATS permits the initiating party or respondents a final opportunity prior to execution to accept or reject the price after the negotiating parties agree to a trading price (*i.e.,* a ''last look''), the ATS must describe such processes.

Part III, Item 8 would require the Covered ATS to describe any time parameters that the ATS sets or permits subscribers to set regarding sending and receiving messages. This would include time-in-force restrictions that a subscriber may place on trading interest in a message (*e.g.,* fill-or-kill, day, good-til-cancel). This would also include time parameters for updating prices or responding to trading interest or requests for negotiation applicable during any negotiation process. In the case of an RFQ, subscribers may provide a specific price with a ''wire time'' during which such price is actionable. Any parameters around such wire times would be required to be disclosed by the Covered ATS. Additionally, if the Covered ATS requires that a subscriber firm-up its conditional orders within, for example, three seconds of receiving a response, the Covered ATS would be required to state so. Any time parameters within which an initiator of a message would have to respond to responses to its messages would also be disclosed under Part III, Item 8.

The Covered ATS would also be required to provide information regarding the contra-party trading interest made available or known on the system, including whether a subscriber may elect whether to display only part of its trading interest. The instruction in Part III, Item 8 would state that, if trading interest is made known on the system, the ATS would be required to describe it in Part III, Item 15. Part III, Item 8 of Form ATS–N would also require a description of the circumstances under which messages may be modified, replaced, canceled, rejected, or removed from the Covered ATS. The Covered ATS would also be required to describe any restrictions or conditions under which the message might result in the match of two counterparties, require a response, or result in an execution in the Covered ATS (*e.g.,* interaction, matching, selection, automatic execution) and any price conditions (*e.g.,* how price conditions affect the rank and price at which the message can result in an execution).

The Covered ATS would also be required to describe the limits or requirements for multiple messages sent at the same time. For example, if the Covered ATS prohibits a subscriber from entering non-firm trading interest to buy and sell the same bond or security at the same time, entering the same price for a buy and sell order in the same bond (*i.e.,* a locked market), or entering a lower-priced sell order than the buy order (*i.e.,* inverted market), it should disclose these. In addition, the ATS would be required to state whether a message containing trading interest is eligible to be sent to destinations outside the Covered ATS, and if so, describe it in Part III, Item 16. The Covered ATS would also be required to disclose information about the availability of message types across all forms of connectivity to the ATS. To the extent there are differences in the availability of message types across forms of connectivity, the ATS would need to describe those differences.

A Covered ATS would also be required to disclose, with respect to non-firm trading interest, any requirements relating to the size of trading interest (*e.g.,* minimum or maximum size, odd-lot, mixed-lot, trading increments, message controls or throttling). This would include the requirements of Part III, Item 8 of current Form ATS–N, and also include examples of limitations, such as message controls or throttling, that the Commission understands a negotiation system, for example, may use to limit the number of messages sent by a subscriber. The Covered ATS would also be required to disclose any related handling procedures, such as, for example, the handling of residual trading interest after an execution on the ATS (*e.g.,* whether it is canceled or remains in the system).

In addition, in its response to Part III, Item 8, the Covered ATS would also be required to disclose in its response the procedures governing communication protocols. These requirements are currently incorporated in Part III, Item 11 of current Form ATS–N. Requiring information about such procedures would provide transparency into how buyers and sellers may interact, and how non-firm trading interest may interact with other trading interest in the ATS. The Commission is proposing to require disclosure of how Covered ATSs prioritize and permit their subscribers to prioritize trading interest, to provide information that market participants can use to choose an appropriate venue at which they can interact with other subscribers or send trading interest. As applicable, the Covered ATS would be required to provide in Part III, Item 8, a description of priority applied to a message upon entry and any subsequent change to priority (if applicable, whether and when the message can receive a new time stamp, the message's priority in relation to other messages in the Covered ATS due to a change to any reference price, and any instance in which a message could lose execution priority to a later arriving message at the same price); whether the Covered ATS permits or provides for subscribers to vary pricing based on the identity of other subscribers (*e.g.,* preferred pricing feeds or tiered pricing); and whether subscribers can select counterparties based on their identity or other factors. If a Covered ATS allows subscribers complete discretion to, for example, select which counterparty to interact with when the prices such counterparties offer are the same, the Covered ATS would be required to disclose that.

In addition, Part III, Item 8 would require a Covered ATS to disclose its rules and procedures under which buyers and sellers interact and agree upon the terms of a trade. Based on Commission staff experience, ATSs disclose various methods, rules, and conditions under which subscribers may interact using trading interest. Form ATS–N would provide a non-exhaustive list of such rules and procedures, which includes those for participant interaction, pricing methodologies, allocation, matching, and execution. This question is designed to provide transparency to those diverse methods, rules, and conditions so that market participants better understand how the ATS will handle non-firm trading interest and how subscribers may interact with others in the ATS. If the Covered ATS auto-executes non-firm trading interest, the ATS would also be required to disclose the functionality or protocols governing such auto-execution. The

Covered ATS would be required to disclose, for example, how the ATS or a subscriber can designate trading interest as automatically executable. Any limitations that subscribers may impose on auto-execution would be responsive to such request.

The Covered ATS would also be required to discuss in Part III, Item 8 how non-firm trading interest may interact with orders or separate trading functionalities in the ATS or functionality offered by the broker-dealer operator. For example, if an IOI can interact with a firm order on the Covered ATS's order book, it should disclose this and any policies and procedures for such interaction. To the extent that the Covered ATS has disclosed this in Part III, Item 7 in its discussion of how firm orders can interact with non-firm trading interest, the ATS should describe how the non-firm trading interest may interact with firm trading interest and may cross-reference the disclosure in Part III, Item 7.

In the Commission's experience, ATSs have adopted other trading procedures governing interaction and execution. The Commission is proposing to include examples of such procedures governing communication protocols that would be required to be disclosed. This would include functionality or protocols that permit the selection of displayed non-firm trading interest to trade against. In the Commission's experience, negotiation systems may allow subscribers to choose the trading interest they interact with; any procedures governing such selection should be disclosed in Part III, Item 8. In addition, the Commission believes that market participants would benefit from transparency regarding procedures that could re-price trading interest or prevent it from interacting with other trading interest under certain conditions. Accordingly, the Form ATS–N would provide a non-exhaustive list of procedures that includes price improvement, price protection mechanisms, procedures related to short sales, functionality to adjust or hedge trading interest, locked-crossed markets, the handling of execution errors, platform and trade controls (*e.g.,* fat finger checks, whether the ATS can employ a global kill switch), the time-stamping of trading interest messages and executions, and any conditions or processes for terminating a counterparty match.

In addition, the Covered ATS would be required to disclose what information is available to subscribers from the ATS about interaction history, counterparty matching, or executions (*e.g.,* pre- and post-trade data, best execution analysis, transaction cost analysis), when such information is made available, the source(s) of such information, and the process for subscribers to access this information. The Commission believes that requiring such information would allow market participants to better assess the information that Covered ATSs provide, including allowing them to analyze or evaluate their performance, resolve potential disputes, and/or understand how their trading interest has historically interacted and been treated in the ATS, among other things.

Request for Comment

118. Are there any aspects of how Covered ATSs permit non-firm trading interest to be sent and/or received that are not covered by this Item? Are there any aspects of how subscribers interact with each other on Covered ATSs by using non-firm trading interest that are not covered by this Item? What information about non-firm trading interest and the process for transmitting non-firm trading interest would be useful to market participants?

i. Item 9: Monitoring and Surveillance of the ATS Market

The Commission is proposing that Part III, Item 9(a) of Form ATS–N require a Covered ATS to disclose information about the activities the ATS undertakes to supervise the trading activity that occurs on or through the ATS (*e.g.,* supervisory systems and procedures to detect, deter, or limit potentially disruptive, manipulative, or non-bona fide quoting and trading activities that occur on or through its system and to ensure that they are reasonably designed to achieve compliance with applicable SRO rules and the Federal securities laws) and to provide a summary of any supervision activities that occur on or through the ATS, the sources of data the ATS uses to supervise trading activity (*e.g.,* internal or external sources), and the activities that the ATS intends to detect, deter, or limit.

As a registered broker-dealer, an ATS must comply with the filing and conduct obligations associated with being a registered broker-dealer, including becoming a member of an SRO, such as FINRA, and compliance with SRO rules.[593] Accordingly, ATSs must comply with SRO rules which, among other things, require each member to maintain a reasonably designed supervisory system.[594] For example, FINRA states it expects an ATS's supervisory system to be reasonably designed to identify ''red flags,'' including potentially manipulative or non-bona fide trading that occurs on or through its systems, and that ATSs must regularly assess and evaluate their supervisory systems and procedures to ensure that they are reasonably defined to achieve compliance with applicable FINRA rules and the Federal securities laws.[595] The Commission believes that the information disclosed in response to this request would help market participants understand the scope of supervision activities that an ATS performs to mitigate potentially manipulative and non-bona fide trading that occurs on or through its system. This information could also help regulators, including the Commission and FINRA, to assess the extent to which an ATS's supervision procedures are designed to facilitate investor protection over activities occurring in the ATS and comply with the applicable rules, including the Exchange Act and FINRA rules.

The Commission is proposing Part III, Item 9(b) of Form ATS–N to request disclosures about whether the ATS monitors for certain types of trading behaviors or activities that may be detrimental to the ATS market place or trading (*e.g.,* anti-gaming technology) and, if so, to provide a summary of the ATS's monitoring activities and the trading behaviors and explain the

[593] 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. 78o(b)(8).

[594] *See* Regulatory Notice 18–25, ATS Supervision Obligations, August 13, 2018, *available at https://www.finra.org/sites/default/files/Regulatory-Notice-18-25.pdf* (''FINRA Regulatory Notice'') at 3. In addition, FINRA Rule 3310 requires FINRA members to, among other things: Establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations, and FINRA rules; establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of associated persons that are reasonably designed to achieve compliance with applicable securities laws, regulations, and FINRA rules; conduct a review, at least annually of the businesses in which it engages reasonably designed to assist the member in detecting and preventing violations of, and achieving compliance with, applicable securities laws, regulations, and FINRA rules and retain a written record of the date upon which each review and inspection is conducted; and include in its supervisory procedures a process for the review of securities transactions that are reasonably designed to identify trades that may violate the provisions of the Exchange Act, the rules thereunder, or FINRA rules prohibiting insider trading and manipulative and deceptive devices that are effected for certain accounts. *See* FINRA Rule 3310.

[595] *See* FINRA Regulatory Notice, *supra* note 594, at 3.

activities that the ATS intends to detect, deter, or limit. In the NMS Stock ATS Adopting Release, the Commission described that, in response to the proposal of Form ATS–N, commenters requested that information about the monitoring activities the ATS performs be included in Form ATS–N.[596] One commenter suggested that disclosure of certain additional trading services should be required, specifically whether the ATS employs technology designed to detect and deter price manipulation and other disruptive trading practices (*i.e.,* anti-gaming technology), and, if so, the ATSs should include a description of this technology in the form.[597] This commenter stated that existence of such technology can increase market confidence, particularly for market participants that transact in large volumes, such as funds, because it shows that a trading venue is committed to providing a fair and competitive market.[598] This commenter further stated that funds currently have no mechanism to receive standardized information regarding anti-gaming technology or to compare anti-gaming technology across different ATSs.[599] Another commenter stated 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.[600]

The Commission, however, declined to adopt a request related to anti-gaming technology and subscriber-related safeguards at that time because such descriptions made in a publicly available document could serve to undermine those safeguards by disclosing information that makes evading those safeguards easier.[601] However, the Commission is now proposing this requirement because it believes that market participants would want to know how the ATS may monitor for certain trading behaviors or activities that may be detrimental to the ATS market place or to the participants that use the ATS's services. In addition, the information would help market participants determine which ATSs provide better market quality that the market participants would be more inclined to effect transactions on. In the Commission staff's experience reviewing Forms ATS–N filed by NMS Stock ATSs, some NMS Stock ATSs have described information about their surveillance procedures and other safeguards, which allow market participants to understand their practices, while avoiding the level of detail that would help enable market participants to evade them. Accordingly, the Commission believes that the requests for information proposed would not serve to undermine the ATS's surveillance and monitoring activities because the Commission is requesting summary level information, which would strike the right balance in requiring these important disclosures and avoiding the risk that market participants could use the disclosures on Form ATS–N to evade such tools and controls.

Request for Comment

119. Would requiring summary disclosure regarding the Covered ATS's anti-gaming technology and similar safeguards benefit market participants? What other information regarding monitoring and surveillance of activity in the ATS would be beneficial? Does the proposed summary disclosure strike the right balance in providing disclosure and avoiding the risk that market participants could use the disclosures to evade the ATS's tools and controls?

j. Item 10: Opening and Reopening

Part III, Item 10 of Form ATS–N is designed to provide information about the use of any special processes and procedures related to matching trading interest 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 Commission believes that this disclosure requirement is important because market participants would likely want to know about any special opening or reopening processes, including which types of trading interest can participate in the opening or reopening processes or whether there are any protocols at the open for buyers and sellers to send messages and negotiate a trade. To capture processes related to sending, receiving, and viewing trading interest for communication protocols and negotiation systems, the Commission is proposing to specify in Part III, Item 10 that the ATS should disclose when and how trading interest may be sent, received, and viewed at opening, how unexecuted trading interest is handled at the time the ATS begins its regular trading hours or following a stoppage of trading in a security during its regular trading hours, and whether there are any protocols at the open for buyers and sellers to send messages and negotiate a trade.

Based on Commission staff experience with Form ATS–N filings, the Commission is proposing to amend Form ATS–N to incorporate the requirements of Part III, Item 10(c) of current Form ATS–N with the requirements of Part III, Item 10(a). In its experience, the Commission observed significant overlap in the responses to Part III, Item 10(a), which asks about how the ATS opens or re-opens after stoppage, and Part III, Item 10(c), which asks how unexecuted trading interest is handled at the start of regular trading hours or following a stoppage, as the treatment of unexecuted trading interest is an integral part of an ATS's opening and re-opening procedures. Because of this overlap, some NMS Stock ATSs repeat the disclosures in both current Form ATS–N Part III, Items 10(a) and (c). To streamline the disclosure and reduce redundancy, the Commission is proposing to specify in Part III, Item 10(a) of revised Form ATS–N that the Covered ATS describe how unexecuted trading interest is handled at the time the ATS begins its regular trading hours or following a stoppage of trading in a security during its regular trading hours, and to delete the separate disclosure requirements of Part III, Item 10(c) of current Form ATS–N.

Information about when the Covered ATS will price and prioritize trading interest during the opening or reopening of the ATS would 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 processes or procedures to match trading interest to set a single opening or reopening price to maximize liquidity and accurately reflect market conditions at the opening or reopening of trading. For trading interest allowed to be submitted before an ATS opens for trading, the Item 10(b) would require an explanation of what priority rules would apply to that trading interest.[602] The Commission believes most participants consider important the procedures for the pricing and priority of trading interest, and the

[596] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38850.

[597] *See* Letter from David W. Blass, General Counsel, Investment Company Institute, dated February 25, 2016, at 9–10.

[598] *See id.*

[599] *See id.*

[600] *See* Letter from Phillip S. Gillespie, Executive Vice President, General Counsel, State Street Global Advisors, dated February 26, 2016 at 2–3. *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).

[601] *See* NMS Stock ATS Adopting Release, *supra* note 2, 83 FR 38850.

[602] The Commission is renumbering Part III, Item 10(e) of current Form ATS–N as Part III, Item 10(b) in revised Form ATS–N. The Commission also proposes to clarify in Item 10 that ''regular trading hours'' refer to the ATS's regular trading hours.

types of trading interest allowed because these rules and procedures can directly impact their execution price. The disclosures are also designed to provide information to subscribers about when they may use the systems to send or receive messages or view trading interest at the open or reopen, and the status of any messages or orders that may be pending before the ATS opens or reopens.

Request for Comment

120. Do Government Securities ATSs have any special opening and reopening processes and procedures around Treasury auctions? If so, do commenters believe there any aspects of the opening and reopening processes for Treasury auctions that should be specifically addressed in this Item?

k. Item 11: Interaction With Related Markets

Proposed Part III, Item 11 of Form ATS–N is designed to provide information about any functionality, procedure or protocol used to facilitate trading or communication on, or source pricing for, the Covered ATS that is offered by the broker-dealer operator or its affiliates [603] using markets for financial instruments related to the securities it trades (''Related Markets''). In the 2020 Proposal, the Commission proposed to add a similar question to Form ATS–G; the Commission is now proposing to add this question to Form ATS–N and to make it applicable to both Government Securities ATSs and NMS Stock ATSs. Markets for financial instruments related to government securities could include those non-government securities markets that trade futures, currencies, fixed income, and swaps, for example. Markets for financial instruments related to NMS stocks could include, for example, non-NMS stock markets that trade futures, options, and swaps. If applicable, the Covered ATS would: (1) Identify the functionality, procedures, protocols, and source of pricing and the Related Market; (2) state whether the functionality, procedures, protocols, and source of pricing is provided or operated by the broker-dealer operator or its affiliate, and whether the Related Market is provided or operated by the broker-dealer operator or its affiliate; (3) explain the use of the functionality, procedures, protocols, and source of pricing with regard to the Related Market and the ATS, including how and when the functionality, procedures, protocols, and source of pricing can be used, by whom, and with what markets.

The functionalities, procedures, or protocols required to be disclosed would include, for example, offering order types to facilitate transactions in the ATS and the Related Market, procedures to allow subscribers to perform multi-leg transactions involving another market and the ATS, or a protocol to allow a subscriber to communicate with other persons to negotiate a trade including, for example, a government security and non-government security. A Covered ATS could offer, for example, Exchange-for-Physical (''EFP'') transactions that can involve markets in addition to the ATS. An EFP transaction where ATS subscribers agree to exchange a financial product, such as a futures contract on a government security, for the underlying related government security or NMS stock, would be responsive to this Item. The Commission believes that it would be important to participants to understand functionality, procedures, and protocols made available to them, as they can impact their experience in the ATS.[604]

Information about how the ATS uses market data from a Related Market, through an aggregator or otherwise, to provide the services it offers would also be required by the form.[605] Among other things, for example, the ATS would need to disclose in response to this Item its use of such market data to display, price, prioritize, execute, and remove trading interest in the ATS.[606] As part of this explanation, the ATS would specify, if applicable, when the ATS may change sources of market data to provide its services. In response to proposed Part III, Item 11 of Form ATS–N, the ATS would explain how, for example, market data from a Related Market is received by the ATS, compiled, and delivered to the matching engine. For example, among other possible arrangements, the ATS could explain that market data from a Related Market is received and assembled by the broker-dealer operator, 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. The ATS would disclose, for example, whether it uses market data from the futures market to price and execute EFP transactions and describe how it uses that market data under this Item.

A broker-dealer operator's activities in financial instruments related to the securities that the ATS trades or offerings of a Related Market, such as a futures exchange, along with its operation of an ATS, raise the potential for information leakage of a subscriber's confidential trading information, or the broker-dealer operator could provide certain advantages to subscribers that use a Related Market that it operates. As such, Item 11 would require information about whether the functionality, protocols, procedures, and source of pricing on the Covered ATS or the Related Markets are provided or operated by the broker-dealer operator or its affiliates.

Request for Comment

121. What are commenters' views on the relationship between markets for government securities and Related Markets and between markets for NMS stocks and Related Markets and how investors may use these markets together with a Covered ATS to achieve their trading objectives?

122. What aspects of government securities markets or NMS stock markets and Related Markets, such as the futures markets, do market participants use for trading on a Covered ATS? What information about those markets might be useful to a subscriber and why?

l. Item 12: Liquidity Providers

Part III, Item 12 of Form ATS–N is designed to disclose information about arrangements with liquidity providers. Like national securities exchanges,[607] ATSs might engage firms to provide liquidity on both sides of the market. The Commission has observed that the overwhelming majority of registered national securities exchanges have structured programs for market makers, which generally set forth both obligations (*e.g.,* continuous quoting at or within the NBBO) and often, some benefits (*e.g.,* fee rebates). Similarly, a Covered ATS may want to ensure that there is sufficient contra-side liquidity

[603] Among other things, services to facilitate trading or source pricing for the Government Securities ATS using non-government securities markets that are offered by a third-party by arrangement with the broker-dealer operator or affiliates would also be required to be disclosed under this Item.

[604] To the extent that a Government Securities ATS offers a functionality, procedure, or protocol using a market for government securities (*e.g.,* trading venue for U.S. Treasury Securities or options) or an NMS Stock ATS offers a functionality, procedure, or protocol using a market for NMS stocks, the Covered ATS would disclose information about that functionality, procedure, or protocol in Part III, Item 11 of Form ATS–N.

[605] If a Covered ATS uses market data from another market that trades government securities, that information would be disclosed under Part III, Item 22 of revised Form ATS–N.

[606] Disclosure of any market data used by the Covered ATS, including market data for options and repos on government securities, would be required under Part III, Item 22 of Form ATS–N.

[607] *See, e.g.,* NYSE Guide Rule 104 (Dealings and Responsibilities of DMMs), Nasdaq Rules Equity 2, Section 5 (Market Maker Obligations).

available in the ATS in a particular security to incentivize market participants to send trading interest in that security to the ATS. To do this, the ATS may engage certain market participants to quote in a security or trade against orders in the Covered ATS, performing similar functions to a market maker on a national securities exchange.[608]

To the extent that a Covered ATS and a participant have entered into an arrangement under which that participant undertakes obligations to display, enter, or trade against trading interest on the Covered ATS, the Commission believes that market participants should know both the terms and conditions of such an arrangement and the identity of the liquidity-provider ATS participant. Form ATS–N currently requires an ATS to disclose the terms and conditions of an arrangement with a liquidity provider and the names of any liquidity providers that are either business units of the broker-dealer operator or affiliates of the broker-dealer operator.[609] When it adopted Form ATS–N, the Commission explained that it was requiring disclosure regarding liquidity providers because it believed that market participants would want to know the identity of such liquidity providers to help evaluate potential conflicts of interest or information leakage on the trading platform.[610] The Commission now believes that the names of all liquidity providers should be disclosed to evaluate potential conflicts of interest and the potential for information leakage. Specifically, if a participant is obligated to provide contra-side liquidity and, for example, derives a particular benefit in exchange for undertaking such an obligation, the Commission believes that other users of the ATS should know who that liquidity provider is, how it is expected to trade in the ATS, and the benefit that it is receiving. This disclosure would be similar to Exhibit M of Form 1, which requires national securities exchanges to publicly disclose, among other things, the identity of all market makers and liquidity providers. The Commission believes it appropriate to require a similar level of disclosure for Covered ATSs with regard to the identity of market makers and liquidity providers, given the sizable market share of such entities in their respective sectors.

Additionally, the Commission believes that information about liquidity providers would be useful to ATS 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 Covered ATS. 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. This Item could cover, for example, arrangements or agreements between the broker-dealer operator and another party to quote or trade on the Covered ATS. The Item does not cover agreements with a subscriber that has no obligation to buy or sell securities in the ATS. Furthermore, to obtain disclosures about activity on Communication Protocol Systems, the Commission is proposing to revise Part III, Item 12 of Form ATS–N, which asks about whether there are arrangements to ''provide'' orders and trading interest, and, instead, to ask about arrangements to ''display, enter, or trade against'' trading interest.

Accordingly, the Commission is proposing that Part III, Item 12 require a Covered ATS to disclose any formal or informal arrangements with any person[611] or the broker-dealer operator to display, enter, or trade against trading interest in the ATS (*e.g.,* undertaking to buy or sell continuously or to meet specified thresholds of trading or quoting activity). This will be in the form of a ''yes'' or ''no'' question, and if the ATS answers yes, it must both identify the liquidity provider(s) and describe the arrangement(s), including the terms and conditions.

Request for Comment

123. Are there any arrangements between Covered ATSs and persons to provide trading interest to the Covered ATS that may not be required by this Item but should be? If any, what is the nature of those arrangements, and why are they important to disclose publicly on Form ATS–N?

124. Should Covered ATSs be required to identify liquidity providers on Form ATS–N? Please explain why or why not, including any advantages or disadvantages resulting from this disclosure.

m. Item 13: Segmentation; Notice

Part III, Item 13(a) of Form ATS–N is designed to disclose information about how trading interest in the Covered ATS is segmented into categories, classifications, tiers, or levels. The Covered ATS would be required to explain the segmentation procedures, including how and what trading interest is segmented. The Commission is proposing to add in Item 13(a) of Form ATS–N a requirement to explain where the identification of segmented trading interest is applied (*e.g.,* when ATS trading interest is received by the broker-dealer operator or entered into the ATS). From the Commission's experience, systems may segment trading interest when trading interest enters through the broker-dealer (from the SOR or similar functionality), or when the trading interest is entered into the ATS. The Commission believes subscribers would want to understand where their trading interest is segmented so they can assess who is making the decisions about how their trading interest will be categorized when entered into the ATS and the level of protections their confidential trading information will receive. The Covered ATS would also be required to identify and describe any categories, classifications, tiers, or levels and the types of trading interest that are included in each and provide a summary of the parameters for each segmented category and length of time each segmented category is in effect. The Commission is proposing to add to Item 13(a) that the parameters for each segmented category would include when such category is determined, reviewed, and can be changed. Item 13(a) also requires disclosure of any procedures for overriding a determination of segmented category and would require how segmentation can affect trading interest interaction.

This Item is designed to provide market participants with an understanding of the categories of trading interest or types of participants with which they may interact. In addition, the information provided would allow them to both assess the consistency of a segmented group and determine whether the manner in which the trading interest is segmented comports with their views of how

[608] These liquidity providers may quote in a particular security in 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.

[609] *See* Part II, Items 1(c) and 2(c) of Form ATS–N.

[610] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38829.

[611] The Commission is proposing to change the current requirement to disclose arrangements with any ''Subscriber'' to display, enter, or trade against trading interest in the Covered ATS to require disclosure of any such arrangements with any ''persons.'' In the Commission's experience, arrangements to display, enter, or trade against trading interest in a Covered ATS may include arrangements with subscribers, non-subscriber participants who submit orders through a subscriber or the broker-dealer operator, and persons controlling subscribers or participants to the ATS. The Commission is therefore proposing to revise the rule text by using the term ''person'' to capture arrangements with non-subscribers that could impact order flow on the ATS.

certain trading interest should be categorized. Disclosure of the procedures and parameters used to segment categories would allow a participant to determine whether its view of what constitutes certain trading interest it wants to seek or avoid is classified in the same way by the Covered ATS. For example, a subscriber may find it useful to understand the standards a Covered ATS uses to categorize high frequency trading firms so that it can compare the criteria used by the ATS with its view of what constitutes a high frequency trading firm, and thus be able to successfully trade against or avoid such trading interest. Similarly, information regarding the procedures applicable to trading among segmented categories would allow market participants to evaluate whether they can successfully trade against or avoid the segments of trading interest. In response to the question regarding segmentation on previously-proposed Form ATS–G in the 2020 Proposal, one commenter stated that, as the fixed income market structure continues to develop, types of segmentation options may occur in Government Securities ATSs and should be disclosed.[612]

Some Covered ATSs segment trading interest entered in the ATS according to various categories for purposes of trading interest interaction. For example, a Covered ATS could elect to segment trading interest by type of participant (*e.g.,* buy-side or sell-side firms, PTFs, agency-only firms, firms above or below certain assets under management thresholds). When segmenting trading interest in the ATS, a Covered ATS might look to the underlying source of the trading interest such as the trading interest of retail customers. Some Covered 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. Covered ATSs might use some combination of these criteria or other criteria altogether. The ATS might use these segmented categories to design its trading interest interaction rules, allowing only trading interest from certain categories to interact with each other.

The Commission recognizes the concern that describing the precise criteria used by the ATS to segment trading interest could result in gaming of those criteria by subscribers and thus reduce the effectiveness of segmentation as a control. On the other hand, market participants are interested in understanding how their trading interest is categorized in the ATS and the types of market participants that would interact with its trading interest. The Commission believes that Part III, Item 13 of Form ATS–N appropriately balances these competing interests by soliciting a *summary* of the parameters for each segmented category. By requiring Covered ATSs to provide a summary of these parameters on Form ATS–N, rather than a detailed analysis of the parameters and how they are calculated, this Item is designed to avoid responses that could allow the gaming or manipulation of segmentation criteria.

Based on the Commission's experience, systems that offer RFQs or BWIC protocols that bring buyers and sellers together to negotiate may apply filtering technology to allow participants to more easily search for securities with particular characteristics that comport with the participants' needs or exclude securities that do not meet the participants' needs. They may also offer counterparty filtering that prevents transactions between certain participants (*i.e.,* potential counterparties) by prohibiting views of either party's inventory by the other party. Such systems may also implement permissioning procedures for subscribers to be able to view trading interest of certain other subscribers. The Commission believes that market participants would benefit from understanding how a Covered ATS controls the counterparty interest that they, and their potential counterparties, can view and interact with, and accordingly, the Commission is proposing to add new Part III, Item 13(b), which would ask if the ATS, in the absence of subscriber direction, can prevent a participant or its potential counterparties from viewing or interacting with certain trading interest (*e.g.,* permissioning, filtering, or blocking).[613] An ATS that has such controls would be required to explain the processes, including what a subscriber or counterparty is prevented from viewing or interacting with and where this determination is made (*i.e.,* when trading interest is received at the broker-dealer operator or the ATS); how and when the ATS prevents a subscriber or its potential counterparty from viewing or interacting with certain trading interest; any categories, classifications, tiers, or levels, and the types of trading interest that the ATS uses to determine how subscribers can view or interact with other trading interest; a summary of the parameters for such processes and the length of time any such parameter is in effect; any procedures for overriding a determination of any category, classification, tier, or level that the ATS uses to designate how subscriber trading interest can interact; how such processes can affect trading interest interaction; and how a subscriber can view filtered messages and any permissioning process and criteria for a subscriber to send, receive, or interact with a message.

The Commission believes that market participants will benefit from transparency regarding protocols that Covered ATSs use to limit in any way the trading interest that certain subscribers can view or interact with based on the identity of the counterparty. The Commission recognizes that RFQs and similar systems may establish protocols to block or filter participants from viewing or interacting with the trading interest of certain potential counterparties. The Commission is thus proposing to clarify in Part III, Item 13 of Form ATS–N that the scope of the question would extend to ATS protocols involving the ATS filtering or blocking trading interest.

Part III, Item 13(c) would address whether the ATS identifies trading interest entered by a customer of a broker-dealer as customer trading interest. Disclosing the origin of customer trading interest of a broker-dealer could be a form of segmentation because it can facilitate users restricting their trading to only certain types of market participants and it can contribute to information leakage and adverse selection of trading interest of institutional investors, who generally trade passively. Accordingly, Part III, Item 13(c) would require a Covered ATS to disclose if it identifies trading interest entered by a customer of a broker-dealer in the ATS as customer trading interest.

In addition, in Part III, Item 13(d) of Form ATS–N, the ATS would be required to state whether it discloses to any person the designated segmented or otherwise designated category, classification, tier, or level of trading interest and, if so, 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

[612] *See* Bloomberg Letter at 8.

[613] The Commission is proposing to specify that this question relates to process implemented ''in the absence of subscriber direction.'' The Commission is drawing a distinction from the filtering or blocking that a subscriber can do in the ATS, which would be disclosed in Part III, Item 14 (Counter-Party Selection). If the ATS, on its own, and in the absence of subscriber directions, filters certain subscribers from viewing the existence of certain trading interest, that would be responsive to Part III, Item 13 of Form ATS–N.

be contested. This requirement is substantially similar to the current requirement of Part III, Item 13(d) of Form ATS–N, but the Commission is proposing to amend this request to add designations other than segmentation, such as permissioning, filtering, and blocking, that would be responsive under proposed Part III, Item 13(b) of Form ATS–N. This would provide information to market participants about the notice that the ATS provides subscribers about the segmented category to which they are assigned, and also, if applicable, who can obtain information about the segmented categories of other subscribers.

Request for Comment

125. What information about the segmentation of trading interest by a Covered ATS or any other practices or procedures that allow a Covered ATS to control which counterparties view each other's trading interest or are able to interact would be important to persons that use the services of the ATS?

n. Item 14: Counter-Party Selection

Part III, Item 14(a) of Form ATS–N is designed to provide information about whether trading interest can be designated to interact or not interact with certain trading interest in the ATS by an ATS participant. The Commission is proposing to make minor modifications to this question including new examples of the types of designations that a subscriber can make to control both interactions with and matching against trading interest or a participant in the ATS. These examples would include designations to interact with or execute against a specific subscriber's trading interest or prevent the trading interest of a subscriber from interacting with or executing against the trading interest of that subscriber. If the ATS has such counterparty selection available, it would be required to explain the counterparty selection procedures, including how counterparties can be selected and whether the designation affects the trading rules (*e.g.,* order interaction or priority) or communication protocols of the ATS.[614] To analyze whether the ATS is an appropriate venue to accomplish their trading objectives, market participants have an interest in knowing whether—and how—they may designate their trading interest to interact or avoid interacting with specific trading interest or persons in the ATS. Part III, Item 14 is designed to require disclosure of such information.

For instance, the disclosures proposed under this Item would allow a participant in the Covered ATS to know whether it can interact with certain categories of trading interest in the ATS or can designate trading interest submitted to the ATS to interact only with trading interest of certain other types of ATS participants. The ATS might allow subscribers to choose from categories of trading interest or categories of participants that the broker-dealer operator segments in the ATS. For example, buy-side or institutional subscribers might seek to trade only against other buy-side or institutional trading interest, or might seek to avoid trading against PTFs or high frequency trading firms. Also, it would also be responsive to this Item for a Covered ATS to state whether a subscriber can restrict interacting with its own trading interest, whether such restrictions are by default or only upon subscriber request, and any applicable limitations on such restrictions. This Item would require description of any procedures allowing a subscriber to limit its counterparty on an order-by-order basis or a participant-by-participant basis, how it would go about doing so, and how such selection would affect the interaction and priority of trading interest. For example, an ATS would include in its response to this Item whether a designation to interact with a specific category of counterparty trading interest or participants can be made by the subscriber (*i.e.,* by marking its trading interest) or whether the designation must be implemented by the broker-dealer, on the subscriber's behalf. If the broker-dealer implements the counterparty designation, the ATS would also include when such designation would go into effect (*e.g.,* on same trading day as the subscriber's selection or on a date thereafter).

The Commission is also proposing to amend Form ATS–N to add a requirement that the ATS disclose in Part III, Item 14(b) whether a subscriber can designate trading interest that the subscriber or potential counterparties can view (*e.g.,* filtering, blocking, permissioning). The ATS would be required to explain any such processes, including how and when a subscriber can (or cannot) designate which trading interest it or a potential counterparty can view, any categories, classifications, or levels, and the types of trading interest that subscribers are able to designate, a summary of the parameters for such processes and the length of time any such parameter is in effect, and how such processes can affect how trading interest interacts in the ATS. The Commission believes this type of functionality may be particularly relevant to communication protocols and negotiation systems that may fall within the criteria of Rule 3b–16(a), as proposed to be amended. From Commission staff's experience, ATSs may disclose counterparty filters that could, for example, allow a subscriber to prohibit itself from viewing a potential counterparty's inventory or to prohibit a potential counterparty from viewing its inventory. Under proposed Part III, Item 14(b), an ATS would include in its response if, for example, participants in the ATS can choose not to view trading interest from certain identified potential counterparties or certain types of counterparties, such as those that have failed to respond to RFQs in a given amount of time. Similarly, if a participant can block certain potential counterparties from viewing its trading interest, such functionality would be required to be disclosed in this Item as well. Market participants should be aware of how participants on the platform can choose not to interact with certain trading interest. If, however, the ATS (and not the participant) makes these designations and restricts the interactions of potential counterparties, such designations and restrictions would be required to be disclosed under Part III, Item 13.[615]

Request for Comment

126. Should Form ATS–N request more or less information about how trading interest can be designated to interact or not interact with certain trading interest in the Covered ATS? Are there important forms of counterparty selection that the Commission should address?

o. Item 15: Display and Visibility of Trading Interest

The Commission is proposing to restructure Part III, Item 15 so market participants can more readily understand information regarding trading interest that the Covered ATS displays to the subscribers, the public, and any person, including the broker-dealer operator, and what information regarding trading interest a subscriber of the ATS can display through the ATS. Although, as discussed below, the Commission proposes to require Covered ATSs to divide the responses to Part III, Item 15(b) of current Form ATS–N into Items 15(a), (b), and (c) in revised Form ATS–N, the Commission believes that these questions would solicit substantially similar information

[614] The Commission is proposing minor changes to Form ATS–N, Part III, Item 14, which references how the designation affects the ''interaction and priority of trading interest in the ATS'' to be more inclusive of communication protocols.

[615] *See supra* Section IV.D.5.m.

that is required by current Item 15(b) of Form ATS–N, in addition to information that is relevant to communication protocols and the use of non-firm trading interest.

Part III, Item 15(a) of Form ATS–N would require a Covered ATS to disclose whether the ATS displays trading interest to subscribers or the public (*e.g.,* whether the ATS disseminates orders through market data feeds or a website or sends invitations or requests to subscribers about potential counterparties to trade with). If the ATS displays trading interest to subscribers or the public, the ATS would be required to explain what information the ATS displays (*e.g.,* security, price, size, direction, the identity of the sender, rating information based on the sender's past performance in the ATS), how and when such information is displayed, to whom such information is displayed (*e.g.,* subscribers, public, types of market participant), and how long the displayed information is available. In addition, the ATS would also be required to indicate whether a subscriber can opt-out of the display of its trading interest, and if so, the process for subscribers to do so. This Item would also require the ATS to describe differences in latencies with which the ATS displays subscribers' trading interest due to a functionality of the ATS. For example, if a Covered ATS transmits and displays its proprietary data feed to certain subscribers faster than to other subscribers as a result of the alternative means offered by the ATS to connect, such information would be responsive to this Item. In addition, this Item would require an ATS that offers work-ups to match trading interest to disclose the information that is displayed to all subscribers or certain subscribers in public or private phases of the work-up, as well as what characteristics of the trading interest are displayed.

The ATS could display subscriber trading interest in a number of ways. For instance, when an ATS sends electronic messages outside of the ATS that expose the presence of trading interest in the ATS, it is displaying or making known trading interest in the ATS. In Part III, Item 15(a), a Covered ATS would be required to disclose the circumstances under which the ATS sends 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. An ATS may also offer a direct data feed from the ATS that contains real-time order information.[616] Some ATSs have arrangements, whether formal or informal (oral or written), with third parties to display the ATS's trading interest outside of the ATS, such as IOIs from the subscribers being displayed on vendor systems or arrangements with third parties to transmit IOIs between subscribers. A Covered ATS would be required to include this type of information in its response to this Item.

Part III, Item 15(b) of Form ATS–N would require a Covered ATS to disclose whether a subscriber can use the ATS to display or make known trading interest to any person (*e.g.,* stream quotes to the subscribers or the public or send a request for quote, IOI, conditional order, or invitation to negotiate to a subscriber or the broker-dealer operator). If yes, the ATS would explain what information the subscriber can display through the ATS (*e.g.,* security, price, size, direction, the identity of the sender), procedures for subscribers to display such information, how and when such information is displayed, to whom such information is displayed (*e.g.,* subscribers, public, types of market participant), and how long the displayed information is available. In addition, Communication Protocol Systems may offer functionalities or protocols to allow their subscribers, who otherwise do not have the ability to display their trading interest, to use the functionalities or protocols to display trading interest information. Part III, Item 15(b) would differ from Part III, Item 15(a) in that Item 15(b) would ask what information subscribers can display or make known about their trading interest through the ATS whereas Part III, Item 15(a) would ask what information regarding trading interest the ATS displays. For example, an ATS that receives orders and disseminates top-of-book information to subscribers would be required to disclose this in Item 15(a), while an RFQ system that allows participants to select when, how, and to whom to display their trading interest to solicit counterparty trading interest would be required to disclose this in Item 15(b). The Commission is proposing the disclosure requirements of Item 15(b) because it believes that ATS participants would want to know whether a particular ATS would provide them with any protocol or functionality that would enable them to stream quotes to other subscribers or the public or send a request or invitation to negotiate to another subscriber or the broker-dealer operator. The disclosures regarding whether subscribers can display or make known their trading interest and the types of information that the subscribers can display would help market participants understand the extent to which potential information leakage may occur on the ATS.

Part III, Item 15(c) of Form ATS–N would require a Covered ATS to disclose whether any trading interest bound for the ATS is made known to any person—not including employees of the ATS who are operating the system. Many market participants are sensitive to precisely how and when the ATS displays or otherwise makes known their trading interest both inside and outside the ATS as such information could result in other market participants trading ahead of their positions, and thus possibly causing inferior execution prices for the participants whose trading interest is displayed or otherwise made known. These participants could use these disclosures to evaluate whether sending trading interest to a particular ATS would achieve their trading strategies. In particular, subscribers that use the services of Covered ATSs, including customers of the broker-dealer operator, have limited information about the extent to which their trading interest sent to the ATS could be displayed outside the ATS.

For example, trading interest directed to the ATS could pass through the broker-dealer operator's non-ATS systems or functionalities such as an algorithm or a SOR, before entering the ATS. Such non-ATS systems and functionalities could be used to support the broker-dealer operator's other business units, including any trading venues.[617] It would be responsive to this Item to identify the recipient of displayed information by identifying the functionality of the broker-dealer operator (*e.g.,* SOR, algorithm, trading desk), third party, or the type of market participant[618] that receives the displayed information. If, for instance, the ATS displays orders to the broker-dealer operator's SOR or trading desk, the ATS would indicate ''yes'' to this

[616] In the case of a Covered ATS offering a direct data feed with information about trading interest in the ATS, the ATS would be required to disclose under Part III, Item 15 what information the data feed provides about the trading interest, the associated timing in receiving the feed (*e.g.,* real-time, delayed), how a subscriber would receive the feed (*e.g.,* connectivity), and if all subscribers are treated the same in receiving the feed, including whether all subscribers are eligible to receive it and any differences in latency receiving the feed.

[617] The broker-dealer operator typically controls the logic contained in these systems or functionality that determines where trading interest that the broker-dealer operator receives will be handled or sent.

[618] *See* Part III, Item 1 of Form ATS–N (providing examples of types of market participants).

question. If the answer is ''yes'' to either of these questions, the ATS would be required to explain what information is displayed (*e.g.,* security, price, size, direction, the identity of the sender), how and when such information is displayed, to whom such information is displayed (*e.g.,* algorithm, SOR, trading desk, third party), and how long the displayed information is available. If, for instance, trading interest bound for the ATS passes through the broker-dealer operator's common gateway or algorithm, the ATS would need to disclose these functionalities as the trading interest was displayed to a functionality of the broker-dealer operator that would likely be outside the ATS. If trading interest resting in the ATS is displayed to one or more of the broker-dealer operator business units, the ATS would need to identify the business units of the broker-dealer operator by type of market participant (*e.g.,* institutional investors, PTFs, market makers, affiliates, trading desks at the broker-dealer operator, market data vendors, clearing entities, and potential subscribers, among others). This Item is designed to ensure that the ATS discloses any display of trading interest bound to the ATS or residing in the ATS not otherwise captured in Part III, Items 15(a) and (b). Consistent with the discussion above, the Commission believes that market participants should have a full understanding of how and when their trading interest becomes known to any person, particularly when the information is made known to the broker-dealer operator's non-ATS-systems and functionalities. The Commission further believes that information required under this Item would help market participants assess the potential for information leakage of subscribers' confidential trading information to the broker-dealer operator's non-ATS systems and functionalities.

The proposed Item would not require information about employees of the ATS in non-trading related roles, such as technical, quality assurance, compliance, or accounting roles, among others, that support the ATS's operations and to whom trading interest are made known in the performance of their duties.[619]

Part III, Item 15(d) of Form ATS–N would require the ATS to indicate whether it is an Electronic Communication Network (''ECN'') as defined in Rule 600(a)(31) of Regulation ATS.[620] NMS Stock ATSs that are also ECNs may differ in how and where trading interest are displayed. NMS Stock ATSs that indicate ''yes'' to this Item would also be required to provide information in response to Part III, Items 15(a), (b), or (c) to inform market participants how ECNs display trading interest.

Request for Comment

127. What information involving NMS stocks, government securities, and repos do ATSs or Communication Protocol Systems display? Are there levels of displayed information that a system may offer to market participants? If so, what are the levels and are there any specific requirements for a market participant to access that information? For instance, do ATSs or Communication Protocol Systems have different mechanisms or functionalities for displaying trading interest depending on the subscriber? What functionalities does the system use to display information in government securities and repos? Please explain the purpose and operation of any such functionality.

128. For ATSs or Communication Protocol Systems that display trading interest both on the system and outside the system, what is the process for market participants to submit trading interest to interact with the trading interest that is displayed outside the system?

129. Are there any aspects of display of trading interest on Government Securities ATSs that should be specifically addressed in the Item? Are there any aspects of display that are unique to Communication Protocol Systems?

p. Item 16: Routing

Part III, Item 16 is designed to provide information about whether trading interest in the ATS can be routed or sent to a destination outside the ATS. As proposed, Part III, Item 16 would apply to both NMS Stock ATSs and Government Securities ATSs. In the Commission's experience, routing of government securities among trading venues is not as prevalent as in the market for NMS stocks. To the extent it is inapplicable, a Government Securities ATS would check ''no'' on Form ATS–N. However, Government Securities ATSs may have mechanisms to send trading interest outside the ATS. Accordingly, the Commission is proposing to require Covered ATSs to disclose whether they route or otherwise ''send'' trading interest outside of the ATS. If the Covered ATS permits trading interest to be routed or sent to a destination outside of the ATS, the ATS would be required to indicate whether affirmative instructions from a subscriber must be obtained before its trading interest can be routed or sent from the ATS, and provide a description of the affirmative instruction and explain how the affirmative instruction is obtained. If the ATS is not required to obtain an affirmative instruction to route or send trading interest, the ATS would be required to explain when trading interest can be routed or sent from the ATS (*e.g.,* at the discretion of the broker-dealer operator). The Commission believes that such disclosures provide ATS participants with the ability to gauge how their trading interest would be handled by the ATS. Subscribers might, for example, have concerns about the leakage of confidential trading information when their orders are routed to other trading venues. The Commission believes the disclosures in Part III, Item 16 would provide relevant information for ATS participants to evaluate the potential for leakage of their confidential trading information.

The Commission is also proposing to relocate Part II, Items 1(d) and 2(d) of current Form ATS–N to Part III, Item 16(c) of revised Form ATS–N.[621] Specifically, proposed Item 16(c) of revised Form ATS–N would request whether trading interest in the ATS can be routed or sent to a destination operated or controlled by the broker-dealer operator or an affiliate of the broker-dealer. If yes, the ATS would be required to identify the destination and when and how trading interest is routed or sent from the ATS to the destination. The Commission believes that such information would help market participants evaluate whether the Covered ATS sending trading interest to a trading venue operated or controlled

[619] Covered ATSs, as proposed, would be subject to the requirements of Rule 301(b)(10) and would be 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).

[620] Part III, Item 15(d) of revised Form ATS–N (which is currently included in Part III, Item 15(a) of current Form ATS–N) would be applicable only to NMS Stock ATSs because Rule 600(a)(31) only applies to systems that trade NMS stocks. A Government Securities ATS would select ''no'' in response to this question. The Commission is also correcting a typo referencing Rule 600(a)(23) and replacing the reference with Rule 600(a)(31).

[621] As discussed above, the Commission believes it would be more efficient for market participants and filers to consolidate the current disclosure in Part II, Items 1(d) and 2(d) to proposed Part III, Item 16(c). *See supra* Section IV.D.4.a.

by the broker-dealer operator or its affiliates poses a conflict of interest and is consistent with its trading objectives.

Request for Comment

130. Do Government Securities ATSs (inclusive of Communication Protocol Systems, as proposed) and Communication Protocol Systems that trade NMS stocks send trading interest to destinations away from the system? If so, how and under what circumstances? Are there any aspects about how trading interest is sent away from a Covered ATS that should be addressed by Form ATS–N? Have the mechanisms for routing to a destination outside an NMS Stock ATS changed in any way since the adoption of Form ATS–N for NMS Stock ATSs? If so, do commenters believe that the Commission should require Covered ATSs to provide additional information in Part III, Item 16 to reflect such change?

q. Item 17: Closing

Part III, Item 17 of Form ATS–N is designed to provide information about differences between how trading interest is treated on the ATS during the ATS's closing session(s) [622] and during regular trading hours established by the ATS. The Item is designed to provide market participants with information about processes the Covered ATS uses to transition to the next trading day, including whether the ATS offers any particular order types during a closing session(s) or has different procedures for closing trading for a particular trading session and transitioning trading to the next trading day. The vast majority of requests in Part III of revised Form ATS–N relate to trading during the Covered ATS's regular trading hours. Therefore, when discussing differences between trading during the Covered ATS's closing session(s) and during regular trading hours set by the ATS, the Covered ATS would be required to discuss differences as compared to relevant information disclosed in Part III Items, including, among others, order types and sizes and trading facilities (Item 7), use of non-firm trading interest and communication protocols and negotiation functionality (Item 8), segmentation and notice (Item 13), and display and visibility of trading interest (Item 15). The Commission believes this information would be important for market participants to understand the closing procedures around a particular trading session, if any, to carry out their trading objectives.[623]

r. Item 18: Fees

Part III, Item 18 of Form ATS–N [624] would require a Covered ATS to provide information on any fees or charges for use of the ATS's services, including any fees or charges for use of the ATS's services that are bundled with the subscriber's use of non-ATS services or products offered by the broker-dealer operator or its affiliates, and any rebate or discount of fees or charges. The Commission believes that disclosures regarding fees on Form ATS–N are necessary and important, and should not be voluntary for Covered ATSs. Fee disclosures on Form ATS–N are designed to allow all market participants to analyze the fee structures across Covered 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. Requiring disclosures of ATS fees is warranted as, in the Commission's experience, fees can be a primary factor for market participants in deciding where to send their trading interest.

Part III, Item 18 would request that Covered ATSs include in their descriptions the types of fees, the structure of the fees, variables that impact the fees, and differentiation among types of subscribers, and whether the fee is incorporated into the price displayed for a security, and the Commission would provide examples of responsive information in a parenthetical in the text of each subpart.[625] The Item also would require a range for each type of fee (*e.g.,* subscription, connectivity, and market data) charged on the Covered ATS.

The Commission is proposing to add the term ''market data'' to the examples listed in Part III, Item 18 of the types of fees that a Covered ATS must disclose. For example, if a Covered ATS distributed a market data feed and charged a fee for it, the ATS would be required to provide the information responsive to Item 18 regarding that fee. The Commission believes this example may be relevant to Government Securities ATSs, which are primarily lit venues that offer market data to subscribers. While most NMS Stock ATSs do not disseminate market data, a description of an NMS Stock ATS's market data fees is currently required by the Item, which requires disclosure of ''any'' fee or charge for use of the ATS services. Adding the example could assist Covered ATSs in responding comprehensively to the Item.

The Commission recognizes that the fee structures of Covered ATSs can vary and that not all Covered ATSs apply set tiers or categories of fees for subscribers; however, the Commission believes that a market participant should have sufficient information to understand the fees for using the services of the Covered ATS. Recognizing the various fees that can be charged by Covered ATSs, the Commission is specifying in the fee request the types of information that a Covered 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). With regard to the variables that impact the fees set, ATSs would be required to be specific and delineate how a given variable would likely impact the fee level (*e.g.,* higher or lower). In addition, the Commission is proposing to add a new requirement not included in current Form ATS–N that the Covered ATS must disclose whether the fee is incorporated into the price displayed for a security (*e.g.,* markups, markdowns). For example, the price displayed by the security may be higher (or lower) than the market price, and the broker-dealer would be compensated by the difference between the displayed price and the market price. The Commission believes that, in particular, such fees or charges may be relevant to communication protocols that would be

[622] The Commission is proposing to revise Item 17 of Form ATS–N to clarify that the question relates to the ATS's closing session(s), and that ''regular trading hours'' refers to the ATS's regular trading hours.

[623] The Item would, for example, require disclosure of any procedures to match trading interest to set a single closing price to maximize liquidity and accurately reflect market conditions at the close of trading in the ATS.

[624] As discussed above, the Commission is proposing to delete current Part III, Item 18 of Form ATS–N (Trading Outside of Regular Trading Hours) to combine such disclosure requests with Part III, Item 4 (Hours of Operations). As a result of this deletion, the Commission is proposing to re-number Part III, Items 19 through 26 of current Form ATS–N. The discussion herein refers to the Items as proposed to be re-numbered.

[625] The Commission is including non-exhaustive lists of examples of responsive information in parentheticals in the text of the Item. For instance, for the description of the structure of the fees, the Commission is providing as examples fixed, volume-based, and transaction-based fee structures. For the description of variables that impact the fees, 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 the types of subscribers: Broker-dealers, institutional investors, and retail investors.

included under the proposed definition of ''exchange.''

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. Although the fees charged for Covered ATS services may be individually negotiated between the broker-dealer operator and the subscriber, the disclosures about the type of fees charged by the Covered ATS are designed to help market participants discern how the ATS's fees are organized and compare that information across Covered ATSs, which could reduce the search costs of market participants in deciding where to send their trading interest. The Commission believes that Covered ATSs should be required to disclose differences in the treatment among ''types of subscribers'' (*e.g.,* broker-dealers, institutional investors, retail). This information would allow subscribers to observe whether a Covered ATS is offering preferential treatment for certain types of subscribers with respect to fees.

Part III, Item 18(a) would cover charges to subscribers for their ''use of the ATS services'' [626] and would not request information on fees charged for non-ATS services by a third party not in contract with the broker-dealer operator.[627] Part III, Item 18(b) would require a description of 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 18(b) is designed to allow market participants to better evaluate fees for bundled services and products that include access to the Covered ATS. Covered ATSs would 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 bundled fees could apply to them as subscribers.[628]

The disclosure requests under Part III, Item 18 would contain a stand-alone Item—Item 18(c)—which requests information about rebates and discounts of fees that are identified in subparts (a) and (b) of Item 18. Item 18(c) would require information about rebates and discounts that is similar to information required for fees (*e.g.,* 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).

Request for Comment

131. What fees should the Commission require a Covered ATS subject to the Fair Access Rule to disclose on Form ATS–N? Are there any fees disclosures that are unique to NMS Stock ATSs or Government Securities ATSs and, if so, what information about those fees should be disclosed on Form ATS–N?

132. What disclosures about bundled fees would be relevant and useful to potential and current subscribers to the ATS?

133. What fees should the Commission require a Communication Protocol System that operates as a Covered ATS to disclose on Form ATS–N?

s. Item 19: Suspension of Trading

Part III, Item 19 of Form ATS–N would require a Covered ATS to provide information about any procedures for suspending or stopping trading in the ATS, including the suspension of trading in an NMS stock, U.S. Treasury Security, or an Agency Security.[629] This Item is designed to, for example, inform market participants of whether, among other things, a Covered ATS will continue to accept trading interest after a suspension or stoppage occurs, whether the ATS cancels, holds, or executes trading interest that was resting in the ATS before the suspension or stoppage was initiated, and what type of notice the ATS provides to subscribers regarding a suspension or stoppage. Examples of system disruptions would include, but are not limited to, internal software problems that prevent the Covered ATS's system from opening or continuing trading,[630] a significant increase in volume that exceeds the ability of the trading system of the ATS to process incoming trading interest,[631] and the failure of the trading system of the ATS to receive external pricing information that is used in the system's pricing methodology. Information regarding a Covered ATS's procedures about how trading interest might be handled by the ATS during a suspension or stoppage of trading would be useful to market participants because an ATS's procedures might require the cancelation of existing trading interest or preclude the acceptance or execution of trading interest during a suspension, both of which would impact a subscriber's trading interest or its ability to trade in the ATS. This information would better inform a subscriber's trading decisions at the time of such an event and thus help that subscriber accomplish its trading objectives. If a Covered ATS establishes different procedures for suspending or stopping trading in the ATS depending on whether the source of the disruption is internal or external, a description of both procedures would be responsive to this request. In addition, this Item would require disclosure of procedures whereby a Covered ATS suspends trading in NMS stocks, U.S. Treasury Securities, or Agency Securities so that it does not cross the volume thresholds, as proposed herein, that may subject the ATS to certain Federal securities laws, including the order display and execution access rule (Rule 301(b)(3)), Fair Access Rule, or Regulation SCI. Information regarding the procedures for how a Covered ATS would handle trading interest during a suspension of trading or system disruption or malfunction would help the Commission better monitor the securities markets.

Request for Comment

134. Should Form ATS–N request information about any procedures for suspending or stopping trading that is particularly relevant to Government Securities ATSs (inclusive of Communication Protocol Systems, as proposed) or Communication Protocol Systems that trade NMS stock?

t. Item 20: Trade Reporting

Part III, Item 20 of Form ATS–N would require a Covered ATS to provide information on any procedures and material arrangements for reporting

[626] The Covered ATS services generally include those services used for the purpose of effecting transactions in securities, or for submitting, disseminating, or displaying trading interest in the ATS. *See* 17 CFR 242.300(b).

[627] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38858 (discussing what fees should be categorized as for use of the ATS's services).

[628] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38858 (discussing responses to current Item 19(b) (proposed Item 18(b)) depending on whether there is an explicit fee for the ATS as part of any bundled services).

[629] The Commission is proposing to revise Form ATS–N, Part III, Item 19 of revised Form ATS–N (numbered as Item 20 in current Form ATS–N) to reference trading in U.S. Treasury Securities and Agency Securities.

[630] *See* Regulation SCI Adopting Release, *supra* note 3, at 72254–55 n.28.

[631] *See id.* at 72255 n.29.

transactions in the ATS.[632] For Government Securities ATSs, FINRA member firms are required to report transactions in U.S. Treasury Securities and Agency Securities to TRACE.[633]

Part III, Item 20 would require a Covered ATS to disclose its trade reporting procedures for reporting transactions in the ATS to an SRO or any alternative trade reporting destinations, if applicable. For example, it would be responsive to Item 20 for a Covered ATS to disclose whether the ATS has a specific procedure for reporting transactions to the SRO at different times based on, for example, a subscriber's use of a particular order type, or the type of subscriber involved in the transaction. Covered ATSs would also be required to disclose ''material'' arrangements for reporting transactions in the ATS. The Commission recognizes 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. On the other hand, if a Covered ATS uses another party to report transactions occurring in the ATS or has a backup facility that it uses for trade reporting, that information is likely to be responsive as a material arrangement. Requiring reporting only of material arrangements would limit potential burdens on Covered ATSs while providing market participants with sufficient information to understand how their trade information will be reported. Also, the proposed disclosure of the trade reporting procedures would allow the Commission to more easily review the compliance of the Covered ATS with its applicable trade reporting obligations as a registered broker-dealer as proposed herein.

u. Item 21: Post-Trade Processing, Clearance, and Settlement

Part III, Item 21 is designed to provide information on any procedures and material arrangements undertaken as a result of the contractual agreements between the broker-dealer operator for the Covered ATS[634] and the ATS's participants to manage the post-trade processing, clearance, and/or settlement of transactions on the Covered ATS. The Commission is proposing revisions to Part III, Item 21 that would request information about post-trade processing, which covers the steps taken after execution to prepare a trade for clearance and/or settlement. These steps include, but are not limited to, routing trade information to relevant parties; enrichment of trade details with supplemental information (such as counterparty account information) required to effect settlement; performing allocations whereby a block trade is broken down into various client accounts; comparing the terms of a trade submitted by each counterparty (performing matching) to reconcile the terms so as to generate an affirmed confirm; performing sequential affirmation and confirmation processes; or sending notifications to interested parties, such as custodians. These types of activities can be performed both manually (with trading desk, middle office, or back office personnel completing the steps) or through automated activity processes (which seek to achieve the goal of straight-through processing whereby trade information passes through the necessary steps to effect settlement in an automated manner).

The proposed revisions to Part III, Item 21 provide some specific examples of the types of procedures and material arrangements that should be described by a Covered ATS under this Item, such as whether the broker-dealer operator, or an affiliate of the broker-dealer operator becomes a counterparty; submits trades to a registered clearing agency; requires subscribers to have arrangements with a clearing firm, or terminates trades. These examples are intended to be illustrative and not the only types of material arrangements that may exist. From Commission staff's experience reviewing Form ATS–N, the Commission understands that broker-dealer operators have different arrangements and contractual obligations that are important to understanding the clearance and settlement of transactions in the ATS.

A Covered ATS would also be required to describe any user requirements for such procedures and material arrangements, including the type and extent of connectivity (*e.g.,* FIX), and whether the connectivity is to an order management system (OMS), execution management system (EMS), end-of-month expirations (EOMS), clearinghouse/custodian, or other system.

The integrity of the trading markets depends on the prompt and accurate post-trade processing, clearance, and/or settlement of securities transactions. For example, counterparties to a trade face counterparty credit risk, regardless of whether they choose to clear and settle bilaterally or through a central counterparty, and therefore knowledge of any specific arrangements that are required by an ATS as part of the clearing process promotes market integrity.[635] The Covered ATS's procedures or material arrangements that address post-trade processing, clearance, and/or settlement are critical to ensuring that a buyer receives securities and a seller receives proceeds in accordance with the agreed-upon terms of the trade by settlement date. The disclosures required by this Item are intended to cover each of the steps in the post-trade process from the time of execution (including whether the broker-dealer operator or an affiliate of the broker-dealer operator is a counterparty to a transaction and whether the obligations of a counterparty are ever assigned or novated), through trade matching or affirmation/confirmation, and then through clearing procedures (including whether the Covered ATS requires its participants to be a member of a registered clearing agency, whether participants have any particular clearing obligations, and whether transactions are—wholly or partially—submitted to a registered clearing agency or cleared bilaterally using clearing banks or clearing agents), until settlement of the transaction (including whether counterparties make use of custodians, settlement banks, or a registered clearing agency). If the Covered ATS has adopted post-trade processing, clearing, and/or settlement processes or imposes any obligations on its participants in the event of a disruption (for example, a failure to deliver securities, a liquidity shortfall, or a counterparty default), this proposed Item should include a discussion of these processes and any resulting participant obligations.

The Item requires the disclosure of ''material'' arrangements to manage the post-trade processing, clearance, and/or settlement of transactions on the Covered ATS. For example, an arrangement under which another party would have a role in clearance or settlement may constitute a material

[632] This question is substantially the same as Part III, Item 21 of current Form ATS–N.

[633] *See supra* notes 228–229 and accompanying text.

[634] The contractual obligations of the ATS are ultimately those of the broker-dealer operator. Because an ATS must register as a broker-dealer, the broker-dealer operator controls the ATS and 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. *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38819.

[635] *See* Treasury Market Practices Group (TMPG), *White Paper on Clearing and Settlement in the Secondary Market for U.S. Treasury Securities* (July 12, 2018), *available at https://www.newyorkfed.org/medialibrary/Microsites/tmpg/files/CS-DraftPaper-071218.pdf.* ''The TMPG found that many market participants do not understand the role of the [interdealer brokers] platform in terms of who their counterparty credit risk was to and the roles of various market participants in settlement and clearing.'' *Id.* at 27.

arrangement that could trigger the disclosure requirement under Part III, Item 21. Limiting the explanation required to material arrangements would reduce the burden on Covered ATSs while at the same time still allowing market participants to understand and more easily compare such arrangements required across Covered ATSs.

Proposed Part III, Item 21 is also designed to help market participants understand the measures the Covered ATS takes to manage post-trade processing, clearance, and/or settlement of transactions. Market participants should know and be able to understand any requirements a Covered ATS places on its subscribers, or other persons whose trading interest is sent to the ATS, to receive certain post-trade processing, clearance, and/or settlement services. The Commission believes market participants would likely find the disclosures required by this Item to be useful in understanding the measures undertaken by a Covered ATS to manage post-trade processing, clearance, and/or settlement of subscriber orders in the ATS and allow them to more easily compare these arrangements across Covered ATSs as part of deciding where to send their trading interest. The Commission believes that these disclosures would assist the Commission in better understanding the post-trade processing, clearance, and/or settlement procedures of Covered ATSs and risks and trends in the market as part of its overall review of market structure.

Request for Comment

135. What aspects of the procedures and material arrangements undertaken to manage the post-trade processing, clearance, and/or settlement of transactions on Covered ATSs are important for ATSs to disclose on Form ATS–N for the benefit of market participants?

v. Item 22: Market Data

Part III, Item 22 [636] of Form ATS–N is designed to solicit information about the sources of market data used by the Covered ATS and how the ATS uses that market data from these sources to provide the services that it offers. As the Commission is proposing to apply Form ATS–N to Government Securities ATSs, the Commission is proposing to add to Part III, Item 22 to include ''feeds from trading venues'' in the examples of sources of market data, which may be applicable to Government Securities ATSs. Specifically, market participants would likely find it useful to know the source and specific purpose for which the market data is used by the Covered ATS, as the market data received by the ATS might affect the price at which trading interest is prioritized and executed, including trading interest that is pegged to an outside reference price. An NMS Stock ATS, for example, would be required to provide the names of national securities exchanges from which the ATS receives direct market data feeds, either from a vendor or directly from the exchange, in addition to the specific types of market data received from each source. In addition, a Covered ATS would be required to provide information about how the ATS uses market data to provide the services it offers. To avoid duplicative disclosure, market data reflecting options traded on government securities that is used by the ATS could be discussed in response to proposed Part III, Item 11. The Commission is proposing to include determining the best bid or offer (BBO) as an example of how the ATS uses market data, which could be applicable to Government Securities ATSs. Among other things, Part III, Item 22 requires the disclosure of the use of market data to display, price, prioritize, execute, and remove trading interest. As part of this explanation, the Covered ATS would be required to specify, if applicable, when the ATS may change sources of market data to provide its services. A Covered ATS would also be required to explain how market data is received by the ATS, compiled, and delivered to the matching engine. For example, among other possible arrangements, a Covered ATS could explain in response to the Item that market data is received and assembled by the broker-dealer operator, 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.

Request for Comment

136. What are the sources of market data in NMS stocks, government securities, and repos that are available to market participants as well as to Covered ATSs and how do market participants and ATSs use this information? What disclosures about an ATS's use of market data would be important to market participants?

w. Item 23: Order Display and Execution Access

Part III, Item 23 is designed to provide information about whether an NMS Stock ATS is required to comply with Rule 301(b)(3)(ii) of Regulation ATS.[637] The Commission is not proposing to make changes to this Item, other than specifying that this Item would be applicable to NMS Stock ATSs, as the order display and execution access provisions under Rule 301(b)(3) only apply to an ATS's NMS stock activities.[638]

x. Item 24: Fair Access

Part III, Item 24 of Form ATS–N would provide a mechanism under which a Covered ATS would notify market participants whether it has triggered the proposed fair access threshold and, if so, whether the ATS is subject to the Fair Access Rule. As described above, the Commission is proposing to require Government Securities ATSs to comply with the Fair Access Rule if they meet the applicable thresholds.[639] As a result, Part III, Item 24 would be applicable to both NMS Stock ATSs and Government Securities ATSs that meet the applicable thresholds. Pursuant to proposed Rule 301(b)(5)(ii), a Covered ATS would aggregate the trading volume for a security or category of securities for ATSs that are operated by a common broker-dealer, or ATSs that are operated by affiliated broker-dealers for the purpose of calculating the volume thresholds.[640] In connection with proposed Rule 301(b)(5)(ii), the Commission is proposing to require the Covered ATS to indicate in Part III, Item 24(a) through (c) if the ATS crossed the volume thresholds ''whether by itself or aggregated pursuant to Rule 301(b)(5)(ii).''

If a Covered ATS crosses the fair access thresholds, proposed Rule 301(b)(5)(iii)(A) [641] requires the ATS to establish and apply reasonable written standards for granting, limiting, and denying access to the services of the ATS.[642] If subject to the Fair Access Rule, the Covered ATS would be required to describe the reasonable written standards for granting, limiting, and denying access to the services of the ATS pursuant to Rule 301(b)(5)(iii) of

[636] This Item is currently numbered as Part III, Item 23 of current Form ATS–N.

[637] Part III, Item 23 of revised Form ATS–N (currently numbered as Part III, Item 24 of current Form ATS–N) would be required only for NMS Stock ATSs, as the associated rule is inapplicable to government securities. *See* also NMS Stock ATS Adopting Release, *supra* note 2, at Section V.D.24.

[638] 17 CFR 242.301(b)(3).

[639] *See supra* Section III.D.

[640] The Commission is proposing changes to the Fair Access Rule, which are discussed in detail below. *See infra* Section V.A.2.

[641] *See infra* Sections V.A.3 through V.A.4.

[642] *See* 17 CFR 242.301(b)(5)(iii)(A). The Commission is proposing that any change in a Covered ATS's response to Item 24 would be filed as a contingent amendment. *See supra* note 440 and accompanying text.

Regulation ATS (as proposed to be applied herein).[643] A description of the Covered ATS's reasonable written standards in response to Part III, Item 24 should be clear and comprehensive and should explain, among other things, the objective and quantitative criteria upon which the ATS's reasonable written standards are based, any differences in access to the services of the ATS by applicant and current participants, and why the standards including any differences in access to the services of the ATS) are fair and not unreasonably discriminatory. To the extent another person performs a function of the ATS, the ATS would be required to provide reasonable written standards for granting, limiting, or denying access to the services performed by such person. In addition, an NMS Stock ATS must provide the ticker symbol for each NMS stock for which the NMS Stock ATS has exceeded the fair access threshold during each of the last 6 calendar months.

The Commission believes that the proposed disclosures would facilitate its oversight of Covered ATSs and their compliance with Rule 301(b)(5) as proposed herein. In addition, the proposed disclosures would allow market participants to assess whether fair access is, in fact, being applied by a Covered ATS that meets the fair access threshold, in part by making publicly available a description of the ATS's written standards for granting access.

Request for Comment

137. Is there other information that market participants might find important or useful regarding the reasonable written standards for granting, denying, and limiting access to the services of a Covered ATS that is subject to the Fair Access Rule? If so, describe such information and explain whether, and if so, why, such information should be required to be provided on Form ATS–N.

y. Item 25: Aggregate Platform-Wide Data; Trading Statistics

Part III, Item 25 of Form ATS–N[644] is designed to make public aggregate, platform-wide statistics that a Covered ATS already otherwise collects and publishes, or provides to one or more subscribers to the ATS. The purpose of Item 25 is to place subscribers on a level playing field with regard to aggregate, platform-wide statistics about the Covered ATS that the ATS makes available.

As explained above, the Commission is proposing to amend Form ATS–N to solicit information about the use of non-firm trading interest in the ATS, which relates to the proposed changes to Exchange Act Rule 3b–16.[645] Consistent with those proposed revisions, the Commission also proposes to change the request for information on Part III, Item 25 to require statistics beyond solely platform-wide order flow and execution statistics. Specifically, the Commission proposes that Part III, Item 25 require a Covered ATS to disclose all aggregate, platform-wide statistics that it publishes or provides to one or more subscribers. Such statistics would include the order flow and execution data that is currently solicited in Form ATS–N. In addition, the proposed disclosure request would require a Covered ATS to disclose statistics related to use of non-firm trading interest. On an RFQ system, such statistics might include the percentage or total number of timed-out inquiries (*i.e.,* when a participant receives no prices or other responses after posting an inquiry). With the use of a conditional order protocol, such statistics could include market participants' firm-up rates (*e.g.,* the ATS sends a firm-up request to participants after their conditional orders are matched).

While the Commission proposes to expand the scope of information that this Item would solicit, the proposed disclosure request does not require a Covered ATS to create, maintain, or publish any specific type of statistic. As is the case with the current requirement, this disclosure request only requires a Covered ATS to publicly disclose any statistics within the scope of the question that it already discloses to one or more subscribers. If a Covered ATS compiles a particular statistic without distributing it (*i.e.,* only uses it internally), it would not be required to provide that statistic on Form ATS–N. Finally, as with current Part III, Item 26 (proposed to be renumbered to Item 25), the proposed disclosure request does not require a Covered ATS to provide on Form ATS–N any data that is otherwise required by Rule 605 of Regulation NMS.[646] A Covered ATS may choose to create and publish or provide to one or more subscribers or persons aggregate, platform-wide statistics for different reasons. To the extent that a Covered ATS has made a determination to create and publish or provide to subscribers certain aggregate platform-wide data, the Commission believes that others may also find such information useful when evaluating the ATS as a possible venue for their trading interest.

As with the current disclosure request, the proposed disclosure request would not require a Covered ATS to amend its Form ATS–N every time it receives a subscriber data request. To comply with the proposed requirements under Part III, Item 25, Form ATS–N only requires a Covered ATS to update its disclosures for Part III, Item 25 on a quarterly basis.[647] For instance, if a participant were to request updated or new aggregate platform-wide statistics in January, the Covered ATS would not be required to immediately file an updating amendment containing these statistics after complying with the participant's request. Rather, the ATS would need to file an updating amendment within 30 days following the end of March. That updating amendment must contain the most recently distributed version of these statistics, as well as the most recently distributed version of all other aggregate platform-wide data that was provided during that quarter. The Commission notes that communications associated with the responsive statistics are not required to be publicly filed. In the prior example, for instance, if the statistics provided in the quarterly amendment are the ones provided in January (*i.e.,* those are the latest version of those aggregate platform-wide statistics the ATS distributed), the ATS would not (and should not) also attach to Form ATS–N the participant's email requesting the statistics.

Furthermore, Part III, Item 25 of Form ATS–N would only require a Covered ATS to publicly disclose aggregate platform-wide data. As such, a Covered ATS would not be required to disclose individualized or custom reports containing data relating to that participant's specific usage of the ATS. For example, an individual participant's trade reports, order and execution quality statistics, and other statistics

[643] The Commission is proposing revisions to Part III, Item 24 (currently numbered as Part III, Item 25) to conform to the proposed rule text of the Fair Access Rule, including rule re-numbering, describing the required written standards as ''reasonable,'' and to reference standards limiting and denying access to the services of the ATS.

[644] This Item is currently numbered as Part III, Item 26 of current Form ATS–N.

[645] *See supra* Section II.C.

[646] *See* 17 CFR 242.605.

[647] If, for example, a Covered ATS publishes or provides a particular statistic on a daily basis, the ATS would include in Exhibit 4 of 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). If a Covered ATS publishes or provides a particular statistic weekly, the ATS would be required to include in Exhibit 4 of 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).

specific to a participant's trading in the ATS would not be covered by the disclosure request in Part III, Item 25. A Covered ATS would need to independently evaluate any statistics that it compiles and distributes to determine whether they are responsive to this disclosure request.

Part III, Item 25 would require the Covered ATS to attach both the responsive statistics and its explanation of the categories or metrics of the statistics and the criteria or methodology used to calculate those statistics as Exhibits 4 and 5, respectively. Also, in lieu of filing Exhibits 4 and 5, the Covered ATS could certify that the information requested under Exhibits 4 and 5 is available at the website provided in Part I, Item 6 of the form and is accurate as of the date of the filing. The Commission is proposing to add to the instruction that if the ATS selects the checkbox, the ATS will maintain its website in accordance with the rules for amending Form ATS–N pursuant to Rule 304(a)(2)(i) to reflect any changes to such information. This would require an ATS checking the box to update its website as if it were Form ATS–N, and therefore, to update the information, as appropriate pursuant to the Commission's rules for amending Form ATS–N.

Request for Comment

138. Does Part III of Form ATS–N capture the information that is most relevant to understanding the operations of the Government Securities ATS and the use of non-firm trading interest on Communication Protocol Systems? Are there any Items that commenters believe are unnecessary? If so, why?

139. Should the Commission expand what Covered ATSs must disclose on Form ATS–N? Is there other information that market participants might find relevant or useful regarding the operations of Covered ATSs that should be publicly disclosed? If so, describe such information and explain whether, and if so, why, such information should be required to be provided under Form ATS–N.

140. Is there any information related to repos that Form ATS–N should require?

141. Is there any information related to options on government securities that Form ATS–N should require?

142. Is there any information that would be required by Part III of Form ATS–N that a Covered ATS should not be required to disclose due to concerns regarding confidentiality, business reasons, trade secrets, commercially sensitive information, burden, or any other concerns?

143. Should the Commission adopt a more limited or expansive definition of ''affiliate'' for purposes of Part III?[648]

144. Would the disclosures under Part III of Form ATS–N help market participants better evaluate trading opportunities and decide where to send trading interest to reach their trading objectives?

145. Would the proposed disclosures in Part III of Form ATS–N require a Government Securities ATS to reveal too much (or not enough) information about its structure and operations?

146. Are there ways to obtain the same information as would be required from Government Securities ATSs by Part III of Form ATS–N other than through disclosure on Form ATS–N? If so, how else could this information be obtained?

147. Could the proposed requirement to disclose the information that would be required by Part III of Form ATS–N impact innovation in Government Securities ATSs?

148. Are there any aggregate platform-wide statistics of the Covered ATS that should not be required to be disclosed under Item 25?

149. Has Form ATS–N allowed market participants to better evaluate trading venues? If so, how? How do commenters believe the manner in which NMS Stock ATSs currently disclose information on Form ATS–N could be improved? Is the level of detail required appropriate? Are there any aspects of Form ATS–N on which the Commission should provide further guidance?

6. Part IV: Contact Information, Signature Block, and Consent to Service

Part IV of Form ATS–N would require a Covered ATS to provide certain basic information about the point of contact for the ATS, such as the point of contact's name, title, telephone number, and email address. Part IV would also require the Covered ATS to consent to service of any civil action brought by, or any notice of any proceeding before, the Commission or an SRO in connection with the ATS's activities. The Commission is proposing that Form ATS–N would be filed electronically and require an electronic signature.[649] The signatory to each Form ATS–N filing would be required to represent that the information and statements contained on the submitted Form ATS–N, including exhibits, schedules, attached documents, and any other information filed, are current, true, and complete. Given that market participants would use information disclosed on Form ATS–N to evaluate potential venues, and that the Commission intends to use the information to monitor developments of Covered ATSs, it is important that Form ATS–N contain disclosures that are current, true, and complete, and therefore the Commission is proposing to require that the signatory to Form ATS–N make such an attestation.

V. Proposed Amendments to Form ATS, Form ATS–R, and Other Conditions to Regulation ATS

A. Proposed Amendments to the Fair Access Rule for all ATSs

In addition to the amendments to the Fair Access Rule for Government Securities ATSs,[650] the Commission is proposing several amendments to the Fair Access Rule that would apply to all ATSs that are subject to the rule. The proposed amendments are discussed below.

1. Rule Text Clarifications

The Commission is re-proposing to amend the Fair Access Rule, as well as the Capacity, Integrity, and Security Rule under Rule 301(b)(6), to specify the use of volume to calculate the relevant thresholds under the rule. For purposes of determining whether an ATS crossed the average daily volume thresholds for compliance with the Fair Access Rule, Rule 301(b)(5)(i) does not specify whether the ATS's transaction volume in an NMS stock or an equity security that is not an NMS stock and for which transactions are reported to an SRO is calculated using the dollar or the share volume.[651] In the Regulation ATS Adopting Release, when discussing the Fair Access Rule, the Commission stated that for these two types of securities, the test should be based on the share volume.[652] Similarly, Rules 301(b)(5)(i) and (b)(6)(i) do not specify whether, for purposes of determining compliance with the Fair Access Rule and the

[648] *See supra* note 533 for the definition of affiliate under Form ATS–N.

[649] To avoid confusion, the Commission is proposing to delete language in the signature block in Part IV of Form ATS–N that refers to the signatory as ''duly sworn.'' The Commission notes that unlike Form ATS, Form ATS–N filings, which are submitted to EDGAR, are not required to be notarized; instead, they are subject to the rules governing electronic signatures set forth in Rule 302 of Regulation S–T. *See* 17 CFR 232.302.

[650] *See supra* Section III.B.4.

[651] 17 CFR 242.301(b)(5)(i)(A)–(B).

[652] *See* Regulation ATS Adopting Release, *supra* note 31, at 70873 (''Accordingly, if an [ATS] accounted for twenty percent or more of the *share volume* in any equity security, it must comply with the fair access requirements in granting access to trading in that security.'') (emphasis added).

Capacity, Integrity, and Security Rule, the volume for municipal securities or corporate debt securities is calculated based on the dollar or the share volume.[653] In the Regulation ATS Adopting Release, the Commission intended the test applicable to debt securities to be based on the dollar volume.[654] To mitigate any potential confusion, the Commission is adding these terms to Rules 301(b)(5)(i) and (b)(6)(i) to align the rule text with the Regulation ATS Adopting Release.[655]

The Commission is also re-proposing to amend Rules 301(b)(5)(i)(C) and (D) to clarify that the average daily dollar volume in municipal securities is provided by the SRO to which such transactions are reported and average daily dollar volume in corporate debt securities is provided by the SRO to which such transactions are reported.[656] When Regulation ATS was adopted, transaction reporting plans for municipal securities and corporate debt securities were being developed.[657] Today, transactions in municipal securities are reported to the MSRB and transactions in corporate debt securities are reported to FINRA. These two SROs provide the information that can be used by ATSs to determine whether the ATS is subject to the Fair Access Rule for these two categories of securities.[658] This amendment will add clarity to the rule given the established transaction reporting regimes for municipal securities and corporate debt securities.

2. Aggregation of Volume Threshold for Affiliated ATSs

The Commission is also proposing to amend the Rule 301(b)(5)(ii) of the Fair Access Rule to aggregate the trading volume for a security or category of securities for ATSs that are operated by a common broker-dealer, or ATSs that are operated by affiliated broker-dealers, solely for the purpose of calculating the average transaction volume under Rule 301(b)(5)(i)(A) through (F).[659] Today, there are single entities that may be the registered broker-dealer operator for different types of ATSs that trade different categories of securities (*e.g.,* NMS Stock ATS and non-NMS Stock ATS), and there are broker-dealers that may operate multiple ATSs that trade the same type of securities with different matching protocols (*e.g.,* limit order book for one and volume-weighted-average-price for the other). Likewise, there are entities that control multiple subsidiary broker-dealers, each of which operates one or more ATS or Communication Protocol System that trade the same or different categories of securities.[660] In these instances, each ATS with a common broker-dealer operator—and each of the affiliated Communication Protocol Systems that would be subject to Regulation ATS under this proposal—must comply with Regulation ATS.[661]

In response to the 2020 Proposal, one commenter stated that because each ATS is unique, it believed that for purposes of determining whether an ATS should be subject to the Fair Access Rule, volume should be determined at an individual ATS level and not aggregated across commonly controlled ATSs.[662] The commenter stated that a broker-dealer may choose to operate separate ATSs based on separate business units within the broker-dealer, different technology backbones, or different types of functionality, such as anonymous or fully disclosed order books or auction-based offerings.[663]

The Commission is concerned, however, that despite differences that may exist between ATSs that are operated by a common broker-dealer or ATSs operated by affiliated broker-dealers, there is a potential for a broker-dealer operator or controlling entity for more than one broker-dealer to structure its business to avoid triggering the fair access thresholds, and thereby circumvent the Fair Access Rule. It could do this by establishing multiple ATSs under one broker-dealer, or establishing multiple broker-dealers that each operate an ATS, to trade the same security or category of securities. The Fair Access Rule is designed to ensure that market participants have reasonable access to ATS market places that capture a significant percentage of national trading volume for a security or type of security. When a single entity operates multiple market places, that entity ultimately controls which market participants have access to trading across those market places.

When an organization, such as a broker-dealer, for example, provides an exchange market place for the same security or category of security but chooses to divide the market place into component parts by filing multiple Forms ATS or Forms ATS–N rather than filing a single form encompassing all the component market places, that organization is still the exchange providing a market place to bring together buyers and sellers of securities

[653] 17 CFR 242.301(b)(5)(i)(C)–(D); 17 CFR 242.301(b)(6)(i)(A)–(B).

[654] *See* Regulation ATS Adopting Release, *supra* note 31, at 70873, 70875 (requiring compliance with the Fair Access Rule and the Capacity, Integrity, and Security Rule if an ATS accounted for more than 20 percent of the total ''share volume'' in a security with respect to equity securities, and for more than 20 percent of the ''volume'' in a security with respect to debt securities). While Form ATS–R requires an ATS to report total volume in terms of both units and dollars for equity securities, it requires an ATS to report the total settlement value only in dollar terms for municipal securities and corporate debt securities. *See id.* at 70878.

[655] *See* proposed Rule 301(b)(5)(i)(A)–(D); proposed Rule 301(b)(6)(i)(A)–(B).

[656] To the extent transactions are reported to multiple SROs, the volume of transactions reported to such SROs would be combined for the purpose of calculating whether the transactions meet the threshold.

[657] *See* Regulation ATS Adopting Release, *supra* note 31, at 70873.

[658] *See* MSRB Rule G–14; FINRA Rule 6730. Electronic Municipal Market Access (''EMMA''), which is a service operated by the MSRB, and FINRA disseminate information on transactions in municipal securities and corporate debt securities, respectively. *See* EMMA Information Facility, *available at http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/Facilities/EMMA-Facility.aspx;* FINRA Rule 6750.

[659] For Rule 301(b)(5)(ii), the Commission would refer to the definition of affiliate used for purposes of Form ATS–N. *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38818–19. Affiliate was defined 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.'' *Id.* The Commission is proposing to include the definition of affiliate in proposed Rule 300(c). The currently defined term ''affiliate of a subscriber'' in Rule 300(c) is not currently used in Regulation ATS, and the Commission is therefore replacing such term with the definition of ''affiliate.'' The proposed amended definition of ''affiliate'' would help ATSs determine whether to aggregate the trading volume of ATSs operated by affiliated broker-dealer operators. The proposed definition of ''affiliate'' is identical to the definition of affiliate in Form ATS–N Explanation of Terms. Like the definition of ''affiliate of a subscriber'' under current Rule 300(c), the proposed definition of ''affiliate'' would include a specified person that, directly or indirectly, controls, is under common control with, or is controlled by, the specified person, and therefore would include employees of the specified person.

[660] The term ''control'' is defined in Rule 300(f) of Regulation ATS to 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: Is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); 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 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). *See also* NMS Stock ATS Adopting Release, *supra* note 2, at 38818–19 (discussing definition of control).

[661] *See* Rule 3a1–1(a)(2) (providing that an organization, association, or group of persons shall be exempt from the definition of ''exchange'' if it is in compliance with Regulation ATS) and Rule 301(a) (providing that an ATS shall comply with the requirements of Rule 301(b)).

[662] *See* ICE Bonds Letter I at 6.

[663] *See id.*

and ultimately controls access to the entire security or category of securities that it makes available for trading across its multiple ATSs. In the Commission's experience, ATSs under common operation of a broker-dealer generally are designed to function as complementary products of a single business of the broker-dealer as opposed to separate market places competing against each other for order flow in the same security or types of securities. In the Commission's experience, it is typical for a broker-dealer that operates multiple ATSs for the same security or category of securities to use, for example, the same operations, technology, and administrative personnel for purposes of its ATSs' trading operations. Furthermore, a single entity controlling multiple ATSs often applies similar standards for granting access across all of its ATSs that trade the same security or category of security and applies the same market data, clearance, settlement, and trade reporting processes, and procedures for protecting subscriber confidential trading information. Even in the case of a single parent company, for example, which controls several affiliated broker-dealers that each operate an ATS for the same category of security, access to each ATS is obtained from the broker-dealer operator, and each broker-dealer operator is subject to the direction of the parent company. Ultimately, those ATSs serve the business interests of, and are under common control by, the parent company.

Aggregating trading volume among ATS market places and Communication Protocol Systems that would be subject to Regulation ATS under this proposal—either operated by a common broker-dealer or by affiliated broker-dealers—would help further the vital policy goal of ensuring that no single entity is able to restrict fair access to a security or type of security. As a result of this proposed change, if, for example, a broker-dealer operated two NMS Stock ATSs that each accounted for three percent of the average daily volume in an NMS stock during at least four of the preceding six calendar months, both NMS Stock ATSs would be subject to the Fair Access Rule for that security because their aggregated volume exceeds the five percent threshold of Rule 301(b)(5)(i)(A).[664] If, instead, one of the ATSs had six percent of the average daily volume for an NMS stock and the other ATS had one percent, both NMS Stock ATSs would be subject to the Fair Access Rule as a result of their common broker-dealer operator and aggregated volume. In another example, if two broker-dealers that are subsidiaries of the same parent company each operate an ATS for corporate bonds and each ATS accounts for three percent of the average daily volume of corporate bonds traded in the United States during at least four of the preceding six calendar months, then both ATSs would be subject to the Fair Access Rule. This result would be because the ATSs are operated by affiliated broker-dealers and their aggregate volume exceeds the volume threshold of Rule 301(b)(5)(i)(C).

3. Reasonable Written Standards

The Commission is proposing to amend the requirements related to reasonable written standards.[665] The Commission is proposing Rule 301(b)(5)(iii)(A) to provide that the ATS ''establish and apply reasonable written standards for granting, limiting, and denying access to the services of the alternative trading system.'' As discussed in more detail below, the Commission is proposing to add the word ''reasonable'' before ''written standards'' to incorporate the concept that is part of current Rule 301(b)(5)(ii)(B) (''not unreasonably prohibit or limit'') and used in the Regulation ATS Adopting Release.[666] The Commission is also adding in the rule text, for the removal of any doubt, that the ATS must ''apply'' the reasonable written standards as established. For example, if an ATS establishes a written standard that states subscribers' trading interest will not be displayed to anyone, but the ATS in practice displays trading interest to a subscriber, then the ATS would not be *applying* its established written standards. Establishing the written standard is not sufficient if the ATS is not following or applying them.

Also incorporated into proposed Rule 301(b)(5)(iii)(A), and taken from current Rule 301(b)(5)(ii)(B), is that the written standards apply to access of ''the services of the alternative trading system.'' This addition to the rule text serves to emphasize that the Fair Access Rule applies not only to the initial grant or denial of access to an applicant of the ATS, but also to the services of the ATS that are offered to current participants. ATS services, including, among others, the provision of market data, order entry functionalities, priority rules, segmentation procedures, negotiation features, communication protocols, counterparty selection, and order types offered, would all be subject to the provisions of the Fair Access Rule. The Commission is also incorporating from current Rule 301(b)(5)(ii)(B) that the Fair Access Rule applies when limiting and denying access to the ATS services, not solely granting access.[667] The application of the Fair Access Rule to limitations and denials of access would help ensure that market participants receive the full benefits of participation in an ATS subject to the Fair Access Rule unless a limitation or denial of access can be reasonably justified.

As indicated above, the Commission is making explicit in the text of Rule 301(b)(5) that the written standards required under the Fair Access Rule must be reasonable. An ATS subject to the Fair Access Rule is not required to treat all participants the same in all instances; however, the Fair Access Rule has always required that an ATS subject to the rule provide reasonable access to ATS services.[668] The Commission is revising the rule text to make it clear that the written standards must be reasonable. For an ATS's written standards to be reasonable, the standards must be fair and not unreasonably discriminatory. Some ATSs, for example, might offer different services, or levels of a service, to one subscriber or among different classes of subscribers. An ATS subject to the Fair Access Rule could not provide services to one class of participants and not to other classes of participants unless the ATS established standards with a reasonable basis for treating the participant classes differently. For example, as stated in the Regulation ATS Adopting Release, an ATS may establish a standard that requires all participants be registered broker-dealers and that ATS may deny access to the ATS to any applicant that is not a

[664] Also, if one of the ATSs operated by the common broker-dealer operator accounted for five percent of the average daily volume in an NMS stock for three months and the other ATS accounted for five percent of the average daily volume in the same NMS stock for the subsequent three months, then both ATSs would be subject to the Fair Access Rule for that NMS stock because aggregated they would have crossed the volume threshold for more than four of the preceding six calendar months.

[665] These requirements are currently in Rule 301(b)(5)(ii), which the Commission is proposing to re-number as Rule 301(b)(5)(iii).

[666] *See* Regulation ATS Adopting Release, *supra* note 31, at 70872. The Commission believes that the addition of ''reasonable'' is consistent with its intent as expressed in the Regulation ATS Adopting Release. Specifically, in discussing the Fair Access Rule, the Commission stated that ''fair treatment . . . is particularly important'' when ATSs reach significant volume in a security, and the rule would serve to prohibit ''unreasonably'' discriminatory denials of access.

[667] Rule 301(b)(5)(ii)(B) states that the ATS shall not ''unreasonably *prohibit or limit*'' (emphasis added) any person with respect to the services of the ATS.

[668] *See supra* notes 666–667.

registered broker-dealer.[669] As part of its reasonable analysis, an ATS subject to the Fair Access Rule must explain why the standard for admitting registered broker-dealers rather than non-registered broker-dealers is fair and not unreasonably discriminatory.[670] Fees can be a manner of limiting or denying services. In another example, an ATS that charges certain fees to one class of participants but different fees to another class of participants for the same service could not, if it were subject to the Fair Access Rule, discriminate in this manner unless it adopted reasonable written standards and applied them in a fair and non-discriminatory manner. Also, to *apply* the standards fairly and non-discriminatorily, the ATS's activities (or the activities of persons performing a function of the ATS) must be carried out in accordance with the established written standards of the ATS.

When assessing the reasonableness of standards under the Fair Access Rule, the Commission may consider principles applied in the national securities exchange context to guide its analysis of whether an ATS's written standards are fair and not unreasonably discriminatory. Under Section 6(b)(5) of the Exchange Act, for example, a national securities exchange must show that its rules are not designed to permit *unfair discrimination* between customers, issuers, brokers or dealers.[671] Sections 6(b)(2) and 6(c) of the Exchange Act require national securities exchanges to consider the public interest in administering their markets and to establish rules designed to admit members *fairly*.[672] National securities exchanges and ATSs are regulated pursuant to separate statutory and rule provisions of the Federal securities laws and there are different benefits and burdens associated with each entity; however, as the Commission stated in the Regulation ATS Adopting Release, fair access requirements are based on the principle that qualified market participants should have fair access to the U.S. securities markets, and such markets would include ATSs subject to the Fair Access Rule.[673]

The justification provided for why each written standard is fair and not unreasonably discriminatory is an important aspect of an ATS's compliance with the Fair Access Rule as proposed to be amended. The same limitation or restriction on different ATSs may be unfair on one ATS and not another depending on the design of the ATS and its rationale for such a limitation. One commenter suggested that fair access is not applicable to fixed income platforms where each participant has discretion over which other participants they want to trade with.[674] Under these circumstances where ATS participants can select their potential counterparties, the Commission would view an ATS that implements the participant's choices as having adopted those as ATS standards. As a result, the ATS subject to the Fair Access Rule would need to establish reasonable written standards that, among other things, justify why the differences in access between the selected and not-selected counterparties are fair and non-discriminatory and thus reasonable. For example, if subscribers selected their counterparties based on the condition of the counterparty's balance sheet (*e.g.,* totals for assets and liabilities), and the ATS implemented those selections, then the ATS would need to include a justification in its written standards for why implementing those selections is fair and not unreasonably discriminatory.[675] In cases where the Commission staff reviews an ATS's fair access standards, whether in the description provided under Item 24 of revised Form ATS–N for NMS Stock ATSs and Government Securities ATSs (as proposed) or during an examination, the Commission staff would review whether a given justification for the standard is, for example, unreasonably discriminatory, or is pretextual and, in fact, designed to thwart the goal of providing fair access to qualified market participants.[676]

Even if an ATS's written standard is equally applicable to all participants, the ATS must nevertheless ensure the standard itself is not unfair or unreasonably discriminatory or applied in an unfair or unreasonably discriminatory manner. If an ATS included in its written standards that it reserves the right to accept or deny applicants to the ATS at its sole discretion, such standard may apply equally to all applicants, but it would not be reasonable as it would contradict the rule's goal of promoting fair access to the securities markets. In another example, if an ATS adopts a written standard that it would only accept participants with ''industry-leading reputations,'' such written standard, depending on the justification, is unlikely to be considered reasonable because of its subjectivity and potential substantial limiting effect on market participants' access to the ATS. As stated in the Regulation ATS Adopting Release, if an ATS applied its standards so as to discriminate among similarly-situated participants, such actions would be inconsistent with reasonable written standards because the ATS would not be acting impartially. One example of this would be an ATS that provides liquidity providers that met certain volume thresholds with trading privileges, yet does not provide those privileges equally to every qualifying liquidity provider. Another example would be a Communication Protocol System that establishes a standard to track all participants' ''firm up'' rates in response to requests for quotes but subsequently denies or limits access to only certain subscribers that exceed the firm-up threshold and not to other participants who likewise exceeded the firm-up threshold.

The Commission is also proposing Rule 301(b)(5)(iii)(A)(*1*) through (*5*) to provide minimum requirements for the reasonable written standards that must be established, and applied, by an ATS that is subject to the Fair Access Rule. These minimum requirements for what the written standards must include do not alter the substantive requirement that the written standards be reasonable. Rather, they explain in more granular detail what is required to be sufficient written standards to facilitate compliance. First, the Commission is proposing Rule 301(b)(5)(iii)(A)(*1*) to require that an ATS's reasonable written standards provide the dates that each written standard is adopted, effective, and, if applicable, modified. This proposed requirement is designed to assist Commission examination staff in their evaluation of the application of an ATS's written standards as well as help the staff understand the written fair

[669] *See* Regulation ATS Adopting Release, *supra* note 31, at 70874.

[670] *See* proposed Rule 301(b)(5)(iii)(A)(*4*).

[671] 15 U.S.C. 78f(b)(5).

[672] 15 U.S.C. 78f(b)(2) and (c).

[673] *See* Regulation ATS Adopting Release, *supra* note 31, at 70874.

[674] *See* MarketAxess Letter at 10.

[675] In practice, the ATS participant making a selection of its potential counterparties would need to provide the ATS with its justification for selecting those counterparties, and the ATS would need to evaluate whether the stated justification comports with the Fair Access Rule, and if so, incorporate it into the ATS's established written standards.

[676] Rule 301(b)(5)(ii)(D) requires ATSs to report to the Commission information on Form ATS–R regarding grants, limitations, and denial of access to an ATS subject to the Fair Access Rule. Specifically, Form ATS–R, Exhibit C requires the ATS to list of all persons granted, denied, or limited access to the ATS during the period covered by the report, designating for each person whether they were granted, denied, or limited access; the date the ATS took such action; the effective date of such action; and the nature of any denial on limitation of access. The Commission stated in the Regulation ATS Adopting Release that the Commission intended to enforce the Fair Access Rule by reviewing Form ATS–R reports and investigating any possible violations of the rules. *See* Regulation ATS Adopting Release, *supra* note 31, at 70874.

access standards that were in place at a given time.

Second, the Commission is proposing Rule 301(b)(5)(iii)(A)(*2*) to require an ATS's reasonable written standards set forth any objective and quantitative criteria upon which each standard is based.[677] Objective or quantitative standards can help demonstrate an ATS's compliance with the Fair Access Rule by limiting an ATS's discretion and its ability to act arbitrarily with respect to an applicant to the ATS or current participant. Nevertheless, an ATS's objective or quantitative standards must still be fair and not unreasonably discriminatory. An ATS could not, for example, establish, without reasonable justification, a quantitative standard at such a high level that it unfairly results in only a limited group of ATS participants that can meet it. If an ATS, for example, sets its required firm up rate on conditional orders at 95 percent, compliance with the Fair Access Rule would depend on whether that standard was fair and whether it unreasonably discriminated against those subscribers that did not attain a 95 percent firm up rate.[678]

In the case of an ATS that segments the order flow of its participants into certain categories based on quantitative metrics, such as reversion rates,[679] the ATS's standards generally should include, among other things, the metrics and factors used to determine the segmented categories and, as explained further below, how the metrics and factors are fair and not unreasonably discriminatory, and thus are reasonable. The presence of the objective and quantitative thresholds limits the ATS's discretion in differentiating among participants (in this example, by setting segmented categories for order interaction and thus denying certain participants the ability to interact with other participants on the ATS). The quantitative threshold still must be reasonable; an objective or quantitative standard would not by itself be sufficient to comply with fair access. In cases where an ATS has a written standard for access that is not based on objective or quantitative criteria, the ATS must still justify why the standard is reasonable, and more specifically, how such standard is fair and not unreasonably discriminatory.

Third, the Commission is proposing Rule 301(b)(5)(iii)(A)(*3*) to require that an ATS's reasonable written standards identify any differences in access to the services of the ATS by applicants and current participants. The purpose of this provision is to highlight each instance where an ATS treats participants differently under the established written standards. Under the Fair Access Rule, ATSs may provide different services to different subscribers, or may vary how services are offered among ATS participants; however, the ATS must have a reasonable basis for doing so. An ATS might, for example, segment participant order flow into specific categories (*i.e.,* based upon the type of market participant generating the order flow) to determine order interaction. As a result, some subscribers can only interact with certain subscribers and not others. In such a case, the ATS would be required to, among other things, identify the segmentation categories and criteria used to set the categories. If, for example, an ATS grants certain trading privileges, such as being able to view certain trading interest, to a person classified as a liquidity provider, the ATS would be required to describe any such differences in treatment for the liquidity provider. The identification of differences in treatment required would also include those applicable to applicants to the ATS. For example, if an ATS had different minimum capital and credit requirements for applicants to the ATS, the ATS would need to identify the differences in its written standards. As described above, differences in access must be reasonable and the ATS would be required to justify how such differences in access are fair and not unreasonably discriminatory pursuant to proposed Rule 301(b)(5)(iii)(A)(*4*).

Fourth, the Commission is proposing Rule 301(b)(5)(iii)(A)(*4*) to require that an ATS's reasonable written standards justify why each standard, including any differences in access to the services of the ATS, is fair and not unreasonably discriminatory. While the Fair Access Rule does not require that the ATS treat all market participants equally, the Fair Access Rule requires an ATS to have a reasonable basis for not treating market participants equally. Accordingly, an ATS would be required to justify in writing why its standards are fair and not unreasonably discriminatory.[680] Requiring an ATS to justify its fair access standards in writing would facilitate Commission staff review of those standards, whether by reviewing the standards in the description provided under Item 24 of revised Form ATS–N for NMS Stock ATSs and Government Securities ATSs (as proposed) or during an examination of an ATS. Above, the Commission sets forth an example of an ATS establishing different minimum capital and credit requirements for applicants to the ATS. In addition to identifying that difference in its written standards, the ATS would also be required to justify why the difference is fair and not unreasonably discriminatory. The ATS could, for instance, explain: (1) Objective or quantitative criteria used to determine which minimum applies to which applicants and why the ATS chose the objective and qualitative criteria that it did, which would also meet the requirements of paragraph (b)(5)(iii)(A)(*2*) outlined above; and (2) why those objective or quantitative criteria are fair and not unreasonably discriminatory as applied to the ATS. If there are no objective criteria, the ATS must explain why it is fair and not unreasonably discriminatory to have and apply the capital and credit requirements among applicants to the ATS.

Finally, the Commission is proposing Rule 301(b)(5)(iii)(A)(*5*) to require an ATS's reasonable written standards address any standard for granting, limiting, or denying access to the services of the ATS performed by persons other than the broker-dealer operator. From the Commission's experience, persons other than the broker-dealer operator may perform all or some functions of the ATS. In other cases, the broker-dealer operator, or affiliate of the broker-dealer operator, may direct the ATS participants to use the services of a person other than the broker-dealer operator. In both such cases, the activities of those persons can affect participants' access to the ATS,

[677] *See* Regulation ATS Adopting Release, *supra* note 31, at 70874 (providing minimum capital or credit requirements for subscribers as an example of objective standards).

[678] In assessing whether such a standard is reasonable, the Commission could consider, among other things, the quantitative criteria upon which the standard is based, the justification by the ATS for why the standard is fair and not unreasonably discriminatory, the differences in, and impact on, access to services from the application of the standard, and other information provided through discussions with the ATS.

[679] In the Commission's experience, a common method for ATSs to segment order flow is to measure a security's change in price within a certain (usually short) time period after an execution and, based on that figure or reversion rate, assign a score to one or both of the parties to the transaction. If a security's price moves substantially after an execution, then that subscriber's (or subscribers') score may cause it to be segmented into a class of subscribers that is considered riskier to trade against and other subscribers may select to not trade against that subscriber. Subscribers are assigned scores based on their reversion rates and segmented into classes or categories accordingly.

[680] As the Commission is proposing to relocate these requirements under the requirements for an ATS's written standards under Rule 301(b)(5)(iii)(A), the Commission is proposing to delete the rule text under current Rule 301(b)(5)(ii)(B) and renumber current paragraphs (b)(5)(ii)(B) and (C) to paragraphs (b)(5)(ii)(C) and (D), respectively.

and therefore, the ATS must ensure, through its written fair access standards, that those persons have established reasonable written standards for granting, denying, and limiting access to the ATS and are applying those standards in a fair and non-discriminatory manner.

For example, an ATS that arranges for an entity to provide order entry services to the ATS would be required to ensure that the order entry provider has reasonable standards for ATS participants to access the order entry services, and thus the ATS. The ATS would be required to address in its reasonable written standards how the provider ensures that its standards are reasonable because the activities of the provider can impact the ability of participants to access the ATS. In addition, if the ATS broker-dealer operator, or affiliate of the broker-dealer operator, directs participants to use the services of another entity in connection with the ATS, that ATS would be responsible to ensure that such entity establishes reasonable standards for access. For example, if the broker-dealer operator, or affiliate of the broker-dealer operator, directs participants to use the services of a certain clearing broker, the ATS would be required to ensure that the clearing broker has reasonable written standards and to include in the ATS's written standards the clearing broker's written standards for granting, denying, or limiting access to its clearing services as they relate to the ATS. The Commission is concerned that an ATS may attempt to use an affiliate or third party to perform ATS activities or functions while avoiding the application of Regulation ATS to those activities or functions.[681] Requiring an ATS subject to the Fair Access Rule to address in its written standards the activities or functions performed by persons in conjunction with the ATS other than the broker-dealer operator would help ensure fair access to the ATS by investors.

4. Recordkeeping Requirements

The Commission is also proposing changes to the ATS recordkeeping requirements under Rule 301(b)(5)(iii)(B), as proposed to be amended.[682] The Commission is proposing to replace the reference to records relating to grants of access to ''subscribers'' with references to ''participants.'' In the Commission's experience, ATSs can grant access to customers of subscribers who may not themselves be subscribers to the ATS. This proposed change would clarify that records related to such participants would need to be made and kept under the rule. In addition, the Commission is proposing to add to the rule text that the ATS must make and keep records related to denials or limitations of access and reasons for each applicant ''and participant.'' By adding ''participant,'' the Commission will reflect that it requires an ATS subject to the rules to keep records of when it limits access to existing participants (not only ''applicants'') to the ATS system. This is a technical change, as the current rule requires the ATS to make and keep all records related to limitations of access and reasons for such limitations, which would apply to both existing participants, as well as applicants upon entry to the ATS.

The Commission is also proposing to add language to Rule 301(b)(5)(iii)(B)(*1*) and (*2*) to reference that grants of access and denials of limits of access and reasons for limitation and denying access to the services of the ATS would be under the standards provided in proposed Rule 301(b)(5)(iii)(A). Referencing the standards in Rule 301(b)(5)(iii)(A) would clarify that grants, limitations, and denials of ATS services would be under the standards of the rule, as proposed to be revised. The Commission is also proposing to amend Rule 303(a)(1)(iii) of Regulation ATS to require an ATS subject to the Fair Access Rule, for a period of not less than three years, the first two years in an easily accessible place, to preserve at least one copy, including each version, of such ATS's written standards for access to trading, all documents relevant to the ATS decision to grant, deny, or limit access to any person, and all other documents made or received by the ATS in complying with the Fair Access Rule.[683] This change would modify the current rule to specify that the standards are ''written'' and that the ATS must maintain ''each version'' of the written standards required under Rule 301(b)(5), which is consistent with the previous Commission guidance.[684]

5. Removal of the Exclusion for Passive Systems From the Fair Access Rule

The Commission is re-proposing to remove an exclusion from compliance with the Fair Access Rule under Rule 301(b)(5) and the Capacity, Integrity, and Security Rule under Rule 301(b)(6) that is applicable to ATSs that trade equities.[685] An ATS is excluded from complying with the requirements of the Fair Access Rule and the Capacity, Integrity, and Security Rule if the ATS: (i) matches customer orders for a security with other customer orders; (ii) such customers' orders are not displayed to any person, other than employees of the ATS; and (iii) such orders are executed at a price for such security disseminated by an effective transaction reporting plan, or derived from such prices.[686] In adopting the exclusion, the Commission stated that ATSs of this nature, the so-called ''passive systems,'' did not contribute significantly to price discovery; however, the Commission also stated that they had the potential to and frequently do affect the markets from which their prices are derived, and thus, the Commission would continue to monitor these systems and reconsider whether the requirements should apply if concerns arise in the future.[687]

In the Regulation ATS Adopting Release, the Commission explained that fair treatment by ATSs of subscribers is particularly important when an ATS captures a large percentage of trading volume in a security because investors lack access to viable alternatives to trading in the ATS.[688] Since the adoption of Regulation ATS, passive systems (as the term is used in the Regulation ATS Adopting Release) for NMS stocks have garnered a significant percentage of trading volume in securities and have come to play an important role in matching buyers and sellers of securities.[689] Eliminating the

[681] *See* Regulation ATS Adopting Release, *supra* note 31, at 70873, n.252.

[682] This is currently in paragraph (b)(5)(iii)(C), but would be renumbered to paragraph (b)(5)(iii)(B) under the proposed changes.

[683] The Commission is also proposing to specify in Rule 303(a)(1)(iv) and (v) that an ATS must maintain ''each version'' of copies of records made in the course of complying with Rule 301(b)(6) and copies of the written safeguards and written procedures to protect subscribers' confidential trading information and written oversight procedures created in the course of complying with Rule 301(b)(10).

[684] *See* Regulation ATS Adopting Release, *supra* note 31, at n.251 (stating that the Commission expects an ATS to maintain a record of its standards at each point in time, and that if the ATS amends or modifies its access standards, the records kept should reflect historic standards, as well as current standards).

[685] When adopting the exclusion, the Commission contemplated that it would apply only to ATSs that trade equity securities, as one of the elements of the exclusion requires that the prices in the ATS be based on the SIP. The third prong of each exception states that if an ATS meets the requirement, among others, to execute customer orders ''at a price for such security disseminated by an effective transaction reporting plan, or derived from such prices,'' the ATS would not be subject to the Fair Access Rule or Capacity, Integrity, and Security Rule, as applicable. 17 CFR 242.301(b)(5)(iii)(C); 17 CFR 242.301(b)(6)(iii)(C).

[686] 17 CFR 242.301(b)(5)(iii); 17 CFR 242.301(b)(6)(iii).

[687] Regulation ATS Adopting Release, *supra* note 31, at 70853.

[688] *Id.* at 70872.

[689] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38770–71.

Rule 301(b)(5)(iii) exclusion would ensure that the Fair Access Rule is applied as intended and help ensure fair treatment of applicants and current subscribers by any type of ATS that captures a large percentage of trading in a security or type of security.

The Commission is also re-proposing to amend Rule 301(b)(6) to remove the exclusion from compliance with the Capacity, Integrity, and Security Rule under Rule 301(b)(6)(iii).[690] As part of Regulation SCI, Rule 301(b)(6) of Regulation ATS was amended to no longer apply to ATSs that trade equities because Regulation SCI superseded and replaced the requirements of the Capacity, Integrity, and Security Rule with regard to ATSs that trade NMS stocks and non-NMS stocks.[691]

Request for Comment

150. Should the Commission change the five percent fair access threshold for NMS stocks, equity securities that are not NMS stocks, corporate bonds, or municipal securities? If so, should the threshold be changed higher or lower than the existing five-percent threshold under Rule 301(b)(5)(i)? National securities exchanges are required to have rules designed to prevent unfair discrimination[692] and admit members fairly.[693] Because ATSs are operating pursuant to an exemption from exchange registration, should the Commission eliminate the volume threshold(s) for the Fair Access Rule and thus, require all ATSs to provide fair access to their participants regardless of trading volume? If yes, should the Commission eliminate the volume thresholds for all categories of securities subject to the Fair Access Rule or only specific categories?

151. Should the Commission change the look-back period for applying the fair access thresholds from four out of the preceding six months to something different? For example, should an ATS be subject to fair access if its average daily trading volume in a subject security is five percent over the prior quarter or the prior month? Should the Commission change to the look-back period for all categories of securities subject to the Fair Access Rule, or just specific categories?

152. Should the Commission allow or require ATSs to use sources of market data other than published data provided by the SRO to which trades are reported? If yes, which data sources?

153. Should the Commission change the Fair Access Rule for it to apply categorically to NMS stocks rather than on a security-by-security basis? For example, should the Commission change the fair access threshold for equity securities so that an ATS would only be subject to the requirements of the Fair Access Rule if its average daily trading volume is five percent across all NMS stocks? Should the Commission change the Fair Access Rule to provide fair access in all NMS stocks if it surpasses the fair access threshold in a single NMS stock?

154. Should the Commission change the Fair Access Rule so that it applies categorically, rather than on a security-by-security basis, to equity securities that are not NMS stocks? For example, should the Commission change the fair access threshold for equity securities so that an ATS would only be subject to the requirements of the Fair Access Rule if its average daily trading volume is five percent across all equity securities that are not NMS stocks? Additionally, or alternatively, should the Commission change the Fair Access Rule to require an ATS to provide fair access in all NMS stocks if it surpasses the fair access threshold in a single NMS stock?

155. Should the Commission adopt rules to amend the Rule 301(b)(5)(ii) of the Fair Access Rule to aggregate the trading volume for a security or category of securities for ATSs that are operated by a common broker-dealer, or ATSs that are operated by affiliated broker-dealers, solely for the purpose of calculating the average transaction volume under Rule 301(b)(5)(i)(A) through (F)?

156. Under Regulation ATS, an ATS would be subject to Rule 301(b)(3) (Order Display and Execution Rule) and Rule 301(b)(6) (Capacity, Integrity and Security Rule) if the ATS exceeded certain volume thresholds within a given period of time under the rules. Should the Commission amend the Order Display and Execution Rule and the Capacity, Integrity, and Security Rule to aggregate the trading volume for a security or category of securities for ATSs that are operated by a common broker-dealer, or ATSs that are operated by affiliated broker-dealers, for the purpose of calculating the average transaction volume under those rules?

157. Instead of aggregating trading volume across multiple ATSs operated by a common broker-dealer, should the Commission amend Regulation ATS to require a broker-dealer to operate only one ATS for a category of security? If no, why is it important for one broker-dealer to be able to offer multiple ATS market places for the trading of the same category of security?

158. Should the Commission adopt the same standard of reasonableness that is applied to national securities exchanges for purposes of the Fair Access Rule? If not, what standard of reasonableness should apply to ATSs that are subject to the Fair Access Rule?

159. Should the Commission adopt requirements in addition to the reasonable written standards proposed in Rule 301(b)(5)(iii)(A)(*1*) through (*4*)? Should any of those standards be amended?

160. Should the Commission eliminate the exclusion from compliance with the Fair Access Rule under Rule 301(b)(5)(iii) and with the Capacity, Integrity, and Security Rule under Rule 301(b)(6)(iii)?

161. Should the Commission adopt the changes to the recordkeeping provisions of the Fair Access Rule? Are there any additional records that an ATS should be required to keep?

B. Electronic Filing of and Other Changes to Form ATS and Form ATS–R

The Commission is re-proposing revisions to Rule 301(b)(2), Form ATS, and Form ATS–R to modernize Form ATS and Form ATS–R and to provide that they are filed electronically. In addition, the Commission is proposing to require ATSs to provide certain additional information on Form ATS–R, including volume reporting for transactions in repurchase and reverse repurchase agreements on the ATS. ATSs are required to file the information required by Form ATS–R[694] pursuant to Rule 301(b)(9) within 30 calendar days after the end of each calendar quarter in which the ATS has operated.[695]

First, the Commission is re-proposing an amendment to Rule 301(b)(2)(vi), which currently states that ''[e]very notice or amendment filed pursuant to this paragraph (b)(2) shall constitute a 'report''' within the meaning of applicable provisions of the Exchange Act. The Commission proposes to add a reference to Rule 301(b)(9) to state that Form ATS–R, as is the case with Form ATS, constitutes a report within the meaning of applicable provisions of the Exchange Act.[696]

[690] 17 CFR 242.301(b)(6)(iii).

[691] *See* Regulation SCI Adopting Release, *supra* note 3, at 72252, 72267.

[692] 15 U.S.C. 78f(b)(5).

[693] *See* 15 U.S.C. 78f(b)(2) and (c); 15 U.S.C. 78o–3(b)(8).

[694] *See* Form ATS–R. *See also supra* notes 144–147.

[695] *See* 17 CFR 242.301(b)(9)(i). An ATS must also file Form ATS–R more frequently upon request of the Commission. *See* Form ATS–R Instructions.

[696] This amendment would be consistent with Rule 301(b)(2)(vii), which states that ''[a]ll reports filed pursuant to this paragraph (b)(2) and

Continued

Next, the Commission is re-proposing to require that all Forms ATS and ATS–R are filed with the Commission electronically. As proposed, following the effective date of the proposed rule, all Form ATS filers would be required to file an amendment on Form ATS in the electronic format proposed herein that would also include all new information required by revised Form ATS. Currently, ATSs are required to submit paper submissions of Forms ATS and ATS–R to the Commission.[697] The Commission proposes to amend Rule 301(b)(2)(vii) to require that an ATS must file a Form ATS or a Form ATS–R in accordance with the instructions therein. The Commission is proposing to revise the instructions to Form ATS and Form ATS–R to require that they be submitted electronically via EDGAR.[698] The Commission is also proposing to require in Rule 301(b)(2)(vii) that reports provided for in Rule 301(b)(2) and (9) shall be filed on Form ATS and Form ATS–R, as applicable, and include all information as prescribed in Form ATS or Form ATS–R, as applicable, and the instructions thereto.[699] In addition, the Commission is proposing to require that any Form ATS or Form ATS–R shall be executed at, or prior to, the time Form ATS or Form ATS–R is filed and shall be retained by the ATS in accordance with Rule 303 of Regulation ATS and Rule 302 of Regulation S–T, and the instructions in Form ATS or Form ATS–R, as applicable.[700] Among other benefits, the electronic filing of Forms ATS and ATS–R would increase efficiencies and decrease filing costs for ATSs (*i.e.,* ATSs would no longer be required to print and mail paper filings) and for Commission staff when undertaking a review of these forms. Form ATS–N is required to be filed in EDGAR. EDGAR is currently configured to support the Commission's receipt and review of filings under Regulation ATS, and requiring electronic Form ATS and Form ATS–R filings to be submitted via EDGAR would be the most efficient way to facilitate their electronic filing.

To facilitate electronic filing, the Commission is proposing to amend the text of General Instructions A.4 of Forms ATS and ATS–R to require that all filings be submitted via EDGAR and prepared, formatted, and submitted in accordance with Regulation S–T and the EDGAR Filer Manual.[701] The Commission also proposes to amend Forms ATS and ATS–R General Instruction A.5 to state that a filing that is defective may be rejected and not be accepted by the EDGAR system and that any filing so rejected shall be deemed not filed. This is consistent with the requirements of Regulation S–T, which provides the rules for EDGAR submissions.[702] The Commission also notes that the instructions for current Form ATS contain similar language,[703] but the current instructions for Form ATS–R do not contain such language. The Commission believes that it would be appropriate to reject a filing as defective if it does not comply with the technical requirements of the form, for example, if a Form ATS or Form ATS–R is missing exhibits, or if the ATS does not provide a response to a Form ATS request or does not comply with the electronic filing requirements. The Commission is also proposing to amend General Instruction A.6 (''Recordkeeping'') of both forms to reflect that records must be retained in accordance with the EDGAR Filer Manual and Rule 303 of Regulation ATS and to conform to the recordkeeping instructions on Form ATS–N, as revised.[704] Instruction A.8 would also be revised to reflect updated Paperwork Reduction Act estimates, and, to conform to changes the Commission is proposing in Rule 301(b)(2)(vii),[705] to state that types of securities traded provided on Form ATS and Form ATS–R will not be afforded confidential treatment. The Commission is also proposing to add new Instruction A.8 to Form ATS to require that, for amendments, the filer attach an Exhibit C marked to indicate additions to or deletions from the disclosures in Items 1 through 6 of Form ATS. This document would help enable the Commission to identify any changes to the form more easily. Most ATSs currently provide such a marked document to the Commission on a voluntary basis. The Commission is also proposing to amend the instructions to Form ATS to state that Newly Designated ATSs are required to file a Form ATS no later than the date 30 calendar days after the effective date of any final rule, if adopted.[706]

In addition, the Commission is re-proposing to amend Form ATS to require an ATS filing an amendment on Form ATS to identify whether the Form ATS filing is a material amendment under Rule 301(b)(2)(ii), a periodic amendment under Rule 301(b)(2)(iii), or a correcting amendment under Rule 301(b)(2)(iv).[707] An ATS currently identifies an amendment to current Form ATS by marking the ''Amendment to Initial Operation Report'' box on Form ATS, and Form ATS currently does not ask the ATS to specify whether the amendment to Form ATS is a material, periodic, or correcting

paragraph (b)(9)'' of Rule 301 are, as proposed, accorded confidential treatment subject to applicable law. *See* 17 CFR 242.301(b)(2)(vii). The instructions to Form ATS and Form ATS–R require an ATS to submit one original and two copies of Form ATS and Form ATS–R to the Commission. *See* Form ATS and Form ATS–R Instructions. In addition, Rule 301(b)(2)(vii) requires that an ATS file copies of its Form ATS filings with the examining authority of the SRO with which it is registered (*e.g.,* FINRA) at the same time it files with the Commission, and upon request, the ATS must provide its SRO's surveillance personnel with duplicate Form ATS–R filings. *See* 17 CFR 242.301(b)(2)(vii).

[697] Rule 301(b)(2)(vii) of Regulation ATS specifies that reports on Form ATS shall be considered filed upon receipt by the Division of Trading and Markets, at the Commission's principal office in Washington, DC *See* 17 CFR 242.301(b)(2)(vii).

[698] *See infra* note 701 and accompanying text.

[699] Accordingly, the Commission is proposing to delete the provisions of Rule 301(b)(2)(vii) related to paper submission. Specifically, the Commission is proposing to delete the sentence that the reports shall be considered filed ''upon receipt by the Division of Trading and Markets, at the Commission's principal office in Washington, DC'' Additionally, although the Commission would continue to require that duplicates of filings on Form ATS be provided to the SRO that is the examining authority for each ATS, and that duplicates of the Form ATS–R be made available to the surveillance personnel of such SRO upon request, the Commission proposes to eliminate the reference to ''originals'' in Rule 301(b)(2)(vii) because paper reports will no longer be furnished to the Commission and there will therefore be no ''original'' version of the reports.

[700] The Commission notes that the proposed provisions would conform to similar provisions of Rule 304, which provide for the electronic filing of Form ATS–N. *See* 17 CFR 242.304(c).

[701] The Commission proposes to eliminate the language in the Form ATS instructions and Form ATS–R instructions requesting that an ATS type all information because an ATS would not otherwise have the option to handwrite any responses. The instructions for both forms would be amended to eliminate the option to use a ''reproduction'' of the forms. The Commission also believes it is redundant to state that the Form ATS or Form ATS–R must be the ''current version'' as the ATS is required to attest that the form is ''current.'' The Commission also proposes to delete the requirement to attach an execution page with original manual signatures for Form ATS because, as discussed above, Form ATS and Form ATS–R would be signed electronically and thus there would be no need for an execution page. The Commission also proposes to delete the instruction that the name of the alternative trading system, CRD number, SEC file number, and report period dates be listed on each page, as this requirement will be unnecessary because the Form ATS or Form ATS–R will be submitted as a single submission. Because Form ATS and Form ATS–R would be submitted via EDGAR, the Commission is also proposing to delete references to submitting the ''original'' and ''copies'' of the form to the Commission at the Commission's mailing address.

[702] 17 CFR part 232. This is also consistent with the requirements for Form ATS–N.

[703] The Form ATS Instructions state that ''Form ATS shall not be considered filed, unless it complies with applicable requirements.''

[704] Rule 303 of Regulation ATS provides the record preservation requirements for ATSs. *See* 17 CFR 242.303.

[705] *See infra* Section V.C.

[706] *See supra* note 180 and accompanying text.

[707] *See* Rule 301(b)(2)(ii)–(iv).

amendment.[708] Requiring an ATS to specify the type of amendment would better enable the Commission to determine whether an ATS is in compliance with Regulation ATS. The Commission also proposes requiring an ATS that is filing a cessation of operations report to provide the date that the ATS ceased to operate, which is not currently required on Form ATS. The Commission believes that having information about the date that the ATS ceased to operate would enable the Commission to determine more readily whether an ATS is, or was, in compliance with Regulation ATS.[709]

The Commission is also re-proposing to amend Form ATS and Form ATS–R to change the solicitation of information relating to the name of the broker-dealer operator and the registration and contact information of the broker-dealer operator. Because many broker-dealer operators of ATSs engage in brokerage and/or dealing activities in addition to operating an ATS, and some broker-dealers operate multiple ATSs, the name of the broker-dealer operator of an ATS often differs from the commercial name under which the ATS conducts business. To identify the broker-dealer operator of an ATS and to assist the Commission in collecting and organizing its filings and assessing whether the ATS has met its requirement to register as a broker-dealer, Forms ATS and ATS–R would require the ATS to indicate the full name of the broker-dealer operator of the ATS, as it is stated on Form BD, in Item 1 of Form ATS and Form ATS–R. To further facilitate compliance with the requirements of Regulation ATS, as proposed, Form ATS and Form ATS–R would require the ATS to indicate whether the filer is a broker-dealer registered with the Commission and whether the broker-dealer operator has been authorized by a national securities association to operate an ATS. Such requirements would conform to the proposed requirements of Form ATS–N.[710] The Commission is proposing to conform Item 1 of Form ATS and Form ATS–R[711] to the requirements of Form ATS–N, which is currently filed electronically. In addition, the Commission is proposing to add to Item 1 of Form ATS and Form ATS–R a requirement that the ATS provide the broker-dealer operator's LEI, if the broker-dealer operator has an LEI,[712] and the MPID of the broker-dealer operator.[713] These requests would help the Commission in identifying and corresponding with ATSs and would conform to the identifying information on Form ATS–N, as proposed to be revised.[714] To determine whether the compliance transition rules applicable to Newly Designated ATSs apply, the Commission is also proposing to require the ATS to indicate if it is a Newly Designated ATS in Item 2.

In addition, to facilitate the electronic filing of Form ATS, the Commission is proposing to revise Form ATS to provide that the narrative disclosures be included in a single document, rather than multiple exhibits.[715] The ATS would be required to provide the information currently required in Exhibits A, B, C, E, F (other than a copy of the ATS's subscriber manual and any other materials provided to subscribers), G, H, and I in a single document. Because the subscriber manual may be lengthy, it would be more efficient for the ATS to provide a copy of its subscriber manual and any other materials provided to subscribers, which are currently required to be included in Exhibit F, as a separate, new Exhibit A. In addition, the Commission is proposing new Exhibit B, which would include a copy of the constitution, articles of incorporation or association, with all amendments, and of the existing by-laws or corresponding rules or instruments, whatever the name, of the alternative trading system. Today, an ATS may, in lieu of attaching such documents, indicate that the ATS makes such information publicly available on a continuous basis on an internet site controlled by the ATS and indicate the website of the ATS. Because the Commission is requiring the ATS to provide its website in Part I,[716] the Commission is proposing to include a checkbox for the ATS to select if, in lieu of filing, the ATS certifies that the information requested under the exhibit is available at the website above and is maintained on a continuous basis and is accurate as of the date of the filing.

The Commission is also re-proposing to amend Form ATS–R to make it easier for the Commission staff to identify if the ATS has met its reporting obligations. First, the Commission is proposing to require an ATS to specify whether it is filing a quarterly report amendment under Rule 301(b)(9)(i) or a report for an ATS that has ceased to operate under Rule 301(b)(9)(ii) and, if the latter, to indicate the date the ATS ceased to operate. Requiring an ATS to indicate its type of Form ATS–R filing would enable the Commission to more effectively review Form ATS–R submissions and determine whether an ATS is in compliance with Regulation ATS. The Commission is also proposing

[708] The Commission is also proposing to add cites to the relevant rule text next to the check boxes on Form ATS identifying whether the ATS is filing an Initial Operation Report (''IOR''), amendment to IOR, or a cessation of operations report.

[709] *See* Rule 301(b)(2)(v) (requiring an ATS to promptly file a cessation of operations report on Form ATS in accordance with the instructions therein upon ceasing to operate as an ATS).

[710] *See supra* Section IV.D.3.

[711] Form ATS and Form ATS–R currently ask for the ATS's main street address, mailing address, business telephone number and facsimile number, and the contact information for the ATS's contact person. The Commission is proposing to move the information requests for the name and title and telephone number of the contact employee to the signature block on the form, and to request an email address for such person and not require the facsimile number. The proposed signature block would ask for the primary street address and mailing address of the ATS. The current certifications required in Form ATS and Form ATS–R, including that the information filed is current, true, and complete, would remain unchanged. However, the Commission is proposing to delete the provision allowing for service of any civil action pursuant to confirmed telegram and instead, permit service of any civil action via email. The signature block on Form ATS and Form ATS–R would conform to the signature block in Form ATS–N, as proposed. *See supra* Section IV.D.6.

[712] *See supra* note 506.

[713] *See supra* Section IV.D.3 (proposing requiring the ATS to disclose the MPID of its broker-dealer operator).

[714] The Commission proposes to replace in Item 1 of Form ATS and Form ATS–R the requests for the ATS's main street address, mailing address, and business telephone number and facsimile number with a requirement that the ATS provide the primary, and if any, secondary physical street address of the ATS's matching system, as well as a URL address for its website if it has a website. Knowing the location of the matching system address and secondary matching system address could be useful to the Commission in the event of, for instance, a natural disaster that could impact market participants' ability to trade in the ATS and potential latency that could be experienced due to the location of the secondary site of the ATS. The Commission is also requesting 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 MPID of the ATS. In addition, because any current or former names of the ATS would be searchable on EDGAR and there will be multiple identifiers included on the form, including MPID, the Commission is proposing to delete the requirement that the ATS indicate if it is changing its name and list its former name.

[715] In response to the 2020 Proposal, one commenter stated that current Form ATS Exhibit F, which requires the ATS to provide certain specified information about its operations and procedures, should be amended to follow the same structure as current Form ATS Exhibit G, which requires a ''brief description'' of the ATS's procedures for reviewing system capacity, security, and contingency planning procedures to provide ATS operators with latitude in the manner in which they provide information to the Commission. *See* ICE Bonds Letter I at 6–7. The Commission is not proposing a change to the structure of Exhibit F of Form ATS to conform to the structure of Exhibit G. The structures of Exhibits F and G are not dissimilar in that they both require an ATS to provide a description of ATS policies and procedures and that the information solicited by Exhibit F is important for the Commission to understand and oversee ATSs.

[716] *See supra* note 714.

to amend Form ATS–R to ask whether the ATS was subject to the fair access obligations under § 242.301(b)(5) during any portion of the period covered by the report by adding a corresponding box for the ATS to check ''yes'' or ''no.'' Currently, Form ATS–R requires an ATS that is subject to the Fair Access Rule to report a list of all persons for whom access to the ATS was granted, denied, or limited during the period covered by the Form ATS–R.[717] Asking the ATS to indicate whether the ATS was subject to the Fair Access Rule during any portion of the period covered by the report would facilitate the Commission's review of Form ATS–R submissions.

The Commission is also proposing changes to the Form ATS–R categories of securities to modernize them and add more specificity with regard to all categories of securities. Form ATS–R currently requires ATSs to indicate the total dollar volume of government securities transactions in the period covered by the report. The Commission is proposing to require that ATSs specify the total dollar volume of transactions in ''U.S. Treasury Securities'' and ''Agency Securities'' under the heading ''Government securities.''[718] As currently, ATSs would also be required to indicate the total dollar volume in government securities overall. This change would help the Commission facilitate compliance with the thresholds for the Fair Access Rule and Regulation SCI, which the Commission is proposing would be based on trading volume in U.S. Treasury Securities and Agency Securities.[719] To avoid double-reporting of transactions in after-hours trading (reported under Item 6), the Commission is proposing to specify that Item 4 pertains to transactions ''other than those for after-hours trading.'' In addition, the Commission is proposing to amend Form ATS–R to update the descriptions of certain categories of securities for which volume is required to be reported on Form ATS–R by an ATS. Specifically, the Commission is proposing to delete the categories of securities, ''Nasdaq National Market Securities'' and ''Nasdaq SmallCap Market Securities,'' reported in Items 4 and 6 of Form ATS–R.[720] The proposal to require ATSs to file Form ATS–R electronically via EDGAR would allow the Commission staff to easily ascertain on which national securities exchanges the equity securities the ATS traded during the applicable period, as disclosed in Exhibit B, are traded. Therefore, it would no longer be necessary to separate out the total volume of securities traded on the Nasdaq markets from the total volume of securities traded on other national securities exchanges. The proposal would require ATSs to report the total volume previously reported under the ''Nasdaq National Market Securities'' and ''Nasdaq SmallCap Market Securities'' categories under ''Listed Equity Securities.''

The Commission is proposing to require ATSs to break down the volume for corporate debt securities, currently reported in Item 4J, by U.S. and non-U.S. corporate debt securities. Non-U.S. corporate debt securities would include debt securities issued by a foreign issuer (excluding a foreign government) in emerging markets as well as non-emerging markets. In addition, the Commission is adding new Item 4L to require ATSs to report total dollar volume for foreign sovereign debt securities, which currently are required to be reported under other debt securities in Item 4N. Foreign sovereign debt securities would be defined in Instruction B of Form ATS–R as any security other than an equity security, as defined in § 240.3a11–1, issued or guaranteed by a foreign government, as defined in § 240.3b–4.[721] Creating subcategories of corporate debt securities and a reporting requirement for foreign sovereign debt securities would improve the quality of data that the Commission already gathers through Form ATS–R. In addition, the proposed reporting requirements would help the Commission further understand the amount of trading that occurs on the ATSs for corporate bonds and foreign sovereign debt securities markets.

The Commission is also proposing to add new Items 4N and 4O to Form ATS–R, which would require ATSs to disclose the total unit and dollar volume of transactions in repurchase agreements and reverse repurchase agreements. Specifically, the Commission is proposing to require ATSs to disclose the total unit[722] and dollar volume of repurchase and reverse repurchase transactions broken down by (1) whether the transaction is overnight or term;[723] (2) whether the transaction is triparty[724] or bilateral;[725] and (3) the type of securities used to finance the collateral—*i.e.,* NMS stocks, U.S. Treasury Securities, Federal Agency Securities, Agency Mortgage-Backed Securities, municipal securities, U.S. and non-U.S. corporate debt securities, asset-backed securities, foreign sovereign debt securities, and other securities.[726] If an ATS traded repurchase or reverse repurchase agreements collateralized with other securities, the ATS would list the other types of securities in proposed Item 4N or 4O. In the Commission's experience, some ATSs that trade repurchase or reverse repurchase agreements, which are currently required to be disclosed as debt securities on Item 4N of Form ATS–R, currently provide in Item 5B of

[717] *See* Form ATS–R and Form ATS–R Instructions, No. 8.

[718] The Commission is proposing to add to the Form ATS–R instructions the definitions of U.S. Treasury Security and Agency Security, which would conform to the definitions the Commission is proposing in Rule 300(o) and (p), respectively.

[719] *See supra* Sections III.B.4 and III.C.

[720] Currently, any equity securities traded on the Nasdaq Global Market are required to be reported under ''Nasdaq National Market Securities,'' and any equity securities traded on the Nasdaq Capital Market are required to be reported under ''Nasdaq SmallCap Market Securities.'' ''Listed Equity Securities'' include all other equity securities listed on any other markets or national securities exchanges, including the Nasdaq Global Select Market. Any rights and warrants are required to be reported under the ''Rights and Warrants'' category even if they are listed on a national securities exchange. As proposed, Items 4B, 4C, 6B, and 6C would be deleted, and therefore, Items 4D through 4N and Item 6D would be re-numbered.

[721] ''Debt Securities'' is defined as ''any security other than an equity security, as defined in § 240.3a11–1'' in Form ATS–R. *See* Instruction B of Form ATS–R. Section 240.3b–4 (Rule 3b–4(a) under the Exchange Act) defines ''foreign government'' as the government of any foreign country or of any political subdivision of a foreign country. *See* 17 CFR 240.3b–4.

[722] For repurchase or reverse repurchase agreements collateralized with a basket or group of securities, ''total unit volume of transactions'' would mean the number of units within each basket or group rather than the number of baskets or groups.

[723] Overnight repo trades end in one business day, whereas term repos mature on a specific future business day that is more than one business day. *See, e.g.,* Office of Financial Research, U.S. Repo Market Data Release Methodology for Tri-party Repo, *available at https://www.financialresearch.gov/data/files/2021-04-Methodology-TPR.pdf;* Office of Financial Research, U.S. Repo Market Data Release Methodology for DVP Cleared Repo, *available at https://www.financialresearch.gov/data/files/2021-04-Methodology-DVP.pdf.*

[724] *See supra* note 521. Triparty repurchase and reverse repurchase transactions would include triparty trades between members that participate in the Fixed Income Clearing Corporation's (''FICC'') General Collateral Financing (GCF) Repo Service. On the other hand, repurchase and reverse repurchase transactions in the FICC's Delivery vs. Payment (''DVP'') Repo Service would be reported under the bilateral category.

[725] *See supra* note 522.

[726] As a result, ATSs would report the total unit and dollar volume of transactions for each of 80 categories of repos: 2 types of agreements (repurchase or reverse repurchase) × 2 transaction types (overnight or term) × 2 party types (bilateral or triparty) × 10 collateral types (NMS stocks, U.S. Treasury Securities, Federal Agency Securities, Agency Mortgage-Backed Securities, municipal securities, U.S. corporate debt securities, non-U.S. corporate debt securities, asset-backed securities, foreign sovereign debt securities, or other securities).

Form ATS–R on a voluntary basis a breakdown of nominal trade value of each of these types of securities. Adding new Items 4N and 4O to Form ATS–R to require that ATSs provide the total unit and dollar volume of transactions in repurchase and reverse repurchase agreements would require all ATSs that trade repurchase or reverse repurchase agreements to take a consistent approach in providing this information. The Commission understands that certain transaction information about repurchase and reverse repurchase agreements is publicly available.[727] However, individual ATSs are not currently required to provide the Commission with information breaking down the types of transactions in repurchase and reverse repurchase agreements. In addition, transactions in repurchase and reverse repurchase agreements are not generally required to be reported to an SRO, and the absence of information about the trading of repurchase and reverse repurchase agreements that occur on ATSs impedes the Commission's oversight of these markets. The proposed reporting requirement would enhance the Commission's oversight of ATSs that trade repurchase and reverse repurchase agreements.

Finally, the Commission is proposing to add new Item 5C, which would require an ATS to list the types of listed options reported in Item 4F of Form ATS–R. Item 4F of Form ATS–R currently requires ATSs to disclose the total unit volume and dollar volume of transactions in listed options. Under new Item 5C, an ATS might indicate, for example, that it trades equity options and options on government securities. This would provide the Commission with more specific information about the types of options that each ATS trades.

In addition, because the Commission is proposing to change the definition of ''exchange'' to include systems that use trading interest, the Commission is proposing to revise Form ATS to require information related to the entry of ''trading interest.'' Communication Protocol Systems that transact in securities other than NMS stocks or government securities or repos will be required to file Form ATS if they choose to comply with Regulation ATS and the resulting disclosures will help the Commission oversee these systems. In addition, the Commission is proposing to include in Form ATS the definition of ''trading interest'' identical to that proposed in Rule 3b–16(e) and Rule 300(q).[728] The Commission is also proposing to change the definition of ''subscriber'' to conform to the changes the Commission is proposing in Rule 300(b).[729] Form ATS Item 3.g (current Exhibit F.a) requests that the ATS provide information about ''the manner of operations of the alternative trading system.'' [730] An ATS that either operates a Communication Protocol System, or an order-driven system, would be required to provide information about the manner of operations on Form ATS that is akin to information provided in response to in Part III of Form ATS–N (*e.g.,* display, connectivity, segmentation, market data, counterparty selection).[731] For example, ATSs that use orders generally should provide information about order types and sizes, and the trading facilities and rules for bringing together the orders of buyers and sellers on the ATS. ATSs that use non-firm trading interest generally should provide information about the communication protocols and functionalities of the ATS, including the use of messages, requirements related to the size of trading interest, and procedures governing the communication protocols.

Request for Comment

162. Would the proposed changes to Form ATS and Form ATS–R enhance the Commission's oversight of ATSs? Do commenters disagree with any of the proposed modifications? If so, what alternatives should the Commission implement?

163. Form ATS–R requires an ATS to quarterly report volume of transactions for certain securities, all subscribers that were participants in the ATS, and securities that were traded in the ATS. Should the Commission adopt amendments to Form ATS–R to add, change, or modify any of the requests for information on Form ATS–R? Are the current categories of securities and the proposed categories of securities for reporting transaction volume to the Commission appropriate?

164. Should Form ATS–R require ATSs to disclose total unit volume in government securities, U.S. Treasury Securities, and/or Agency Securities?

165. Proposed Items 4N and 4O of Form ATS–R would require ATSs to report unit and dollar volume of transactions in repurchase and reverse repurchase agreements broken down by, among other categories, whether the transaction is triparty or bilateral. Do commenters believe that categorizing repurchase and reverse repurchase agreements into these two segments would yield useful information to the Commission? Do commenters believe that the Commission should require ATSs to separately report volumes for repurchase and reverse repurchase agreements in the FICC's GCF Repo Service and FICC's DVP Service rather than include them under volumes for triparty and bilateral, respectively? Are there any types of securities, not otherwise covered in proposed Items 4N and 4O, that are used as collateral in repurchase and reverse repurchase agreements?

166. Proposed Items 4N and 4O of Form ATS–R would require ATSs to report transaction volumes of repurchase and reverse repurchase agreements in total unit and dollar volume. Do commenters believe that ATSs should be required to provide the unit volume as well as the dollar volume?

167. Are there characteristics unique to repurchase or reverse repurchase agreements collateralized with a basket or group of securities that would make reporting those repurchase or reverse repurchase agreements in both unit and dollar volume in Form ATS–R unduly burdensome or inappropriate for ATSs? For such basket repos, the Commission is proposing to define ''total unit volume of transactions'' as the number of units within each basket or group rather than the number of baskets or groups. Do commenters believe ''unit'' should be defined differently for basket repos?

168. Proposed Item 4J of Form ATS–R would require ATSs to report dollar volume of transactions in U.S. and non-U.S. corporate debt securities. Do commenters believe that the two subcategories would yield useful information to the Commission? Non-U.S. corporate debt securities would include debt securities issued by a foreign issuer in emerging markets as well as non-emerging markets. Do commenters believe that the Commission should require ATSs to

[727] For instance, the Treasury Department's Office of Financial Research (''OFR'') collects data on repurchase agreements cleared by triparty clearing banks and major central counterparties, such as the FICC, and publishes aggregate statistics on these transactions broken out by three venues—which are the triparty market, FICC's DVP Service, and FICC's GCP Repo Service—collateral, tenor, volume, and rates. *See* OFR, U.S. Repo Market Data Release, *available at https://www.financialresearch.gov/data/us-repo-data/.*

[728] *See supra* note 98 and accompanying text.

[729] *See id.*

[730] *See* Item 4.g of Form ATS, as proposed to be revised.

[731] *See* NMS Stock ATS Adopting Release, *supra* note 2, at 38869 (describing that many of the disclosure items on Form ATS–N are also required by respondents in whole or in part on current Form ATS). *See also* NMS Stock ATS Proposing Release, *supra* note 29, at 81099–102 (describing that some of the disclosures of Form ATS–N that the Commission was proposing were already required under Form ATS).

further break down the volume for non-U.S. corporate debt securities by type of market—emerging and non-emerging? If so, how should ''emerging markets'' be defined for the purpose of reporting on Form ATS–R? Do commenters believe ''emerging markets'' should be defined by country or region?

169. Do commenters believe that the Commission should require ATSs to report total dollar volume of foreign sovereign debt securities on Form ATS–R, as proposed? Should the proposed definition of sovereign debt securities be modified in any way?

170. Instruction A.1 of Form ATS–R requires ATSs to file Form ATS–R within 30 days after the end of each calendar quarter, or more frequently upon the request of the Commission. Do commenters believe that the Commission should request information from ATSs on Form ATS–R on a more frequent basis (*e.g.,* monthly)? Do commenters believe that such request would be unduly burdensome for ATSs?

171. Form ATS requires an ATS to report information to the Commission about the ATS, including but not limited to, types of subscribers and differential access to services, types of securities traded, counsel, governance documents, service providers, manner of operations, including entry of trading interest, order execution procedures, clearance and settlement procedures, and trade reporting, procedures for reviewing system capacity, security, and contingency planning, procedures to safeguard subscriber funds and securities, and direct owners. Should the Commission adopt amendments to Form ATS to add, change, or modify any of the requests for information on Form ATS? The proposed changes to Rule 3b–16 would require Communication Protocol Systems that trade securities other than NMS stocks or government securities or repos to file Form ATS. Are there any changes that the Commission should make to Form ATS that would be relevant to Communication Protocol Systems? If so, please identify the request and explain how it should be amended.

172. Should the Commission amend Form ATS to require disclosures similar to disclosures required on Part II of Form ATS–N, which requests information about ATS-related activities of the broker-dealer operator and its affiliates?

173. Should the Commission amend Form ATS to include questions similar to those in Part III of Form ATS–N, which requests information about the manner of the ATS's operations?

174. Are there any specific items on Form ATS–N, currently or as proposed to be revised, that the Commission should incorporate into Form ATS?

175. Should the Commission amend Rule 301(b)(2) and Form ATS to provide that Form ATS is publicly disseminated? If so, should any of the information on Form ATS be kept confidential?

C. Amendment to Rule 301(b)(2)(vii)

Rule 301(b)(2)(vii) provides that all reports filed pursuant to Rules 301(b)(2) and (9) are ''deemed confidential.'' [732] As a result, the Commission does not make Form ATS and Form ATS–R disclosures available to the public, including the types of securities that the ATS trades or intends to trade.[733] Currently, the Commission makes public on a monthly basis on the Commission website information about ATSs that have a Form ATS on file with the Commission, which includes the name of the ATS, any name(s) under which business is conducted, and the location of each ATS. The list also identifies each ATS that filed a cessation of operations report in the prior month. While the Commission does not approve Form ATS filings, the list is designed to inform the public about ATSs that have noticed their operations with the Commission.

The Commission is re-proposing to amend Rule 301(b)(2) to clarify that being ''deemed confidential'' means receiving confidential treatment under a relevant Commission regulation subject to applicable law [734] and to eliminate confidential treatment for information about the type(s) of securities that the ATS trades as disclosed in the Exhibit B, subpart (a) of Form ATS and Exhibit B of Form ATS–R. The Commission does not believe that ATSs will be harmed by these disclosures because a vast majority of ATSs currently publicize the types of securities in which they transact, for example, on the website for the ATS or the website of the ATS broker-dealer operator. The Commission publishes on its website a list of ATSs that have an active Form ATS on file with the Commission; however, information about types of securities traded is not provided on that list and the Commission frequently receives requests from the public and regulators for more detail in the Commission's publication about the types of securities traded by ATSs. Disclosing this information could help the public understand a fundamental aspect of an ATS. To allow for this narrow exception, the Commission is proposing to amend Rule 301(b)(2)(vii) of Regulation ATS to state that the content of reports filed under Rule 301(b)(2) and (9) ''(except for types of securities traded provided on Form ATS and Form ATS–R) will be accorded confidential treatment subject to applicable law.''

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176. Should the Commission amend Rule 301(b)(2)(vii) to make Form ATS, Form ATS–R, or both public? Should the Commission amend Rule 301(b)(2)(vii) to make any other disclosures provided on Form ATS or Form ATS–R public?

177. Should the Commission eliminate confidential treatment for information about the type(s) of securities that the ATS trades as disclosed on Form ATS and Form ATS–R?

VI. General Request for Comment

The Commission is requesting comments from all members of the public. The Commission particularly requests comment from the point of view of persons who operate ATSs that would meet the proposed definition of Government Securities ATS, subscribers to those systems, and investors. The Commission seeks comment on all aspects of the proposed rule amendments and proposed form, particularly the specific questions posed above. Commenters are requested to provide empirical data in support of any arguments or analyses. With respect to any comments, the Commission notes that they are of the greatest assistance to its rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to the Commission's proposals where appropriate.

VII. Paperwork Reduction Act

Certain provisions of the proposed rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[735] The Commission is submitting these collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency

[732] *See* 17 CFR 242.301(b)(2)(vii).

[733] The Commission notes, however, that Form ATS and Form ATS–R are available to the examination staff of state securities authorities and SROs. *See* Instruction A.7 of Form ATS and Form ATS–R. *See also* 17 CFR 242.301(b)(2)(vii) (requiring duplicate of filings on Form ATS be provided to the surveillance personnel designated by the SRO that is the examining authority for each ATS, and that duplicates of the Form ATS–R be made available to the surveillance personnel of such SRO upon request).

[734] *See, e.g.,* 17 CFR 200.83, 240.24b–2.

[735] 44 U.S.C. 3501 *et seq.*

may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid control number. The Commission is proposing to alter seven existing collections of information and apply such collections of information to new categories of respondents. The titles of such existing collections of information are:

Rule	Rule title	OMB control No.
Rule 301 of Regulation ATS	Regulation ATS Rule 301 Amendments	3235–0509
Rule 302 of Regulation ATS	Rule 302 (17 CFR 242.302) Recordkeeping Requirements for Alternative Trading Systems.	3235–0510
Rule 303 of Regulation ATS	Rule 303 (17 CFR 242.303) Record Preservation Requirements for Alternative Trading Systems.	3235–0505
Rule 304 of Regulation ATS	Regulation ATS Rule 304 and Form ATS–N	3235–0763
17 CFR 240.15b1–1 (Rule 15b1–1 under the Exchange Act).	Form BD and Rule 15b1–1 Application for Registration as a Broker-Dealer	3235–0012
17 CFR 232.10(b) (Rule 10(b) of Regulation S–T).	Form ID	3235–0328
Rules 1001 through 1007 of Regulation SCI.	Regulation SCI and Form SCI	3235–0703

A. Summary of Collection of Information

The proposed amendments create burdens under the PRA by (1) adding new categories of respondents to the seven existing collections of information noted above and (2) modifying the requirements of two of those collections, as noted below. The proposed amendments do not create any new collections of information. The collections of information and applicable categories of new respondents[736] are summarized in the following table:[737]

Collection of information	Rule	Burden description	Respondent categories
Rule 301 of Regulation ATS and Forms ATS and ATS–R.	Rule 301(b)(2)	Revised Burden: File initial operations report using the proposed modernized Form ATS.	Certain Communication Protocol Systems. All Other Form ATS Filers.
	Rule 301(b)(5)	Comply with fair access standards recordkeeping and fair access notice requirements for certain securities, including, as proposed, U.S. Treasury Securities and Agency Securities.	Certain Communication Protocol Systems. Certain Legacy Government Securities ATSs. Certain NMS Stock ATSs. Certain Other ATS Filers.
	Rule 301(b)(6)	Comply with ATS-specific systems capacity, integrity and security recordkeeping and systems outages notice requirements.	Certain Communication Protocol Systems.
	Rule 301(b)(9)	Revised Burden: File quarterly reports using the proposed modernized Form ATS–R.	All Communication Protocol Systems. All Legacy Government Securities ATSs. All NMS Stock ATSs. All Other Form ATS Filers.
	Rule 301(b)(10)	Comply with written safeguards and procedures requirement.	All Communication Protocol Systems. All Currently Exempted Government Securities ATSs.
Rule 302 of Regulation ATS	Rule 302	Comply with ATS recordkeeping requirements (required by Rule 301(b)(8)).	All Communication Protocol Systems. All Currently Exempted Government Securities ATSs.
Rule 303 of Regulation ATS	Rule 303	Comply with ATS record preservation requirements (required by Rule 301(b)(8)).	All Communication Protocol Systems. All Currently Exempted Government Securities ATSs.
Rule 304 of Regulation ATS and Form ATS–N.	Rule 304	Revised Burden: File initial Form ATS–N (required by Rule 301(b)(2)(viii)), as proposed to be revised.	Certain Communication Protocol Systems. All Legacy Government Securities ATSs. All NMS Stock ATSs.
Rule 15b1–1 and Form BD	Rule 15b1–1	Register as a broker-dealer using Form BD (required by Rule 301(b)(1)).	Certain Communication Protocol Systems. Certain Currently Exempted Government Securities ATSs.
Form ID	Rule 101 of Regulation S–T.	Apply for EDGAR access using Form ID	Certain Communication Protocol Systems. Certain Currently Exempted Government Securities ATSs.

[736] *See infra* Section VII.C for a description of the categories of respondents.

[737] Unless otherwise described, none of the existing information collections are being revised with new requirements.

Collection of information	Rule	Burden description	Respondent categories
Regulation SCI	Rules 1001–1007 of Regulation SCI.	Comply with Regulation SCI	Certain Communication Protocol Systems. Certain Legacy Government Securities ATSs.

B. Proposed Use of Information

The existing information collections affected by the proposed amendments are used as described below:

1. Rule 301 of Regulation ATS and Forms ATS and ATS–R

Rule 301 of Regulation ATS sets forth the conditions that an ATS must comply with to be exempt pursuant to Exchange Act Rule 3a1–1(a)(2). Rule 301 requires an ATS to register as a broker-dealer. Rule 301 further requires all ATSs that wish to comply with Regulation ATS to file an initial operation report on Form ATS. The initial operation report requires information regarding operation of the system including the manner of operation, how subscribers access the trading system, and the types of securities traded. ATSs are also required to notice changes in their operations by filing amendments to Form ATS to the Commission.

In addition, Regulation ATS requires ATSs to provide quarterly transaction reports on Form ATS–R. ATSs are also required to file cessation of operations reports on Form ATS. The gathering of such information permits the Commission to oversee the operation of such systems and track the growth of their role in the securities markets.

The Commission is proposing revisions to Rule 301(b)(2), Form ATS, and Form ATS–R to modernize Form ATS and Form ATS–R and to provide that they are filed electronically. The Commission believes that, among other benefits, the electronic filing of Forms ATS and ATS–R would increase efficiencies and decrease filing costs for ATSs.

ATSs with significant volume are required to comply with requirements for fair access pursuant to Rule 301(b)(5) of Regulation ATS. As proposed, such ATSs would be required to establish and apply reasonable written standards for granting, limiting, and denying access to the services of the ATS and 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 the reasons for each applicant for denying or limiting access.[738] The Commission is proposing to apply the Fair Access Rule to the trading of U.S. Treasury Securities and Agency Securities. The Commission believes that, today, the principles undergirding the Fair Access Rule are equally relevant to a Government Securities ATS and amending the Fair Access Rule to include the trading of U.S. Treasury Securities and Agency Securities would help ensure the fair treatment of potential and current subscribers to ATSs that consist of a large percentage of trading volume in these two types of securities.

ATSs with significant volume are also required to comply with requirements for systems capacity, integrity and security pursuant to Rule 301(b)(6), which, together with the requirements under Rule 302, requires ATSs to preserve any records made in the process of complying with the systems capacity, integrity, and security requirements. In addition, such ATSs are required to notify Commission staff of material systems outages and significant systems changes.

The Commission uses the information provided pursuant to Rule 301 to comprehensively monitor the growth and development of ATSs to confirm that investors effecting trades through the systems are adequately protected, and that the systems do not impede the maintenance of fair and orderly securities markets or otherwise operate in a manner that is inconsistent with the Federal securities laws. In particular, the information collected and reported to the Commission by ATSs enables the Commission to evaluate the operation of ATSs with regard to national market system goals, and monitor the competitive effects of these systems to ascertain whether the regulatory framework remains appropriate to the operation of such systems.

Without the information provided on Forms ATS and ATS–R, the Commission would not have readily available information on a regular basis in a format that would allow it to determine whether such systems have adequate safeguards. Further, in the absence of Rule 301, the Commission would not regularly obtain uniform trading data to identify areas where surveillance by SROs may be more appropriately tailored to the detection of fraudulent, deceptive and manipulative practices that may be peculiar to an automated trading environment.

2. Rule 302 of Regulation ATS

Rule 302, as proposed to be amended,[739] would require ATSs to make a record of subscribers to the ATS, daily summaries of trading in the ATS and time-sequenced records of trading interest information in the ATS. Regulators (including the Commission and SROs) use the information contained in the records required to be preserved by Rule 302 to ensure that ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations. Without the data required by Rule 302, regulators would be limited in their ability to comply with their statutory obligations, provide for the protection of investors, and promote the maintenance of fair and orderly markets.

3. Rule 303 of Regulation ATS

Rule 303 describes the record preservation requirements for ATSs. Rule 303 also describes how such records must be maintained, what entities may perform this function, and how long records must be preserved.

The information contained in the records required to be preserved by Rule 303 is used by regulators (including the Commission and the SROs) to ensure that ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations. Without the data required by Rule 303, regulators would be limited in their ability to comply with their statutory obligations, provide for the protection of investors, and promote the maintenance of fair and orderly markets.

4. Rule 304 of Regulation ATS and Form ATS–N

Rule 304 provides conditions for NMS Stock ATSs seeking to rely on the exemption from the definition of ''exchange'' provided by Rule 3a1–1(a) of the Exchange Act, including to file a Form ATS–N, and for that Form ATS–N to become effective. Form ATS–N requires NMS Stock ATSs to provide information about their manner of operations, the broker-dealer operator, and the ATS-related activities of the broker-dealer operator and its affiliates to comply with the conditions provided under Rule 304. Form ATS–N promotes

[738] *See supra* Section V.A.

[739] *See supra* notes 165–166 and accompanying text.

more efficient and effective market operations by providing more transparency to market participants about the operations of NMS Stock ATSs and the potential conflicts of interest of the controlling broker-dealer operator and its affiliates, and helps brokers meet their best execution obligations to their customers. Operational transparency rules, including Form ATS–N, are designed to increase competition among trading centers in regard to order routing and execution quality.

As discussed above, the Commission is re-proposing to amend Rule 304(a) to require that a Covered ATS, which would include a Government Securities ATS, must comply with Rules 300 through 304 of Regulation ATS, as applicable, to be exempt pursuant to Rule 3a1–1(a)(2). As proposed, all Government Securities ATSs would be required to comply with Rule 304, as proposed to be amended, to file Form ATS–N, as revised.[740]

The Commission is proposing to revise Form ATS–N to include information it previously proposed on Form ATS–G, including a question requiring information about interaction with related markets, which would be required to be responded to by both Government Securities ATSs and NMS Stock ATSs.[741] The Commission is also proposing to reorganize certain questions on Form ATS–N and to require disclosure about any surveillance and monitoring that is conducted with respect to the ATS.[742] The Commission believes that the proposed revisions to Form ATS–N will continue to allow for better comparisons between ATSs, and applying Form ATS–N to Government Securities ATSs will help enable market participants to compare Government Securities ATSs.

The Commission is also proposing certain amendments to Form ATS–N that would apply globally to Form ATS–N unless otherwise noted.[743] The Commission believes that Form ATS–N's public disclosures would provide important information to market participants that would help them better understand these operational facets of Government Securities ATSs and select the best trading venue based on their needs.

5. Rule 15b1–1 and Form BD

The Commission uses the information disclosed by applicants in Form BD: (1) To determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers, municipal securities dealers, and government securities broker-dealers, and where the Commission, other regulators, and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers, municipal securities dealers, and government securities broker-dealers. Without the information disclosed in Form BD, the Commission could not effectively implement policy objectives of the Exchange Act with respect to its investor protection function.

6. Form ID

The information provided on Form ID allows the Commission staff to review applications for EDGAR access and, if the application is approved, assign identification numbers (if the applicant does not already have an identification number) and access codes to applicants to permit filing on EDGAR. Form ID is essential to EDGAR security.

7. Regulation SCI

Regulation SCI requires certain key market participants to, among other things: (1) Have comprehensive policies and procedures in place to help ensure the robustness and resiliency of their technological systems, and also that their technological systems operate in compliance with the Federal securities laws and with their own rules; and (2) provide certain notices and reports to the Commission to improve Commission oversight of securities market infrastructure.

C. Respondents

The categories of respondents for which the proposed amendments create a burden under the PRA are described below.

1. Legacy Government Securities ATSs

As discussed above, the Commission is re-proposing amendments to Regulation ATS that would require a Currently Exempted Government Securities ATS that seeks to operate pursuant to the exemption from the definition of an ''exchange'' under Exchange Act Rule 3a1–1(a)(2), and thus not be required to be registered as a national securities exchange, to comply with Regulation ATS as proposed[744] and that Current Government Securities ATSs will have to comply with the enhanced requirements for Government Securities ATSs.[745] The Commission estimates the total number of Currently Exempted Government Securities ATSs to be 7[746] and Current Government Securities ATSs to be 17,[747] and some or all of this number will be subject to the following collections of information as estimated below:

Collection of information	Rule	Number of respondents	Description
Rule 301 of Regulation ATS and Forms ATS and ATS–R.	Rule 301(b)(5)	7	The Commission estimates that certain Legacy Government Securities ATSs would satisfy the conditions for the proposed application of the Fair Access Rule to Government Securities ATS and be subject to the related recordkeeping and notice provisions.

[740] *See supra* Section IV.A.

[741] *See supra* Section IV.D.1.

[742] *See supra* Section IV.D.5.

[743] *See supra* Section IV.D.

[744] *See supra* Section III.B.2.

[745] *See supra* Section IV.A.

[746] The Commission estimates that there are 7 Currently Exempted Government Securities ATSs that would be newly subject to the requirements of the exemption under Rule 3a1–1(a)(2) and will be required to comply with the applicable sections of Regulation ATS, as amended. The Commission estimates that 5 such ATSs limit their trading activity to government securities and the other 2 ATSs limit their trading activity to repos.

[747] As of September 30, 2021, 17 Government Securities ATSs currently operate pursuant to a Form ATS currently on file with the Commission.

Collection of information	Rule	Number of respondents	Description
	Rule 301(b)(9)	24	The Commission estimates that all Legacy Government Securities ATSs will have to comply with the requirement to file quarterly reports on the proposed modernized Form ATS–R. The proposal would impose the full currently-authorized baseline burden of filing on Currently Exempted Government Securities ATSs, for which the requirement is new. For Current Government Securities ATSs, the proposal would only impose the marginal new burden of filing using the modernized version of the form.
	Rule 301(b)(10)	7	The Commission estimates that all Currently Exempted Government Securities ATSs will have to comply with the requirement to have written safeguards and written procedures to protect subscribers' confidential trading information.
Rule 302 of Regulation ATS	Rule 302	7	The Commission estimates that all Currently Exempted Government Securities ATSs will have to comply with the recordkeeping requirements for ATSs.
Rule 303 of Regulation ATS	Rule 303	7	The Commission estimates that all Currently Exempted Government Securities ATSs will have to comply with the record preservation requirements for ATSs.
Rule 304 of Regulation ATS and Form ATS–N.	Rule 304	24	The Commission estimates that all Legacy Government Securities ATSs will have to comply with the requirement to file initial Form ATS–N, as proposed to be revised.
Rule 15b1–1 and Form BD	Rule 15b1–1	1	The Commission estimates that certain Currently Exempted Government Securities ATSs currently operated by a bank and not registered as a broker-dealer will have to register using Form BD.
Form ID	Rule 101 of Regulation S–T.	1	The Commission estimates that the same subset of Currently Exempted Government Securities ATSs that are not currently registered as a broker-dealer will also have to file Form ID to apply for EDGAR access.
Regulation SCI	Rules 1001–1007 of Regulation SCI.	1 Legacy Government Securities ATS that is an existing SCI entity and 1 that is a new SCI entity.	The Commission estimates that certain Legacy Government Securities ATSs would meet the specified volume threshold to meet the proposed amended definition of ''SCI alternative trading system'' and be subject to the requirements of Regulation SCI.

2. Communication Protocol Systems

As discussed above, the Commission is proposing to amend Exchange Act Rule 3b–16(a) to cause Communication Protocol Systems to fall within the definition of ''exchange'' and believes that such Communication Protocol Systems would likely choose to register as a broker dealer and be regulated under the Regulation ATS exemption than register as a national securities exchange because of the lighter regulatory requirements imposed on ATSs, as compared to registered exchanges.[748] The Commission estimates the total number of Communication Protocol Systems to be 22,[749] and some or all of this total number will be subject to the following collections of information as estimated below:[750]

Collection of information	Rule	Number of respondents	Description
Rule 301 of Regulation ATS and Forms ATS and ATS–R.	Rule 301(b)(2)	14	The Commission estimates that certain Communication Protocol Systems, which trade securities other than NMS stocks or government securities or repos, would be required to file the proposed modernized Form ATS.

[748] *See supra* Section II.D.

[749] Some of the below estimates could change based on how the Communication Protocol Systems structure their operations if subject to Regulation ATS. For example, the Commission is basing some of the below estimates on the assumption that operators of Communication Protocol Systems that are affiliated with existing broker-dealers would structure their operations so that the existing broker-dealer would operate the ATS to avoid the costs of new broker-dealer registration. In addition, the Commission estimates that 2 Communication Protocol Systems that trade municipal securities or corporate debt securities would meet the volume thresholds to satisfy the conditions for complying with ATS-specific systems capacity, integrity and security recordkeeping as well as systems outages requirements. This number is based on aggregate data reported by broker-dealers and could vary based on how these systems structure their businesses.

[750] The estimated respondents for the Rule 304/Form ATS–N collection of information is based on the assumption that systems that operate multiple market places that are affiliated with a new or existing broker-dealer will all be operated by such broker-dealer, and that such systems will not register multiple broker-dealers to operate multiple affiliated ATSs.

Collection of information	Rule	Number of respondents	Description
	Rule 301(b)(5)	8	The Commission estimates that certain Communication Protocol Systems would meet the volume thresholds in government securities, NMS stocks, corporate debt securities, municipal securities, equity securities that are not NMS stocks and for which transactions are reported to an SRO and be subject to the Fair Access Rule and the related recordkeeping and notice provisions.
	Rule 301(b)(6)	2	The Commission estimates that certain Communication Protocol Systems that trade municipal securities or corporate debt securities and meet certain volume requirements would satisfy the conditions for complying with ATS-specific systems capacity, integrity and security recordkeeping as well as systems outages requirements.
	Rule 301(b)(9)	22	The Commission estimates that all Communication Protocol Systems will have to comply with the requirement to file quarterly reports on the proposed modernized Form ATS–R.
	Rule 301(b)(10)	22	The Commission estimates that all Communication Protocol Systems will have to comply with the requirement to have written safeguards and written procedures to protect subscribers' confidential trading information.
Rule 302 of Regulation ATS	Rule 302	22	The Commission estimates that all Communication Protocol Systems will have to comply with the recordkeeping requirements for ATSs.
Rule 303 of Regulation ATS	Rule 303	22	The Commission estimates that all Communication Protocol Systems will have to comply with the record preservation requirements for ATSs.
Rule 304 of Regulation ATS and Form ATS–N.	Rule 304	8	The Commission estimates that certain Communication Protocol Systems that trade NMS stocks or government securities or repos would be required to file Form ATS–N, as proposed to be revised.
Rule 15b1–1 and Form BD	Rule 15b1–1	6	The Commission estimates that certain Communication Protocol Systems are not currently registered as or affiliated with a broker-dealer and will have to register using Form BD.
Form ID	Rule 101 of Regulation S–T	6	The Commission estimates that the same subset of Communication Protocol Systems that are not currently registered as or affiliated with a broker-dealer will also have to file Form ID to apply for EDGAR access.
Regulation SCI	Rules 1001–1007 of Regulation SCI.	2	The Commission estimates that certain Communication Protocol Systems that trade government securities, NMS stocks, or equity securities other than NMS stocks reported to an SRO would meet the specified volume threshold to meet the proposed amended definition of "SCI alternative trading system" and be subject to the requirements of Regulation SCI.

3. NMS Stock ATSs

As discussed above, the Commission is proposing to revise Form ATS–N to include information it previously proposed on Form ATS–G, including adding questions requiring information about interaction with related markets, surveillance and monitoring on the ATS, and liquidity providers, which would be required to be responded to by both Government Securities ATSs and NMS Stock ATSs.[751] The Commission is also proposing to reorganize certain questions on Form ATS–N.[752] The Commission estimates the total number of NMS Stock ATSs to be 34 [753] and that all will be subject to the following collections of information as estimated below:

Collection of information	Rule	Number of respondents	Description
Rule 301 of Regulation ATS and Forms ATS and ATS–R.	Rule 301(b)(9)	34	The Commission estimates that all NMS Stock ATSs will have to prospectively comply with the requirement to file quarterly reports on the proposed modernized Form ATS–R.

[751] *See supra* Section IV.D.1.

[752] *See id.* and Section IV.D.4–5. In addition, for purposes of calculating whether an ATS meets the Fair Access Rule volume thresholds, the Commission is proposing to aggregate trading volume among certain affiliated ATSs. *See supra* Section V.A. At this time, the Commission estimates that no NMS Stock ATSs would be subject to the Fair Access Rule as a result of the proposed changes to aggregate affiliated ATS trading volume, and that the proposed change would therefore impose no additional burden. *Also see* infra note 1085.

[753] As of September 30, 2021, there are 34 NMS Stock ATSs that have filed an effective Form ATS–N with the Commission. For the purpose of this PRA analysis, NMS Stock ATSs include only those that operate today. The burden on Communication Protocol Systems that the Commission estimates will trade NMS stocks are included in the discussion of that category of respondent. *See supra,* Section VII.C.2; *infra,* Section VII.D.3.

Collection of information	Rule	Number of respondents	Description
Rule 304 of Regulation ATS and Form ATS–N.	Rule 304	34	The Commission estimates that all NMS Stock ATSs will be required to re-file their current electronic Form ATS–N disclosure using Form ATS–N, as proposed to be revised.

4. Other Form ATS Filers

There is set of respondents (''Other Form ATS Filers'') that are currently required to file Form ATS and are neither NMS Stock ATSs nor exclusively [754] Legacy Government Securities ATSs and will continue to have an obligation to file Form ATS after the effective date of any final rule. These filers will incur burdens to comply with the proposed revisions to Forms ATS and ATS–R discussed above.[755] The Commission estimates the total number of Other Form ATS Filers to be 59 [756] and that these respondents will be subject to the following collections of information as estimated below:

Collection of information	Rule	Number of respondents	Description
Rule 301 of Regulation ATS and Forms ATS and ATS–R.	Rule 301(b)(2)	59	The Commission estimates that all Other Form ATS Filers will be required to re-file their current paper Form ATS disclosure using the proposed modernized Form ATS.
	Rule 301(b)(9)	59	The Commission estimates that all Other Form ATS Filers will have to comply prospectively with the requirement to file quarterly reports on the proposed modernized Form ATS–R.

D. Total PRA Burdens

1. Burden of Rule 301 of Regulation ATS and Forms ATS and ATS–R

a. Rule 301(b)(2) Burden on Communication Protocol Systems and Other Form ATS Filers

As discussed above, the Commission is proposing to amend Exchange Act Rule 3b–16(a), which would cause Communication Protocol Systems to fall within the definition of ''exchange'' and believes that such Communication Protocol Systems would likely choose to register as a broker dealer and be regulated under the Regulation ATS exemption.[757] Certain Communication Protocol Systems that trade securities other than NMS stocks or government securities would be subject to requirements under Rule 301(b)(2), including to file an IOR and amendments thereto using the proposed modernized and electronic [758] Form ATS.

Other Form ATS Filers—current Form ATS filers that are not required to file Form ATS–N after the effective date of any final rule—would incur a burden to comply with the requirements to file Form ATS using the proposed modernized form. To comply with the requirements of revised Form ATS, such respondents would be required to re-file their most recently-filed Form ATS IOR or Amendment to IOR using the proposed modernized Form ATS. The Commission estimates an initial burden of 20.5 hours [759] and an annual burden of 5 hours [760] per respondent for complying with Rule 301(b)(2) and the following total initial and annual burdens:

[754] Government Securities ATSs that also have trading activities other than in government securities or repos will be required to separately report that activity on Form ATS after the effective date of any final rule.

[755] *See supra* Section V.B. In addition, for purposes of calculating whether an ATS meets the Fair Access Rule volume thresholds, the Commission is proposing to aggregate trading volume among certain affiliated ATSs. *See supra* Section V.A. At this time, the Commission estimates that no Other Form ATS Filers would be subject to the Fair Access Rule as a result of the proposed changes to aggregate affiliated ATS trading volume, and that the proposed change would therefore impose no additional burden. As discussed above, the Commission is also re-proposing to remove an exclusion from compliance with the Fair Access Rule under Rule 301(b)(5) and the Capacity, Integrity, and Security Rule under Rule 301(b)(6) that is applicable to ATSs that trade equities and also re-proposing revisions to Rule 301(b)(2), Form ATS, and Form ATS–R to modernize Form ATS and Form ATS–R and to provide that they are filed electronically. *See id.* The Commission does not expect, however, that any ATSs will be newly subject to the Fair Access Rule or the Capacity, Integrity, and Security Rule as a result of removing the exclusion. *Also see* infra note 1085.

[756] As of September 30, 2021, there are 61 ATSs that file Form ATS. Two of these trade only government securities or repos and, as proposed, would only be required to file a Form ATS–N and amendments to Form ATS–N after the effective date of any final rule. Accordingly, the Commission estimates that 59 ATSs will continue to file Form ATS amendments.

[757] *See supra* Section II.D.

[758] The Commission believes that the proposed electronic submission of Forms ATS and ATS–R would impose no additional burden on existing filers under Regulation ATS such as Other Form ATS Filers. These respondents would already have been required to register as broker-dealers pursuant to Rule 301(b)(1), and registered broker-dealers have been assigned a CIK number and do not need to submit a Form ID to access EDGAR. 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 that broker-dealer operator to submit Form ATS–N filings on EDGAR without needing to apply for a Form ID, so the proposed changes would not impose a burden under the existing Rule 15b1–1 and Form BD or Form ID collections of information on this category of respondents.

[759] The Commission's currently approved baseline burden for the average initial compliance burden for each Form ATS IOR is 20 hours (Attorney at 13 hours + Compliance Clerk at 7 hours). *See* Extension Without Change of a Currently Approved Collection: Regulation ATS Rule 301 Amendments; ICR Reference No. 202101–3235–011; OMB Control No. 3235–0509 (June 9, 2018), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202101-3235-011* (''Rule 301 PRA Supporting Statement''). The Commission is proposing amendments to Part I of Form ATS, which would add an additional burden of 0.5 hours per filing using the modernized form (Compliance Clerk at 0.5 hours), and therefore the average compliance burden for each Form ATS filing would be 20.5 hours. *See supra* Section V.B and *infra* Section VII.E (discussing proposed changes).

[760] The Commission's currently approved baseline burden for the average ongoing compliance burden for each amendment to a Form ATS IOR is 4 hours ((Attorney at 1.5 hours + Compliance Clerk at 0.5 hours) × 2 IOR amendments a year). *See* Rule 301 PRA Supporting Statement, *supra* note 759. The Commission is proposing amendments to Part I of Form ATS, including a requirement applicable to an ATS filing an IOR amendment to attach as Exhibit 3 a marked document to indicate changes to ''yes'' or ''no'' answers and additions or deletions from any Item in Part I, Part II, and Part III, which would add an additional annual burden of 1 hour per ATS using the modernized form (Compliance Clerk at 0.5 hours × 2 IOR amendments a year). Therefore the average compliance burden for each Form ATS filing would be 5 hours. *See supra* Section V.B and *infra* Section VII.E (discussing proposed changes).

Burden type	Respondent type	Number of respondents	Burden per respondent (hours)	Total burden (number of respondents × burden per respondent) (hours)
Initial	Communication Protocol Systems	14	20.5	287
Annual			5	70
Initial	Other Form ATS Filers	59	20.5	1,209.5
Annual			5	295

b. Rule 301(b)(5) Burden on Communication Protocol Systems and Legacy Government Securities ATSs

As discussed above, the Commission is proposing to apply the Fair Access Rule to the trading of U.S. Treasury Securities and Agency Securities. Certain Communication Protocol Systems and Legacy Government Securities ATS that trade U.S. Treasury Securities and Agency Securities and meet the relevant thresholds would be newly subject to the requirements of Rule 301(b)(5) of Regulation ATS.[761] In addition, for purposes of calculating whether an ATS meets the Fair Access Rule volume thresholds, the Commission is proposing to aggregate trading volume among certain affiliated ATSs, which will impose a burden on certain NMS Stock ATSs and Other Form ATS Filers that trade securities subject to the Fair Access Rule.[762] There is no initial burden associated with the currently approved collection of information for this requirement.[763] The Commission estimates an annual compliance burden of 37 hours per respondent [764] and the following total annual burdens:

Respondent type	Number of respondents	Annual burden per respondent (hours)	Total annual burden (number of respondents × annual burden per respondent) (hours)
Communication Protocol Systems	8	37	296
Legacy Government Securities ATSs	7	37	259

c. Rule 301(b)(6) Burden on Communication Protocol Systems

As discussed above, the Commission is proposing to amend Exchange Act Rule 3b–16(a) to cause Communication Protocol Systems to fall within the definition of ''exchange'' and believes that such Communication Protocol Systems would likely choose to register as a broker dealer and be regulated under the Regulation ATS exemption. Certain Communication Protocol Systems that trade municipal and corporate debt securities and meet the relevant thresholds would be newly subject to the systems capacity, integrity, and security recordkeeping and systems outages notice requirements of Rule 301(b)(6) of Regulation ATS. There is no initial burden associated with the currently approved collection of information for this requirement.[765] The Commission estimates an annual compliance burden of 11 hours per respondent [766] and the following total annual burden:

Respondent type	Number of respondents	Annual burden per respondent (hours)	Total annual burden (number of respondents × annual burden per respondent) (hours)
Communication Protocol Systems	2	11.25	22.5

d. Rule 301(b)(9) Burden on All Respondents

All respondent categories—Communication Protocol Systems, Legacy Government Securities ATSs, NMS Stock ATSs, and Other Form ATS Filers—are subject to the requirements of Rule 301(b)(9) and would incur a burden to file quarterly transaction reports using the proposed modernized and electronic [767] Form ATS–R.

[761] *See supra* Section II.D.2.

[762] *See* proposed Rule 301(b)(5)(ii). *See supra* Section V.A.

[763] *See* Rule 301 PRA Supporting Statement, *supra* note 759.

[764] The Commission's currently approved baseline for the average compliance burden per respondent is 37 hours = 10 hours for Fair Access Standards recordkeeping (Attorney at 5 hours × 2 responses a year) + 27 hours for Fair Access notices (Attorney at 1 hour × 27 responses a year). *See* Rule 301 PRA Supporting Statement, *supra* note 759.

[765] *See* Rule 301 PRA Supporting Statement, *supra* note 759.

[766] The Commission's currently approved baseline for the average compliance burden per respondent is 11.25 hours = 10 hours for systems capacity, integrity and security recordkeeping (Attorney at 10 hours) + 1.25 hours for systems outages notice (Attorney at .25 hours × 5 systems outages a year). *See* Rule 301 PRA Supporting Statement, *supra* note 759.

[767] As discussed above, the Commission believes that the proposed electronic submission of Form ATS–R would impose no additional burden on current Forms ATS and ATS–N filers. *See supra* note 758.

Presently, neither Currently Exempted Government Securities ATSs—the subset of Legacy Government Securities ATSs not operating pursuant to a Form ATS on file with Commission as of the effective date of any final rule—nor Communication Protocol Systems—are required to file quarterly transaction information on Form ATS–R, but the proposed amendments will newly impose on all respondents in these categories the currently-approved baseline burden of filing Form ATS–R and the additional burden of filing using the proposed modernized form.[768]

Current Government Securities ATSs—the subset of Legacy Government Securities ATSs operating pursuant to a Form ATS on file with Commission as of the effective date of any final rule—as well as NMS Stock ATSs and Other Form ATS Filers already incur a burden to file Form ATS–R, so the proposed rules would only impose upon them the new increased burden of filing on the modernized version of Form ATS–R. There is no initial burden associated with the currently approved collection of information for this requirement.[769] The Commission estimates an annual compliance burden of 19 hours per new Form ATS–R respondent[770] and 3 hours per existing Form ATS–R respondent;[771] and the following total annual burdens:

Respondent type	Number of respondents	Annual burden per respondent (hours)	Total annual burden (number of respondents × annual burden per respondent) (hours)
Communication Protocol Systems	22	19	418
Currently Exempted Government Securities ATSs	7	19	133
Current Government Securities ATSs	17	3	51
NMS Stock ATSs	34	3	102
Other Form ATS Filers	59	3	177

e. Rule 301(b)(10) Burden on Communication Protocol Systems and Currently Exempted Government Securities ATSs

Rule 301(b)(10) requires ATSs to establish adequate written safeguards and written procedures to protect subscribers' confidential trading information. Neither Currently Exempted Government Securities ATSs nor Communication Protocol Systems are presently subject to any of the requirements of Rule 301(b), but the current proposal will newly impose on all respondents in these categories the currently-approved baseline burden of complying with Rule 301(b)(10) after the effective date of any final rule.[772] The Commission estimates an initial burden of 8 hours[773] and an annual burden of 4 hours[774] per respondent for complying with Rule 301(b)(10) and the following total initial and annual burdens:

Burden type	Respondent type	Number of respondents	Burden per respondent (hours)	Total burden (number of respondents × burden per respondent) (hours)
Initial	Communication Protocol Systems	22	8	176
Annual			4	88
Initial	Currently Exempted Government Securities ATSs	7	8	56
Annual			4	28

2. Burden of Rules 302 and 303 of Regulation ATS on Communication Protocol Systems and Currently Exempted Government Securities ATSs

Rule 301(b)(8) of Regulation ATS requires ATSs to comply with the recordkeeping requirements of Rule 302 and the record preservation requirements of Rule 303.

[768] The Commission's currently approved baseline for the average compliance burden for each Form ATS–R filing is 4 hours (Attorney at 3 hours + Compliance Clerk at 1). *See* Rule 301 PRA Supporting Statement, *supra* note 759. The Commission is proposing amendments to Form ATS–R, which would add an additional burden of 0.75 hours per filing (Compliance Manager at 0.25 hours + Compliance Clerk at 0.5), and therefore the average compliance burden for each Form ATS–R filing would be 4.75 hours. *See supra* Section V.B and *infra* Section VII.E (discussing proposed changes to Form ATS–R applicable to all ATSs).

[769] *See* Rule 301 PRA Supporting Statement, *supra* note 759.

[770] The annual burden per Currently Exempted Government Securities ATS or Communication Protocol System would be 4.75 hours × 4 quarterly filings annually = 19 burden hours.

[771] The annual burden per existing Form ATS–R respondent would be 0.75 hours × 4 quarterly filings annually = 3 burden hours.

[772] The proposal would not impose a new burden on Current Government Securities ATSs, NMS Stock ATSs, and Other Form ATS Filers, as these categories of respondents would already be required to comply with Rule 301(b)(10) before the effective date of any final rule.

[773] The Commission's currently approved baseline for the average initial compliance burden is 8 hours (Attorney at 7 hours + Compliance Clerk at 1 hour). *See* Rule 301 PRA Supporting Statement, *supra* note 759.

[774] The Commission's currently approved baseline for the average ongoing compliance burden is 4 hours (Attorney at 2 hours + Compliance Clerk at 2 hours). *See* Rule 301 PRA Supporting Statement, *supra* note 759.

The proposal would newly impose the currently-approved baseline burden of complying with these rules on Communication Protocol Systems and Currently Exempted Government Securities ATS.[775] The Commission estimates an annual burden of 45 hours per respondent to comply with Rule 302[776] and 15 hours to comply with Rule 303;[777] and the following total annual burdens:

Rule	Respondent type	Number of respondents	Annual burden per respondent (hours)	Total annual burden (number of respondents × annual burden per respondent) (hours)
Rule 302	Communication Protocol Systems	22	45	990
Rule 303			15	330
Rule 302	Currently Exempted Government Securities ATSs	7	45	315
Rule 303			15	105

3. Burden of Rule 304 of Regulation ATS and Form ATS–N on Communication Protocol Systems, Legacy Government Securities ATSs, and NMS Stock ATSs

As discussed above, the Commission is proposing to amend Exchange Act Rule 3b–16(a) to cause Communication Protocol Systems to fall within the definition of ''exchange'' and believes that such Communication Protocol Systems would likely choose to register as a broker dealer and be regulated under the Regulation ATS exemption.[778] Under the proposal, Government Securities ATSs (inclusive of Communication Protocol Systems) would be subject to the proposed changes to Regulation ATS related to Government Securities ATSs.[779] Those respondents, as well as Communication Protocol Systems that trade NMS Stocks, will be newly required to file Form ATS–N as revised,[780] pursuant to Rule 304. In addition, existing NMS Stock ATSs that do not also trade in government securities will, after the effective date of any final rule, be required to re-file their most recent Form ATS–N or Form ATS–N amendment using the revised Form ATS–N. The Commission estimates the initial burden for new filers of Form ATS–N, as revised—Currently Exempted Government Securities ATSs and Communication Protocol Systems that trade government securities or NMS Stocks—to be 136.4 hours.[781] The Commission estimates the initial burden for Current Government Securities ATSs, which currently file on Form ATS, to file on Form ATS–N, as revised, to be 116.4 hours.[782] The Commission estimates the initial burden for existing NMS Stock ATSs that do not also trade government securities, which currently file on Form ATS–N, to be 8 hours.[783] The Commission estimates that the annual burden for each new Form ATS–N respondent to file amendments to Form ATS–N is 47 hours.[784] The total estimated initial and annual[785] burdens for each respondent type are as follows:

[775] The proposal would not impose a new burden on Current Government Securities ATSs, NMS Stock ATSs, and Other Form ATS Filers, as these categories of respondents would already be required to comply with Rules 302 and 303 before the effective date of any final rule.

[776] The Commission's currently approved baseline for the average compliance burden is 45 hours (Compliance Clerk at 45 hours). *See* Extension Without Change of a Currently Approved Collection: Rule 302 (17 CFR 242.302) Recordkeeping Requirements for Alternative Trading Systems; ICR Reference No. 201906–3235–011; OMB Control No. 3235–0510 (October 24, 2019), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201906-3235-011.* There is no initial burden associated with this rule.

[777] The Commission's currently approved baseline for the average compliance burden is 15 hours (Compliance Clerk at 15 hours). *See* Extension Without Change of a Currently Approved Collection: Rule 303 (17 CFR 242.303) Record Preservation Requirements for Alternative Trading Systems; ICR Reference No. 202101–3235–010; OMB Control No. 3235–0505 (June 25, 2021), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202101-3235-010.* There is no initial burden associated with this rule.

[778] *See supra* Section II.D.

[779] *See supra* Section III.

[780] *See supra* Section IV.

[781] The Commission's currently approved baseline burden for the average initial compliance burden for each initial Form ATS–N is 130.4 hours (currently approved baseline burden to complete an initial Form ATS at 20 hours: Attorney at 13 hours and Compliance Clerk at 7 hours; *see* Rule 301 PRA Supporting Statement, *supra* note 759) + (Part I at 0.5 hour) + (Part II at an average of 29 hours) + (Part III at an average of 78.75 hours) + (Access to EDGAR at 0.15 hours) + (Posting link to published Form ATS–N on ATS website at 2 hours) = 130.4 burden hours. *See* Extension Without Change of a Currently Approved Collection: Regulation ATS Rule 304 and Form ATS–N; ICR Reference No. 202109–3235–014; OMB Control No. 3235–0763 (January 3, 2022), *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202109-3235-014* (''Rule 304 PRA Supporting Statement''). The aggregate totals by professional, including the baseline, are estimated to be approximately 54.6 hours for an Attorney, 0.5 hours for a Chief Compliance Manager, 34.55 hours for a Compliance Manager, 32.25 hours for a Senior Systems Analyst, 1 hour for a Senior Marketing Manager, and 7.5 hours for a Compliance Clerk. The Commission estimates that the proposed amendments to Form ATS–N would add an additional burden of 6 hours per filing (Attorney at 2.5 hours, Compliance Manager at 1.5 hours, Senior Systems Analyst at 1.5 hours, and Compliance Clerk at 0.5 hours), and therefore the average compliance burden for each new Form ATS–N filer would be 136.4 hours. *See supra* Section V.B and *infra* Section VII.E (discussing proposed changes).

[782] The Commission estimates that existing Form ATS filers will not incur the portion of the currently approved baseline burden to file an initial Form ATS–N that is attributable to completing an initial Form ATS, estimated at 20 hours. *See* Rule 304 PRA Supporting Statement, *supra* note 781. Thus, the total initial burden for these respondents will be 116.4 hours (130.4 hours baseline burden to file an Initial Form ATS–N − 20 hours + 6 hours per filing to complete the proposed revised items of Form ATS–N). *See id.*

[783] The Commission estimates the proposal would impose upon current Form ATS–N filers a one-time burden of 8 hours: The marginal burden of 6 hours to respond to the revised items in the form (*see supra* note 781) + 2 hours for a Compliance Clerk to reorganize their current Form ATS disclosures to respond to revised Form ATS–N.

[784] The currently approved baseline burden for filing amendments to Form ATS–N is 47 hours ((Attorney at 5.5 hours + Compliance Manager at 2 hours + Compliance Clerk at 1.9 hours) × 5 amendments a year). *See* Rule 304 PRA Supporting Statement, *supra* note 781.

[785] The currently approved baseline annual burden for Rule 304 contemplates NMS Stock ATSs filing amendments to Form ATS–N, and this proposal does not add to that burden.

Burden type	Respondent type	Number of respondents	Burden per respondent (hours)	Total burden (number of respondents × burden per respondent, rounded to nearest 0.5 hours)
Initial	Communication Protocol Systems	8	136.4	1,091
Annual			47	376
Initial	Currently Exempted Government Securities ATSs	7	136.4	955
Annual			47	329
Initial	Current Government Securities ATSs	17	116.4	1,979
Annual			47	799
Initial	NMS Stock ATSs	34	8	272

4. Burden of Rule 15b1–1 and Form BD on Communication Protocol Systems and Currently Exempted Government Securities ATSs

Rule 301(b)(1) of Regulation ATS requires ATSs to register as a broker-dealer under section 15 of the Act. The proposal would newly impose the currently-approved baseline burden of complying with the Rule 15b1–1 and Form BD collection of information on certain Communication Protocol Systems and Currently Exempted Government Securities ATSs that are not already registered as broker-dealers.[786] The Commission estimates an initial burden of 2.75 hours [787] and an annual burden of 1 hour [788] per respondent for completing Form BD and the following total initial and annual burdens:

Burden type	Respondent type	Number of respondents	Burden per respondent (hours)	Total burden (number of respondents × burden per respondent, rounded to nearest 0.5 hours)
Initial	Communication Protocol Systems	6	2.75	16.5
Annual			.95	5.5
Initial	Currently Exempted Government Securities ATSs	1	2.75	3
Annual			.95	1

5. Burden of Form ID on Communication Protocol Systems and Currently Exempted Government Securities ATSs

The same subset of Communication Protocol Systems and Currently Exempted Government Securities ATSs that are not already registered as broker-dealers discussed above would also newly incur the currently-approved baseline burden of the Form ID collection of information necessary to apply for EDGAR access.[789] The Commission estimates an initial burden of 0.15 hours [790] and no annual burden per respondent for completing Form ID, and the following total burdens:

Respondent type	Number of respondents	Initial burden per respondent (hours)	Total initial burden (number of respondents × initial burden per respondent, rounded to nearest 0.5 hours)
Communication Protocol Systems	6	0.15	1
Currently Exempted Government Securities ATSs	1	0.15	0

6. Burden of Regulation SCI on Communication Protocol Systems and Legacy Government Securities ATSs

As discussed above, the Commission is re-proposing to amend Regulation SCI to expand the definition of ''SCI alternative trading system'' to include Government Securities ATSs that meet a specified volume threshold, which would, in turn, fall within the definition of ''SCI entity'' and, as a result, be subject to the requirements of Regulation SCI.[791] As proposed, (1) Communication Protocol Systems that transact in U.S. Treasuries, Agency Securities, NMS stocks, or equity securities other than NMS stocks reported to an SRO and (2) Legacy Government Securities ATSs could become newly subject to the requirements of Regulation SCI if they

[786] The proposal would not impose a new burden on Current Government Securities ATSs, NMS Stock ATSs, and Other Form ATS Filers, as these categories of respondents are already subject to the requirement of Regulation ATS, and specifically Rule 301(b)(1) to register as a broker-dealer. The Commission also estimates that a subset of Communication Protocol Systems and Currently Exempted Government Securities ATSs would already be registered as broker-dealers.

[787] The Commission's currently approved baseline burden for the average initial compliance burden for each Form BD is 2.75 hours (Compliance Manager at 2.75 hours). *See* Extension Without Change of a Currently Approved Collection: Form BD and Rule 15b1–1. Application for registration as a broker-dealer; ICR Reference No. 201905–3235–016; OMB Control No. 3235–0012 (August 7, 2019), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201905-3235-016.* (''Form BD PRA Supporting Statement'').

[788] The Commission's currently approved baseline burden for the average ongoing compliance burden for each respondent amending Form BD is .95 hours (Compliance Manager at 0.33 hours × 2.87 amendments per year). *See* Form BD PRA Supporting Statement, *supra* note 787.

[789] As discussed above, respondents burdened under the PRA by this proposal that are already registered as broker-dealers would not incur this burden. *See supra* note 786.

[790] *See* Revision of a Currently Approved Collection: Form ID—EDGAR Password; ICR Reference No. 202104–3235–022; OMB Control No. 3235–0328 (April 29, 2021), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202104-3235-022.*

[791] *See supra* Section III.C.

satisfy the thresholds set forth in the proposed amended definition of ''SCI alternative trading system.'' [792]

The Commission estimates 2 Communication Protocol Systems will initially satisfy the conditions and thresholds set forth in the proposed amended definition of ''SCI alternative trading system'' that are not existing SCI entities or affiliated with SCI entities and will incur a higher initial burden to comply. With respect to Legacy Government Securities ATSs, the Commission estimates that 1 respondent will qualify as an SCI alternative trading system that is currently an SCI entity or is affiliated with an SCI entity and will incur a lower initial burden to comply with Regulation SCI, and 1 respondent will qualify as an SCI alternative trading systems that is not an existing SCI entity or affiliated with an SCI entity and will incur the higher initial burden to comply.

The Commission estimates an initial compliance burden for existing SCI entities of 1,017.15 hours,[793] an initial compliance burden for new SCI entities of 2,034.3 hours,[794] an annual compliance burden for all qualifying SCI entities of 2,458.65 hours,[795] and the following total initial and annual burdens:

Burden type	Burden description/respondent type	Number of respondents	Burden per respondent (hours)	Total burden (number of respondents × burden per respondent, rounded to nearest 0.5 hours)
Initial	Compliance with Regulation SCI (Legacy Government Securities ATSs that are existing SCI entities).	1	1,017.15	1,017
Annual			2,458.65	2,458.5
Initial	Compliance with Regulation SCI (Legacy Government Securities ATSs that are new SCI entities).	1	2,034.3	2,034.5
Annual			2,458.65	2,458.5
Initial	Compliance with Regulation SCI (Communication Protocol Systems that are new SCI entities).	2	2,034.3	4,068.5
Annual			2,458.65	4,917.5

E. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

178. Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information shall have practical utility;

179. Evaluate the accuracy of the Commission's estimates of the burden of the proposed collection of information;

180. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

181. Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

182. Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File Number S7–02–22. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number S7–02–22 and be submitted to the Securities and Exchange Commission, Office of FOIA/PA Services, 100 F Street NE, Washington, DC 20549–2736. As OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Economic Analysis

A. Introduction

We are mindful of the economic effects that may result from the proposed amendments, including the benefits, costs, and the effects on efficiency, competition, and capital formation.[796] This section analyzes the expected economic effects of the proposed rules relative to the current baseline, which consists of the current market and regulatory framework in existence today.

A significant number of buyers and sellers for securities are brought together through Communication Protocol Systems, Government Securities ATSs, ATSs trading other securities asset classes, and registered exchanges, but this activity is subject to different regulations according to the type of venue and asset class. By amending Exchange Act Rule 3b–16 to include Communication Protocol Systems within the definition of exchange and ending the exemption for Government Securities ATSs, the proposed amendments would functionally apply

[792] The proposal would not impose a new burden on (1) Communications Protocol Systems that transact in categories of securities that are not within the definition of ''SCI alternative trading system,'' (2) NMS Stock ATSs, which are already subject to the requirements of Regulation SCI (unless they are Communication Protocol Systems that meet the Regulation SCI thresholds in NMS stocks), and (3) Other Form ATS Filers, which, as defined in this proposal, do not transact in the categories of securities within the definition of ''SCI alternative trading system.''

[793] The Commission's currently approved baseline burden for the average initial compliance burden for an existing SCI entity that is not an SRO or a plan processor is 1,017.15 hours. *See* Extension Without Change of a Currently Approved Collection: Regulation SCI and Form SCI; ICR Reference No. 201807–3235–001; OMB Control No. 3235–0703 (September 26, 2018) *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201807-3235-001* (''2018 SCI PRA Supporting Statement'').

[794] The Commission's currently approved baseline burden for the average initial compliance burden for an existing SCI entity that is not an SRO or a plan processor is 2,034.3 hours. *See* 2018 SCI PRA Supporting Statement *supra* note 793.

[795] The Commission's currently approved baseline burden for the average ongoing compliance burden for an SCI entity that is not an SRO or a plan processor is 2,458.6 hours. *See* 2018 SCI PRA Supporting Statement *supra* note 793.

[796] 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).

Regulation ATS to an additional number of entities not currently regulated by it. This would have a number of benefits, including enhanced regulatory oversight and protection for investors, a reduction in trading costs and improvement in execution quality, and enhancement of price discovery and liquidity.

The proposed amendments would also have costs for those entities subject to new requirements, including compliance costs associated with filing forms such as Form ATS–N or Form ATS, protecting confidential information, keeping certain records, and complying with the Fair Access Rule and/or Regulation SCI.

B. Baseline

1. Current State of Communication Protocol Systems

Communication Protocol Systems bring together buyers and sellers of securities through the use of non-firm trading interest and by providing structured methods for communication. Three common types of protocols, RFQ, stream axes, and conditional order protocols, along with their potential advantages and disadvantages for participants, are described in following subsections.[797] Subsequent sections discuss details of Communication Protocol Systems that are particular to different asset classes.[798]

a. Request-for-Quote Protocol

As described in Section II.B.2, an RFQ protocol system typically allows market participants to obtain quotes for a particular security by simultaneously sending messages to one or more potential respondents. The initiating participant is typically required to provide information related to the request in a message, which may include the name of the initiating participant, CUSIP, side, and size. Participants that observe the initiating participant's request have the option to respond to the request with a price quote. These respondents are typically dealers in the relevant asset class, and are often, though not always, pre-selected. The initiating participant can then select among the respondents by either accepting one of multiple responses or rejecting all responses, usually within a ''good for'' time period. After the initiating participant and a respondent agree on the terms of the trade, the trade will then proceed to post-trade processing.

Initiating participants have an incentive to invite multiple respondents to an RFQ, because receiving more quotes increases price competition and thus may improve execution quality.[799] The Commission understands that it is common for an RFQ to include at least three participants.

The number of respondents that are invited to participate in the RFQ is generally less than the total number of dealers available through the system.[800] There may be several reasons for this. First, the Commission understands that the system itself may limit the total number of respondents that can be selected for a single RFQ, typically to five counterparties. This limitation may encourage dealers to respond to RFQs, since it reduces the number of other dealers they would compete with in any give request session.

A second reason stems from the initiating participant's possible incentive to limit the degree of information leakage. If the trade the initiating participant is seeking to complete with the help of the RFQ is not completely filled in that one session, and other participants know this, quotes the initiating participant receives elsewhere may be affected, including in subsequent RFQ sessions.

A third reason is that respondents and initiators both have an incentive to limit price impact because of the expense it will add to the offsetting trade that must follow. Specifically, a dealer who takes a position to fill a customer order through an RFQ will often subsequently offset that position in the interdealer market. If a large number of dealers are invited to participate in an RFQ, this would lead to widespread knowledge that the dealer with the winning bid will now try to offset that position, which could impact the prices available to that dealer in the interdealer market.

Because RFQs give the initiating participant the opportunity to mitigate the information leakage described above, they may give the initiating participant more control over its information than a limit order book (''LOB'').[801]

Once the initiator receives responses from the counterparties, the initiator can select a quote with which to trade. On some RFQ platforms, it is at this point that both sides become committed to the trade. However, there are other RFQ platforms which allow the respondent an opportunity to confirm the trade. Additionally, after the RFQ session has ended, the system may inform other respondents to the RFQ of the price of the second best quote. This allows them to get information as to what other respondents are quoting in the market, while limiting information leakage regarding the details of the actual trade that took place.

Anonymous RFQ sessions may reduce information leakage more than a disclosed RFQ, because the identity of the initiating participant might otherwise reveal something about the initiating participant's willingness to pay.[802] However, this means respondents are not able to price quotes on the basis of an ongoing relationship with the counterparty.

RFQ systems have disadvantages for the initiating participants, when compared with LOBs. For liquid securities, trading on an RFQ system results in less price competition among respondents when compared with an LOB, if the number of respondents are limited. Compared to an LOB, respondents cannot see what quotes they would have to beat to win the auction, and may not have to compete with as many respondents to provide a quote.

Also, the Commission understands that there may be less straight-through processing when trading is conducted via an RFQ protocol system, as opposed to on an exchange. Furthermore, depending on the type of asset being traded, there may not be centralized means of clearing and settlement available. For these reasons, the Commission understands that one reason why disclosed RFQs are used is so that RFQ initiating participants can choose dealers with whom the initiator has an established relationship.[803] Then, after an RFQ session has ended, all necessary processing for the trade is completed through this relationship, in the same way that a transaction might

[797] *See infra* Tables VIII.5 and VIII.6 for a breakdown of the market share of different protocols, including ATS protocols, in the markets for government securities and corporate debt.

[798] *See infra* Sections VIII.B.2.b, VIII.B.3.b, VIII.B.4.b, VIII.B.5.d, VIII.B.6.b, and VIII.B.7.

[799] *See* MarketAxess Letter at 3, stating that variations of the RFQ protocol can allow clients to simultaneously request liquidity on an anonymous basis from over 1,000 platform participants, and that connecting to more counterparties improves trading outcomes and lowers transaction costs for liquidity providers and takers.

[800] *See supra* Section V.A.3, discussing the applicability of fair access to platforms where each participant has discretion over which other participants they want to trade.

[801] This reduction in information leakage may be offset by the fact that on disclosed RFQs, the initiator's identity is revealed to participants in the session, which may be an especially sensitive bit of information to reveal.

[802] The use of anonymous RFQ is not uniform across asset classes. The Commission preliminarily believes that anonymous RFQ is uncommon in the market for U.S. Treasury Securities.

[803] *See, e.g.,* MarketAxess Letter at 5, stating that the majority of RFQ trades are completed on a name-disclosed basis with no central clearing party.

be processed via bilateral voice trading.[804]

In order to facilitate processing of the trade while maintaining the anonymity of the counterparties, the operator of the anonymous RFQ, which is typically a broker-dealer, may act as a counterparty to each side of the trade. Also, the Commission understands that anonymous RFQs are often received by all liquidity providers participating on the platform, instead of a pre-selected few. The Commission understands that providing an intermediary broker to act as a counterparty to each side of a trade on the system may also function as a convenience to RFQ participants generally, by allowing the system to help facilitate more straight-through processing.

As described in Section II.B.2, RFQ Lists, also referred to as BWIC or OWIC,[805] are a variation of the RFQ protocol in which quotes are solicited for multiple securities simultaneously. Market participants use RFQ Lists to complete trades in a number of different securities at the same time. Bringing all liquidity providers together into a single, multi-security RFQ may be a more efficient way of trading multiple securities at once than initiating a separate RFQ session for each security, especially if it is important to complete the trades close together in time. However, the use of the joint session may reveal more about the trading intentions of the initiator to its counterparties than using separate RFQ sessions, where information leakage is more limited, as respondents may be less aware of the complete position the initiator is seeking to take.

b. Stream Axes

As defined in Section II.B.2, ''stream axes'' are systems that electronically display continuous trading interest (firm or non-firm) in a security or type of security to participants on the systems. The Commission understands a typical stream axe to operate as follows: Dealers submit an indication or indications of interest (''axe'' or ''axes''), which may include price quotes and sizes for buying and selling securities. Axes are streamed to participants, updating continuously as dealers adjust prices and inventory offerings. A market participant may choose an axe with which to trade at the broadcasted price and size. In some cases, the axes are streamed on a non-anonymous basis, which permits the prices to be customized to the recipient on the basis of the relationship between the recipient and the dealer.

Stream axes differ from RFQs in that the dealer streaming the axes receives less information about the counterparty's trading intentions before the trade is agreed to. Stream axes are similar to an LOB in this way. This lack of information may end up reflected in the prices the dealer chooses to stream, as well as the type of dealer who chooses to participate in stream axes. Therefore, the decision to use an RFQ or stream axe may depend on the trading intentions of the participant. The stream axes protocol gives the participant receiving the stream the free option to trade at whatever price is being streamed at the moment, without revealing anything about its trading intentions beyond its identity. On the other hand, this may be less conducive to trading in certain sizes, and may not result in the same price as an RFQ.

c. Conditional Order Protocol

Section II.B.2 defines conditional orders as trading interest that may not be executable until after a user takes subsequent action, for example, sending a firm-up invitation message to other participants. Conditional order protocols often allow the matched parties to modify the attributes of the non-firm trading interest before accepting the firm-up invitation. If both matching parties accept the firm-up invite, the parties would agree upon the terms of the trade and an execution would occur.

Unlike LOBs, conditional order protocols allow participants to ultimately decline a transaction after receiving a response to their quote. This may be particularly useful for large size orders or for illiquid securities, for which search costs may be particularly high. For example, participants can place conditional orders on various systems in search of liquidity, and use the fact that the orders are non-firm to avoid the risk of double-execution by declining some responses if they receive more than one. However, the ability for the matched counterparty to also decline to transact implies that the risk of non-execution on conditional order protocols is likely higher than that of LOBs.

2. Current State of Government Securities Market

The market for U.S. Government securities is large both in terms of the outstanding debt and daily trading volume. According to the Treasury Department, as of the end of 2020, the total amount outstanding of marketable Treasury Securities was approximately $21 trillion.[806] The Financial Accounts of the United States Z.1 released by the Federal Reserve Board shows that the amount outstanding of Agency- and GSE-Backed Securities is about $10.1 trillion, as of the end of 2020.[807] According to data published by SIFMA, in September 2021, the average daily trading volume in government securities was about $850.1 billion, or roughly 95 percent of all fixed income trading volume in the U.S.[808] This includes $582.1 billion average daily trading in U.S. Treasury Securities, $265.7 billion in Agency MBSs, and $2.4 billion in other Agency Securities.

a. ATSs in the Market for U.S. Government Securities

i. Operations and Market Share of Government Securities ATSs

The variety of market participants trading on Government Securities ATSs has increased since their inception. While Government Securities ATSs in the market for U.S. Treasury Securities historically only allowed bank and non-bank dealers[809] to trade, beginning in 2003, firms that were neither banks nor dealers, such as hedge funds, insurance companies, and PTFs, gained permission from the ATSs to trade directly on Government Securities ATSs.[810] The Commission estimates that there are currently 17 ATSs trading in government securities (either Treasury or Agency securities, or both) that have a Form ATS on file.[811]

[804] Bilateral voice trading refers to telephone calls, chat messages, etc.

[805] *See supra* note 58.

[806] *See* Monthly Statement of the Public Debt of the United States, dated December 31, 2020, *available at https://www.treasurydirect.gov/govt/reports/pd/mspd/2020/opds122020.pdf.*

[807] *See* Financial Accounts of the United States Z.1 at 177, *available at https://www.federalreserve.gov/releases/z1/20210311/z1.pdf.*

[808] *See* SIFMA Fixed Income Trading Volume, *available at https://www.sifma.org/resources/research/us-fixed-income-securities-statistics/.* The stated figures include Treasury Securities, Agency MBS, and Federal Agency Securities.

[809] Absent an exception or an exemption, Section 15(a)(1) of the Exchange Act makes it unlawful for a ''dealer'' to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless registered with the Commission in accordance with Section 15(b) of the Exchange Act. Similarly, Section 15C of the Exchange Act makes it unlawful for a ''government securities dealer'' (other than a registered broker-dealer or financial institution) to induce or attempt to induce the purchase or sale of any government security unless such government securities dealer is registered in accordance with Section 15C(a)(2).

[810] *See* Letter from Jim Greco, CEO, Direct Match, to David R. Pearl, Office of the Executive Secretary, U.S. Department of the Treasury, dated April 22, 2016, (''Direct Match Letter'') at 5, *available at https://www.treasurydirect.gov/instit/statreg/gsareg/RFIcommentletterDirectMatch.pdf* at 6–7.

[811] *See supra* Section VII.C.1. The Commission estimates that some of these ATSs only support Treasuries trading to facilitate hedging in

Continued

Additionally, the Commission estimates that 7 Currently Exempted Government Securities ATSs are not currently required to register as a national securities exchange or comply with Regulation ATS.[812]

Currently, Government Securities ATSs account for a significant percentage of all Treasury trading activity reported to TRACE.[813] As shown in Table VIII.1, ATSs accounted for approximately 32 percent of U.S. Treasury Securities trading volume in the first half of 2021. Dealer participants on current ATSs use them as a source of liquidity in government securities, including the liquidity needed to efficiently fill customer orders outside the current ATSs. The Commission understands that this means some portion of dealer transactions on Government Securities ATSs are associated with the dealers' activity in filling customer orders.

TABLE VIII.1—ATS MARKET SHARE ANALYSIS

	Treasury securities	Agency securities	Number of unique platforms
Num. of Current Gov. Sec. ATSs	13	7	15
Num. of Currently Exempted Gov. Sec. ATSs	5	1	5
Num. of Grouped-Affiliated ATSs	18	7	.....
Total volume share of Current Gov. Sec. ATSs	24.5%	11.6%	.....
Total volume share of Currently Exempted Gov. Sec. ATSs	9.6%	0.7%	.....
Total volume share of Grouped-Affiliated ATSs Companies	34.1%	12.3%	.....
Above 10% Market Share			
Num. of Current Gov. Sec. ATSs	1	1	2
Num. of Currently Exempted Gov. Sec. ATSs	0	0	0
Num. of Grouped-Affiliated ATSs	2	1	.....
Total volume share of Current Gov. Sec. ATSs	15.2%	11.6%	.....
Total volume share of Currently Exempted Gov. Sec. ATSs	.....	.....	.....
Total volume share of Grouped-Affiliated ATSs	15.2%	.....	.....
Above 5% Market Share			
Num. of Current Gov. Sec. ATSs	2	1	2
Num. of Currently Exempted Gov. Sec. ATSs	0	0	0
Num. of Grouped-Affiliated ATSs	4	1	.....
Total volume share of Current Gov. Sec. ATSs	21.3%	11.6%	.....
Total volume share of Currently Exempted Gov. Sec. ATSs	.....	.....	.....
Total volume share of Grouped-Affiliated ATSs	23.7%	.....	.....
Above 4% Market Share			
Num. of Current Gov. Sec. ATSs	2	1	2
Num. of Currently Exempted Gov. Sec. ATSs	0	0	0
Num. of Grouped-Affiliated ATSs	4	1	.....
Total volume share of Current Gov. Sec. ATSs	21.3%	11.6%	.....
Total volume share of Currently Exempted Gov. Sec. ATSs	.....	.....	.....
Total volume share of Grouped-Affiliated ATSs	23.7%	.....	.....
Above 3% Market Share			
Num. of Current Gov. Sec. ATSs	2	1	2
Num. of Currently Exempted Gov. Sec. ATSs	2	0	2
Num. of Grouped-Affiliated ATSs	8	1	.....
Total volume share of Current Gov. Sec. ATSs	21.3%	11.6%	.....
Total volume share of Currently Exempted Gov. Sec. ATSs	7.9%	.....	.....
Total volume share of Grouped-Affiliated ATSs	32.0%	.....	.....

conjunction with corporate bonds transactions, but typically are not used for outright Treasuries trading. *See also* ICE Bonds Letter I at 3, stating that this offering of Government Securities ATSs gives participants the convenience of electronically trading in instruments with correlated trading activities in a centralized location.

[812] As discussed in Section I, a Currently Exempted Government Securities ATS is defined as an ATS that limits its securities activities to government securities or repos and registers as a broker-dealer or is a bank. Currently Exempted Government Securities ATSs transact exclusively in government securities or repos, and are not required to file a Form ATS.

[813] TRACE aggregation and analysis methods follow those used by Treasury market regulators and FINRA, including adjustments for multiple trade reports for a single transaction and counting only one trade report for an ATS or inter-dealer broker (IDB). Commission staff uses the regulatory version of TRACE in its analysis.

A ''Give-Up'' ID is reported when a principal to a transaction delegates another participant to report a trade on its behalf. When a ''Give-Up'' ID is reported, the corresponding reporting or contra-party is replaced with the ''Give-Up'' ID. This ensures that trades are attributed to the principals to each transaction. System control numbers are used to link corrected, canceled, and reversed trade messages with original new trade messages. In these cases, only corrected trades are kept and all cancellation and reversal messages and their corresponding new trade messages are removed.

Special care must be taken when counting market volume. When a FINRA registered broker directly purchases from another FINRA member, two trade messages are created. If those FINRA registered brokers transact through an IDB, four trade messages are created, two for the IDB and one for each member. In both cases, the volume from only one report is needed. To ensure that double counting of transactions does not occur, only the following trade messages are summed to calculate market volume: Sales to non-IDB members, sales to identified customers, such as banks, hedge funds, asset managers, and PTFs, and purchases from and sales to customers and affiliates. Any trade in which the contra-party is an IDB is excluded. Thus, in the case of trades involving IDBs, only the IDBs' sale message is added to overall volume.

TABLE VIII.1—ATS MARKET SHARE ANALYSIS—Continued

	Treasury securities	Agency securities	Number of unique platforms
Above 2% Market Share			
Num. of Current Gov. Sec. ATSs	3	1	3
Num. of Currently Exempted Gov. Sec. ATSs	2	0	2
Num. of Grouped-Affiliated ATSs	8	1	.....
Total volume share of Current Gov. Sec. ATSs	23.7%	11.6%	.....
Total volume share of Currently Exempted Gov. Sec. ATSs	7.9%	.....	.....
Total volume share of Grouped-Affiliated ATSs	32.0%	.....	.....

Each panel reports the volume share (%) for Government Securities ATSs and the number of Government Securities ATSs above the specified market share level. Grouped-Affiliated ATSs refer to ATSs operated by a common broker-dealer or affiliated broker-dealer and for which their volume would be aggregated under the proposed changes to the Fair Access Rule. Treasury Securities include nominal bonds, TIPS and STRIPS. Agency Securities include Agency Debentures, Agency Collateralized Mortgage Obligations, and Agency Pass-Through Mortgage Backed Securities.[a] Trading volume is measured in dollar volume in par value. Data is based on the regulatory version of TRACE for U.S. Treasury Securities and TRACE for Agency Securities from April 1, 2021 to September 30, 2021.[b c]

[a] Agency Pass-through Mortgage Backed Securities include those traded in specified pool transactions and those to be announced. ''Agency Debenture'' is equivalent to ''Federal Agency Security,'' as used in Part I, Item 8(b) of Form ATS–N. ''Agency Mortgage Backed Securities'' as used in Part I, Item 8(b) of Form ATS–N include both ''Agency Collateralized Mortgage Obligations'' and ''Agency Pass-Through Mortgage Backed Securities.''

[b] The analysis based on TRACE is necessarily limited to transactions reported to TRACE, which may not be all transactions in government securities. Transactions that take place on non-FINRA member ATSs or between two non-FINRA members are not reported to TRACE.

[c] Trades reported to TRACE may include trades conducted on a Communication Protocol System if one participant in the trade is a FINRA member. The volume reported in this table is categorized given this limitation.

Government Securities ATSs have evolved such that they operate with a level of technology use and speed of trading that is similar to that observed on NMS Stock ATSs, particularly in the secondary electronic cash market for on-the-run U.S. Treasury Securities.[814] Some Government Securities ATSs operate as anonymous LOB systems and offer features such as low latency connectivity, direct market data feeds, co-location services, and a variety of order types. In addition to facilitating low latency trading, the Commission understands that the data feeds provided by Government Securities ATS serve as a source for real-time prices in the market for government securities.[815] In providing such information to market participants about Treasury prices in particular, these feeds may serve as a source for real-time risk-free rate benchmarks, which help price other financial instruments.

PTFs have a significant presence on Government Securities ATSs.[816] Table VIII.2 shows that, during April to September of 2021, PTFs accounted for approximately 25.4 percent of total on-the-run U.S. Treasury Securities ATS trading volume. There were 41 PTFs operating on ATSs that trade U.S. Treasury Securities as of August 2021. The Commission understands that PTFs trading on the electronic market for U.S. Treasury Securities often employ automated, algorithmic trading strategies that rely on speed and allow the PTFs to quickly execute trades, or cancel or modify quotes in response to perceived market events.[817] The Commission understands that PTFs contribute liquidity to the trading environment on Government Securities ATSs.[818]

TABLE VIII.2—ON-THE-RUN U.S. TREASURY SECURITIES TRADING VOLUME

	Number of venues	Volume	Volume share (%)
On-the-Run U.S. Treasury Securities Trading Volume			
ATSs	18	812,480	49.7
Customer trades	11	52,754	3.2
Dealer trades	18	344,781	21.1
PTF trades	11	414,945	25.4
Non-ATS Interdealer Brokers	24	118,067	7.2
Customer trades	19	77,334	4.7
Dealer trades	23	40,252	2.5
PTF trades	9	481	0.0[a]
Bilateral dealer-to-dealer trades	352	92,051	5.6
Bilateral dealer-to-customer trades	333	604,823	37.0
Bilateral dealer-to-PTF trades	97	7,250	0.4

[814] *See* October 15 Staff Report, *supra* note 188, at 35–36, discussing increased electronic trading in the market for Treasuries. *See also* Bloomberg Letter at 5, stating that liquid on-the-run government securities are mostly traded on central limit order books and Bloomberg Letter at 21, stating that ATSs are a significant source of liquidity for on-the-run U.S. Treasury Securities.

[815] *See* Letter from Dan Cleaves, Chief Executive Officer, BrokerTec Americas, and Jerald Irving, President, ICAP Securities USA LLC, to David R. Pearl, Office of the Executive Secretary, Treasury Department, dated April 22, 2016 at 7, *available at https://www.treasurydirect.gov/instit/statreg/gsareg/ICAPTreasuryRFILetter.pdf.*

[816] *See supra* Section III.A.

[817] *See* October 15 Staff Report at 32, 35–36, 39.

[818] One market participant stated that this liquidity provision may fill a gap that was left after the introduction of post-2008 financial crisis regulations and their subsequent effects on dealers. *See* Direct Match Letter at 7.

TABLE VIII.2—ON-THE-RUN U.S. TREASURY SECURITIES TRADING VOLUME—Continued

	Number of venues	Volume	Volume share (%)
Total		1,634,671	100.0

This table reports trading volume and volume share for ATSs,[b] Non-ATS interdealer brokers, bilateral dealer-to-dealer transactions, bilateral dealer-to-customer, and bilateral dealer-to-PTF transactions for on-the-run U.S. Treasury Securities. On-the-run U.S. Treasury Securities are the most recently issued nominal coupon securities. Nominal coupon securities pay a fixed semi-annual coupon and are currently issued at original maturities of 2, 3, 5, 7, 10, 20, and 30 years. Treasury Bills and Floating Rate Notes are excluded. *Volume* is the average weekly dollar volume in par value (in millions of dollars) over the 6-month period, from April 1, 2021, to September 30, 2021.[c] *Number of Venues* is the number of different trading venues in each category and the number of distinct MPIDs for bilateral transactions.[d] *Market Share (%)* is the measure of the dollar volume as a percent of total dollar volume.[e] The volumes of ATSs and non-ATS interdealer brokers are broken out by *Customer trades, Dealer trades,* and *PTF trades* within each group.[f] Data is based on the regulatory version of TRACE for U.S. Treasury Securities from April 1, 2021, to September 30, 2021. Bilateral trades are a catchall classification that may include trades conducted via bilateral negotiation, as well as trades conducted electronically via platforms not registered with FINRA as an ATS. Bilateral trades may include trades conducted on Communication Protocol Systems.

[a] The percentage to the nearest non-zero is 0.02%.
[b] *See supra* notes b and c in Table VIII.1.
[c] FINRA reports volume as par volume, where par volume is the volume measured by the face value of the bond, in dollars. *See* relevant weekly volume files, *available at https://www.finra.org/filing-reporting/trace/data/trace-treasury-aggregates*.
[d] Dealers are counted using the number of distinct MPIDs.
[e] Total dollar volume (in par value) is calculated as the sum of dollar volume for ATSs, non-ATS interdealer brokers, bilateral dealer-to-dealer transactions, and bilateral dealer-to-customer transactions.
[f] We identify ATS trades and non-ATS interdealer broker trades using MPID in the regulatory version of TRACE for U.S. Treasury Securities. The regulatory version of TRACE for U.S. Treasury Securities includes an identifier for customer and interdealer trades. Furthermore, we use MPID for non-FINRA member subscriber counterparties in the regulatory version of TRACE for U.S. Treasury Securities to identify PTF trades on ATSs.

Table VIII.1 also shows that trading in the Treasury Securities market is concentrated on a few large ATSs.[819] The largest ATS by Treasury dollar volume has 15.2 percent of the total Treasury Securities market reported to TRACE. Two Government Securities ATSs have dollar volumes that are over five percent of the total TRACE volume figure, and four have dollar volumes over three percent.

Table VIII.2 shows that the majority of trading in on-the-run government securities reported to TRACE goes through Government Securities ATSs. Specifically, Government Securities ATSs accounted for nearly 50 percent of total dollar volume.

When on-the-run securities transition to off-the-run status, their trading activity shifts away from Government Securities ATSs, and towards other transaction methods, including Communication Protocol Systems.[820] This is reflected in Table VIII.3, which shows that Government Securities ATSs account for approximately 21 percent of the total dollar volume of off-the-run Treasury trading reported to TRACE.[821] Table VIII.3 also shows that, while dealers remain a significant contributor to ATS trading in Treasury Securities in the off-the-run market, PTFs make up a smaller percentage of volume than they do in the on-the-run market.

TABLE VIII.3—OFF-THE-RUN U.S. TREASURY SECURITIES TRADING VOLUME

	Number of venues	Volume	Volume share (%)
Off-the-Run U.S. Treasury Securities Trading Volume			
ATSs	17	110,945	21.7
Customer trades	10	13,304	2.1
Dealer trades	17	83,668	13.0
PTF trades	11	13,973	2.2
Non-ATS Interdealer Brokers	22	43,604	6.8
Customer trades	18	15,092	2.4
Dealer trades	21	28,451	4.4
PTF trades	12	61	0.0[a]
Bilateral dealer-to-dealer trades	509	47,912	7.5
Bilateral dealer-to-customer trades	333	437,665	68.2
Bilateral dealer-to-PTF trades	114	1,415	0.2
Total		641,540	100.0

[819] All ATSs identified in this table are determined by the regulatory version of TRACE. TRACE data contains an identifier for trades occurring on ATSs, identifying the MPID of the ATS.

[820] One commenter referenced that market participants trading in less liquid off-the-run securities are better able to find liquidity in non-ATS trading methods. *See* Bloomberg Letter at 5 and 21–22.

[821] *See supra* note 193.

TABLE VIII.3—OFF-THE-RUN U.S. TREASURY SECURITIES TRADING VOLUME—Continued

	Number of venues	Volume	Volume share (%)

This table reports trading volume and volume share for ATSs,[b] non-ATS interdealer brokers, bilateral dealer-to-dealer transactions, bilateral dealer-to-customer, and bilateral dealer-to-PTF transactions for off-the-run U.S. Treasury Securities. Off-the-run or ''seasoned'' U.S. Treasury Securities include TIPS, STRIPS, and nominal coupon securities issues that preceded the current on-the-run nominal coupon securities. *Number of Venues* is the number of different trading venues in each category and the number of distinct MPIDs for bilateral transactions. *Volume* is the average weekly dollar volume in par value (in millions of dollars) over the 6-month period, from April 1, 2021, to September 30, 2021. *Market Share (%)* is the measure of the dollar volume as a percent of the total dollar volume. The volumes of ATSs and non-ATS interdealer brokers are broken out by *Customer trades, Dealer trades,* and *PTF trades* within each group.[c] Data is based on the regulatory version of TRACE for U.S. Treasury Securities from April 1, 2021, to September 30, 2021. Bilateral trades are a catchall classification that may include trades conducted via bilateral negotiation, as well as trades conducted electronically via platforms not registered with FINRA as an ATS. Bilateral trades may include trades conducted on Communication Protocol Systems.

[a] The percentage to the nearest non-zero is 0.009%.
[b] *See supra* notes b and c of Table VIII.1.
[c] We identify ATS trades and non-ATS interdealer broker trades using MPID in the regulatory version of TRACE for U.S. Treasury Securities. The regulatory version of TRACE for U.S. Treasury Securities includes an identifier for customer and interdealer trades. Furthermore, we use MPID for non-FINRA member subscriber counterparties in the regulatory version of TRACE for U.S. Treasury Securities to identify PTF trades on ATSs.

Government Securities ATSs also play a significant role in the market for Agency Securities, accounting for approximately 12 percent of the total dollar volume reported to TRACE. Like in the Treasury market, dealers play a significant role in trading on ATSs for Agency Securities.[822]

It is the Commission's understanding that PTFs play only a small role in the market for Agency Securities. The Commission invites comment on the role of PTFs in trading Agency Securities. The Commission also requests comment on the providers of liquidity in the market for Agency Securities.

TABLE VIII.4—AGENCY SECURITIES TRADING VOLUME

	Number of venues	Volume	Volume share (%)
Agency Securities Trading Volume			
ATSs	8	31,940	12.3
Customer trades	7	6,767	2.6
Dealer trades	7	25,173	9.7
PTF trades	3	1	[a] 0.0
Non-ATS Interdealer Brokers	13	7,935	3.0
Customer trades	9	1,096	0.4
Dealer trades	13	6,838	2.6
PTF trades	5	0	[b] 0.0
Bilateral dealer-to-dealer trades	470	12,170	4.7
Bilateral dealer-to-customer trades	470	206,777	79.9
Bilateral dealer-to-PTF trades	84	3	[c] 0.0
Total		264,916	100.0

This table reports trading volume and volume share for ATSs,[d] non-ATS interdealer brokers, bilateral dealer-to-dealer transactions, and bilateral dealer-to-customer transactions for U.S. Agency Securities. Agency Securities include Agency Debentures, Agency Collateralized Mortgage Obligations, and Agency Pass-Through Mortgage Backed Securities. *Number of Venues* is the number of different trading venues in each category and the number of MPIDs for bilateral transactions. *Volume* is the average daily dollar volume in par value (in millions of dollars) over the 6-month period, from April 1, 2021, to September 30, 2021. *Market Share (%)* is the measure of the dollar volume as a percent of the total dollar volume. The volume of ATSs and non-ATS interdealer brokers are broken out by *Customer trades* and *Dealer trades* within each group.[e] Data is based on the regulatory version of TRACE for Agency Securities from April 1, 2021, to September 30, 2021. Bilateral trades are a catchall classification that may include trades conducted via bilateral negotiation, as well as trades conducted electronically via platforms not registered with FINRA as an ATS. Bilateral trades may include trades conducted on Communication Protocol Systems.

[a] The percentage to the nearest non-zero is 0.0003%.
[b] The percentage to the nearest non-zero is 0.00007%.
[c] The percentage to the nearest non-zero is 0.001%.
[d] *See supra* notes b and c of Table VIII.1.
[e] We identify ATS trades and non-ATS interdealer broker trades using MPID in the regulatory version of TRACE for Agency Securities. The regulatory version of TRACE for Agency Securities includes an identifier for customer and interdealer trades.

[822] Agency Securities are those issued by U.S. Government sponsored enterprises (''GSEs'') such as Federal Home Loan Banks (''FHLBs''), the Federal National Mortgage Association (''Fannie Mae''), and the Federal Home Loan Mortgage Corporation (''Freddie Mac'').

ii. Regulatory Environment for Government Securities ATSs

The regulatory environment for Government Securities ATSs varies according to whether the ATS is a Current Government Securities ATS or a Currently Exempted Government Securities ATS, and whether the ATS is operated by a registered broker-dealer. Differences in reporting requirements can lead to an uneven competitive landscape for Government Securities ATSs and leave room for regulatory arbitrage.[823] In addition, current regulation for Government Securities ATSs does not require public disclosure about operations, fair access, or robust systems.

Much of the difference in regulatory treatment among Government Securities ATSs comes from the fact that Current Government Securities ATSs must comply with Regulation ATS, while Currently Exempted Government Securities ATSs do not. For example, Currently Exempted Government Securities ATSs are not required to file Form ATS with the Commission, while ATSs that trade U.S. Government securities as well as non-government securities, such as corporate or municipal securities, must have filed Form ATS as a confidential filing with the Commission when they began operations, and will incur the cost to do so again if there is a material change in operations.[824]

Current Government Securities ATSs are also required to confidentially report their transaction dollar volume in government securities to the Commission on a quarterly basis via Form ATS–R within 30 days after the end of each calendar quarter. Currently Exempted Government Securities ATSs are not subject to this requirement.

Unlike Current Government Securities ATSs, Currently Exempted Government Securities ATSs are not required to establish written safeguards and written procedures to protect subscribers' confidential trading information.[825] To the extent that a Currently Exempted Government Securities ATS does not have these procedures, or has them but the procedures are not adequate,[826] a subscriber's confidential trading information might be at risk of unauthorized disclosure or subject to potential misuse.

Current Government Securities ATSs must also comply with certain additional requirements, such as recordkeeping requirements pursuant to Rule 301(b)(8). These include requirements to make and keep certain records for an audit trail of trading activity, such as time-sequenced order information, as well as information about current subscribers and summaries of trading activity. The requirement to keep such records may impose compliance costs on Current Government Securities ATSs to which Currently Exempted Government Securities ATSs are not subjected. To the extent that Currently Exempted Government Securities ATSs do not voluntarily maintain records similar to those required by Rule 301(b)(8), detection and investigation of potential market irregularities may be inhibited.

A further disparity exists in the case of the estimated one bank-operated Currently Exempted Government Securities ATS. All other Currently Exempted Government Securities ATSs and all Current Government Securities ATSs are registered broker-dealers that incur the costs of registering with the Commission as well as the costs of SRO membership, and face operational regulatory reporting requirements.[827] In contrast, the estimated one bank-operated Currently Exempted Government Securities ATS is not required to register as a broker-dealer with the Commission and thus, does not have to file Form BD with the Commission or be subject to FINRA rules.

The estimated one bank-operated Currently Exempted Government Securities ATS does not report government securities transactions to TRACE. All transactions in government securities that include at least one FINRA member are required to be reported to TRACE within 15 minutes of the time of execution.[828] Trades on ATSs operated by FINRA members may be required to be reported to TRACE, by either the ATS, counterparties to the trade, or both, depending on whether the counterparties are FINRA members and whether the ATS holds itself out as a party to the trade.[829]

Neither Current Government Securities ATSs nor Currently Exempted Government Securities ATSs are required to make disclosures on public forms, and this might lead to information asymmetries amongst different subscribers. For example, certain Government Securities ATSs might make voluntary disclosures regarding their operations as a signal of quality to some customers,[830] without disclosing the same information to other customers or market participants generally. As a result, some subscribers have limited information which may affect their trading decisions.

There is no legal mechanism to prevent Government Securities ATSs from unreasonably denying or limiting

[823] One commenter stated that the lack of a consistent regulatory framework for entities that undertake similar activities leads to opportunities for arbitrage and may result in market fragmentation, which in turn may cause reduced market liquidity. *See* Tradeweb Letter at 9.

[824] The Commission may use this information in monitoring, examinations and enforcement.

[825] These requirements come from Rule 301(b)(10) of Regulation ATS. Current Government Securities ATSs are currently subject to these rules. *See supra* Section II.D.2.

[826] Currently Exempted Government Securities ATSs are not required to file their written safeguards and written procedures with the Commission. Therefore, absent an examination by the Commission staff, the Commission is not able to determine which Currently Exempted Government Securities ATSs currently have adequate, written safeguards and written procedures to protect subscribers' confidential trading information. At the same time, based on the experience of the Commission, the Commission believes that some Currently Exempted Government Securities ATSs currently have, and maintain in writing, safeguards and procedures to protect subscribers' confidential trading information, as well as the oversight procedures to ensure such safeguards and procedures are followed.

[827] *See* FINRA Letter at 2–3, stating that nearly all Government Securities ATSs currently are FINRA members

[828] *See supra* note 228 and corresponding text discussing TRACE reporting requirements for U.S. Government securities.

[829] FINRA Rule 6731 exempts certain ATSs from TRACE reporting requirements as long as all of the following conditions are met: All trades are between ATS subscribers that are both FINRA members; the ATS demonstrates that member subscribers are fully disclosed to one another at all times, the system does not permit automatic execution and a member must take affirmative steps to agree to a trade, the trade does not pass through any ATS account and the ATS does not hold itself out as a party to the trade; and the ATS does not exchange TRACE-Eligible Securities or funds on behalf of its subscribers, take either side of the trade for clearing or settlement purposes, or in any other way insert itself into the trade; the ATS and the member subscribers acknowledge and agree in writing that the ATS shall not be deemed a party to the trade for purposes of trade reporting and that trades shall be reported by each party to the transaction; and the ATS agrees to provide to FINRA on a monthly basis data relating to the volume of trades by security executed by the ATS's member subscribers using the ATS's system. Furthermore, Rule 6732 exempts certain transactions on ATS from TRACE reporting requirements as long as all of the following conditions are met: The trade is between FINRA members; the trade does not pass through any ATS account, and the ATS does not exchange TRACE-Eligible Securities or funds on behalf of the subscribers, take either side of the trade for clearing or settlement purposes, or in any other way insert itself into the trade; the ATS agrees to provide to FINRA on a monthly basis data relating to each exempted trade occurring on the ATS's system pursuant to this Rule 6732; the ATS remits to FINRA a transaction reporting fee for each exempted sell transaction occurring on the ATS; and the ATS has entered into a written agreement with each party to the transaction that such trade must be reported by such party. *See* also FINRA Letter at 6–7, stating that a fixed income ATS is a ''party to a transaction'' in a TRACE-eligible security occurring through its system and has TRACE transaction reporting obligations, unless an exception or exemption applies.

[830] For example, the ATS may disclose order execution statistics to some customers.

subscribers' access, because the Fair Access Rule does not currently apply to any ATS that trades government securities.[831] When a Government Securities ATS has a significant share of trading volume in government securities, unfairly discriminatory actions might hurt investors because viable alternatives to trading on such a high-volume system might be limited. To the extent this happens, it results in higher trading costs and a reduced efficiency with which such excluded participants achieve trading objectives, which may also lead to concentration in the market for dealers in government securities.[832] Furthermore, market forces alone might not be sufficient to prevent a Government Securities ATS from unreasonably denying access to some market participants.[833]

The Commission preliminarily believes that Government Securities ATSs may not fully internalize the cost of the externalities associated with not having robust, resilient systems, as would be required by the provisions of Regulation SCI and Rule 301(b)(6) of Regulation ATS. Without appropriate safeguards in place for Government Securities ATSs, technological vulnerabilities continue to exist and could lead to the potential for costly failures, disruptions, delays, intrusions, and the reduction in systems up-time,[834] which could harm the price discovery process and price efficiency of government securities. Systems issues pose significant negative externalities on the market, in that if a trading system of a Government Securities ATS with significant trading volume fails, this failure will not only force the ATS to forgo revenue but might also diminish trading in government securities during the disruption. This would increase the trading costs of market participants that have optimized their trading strategy under the assumption that all Government Securities ATSs with significant volume are fully operational, and might harm the price discovery process and liquidity flows for government securities.[835] In addition, price discovery in securities that use government security transaction prices as risk-free rate benchmarks might also be harmed.[836]

One commenter on the 2020 Proposal stated that ''many Government Securities ATSs may already align with industry standards that achieve many of the same goals of Regulations SCI, although in slightly different manner.''[837] While the Commission recognizes that Government Securities ATSs have some incentives to maintain robust systems to remain competitive and thereby reduce systems issues, the Commission believes that market forces alone may not be sufficient to significantly reduce systems issues, because some of the impact of these systems issues represent an externality to the Government Securities ATS.[838]

A comment letter received in response to the Treasury Request for Information stated that many Government Securities ATSs adopted system testing and control procedures that followed the recommended best practices of the Treasury Market Practices Group.[839] However, these best practices are meant only as useful operational guideposts rather than binding rules, and each trading venue can choose if it wants to comply and how to comply, which might provide weak only incentives to internalize the externality costs associated with system failures.

The Commission is aware of 1 Government Securities ATS operated by a broker-dealer that also operates an NMS Stock ATS that is an SCI entity and so may already comply with much of Regulation SCI.

b. Communication Protocol Systems in the Market for Government Securities

Communication Protocol Systems play a significant role in the market for government securities. The Commission estimates that there are 3 Communication Protocol Systems operating in the market for government securities that may meet the definition of exchange under the proposed changes to Exchange Act Rule 3b–16. The Commission understands that these systems are a significant component of the dealer-to-customer segment of the U.S. Treasury market and account for approximately 30 to 40 percent of the total trading volume in U.S. Treasuries.[840] One of the roles of such systems is to provide a means to communicate trading interest in the dealer-to-customer market.[841]

The Commission understands that investors who wish to transact in government securities generally do so with a dealer on a principal basis. Communication Protocol Systems typically facilitate the first step in a principal trade, namely trading between the dealer and customer. In this capacity, the systems provide a way for customers to obtain quotes from dealers and to select a dealer to fill their order, in addition to the other reasons for using a Communication Protocol System described in Section VIII.B.1. The Commission understands that dealers and PTFs may also use Communication Protocol Systems to demand liquidity in government securities, a decision which may be motivated by the possibility of executing block trades with less information leakage compared to ATSs.[842]

The Commission understands that dealer respondents on RFQ systems in the market for government securities typically provide a continuous stream of indicative, non-firm quotes that are aggregated into a single quote and made

[831] *See supra* Section II.D.2, discussing the Fair Access Rule requirements.

[832] One commenter stated that registered investment companies generally are not able to directly access liquidity on most Treasury interdealer platforms. *See* ICI Letter at 4.

[833] *See* MFA Letter at 3, stating that currently there is no mechanism to prevent Government Securities ATSs from unreasonably denying or limiting subscribers' access to an ATS that is a significant market for government securities.

[834] Systems up-time is a measure of the time that a computer system is running and available.

[835] On January 11, 2019, the largest trading platform in on-the-run U.S. Treasury Securities, experienced a system outage approximately from 2 p.m. to 3:30 p.m. ET. While the outage resulted in a modest reduction in market volume, had it occurred at a time other than late on a Friday afternoon when trading activity is normally already low, the outage could have resulted in more adverse consequences on the overall market. *See also* Elizabeth Stanton, Nick Baker, & Matthew Leising, *Treasuries Hit by One-Hour Outage on Biggest Electronic Platform,* Bloomberg, January 13, 2019, *https://www.bloomberg.com/news/articles/2019-01-11/brokertec-inter-dealer-treasury-broker-suffers-outage.*

[836] As noted in the October 15 Staff Report, price discovery is especially important in the secondary market for on-the-run U.S. Treasury Securities because the transaction prices are used as risk-free rate benchmarks to price other securities transactions.

[837] *See* BrokerTec Letter at 6.

[838] A commenter on the 2020 stated ''. . . we believe that market forces alone may be insufficient to significantly reduce systems issues in the market for trading and execution services in government securities.'' *See* MFA Letter at 6.

[839] *See* Letter from Mike Zolik, Nate Kalich, and Larry Magargal, Ronin Capital LLC, to David R. Pearl, Office of the Executive Secretary, U.S. Department of the Treasury, dated March 19, 2016, at 31–33, *available at https://www.treasurydirect.gov/instit/statreg/gsareg/RoninCapital.pdf. See also BrokerTec Letter at 6.* The Treasury Market Practices Group promotes a robust control environment for government securities trading, using internal controls and risk management. *See Treasury Market Practices Group, Best Practices For Treasury, Agency Debt, and Agency Mortgage-Backed Securities Markets (July 2019), available at https://www.newyorkfed.org/medialibrary/Microsites/tmpg/files/TMPG_BestPractices_071119.pdf.*

[840] *See infra* Section VIII.B.2.d, Table VIII.5. Some part of the stream axes volume accounted for in that table may be ATS volume.

[841] As described in Section III.A, the secondary market for U.S. Treasury Securities is generally bifurcated between the dealer-to-customer market and the interdealer market. *See also* Bloomberg Letter at 5, referencing that the bifurcating of the market is due to some extent to structural issues in clearing.

[842] *See supra* Section VIII.B.1.a, discussing information leakage and RFQs.

available to all participants who may wish to initiate an RFQ on the trading system. Such quotes may also be disseminated over the internet to the general public. These indicative quote streams are an important service on RFQ systems for at least two reasons. First, they are a source of price information in government securities, and the Commission understands that some market data vendors may rely exclusively on such quote streams for the information they provide on, for example, the Treasury market. In providing such transparency in the Treasury market, these quote streams may be used as a risk-free rate benchmark, and to help price other financial instruments. Second, the quote streams give potential participants in the RFQ a sense of what quotes they would receive in response to a request without having to make a request, which helps these market participants get a sense of the market without revealing trading interest.

Communication Protocol Systems do not meet the current definition of an exchange and thus are not subject to regulation either as an exchange or an ATS. This means they face a regulatory regime similar to that of Currently Exempted Government Securities ATSs as described in Section VIII.B.1.ii above. Furthermore, depending on how much of a role the Communication Protocol System takes in facilitating the transaction (*e.g.,* acting as a counterparty to each side of the trade), and whether the Communication Protocol System operator and/or parties to the transaction are FINRA members, transactions taking place through the Communication Protocol System may not be reported to TRACE at all.

The Commission estimates that a single Communication Protocol System trading in government securities is not currently operated by a registered broker-dealer. This system does not currently incur the costs of registering with the Commission as well as the costs of SRO membership, and is not subject to FINRA operational regulatory reporting requirements.

c. Other Methods of Trading in U.S. Government Securities

Market participants may also transact in government securities via bilateral voice trading. As the Commission understands, a market participant wishing to make a purchase or sale of government securities would phone a potential counterparty, typically a dealer in government securities, to inquire about specific securities. The parties would then negotiate on price and size. If there were agreement, the parties would execute a trade. If not, the liquidity demander could repeat this process to find a more suitable counterparty. The Commission understands that a liquidity demander would typically contact more than one dealer, in order to compare quotes.

Bilateral voice trading can be attractive to traders in government securities because this method of trading allows for flexibility, minimizes information leakage relative to other trading protocols, and may be conducive to maintaining relationships. The lack of information leakage may cause bilateral voice trading to be a useful method for traders seeking to execute large block trades of government securities.

d. Competition for U.S. Government Securities Trading Services

Government securities are traded through a diverse set of methods, including ATSs, Communication Protocol Systems, and bilateral negotiation methods such as voice trading. The Commission preliminarily believes that each type of trading method may be more prevalent in separate segments of the government securities market.

TABLE VIII.5—U.S. TREASURY SECURITIES TRADING PROTOCOL MARKET SHARE

Limit order book	RFQ	Stream axes [a]	Voice
26.3	29.9	10.4	33.4

This table reports volume share by trading protocol type in the market for U.S. Treasury Securities. *Market Share (%)* is the measure of the dollar volume as a percent of total dollar volume. Data is based on Coalition Greenwich's Greenwich MarketView data from January 2021 through September 2021. Voice protocol is calculated as the remainder of volume after accounting for Limit Order Book, RFQ, and Stream Axes reported directly to Coalition Greenwich from aggregated FINRA TRACE volume.

[a] Coalition Greenwich's Greenwich MarketView refers to this data value as "Stream/Click-to-Engage."

ATSs and Communication Protocol Systems compete with one another to attract order flow. Table VIII.5 shows the percentage of TRACE-reported Treasury Securities transactions that are completed using different trading protocols, and shows that the use of ATSs and Communication Protocol Systems to transact in Treasury Securities are roughly evenly matched in terms of volume.[843] LOB volume represents ATS trades, and the Commission understands that some amount of stream axes volume may also be from ATSs. The remaining portion of stream axes and the RFQ volume represent Communication Protocol Systems in this market.

The Commission understands that the primary customers of ATSs tend to be dealers and PTFs. The Commission understands that many of the PTFs trading on Government Securities ATSs utilize latency-sensitive trading strategies.[844] Such strategies would likely not be possible to implement when trading on a Communication Protocol System, or via bilateral voice trading. This gives ATSs an advantage in attracting such order flow. Because orders on LOB ATSs are generally displayed to all participants on the ATS, ATSs with LOBs may have more price competition among liquidity providers than alternatives. Also, ATSs, unlike non-ATS trading services, can offer certain additional execution protocols, such as crossing mechanisms and auctions, which generally meet the current definition of an exchange.

Government Securities ATSs compete on fees, trading features, and by attracting liquidity to their system. As described above in Section VIII.B.2.a, a substantial amount of order flow in government securities is concentrated on the largest Government Securities ATS.[845]

[843] One commenter pointed out that, at around 30 percent, U.S. Treasury market ATS market share is at a similar level that NMS equities ATS market share was in 1999 when Regulation ATS was adopted. The commenter stated that the exemption of Treasury securities from Regulation ATS gave Treasury market structure time to develop, but the market has now matured to a point where the exemption should be reconsidered. *See* Bloomberg Letter at 21.

[844] *See supra* Section VIII.B.2.a.i for additional discussion on the role of PTFs in the Treasury market.

[845] *See supra* Section VIII.B.2.a.i.

The primary customers of Communication Protocol Systems are those market participants in the dealer-to-customer market. Customers seeking to trade government securities may find the sophistication and infrastructure required to trade on ATSs to not be cost-effective relative to the type and quantity of trading they wish to undertake. This may give the Communication Protocol Systems an advantage in attracting such traders. In addition, Communication Protocol Systems offer features that ATSs might not, such as the ability to trade on a fully disclosed, non-anonymous basis; or the ability to connect trading in Treasuries to related trades in corporate bonds.[846]

Communication Protocol Systems compete with each other through the fees they charge, and through innovation and improvement in the type and quality of the protocols they offer. The Commission preliminarily believes that such competition among Communication Protocol Systems may explain the proliferation of different types of protocols.

Both ATSs and Communication Protocol Systems compete against the option of transacting through bilateral voice trading. Such methods of trading in government securities have been common historically and continue to be used today. As described above in Section VIII.B.2.c, these methods of trading provide traders with the ability to customize transactions on the basis of a relationship between the two parties. At the same time, these trades may be more cumbersome and may suffer from a lack of price competition relative to Communication Protocol Systems and ATSs.

The Commission preliminarily believes that the differences in regulatory regimes among ATSs and between ATSs and Communication Protocol Systems[847] can lead to an uneven competitive landscape and adversely impact the potential for robust competition in the market for government securities.[848]

The Commission believes that the current lack of public disclosure about the operations and potential conflicts of interest of Government Securities ATSs and Communication Protocol Systems that currently trade government securities might hinder competition among these ATSs and between Government Securities ATSs and Communication Protocol Systems in the market for government securities. Competition among Government Securities ATSs and between Government Securities ATSs and non-ATS trading systems would affect the trading costs of government securities market participants, including dealers, PTFs, hedge funds, and institutional investors. Their trading costs include bid-ask spreads,[849] search costs in the selection of trading venues and counterparties, and trading venue fees. When deciding which trading system most suits their trading objectives, market participants consider various operational facets of the system, such as order handling, order types, order segmentation, trading functionalities, and any potential conflicts of interest that might arise from the operator of the trading service or its affiliates. Trading system fees would also be a factor for market participants in deciding between trading systems.

3. Current State of Corporate Debt Market

Although smaller than the market for government securities, the market for corporate debt securities (''corporate bonds'') represents a significant part of the fixed income market. In September 2021, the average daily dollar volume of corporate bond trading was $26.4 billion, including $19.8 billion in investment-grade bonds and $6.5 billion in high-yield bonds.[850] One commenter stated that levels of trading in corporate debt have typically been lower than in other fixed income markets, such as government securities: While corporate bonds made up 20 percent of new issuances in Q4 2020, they only made up 4.4 percent of fixed income market trading.[851] However, the commenter pointed out that the absolute dollar volume of corporate bond trading volume is still very significant, as is the overall size of the market: As of January 2021, the corporate bond market is valued at $9.3 trillion in investment-grade and $2.4 trillion in high-yield debt outstanding.[852] Estimates put the annualized growth rate of the corporate bond market at 5.2 percent between 2008 and 2019, a growth rate second only to that of government securities within the fixed income space.[853]

Trading in corporate bonds tends to be more illiquid than trading in government securities, with liquidity often concentrated in the largest and most recently issued bonds.[854] One commenter referenced that only 18 percent of corporate bonds trade each day, and only 8 percent have more than five trades on any given day.[855] Several commenters stated that this is due in part to the highly idiosyncratic nature of corporate bond characteristics,[856] which

[846] *See supra* Sections VIII.B.1 and VIII.B.2.b for additional details on the nature of Communication Protocol Systems. *See infra* Section VIII.B.3.b for additional details on the trading of corporate bonds on Communication Protocol Systems.

[847] *See supra* Section VIII.B.2.a.ii, discussing the regulatory regime for Government Securities ATSs and Section VIIIB.2.b, discussing the regulatory regime for Communication Protocol Systems.

[848] *See* ICE Bonds Letter II at 2, stating that the significant regulatory burdens on fixed income ATSs puts them at a competitive disadvantage to non-ATS trading systems that are not subject to these same regulatory obligations. *See also* ICE Bonds Letter II at 5, stating that market participants are harmed when electronic trading systems that perform market place functions in fixed income securities are not subject to the same requirements as a fixed income ATSs, and that if the regulatory obligations of operating a fixed income ATS become too burdensome or impair the ability of fixed income ATSs to compete, it may discourage the expansion of ATSs and potentially encourage operators of fixed income ATSs to restructure their operations to avoid being characterized as an ATS.

[849] The estimated average daily relative quoted spread for interdealer transactions for on-the-run U.S. Treasury Securities is small, approximately 0.8 bps for 2-year Treasury Securities and 2.4 bps for 10-year Treasury Securities. The estimated average daily relative quoted spread for interdealer transactions for off-the-run U.S. Treasury Securities, approximately 1.7 bps for 2-year Treasury Securities and 5.4 bps for 10-year Treasury Securities, is larger compared to that of on-the-run Treasury Securities. Spreads have narrowed in the past couple of years with a change to a smaller minimum trading increment of ⅛ of 1/32 of $1. The average daily relative quoted spread is computed as the daily average of the difference between the intraday offer and bid prices divided by the corresponding price mid-quote. *See also* Paolo Pasquariello & Clara Vega, *The On-the-Run Liquidity Phenomenon,* 92 J. Fin. Econ. 1 (2009); Tobias Adria, Michael Fleming, & Or Shachar, *Market Liquidity after the Financial Crisis* (June, 28, 2017), Federal Reserve Bank of New York, Liberty Street Economics, *available at https://libertystreeteconomics.newyorkfed.org/2017/06/market-liquidity-after-the-financial-crisis.html.*

[850] *See http://finramarkets.morningstar.com/BondCenter/TRACEMarketAggregateStats.jsp?bondType=C.* While there are many types of corporate bonds, most tend to fall within two categories: Investment-grade bonds and high-yield bonds (also commonly referred to as ''non-investment-grade'' or ''junk'' bonds). High-yield bonds tend to have higher yields than both government securities and investment-grade bonds, but are also subject to a higher degree of risk.

[851] *See* Healthy Markets Letter at 8.

[852] *See id.*

[853] *See https://vegaeconomics.com/trends-in-the-us-corporate-bond-market-since-the-financial-crisis.*

[854] *See* A Financial System That Creates Economic Opportunities: Capital Markets, U.S. Department of the Treasury, October 2017, *available at https://www.treasury.gov/press-center/press-releases/documents/a-financial-system-capital-markets-final-final.pdf* (''Treasury Report'') at 85.

[855] *See* Bloomberg Letter at 9, citing Financial Times at *https://www.ft.com/content/3175772a-7ea0-3b61-ae53-063459e78c42.* Another commenter gave a similar number, estimating that only 17 percent of the more than 43,000 unique U.S. investment-grade bonds traded on any given day in 2020. *See* MarketAxess Letter at 3.

[856] *See* Bloomberg Letter at 20, mentioning that the corporate bond market is non-standard and highlighting the importance of market-making, and MarketAxess Letter at 3, stating that liquidity is lower for corporate bonds than for equities because, while there are only a few thousand common

Continued

can differ along many different dimensions, including issuer, tenor, coupon rate, and covenants.[857] One commenter stated that, compared to the equity market, the large number of individual CUSIPs in the corporate debt market has resulted in a meaningful subset of corporate bonds without market makers, which in turn lowers the liquidity of these bonds.[858]

Corporate bondholders, who are mainly institutional investors such as mutual funds, pension funds, insurance companies, and banks,[859] have traditionally facilitated their trades through broker-dealers on a principal basis.[860] The past decade has seen an increasing shift towards trading arrangements in which dealers quickly arrange offsetting trades when intermediating between buyers and sellers so as to avoid taking on significant inventory risk for extended periods of time. A more recent trend has seen a rise in the direct participation of institutional investors as corporate bond liquidity providers: In April 2020, one corporate bond RFQ platform reported a record 900 firms providing liquidity, including 700 asset managers.[861]

a. ATSs in the Market for Corporate Debt

In September 2021, corporate bond trading on ATSs accounted for 7.7 percent of total TRACE-reported corporate bond trading volume in terms of dollar volume.[862] Currently, the Commission understands that there are 12 ATSs with a Form ATS on file trading corporate bonds.[863] Protocols in corporate bond ATSs include limit order books (LOBs), displayed and non-displayed venues, and auctions, among others. According to Table VIII.6, the most commonly reported protocol used for trading corporate bonds via ATSs is an auction. Typically, auctions operate by periodically crossing at prices that maximizes the amount of buy and sell trading interest that can be executing at that price.

Corporate bond ATSs are mostly used by dealers, who may be either using them to trade on behalf of retail investors or to rebalance excess inventories.[864] A Division of Economic Risk and Analysis (''DERA'') white paper on corporate bond ATSs finds that large dealers (*i.e.,* those in the highest quartile of trading volume and number of bonds traded) are more likely to provide corporate bond quotes on ATSs than smaller dealers.[865]

Similar to Current Government Securities ATSs, an ATS that trades in corporate debt securities must comply with the requirements of Regulation ATS, including registering as a broker-dealer.[866] Also, similar to Current Government Securities ATSs, corporate bond ATSs are not required to make public disclosures, and, as discussed above, this lack of disclosure requirements might lead to information asymmetries amongst different subscribers.[867] Further, corporate bond ATSs with significant volume[868] are required to comply with the requirements of the Fair Access Rule.[869] Moreover, ATSs that trade in corporate debt must also comply with Rule 301(b)(6) of Regulation ATS (''Capacity, Integrity, and Security Rule'') if they meet certain volume thresholds.[870] The requirements of Rule 301(b)(6), while similar, are less rigorous and less costly than the requirements of Regulation SCI.

All transactions in corporate bonds that include at least one FINRA member are required to be reported to TRACE within 15 minutes of the time of execution.[871] Furthermore, trades on ATSs operated by FINRA members may be required to be reported to TRACE, by either the ATS, counterparties to the trade, or both, depending on whether the counterparties are FINRA members and whether the ATS holds itself out as a party to the trade.[872] Academic studies have shown that TRACE reporting requirements have reduced overall trading costs in corporate bond markets,[873] but may increase the cost of

stocks, there are hundreds of thousands of CUSIPs for corporate and municipal bonds. *See also* ICI Letter at 8, stating that corporate bond liquidity varies dramatically across bonds due to their diverse nature, and that liquidity shifts can be exacerbated during times of market stress.

[857] *See https://fredblog.stlouisfed.org/2015/10/illiquidity-in-the-bond-market/.*

[858] *See* MarketAxess Letter at 3.

[859] One commenter stated that registered investment companies (''funds'') held 21 percent of bonds issued by both U.S. corporate issuers and foreign bonds held by U.S. residents as of year-end 2019. *See* ICI Letter at 1–2.

[860] *See, e.g., ≤https://www.marketwatch.com/story/u-s-corporate-debt-soars-to-record-10-5-trillion-11598921886.* (Retrieved from Factiva database); O'Hara, M., & Zhou, X.A. (2021). Anatomy of a liquidity crisis: Corporate bonds in the COVID–19 crisis. Journal of Financial Economics.

[861] *See* McDowell, Hayley. (2020, April 30). ''MarketAxess reveals record number of buy-side acted as liquidity providers in COVID–19 crisis,'' THETRADE, available at *https://www.thetradenews.com/marketaxess-reveals-record-buy-side-acted-liquidity-providers-covid-19-crisis/.*

[862] *See* TRACE Monthly Volume Files, *available at https://www.finra.org/finra-data/browse-catalog/trace-volume-reports/trace-monthly-volume-files.* One commenter referenced similar numbers for 2020, stating that corporate bond trades (including both investment-grade and high-yield bonds) on all ATSs represented 6.4 percent of the trade volume and 18.7 percent of the trade count reported to TRACE. *See* MarketAxess Letter at 1.

[863] In addition, a small percentage of corporate bonds are exchange-traded on trading systems such as NYSE Bonds and the Nasdaq Bond Exchange. *See, e.g., https://www.nyse.com/markets/bonds* and *https://www.nasdaq.com/solutions/nasdaq-bond-exchange.* Trading volume in exchange-traded bonds was reported to be around $19 billion as of January 2020. *See* Uhlfelder, Eric, (Jan. 2020), A Forgotten Investment Worth Considering: Exchange-Traded Bonds, The Wall Street Journal, available at *https://www.wsj.com/articles/a-forgotten-investment-worth-considering-exchange-traded-bonds-11578279781.* (Retrieved from Factiva database).

[864] *See* Kozora, M., Mizrach, B., Peppe, M., Shachar, O., & Sokobin, J.S. (2020). Alternative Trading Systems in the Corporate Bond Market. FRB of New York Staff Report, (938).

[865] *See* Craig, L., Kim, A., & Woo, S.W. (2020). Pre-trade Information in the Corporate Bond Market. U.S. Securities and Exchange Commission, Division of Economic and Risk Analysis White Paper. White papers and analyses are prepared by SEC staff in the course of rulemaking and other Commission initiatives. The U.S. Securities and Exchange Commission disclaims responsibility for any private publication or statement of any employee or Commissioner. White papers express the authors' views and do not necessarily reflect those of the Commission, the Commissioners, or other members of the staff.

[866] *See supra* Section II.D.2. *See also supra* Section VIII.B.2.a.ii for a discussion about the effects of these regulations and the costs to comply.

[867] *See supra* Section VIII.B.2.b.ii for additional discussion on the effects of a lack of public disclosure.

[868] An ATS trading in corporate debt securities is subject to the Fair Access Rule if, during at least four of the preceding six months, the ATS had five percent or more of the average daily volume in corporate debt securities traded in the United States. *See* 17 CFR 242.301(b)(5)(i) and *https://www.sec.gov/tm/faq-regulation-ats-fair-access-rule.*

[869] *See supra* Section II.D.2. Also, *see supra* Section VIII.B.2.b.ii describing the impact of the Fair Access Rule.

[870] *See* 17 CFR 242.301(b)(6) and *supra* note 157 and corresponding text. Rule 301(b)(6) currently applies to an ATS that trades only corporate debt securities with 20 percent or more of the average daily volume traded in the United States during at least four of the preceding six calendar months. One commenter stated that, given current aggregate ATS volumes, it is unlikely that any single ATS will approach 20 percent of overall corporate debt market volume. *See* MarketAxess Letter at 10.

[871] *See* FINRA Rule 6730(a)(1) requiring FINRA members to report transactions in TRACE-Eligible Securities, which FINRA Rule 6710 defines to include corporate debt securities. For each transaction in corporate debt securities, a FINRA member would be required to report the CUSIP number or similar numeric identifier or FINRA symbol; size (volume) of the transaction; price of the transaction (or elements necessary to calculate price); symbol indicating whether transaction is a buy or sell; date of trade execution (''as/of'' trades only); contra-party's identifier; capacity (principal or agent); time of execution; reporting side executing broker as ''give-up'' (if any); contra side introducing broker (in case of ''give-up'' trade); the commission (total dollar amount), if applicable; date of settlement; if the member is reporting a transaction that occurred on an ATS pursuant to FINRA Rule 6732, the ATS's separate Market Participant Identifier (''MPID''); and trade modifiers as required. *See* FINRA Rule 6730(c).

[872] *See supra* note 829 describing exemptions for ATS transaction reporting to TRACE.

[873] *See, e.g.,* Edwards, A.K., Harris, L.E., & Piwowar, M.S. (2007). Corporate bond market

trading through large dealers, who previously were able to offer lower transaction costs due to their information advantages.[874]

b. Communication Protocol Systems in the Market for Corporate Debt

Communication Protocol Systems play a significant role in the market for corporate debt. Table VIII.6, which breaks down corporate bond dollar volumes according to different trading protocols, shows that corporate bond trading on Communication Protocol Systems (including anonymous and disclosed RFQs, portfolio trading, and stream axes), accounted for 23.1 percent of total corporate bond trading volume during the first half of 2021. Currently, the Commission estimates that there are 8 Communication Protocol Systems trading corporate bonds that may meet the definition of exchange under the proposed changes to Exchange Act Rule 3b–16.

One commenter stated that protocols such as electronic RFQs in the fixed income market evolved from single dealer order routing and the use of the ''three quote rule,'' in which institutional investors would seek three quotes from three dealers in order to assist them in getting the best prices. According to the commenter, in more liquid securities, electronification has allowed traders to better organize pre-trade data, allowing for new Communication Protocol Systems that enable functionalities such as RFQ Lists and other multiple-security trade messaging inquiries.[875]

''Portfolio trading'' is a multi-security protocol that may be particularly useful for corporate bond market participants. This protocol is similar to RFQ Lists as defined in Section II.B.2 and discussed in Section VIII.B.1.b; however, while RFQ Lists permit users to respond with quotes for only some of the securities listed, securities that are listed in a portfolio trading protocol are executed for the entire portfolio at a single price with a single counterparty.[876] One industry report estimates that two to five percent of TRACE trading volume in investment-grade bonds is executed via portfolio trading protocols.[877] Furthermore, one report estimates that portfolio trading volume increased by 159 percent between 2019 and 2021.[878] The ''all-or-none'' nature of portfolio trading can be especially beneficial for corporate bond market participants who wish to trade baskets of securities that include some difficult-to-trade bonds. Specifically, market participants may be able to receive better prices for more illiquid bonds, which may or may not be balanced out by receiving worse prices on more liquid bonds.[879] Additionally, portfolio trading also tends to be faster than list trading, as there is less of a need to look at each individual security. However, these trades tend to be complex and may be more difficult to automate, as they often require extensive negotiations.[880]

While not necessarily its own protocol, one functionality that is increasingly being added to corporate bond Communication Protocol Systems involves so-called ''net spotting.'' Spotting is the practice of hedging corporate bond transactions through offsetting government security transactions, which is useful for participants as corporate bonds—investment-grade bonds in particular—are typically traded ''on spread,'' *i.e.,* quoted relative to a benchmark government bond yield. This practice has led to interlinkages between the corporate bond and government securities markets.[881] However, the Commission understands that manual spotting can suffer from inefficiencies resulting from time delays in completing trades in the two markets.

''Net spotting,'' which incorporates automated spotting functionalities into corporate bond Communication Protocol Systems, may reduce these inefficiencies. This practice calculates a net interest rate exposure resulting from a spot trade, producing a net position that can be traded as a single transaction.[882] Net spotting may help to reduce transaction costs of spot trades. A growth in the popularity of this practice is also likely to increase interlinkages between trading protocols in the corporate bond and government securities markets. One trading system operator estimates that, only six months after adding net spotting functionality to its trading system, almost 10 percent of the corporate bond trading volume on its trading system was using this functionality.[883]

In recent years, driven in part by an increase in the popularity of corporate bond exchange-traded funds (ETFs), there is some evidence that PTFs have begun to enter the corporate bond market.[884] One factor that may correlate with the entry of these firms is the ability to use portfolio trading protocols to more efficiently trade in the bonds underlying corporate bond ETFs.[885] Therefore, unlike in the market for government securities, in which PTFs prefer to trade on Government Securities ATSs, PTFs may have a more active presence on corporate bond Communication Protocol Systems than on corporate bond ATSs.[886]

Corporate bond Communication Protocol Systems do not meet the current definition of an exchange and thus are not subject to exchange registration or the requirements of Regulation ATS, such as requirements for robust systems.[887] The Commission

transaction costs and transparency. *The Journal of Finance,* 62(3), 1421–1451.

[874] *See* Bessembinder, H., Maxwell, W., & Venkataraman, K. (2006). Market transparency, liquidity externalities, and institutional trading costs in corporate bonds. *Journal of Financial Economics,* 82(2), 251–288.

[875] *See* Bloomberg Letter at 12.

[876] *See* Husveth, Ted (2021) ''Electronic Portfolio Trading Rewrites the Corporate Bond Liquidity Playbook,'' *Tradeweb, available at https://www.tradeweb.com/newsroom/media-center/insights/blog/electronic-portfolio-trading-rewrites-the-corporate-bond-liquidity-playbook/.*

[877] *See* McPartland, Kevin (2020), ''All Electronic Trading is Not Created Equal,'' *Greenwich Associates, available at https://www.greenwich.com/fixed-income/all-electronic-trading-not-created-equal.*

[878] *See* McPartland, Kevin (2021), ''Making the Case for Portfolio Trading,'' *Greenwich Associates, available at https://www.greenwich.com/fixed-income/making-case-portfolio-trading.*

[879] One commenter stated that submitting multiple securities as a portfolio of liquid and less-liquid securities enables a liquidity provider to potentially offer better prices than trading each security individually. *See* Bloomberg Letter at 13.

[880] *See* McPartland, Kevin (2020), ''All Electronic Trading is Not Created Equal,'' *Greenwich Associates, available at https://www.greenwich.com/fixed-income/all-electronic-trading-not-created-equal;* and Husveth, Ted (2021) ''Electronic Portfolio Trading Rewrites the Corporate Bond Liquidity Playbook,'' *Tradeweb, available at https://www.tradeweb.com/newsroom/media-center/insights/blog/electronic-portfolio-trading-rewrites-the-corporate-bond-liquidity-playbook/.*

[881] *See* Bloomberg Letter at 8, referencing the Joint Staff Report on the U.S. Treasury Market on October 15, 2014, *available at https://www.treasury.gov/press-center/pressreleases/Documents/Joint_Staff_Report_Treasury_10-15-2014.pdf,* stating that markets, including the U.S. Treasury market, are connected through ''automated trading strategies that involve a nearly instantaneous response to common trading signals or that seek to arbitrage short-lived opportunities across related interest-rate products.''

[882] *See* ''Net Spotting: Reducing Trading Costs for U.S. Corporate Bonds,'' (2021), *Tradeweb, available at https://www.tradeweb.com/newsroom/media-center/insights/commentary/net-spotting-reducing-trading-costs-for-u.s.-corporate-bonds/.*

[883] *See id.*

[884] *See https://www.greenwich.com/blog/what%E2%80%99s-next-high-frequency-traders,* which mentions that one PTF has begun to trade using corporate bond RFQs.

[885] *See, e.g.,* Rennison, Joe, Armstrong, Robert, and Wigglesworth, Robin, January 22, 2020, ''The new kings of the bond market,'' Financial Times, *available at https://www.ft.com/content/9d6e520e-3ba8–11ea-b232-000f4477fbca.*

[886] *See supra* Section VIII.B.2.b for a discussion of PTFs' role in government securities ATSs.

[887] *See supra* Section VIII.B.2.b for discussion of the effects of not being subject to such regulations. One commenter stated that, given the lack of a central clearing party for corporate and municipal

Continued

estimates that there are currently 2 Communication Protocol Systems with sufficient corporate bond trading volume such that they would otherwise be over the threshold for the Capacity, Integrity, and Security Rule 301(b)(6).[888] Several commenters stated that the resiliency of the fixed income market during the COVID crisis showed that the current structure of the fixed income market, and of the electronic trading market in particular, is already resilient and robust.[889]

The Commission estimates that 6 Communication Protocol Systems for corporate bonds are not currently operated by registered broker-dealers. These systems do not currently incur the costs of registering with the Commission as well as the costs of SRO membership, and are not subject to FINRA operational regulatory reporting requirements.[890]

A corporate bond transaction on a Communication Protocol System is reported to TRACE if at least one party to the transaction is a FINRA member, and/or if the Communication Protocol System itself is a member of FINRA.[891] Depending on how much of a role the Communication Protocol System takes in facilitating the transaction (*e.g.,* acting as a counterparty to each side of the trade), and whether the Communication Protocol System operator and/or parties to the transaction are FINRA members, transactions taking place through the Communication Protocol System may not be reported to TRACE at all.[892]

c. Other Methods of Trading in the Market for Corporate Debt Securities

While the electronic trading of corporate bonds through ATSs and Communication Protocol Systems has grown over time,[893] traditionally corporate bonds trading has taken place bilaterally through either dealer-to-dealer or dealer-to-customer negotiations, often using telephone calls. There is evidence that such manual transactions methods remain an important part of the corporate bond market: Table VIII.6 shows that 71.4 percent of trading in corporate bonds was facilitated via bilateral voice trading during the first half of 2021.

Transactions in corporate bonds that do not take place on electronic platforms will be reported to TRACE if at least one party to the trade is a member of FINRA.[894]

d. Competition for Corporate Debt Securities Trading Services

The trading of corporate debt securities takes place through a variety of different methods, including ATSs, Communication Protocol Systems, and informal bilateral trading methods such as voice trading. These different methods compete with each other for customers, and may appeal to different segments of the corporate market depending on that segment's preferences and trading needs. Trading systems within the ATS and Communication Protocol System spaces also compete with one another on the basis of fees, trading features, and their ability to attract liquidity.

One commenter stated that the choice of trading method is driven largely by liquidity considerations, with less liquid securities trading via manual protocols such as voice trading, more liquid securities using protocols such as RFQs, and the most liquid securities trading electronically on ATSs using protocols such as LOBs and call auctions.[895] Other commenters stated that the majority of corporate bonds are not liquid enough to support order book trading,[896] which may be one reason why there is not much corporate bond trading volume in ATSs as compared to Communication Protocol Systems, and why there is less ATS trading in corporate bonds as compared to other securities, such as government securities. As discussed in Section VIII.B.1, customers who want to trade electronically but are concerned about information leakage may be more likely to use Communication Protocol Systems, particularly RFQs, as opposed to ATSs. One study finds that corporate bond ATSs may be most utilized for smaller transactions in investment-grade bonds, which are less vulnerable to information asymmetry, and transaction in bonds that have (all else being equal) experienced a recent decrease in secondary market trading volume, for which search costs may be high.[897]

As shown in Table VIII.6, the majority (65.4 percent) of non-voice trading in corporate bonds is conducted on RFQs. About one fourth of RFQ volume is anonymous, and, while the majority of corporate bond trading volume on RFQs is disclosed, even participants on disclosed RFQs often have greater flexibility over the extent to which they reveal their trading interest, for example by limiting how many entities can view their trading interest or by refraining from responding to a quote request.[898] RFQs may also help facilitate a wider variety of functionalities that market bond participants find particularly useful, such as portfolio trading and net spotting. Automated executions and limited negotiation possibilities may make these functionalities more difficult to implement on many ATSs.

bond trades, each participant has the discretion over which other participants they wish to extend credit to and trade; therefore, fair access to a corporate bond Communication Protocol System may not have the same meaning given to it in the equity ATS context as the system does not have the ability to ensure that all participant have the same access to liquidity. *See* MarketAxess Letter at 10. Another commenter stated that Communication Protocol Systems such as RFQs do not pose the same technological risks as, *e.g.,* fully automated central limit order books (CLOBs) because trading is slower, there are fewer algorithms that may malfunction, and, if RFQ systems are unavailable, parties can continue to negotiate and execute transactions bilaterally away from the trading system. *See* Tradeweb Letter at 6.

[888] *See supra* notes 157 and 870. One commenter stated that, other than Rule 301(b)(6)(ii)(F) and (G), it expects that nearly all existing platforms already meet or are trying to meet the requirements of Rule 301(b)(6). *See* MarketAxess Letter at 11. Another commenter that runs a fixed-income Communication Protocol System stated that it invested in proper contingency planning, disaster recovery, robustness, and resiliency to ensure there is no disruption in service. *See* FlexTrade Systems Letter at 3.

[889] *See, e.g.,* Bloomberg Letter at 18 and 23 and MarketAxess Letter at 12.

[890] One commenter stated that, even if Communication Protocol System providers do not meet the standard of brokerage activity, since registered broker-dealers are using these trading systems, they are supervised under FINRA standards for brokers relying on outsourced technology. The commenter states that these systems are also monitored by broker-dealer, who are incentivized to do so. *See* Bloomberg Letter at 30–31.

[891] One commenter pointed out that FINRA has recently proposed changes to TRACE reporting of portfolio trades. *See* Bloomberg Letter at 14, citing FINRA request for comment, Regulatory Notice 20–24, September 15, 2020, *available at https://www.finra.org/sites/default/files/2020–07/Regulatory-Notice-20-24.pdf.*

[892] *See* FINRA Rule 6730(a)(1) requiring FINRA members to report transactions in TRACE-Eligible Securities. *See* also *supra* note 228 and *https://www.finra.org/rules-guidance/notices/14-53.*

[893] One commenter stated that approximately 32 percent of investment-grade and 23 percent of high-yield corporate bond daily dollar volumes are executed electronically. *See* BDA Letter at 1.

[894] *See* FINRA Rule 6730(a)(1) requiring FINRA members to report transactions in TRACE-Eligible Securities. *See* also *supra* note 228 and *https://www.finra.org/rules-guidance/notices/14-53* and *https://www.finra.org/filing-reporting/market-transparency-reporting/trace/faq/reporting-corporate-and-agencies-debt.*

[895] *See* Bloomberg Letter, Figure 2. *See also* Bloomberg Letter at 14. *See also* MarketAxess Letter at 2, stating that institutional investors in credit markets prefer RFQs because they have found that liquidity on demand results in the best pricing for illiquid securities.

[896] *See, e.g.,* ICI Letter at 6 and MarketAxess Letter at 3.

[897] *See* Kozora, M., Mizrach, B., Peppe, M., Shachar, O., & Sokobin, J.S. (2020). Alternative Trading Systems in the Corporate Bond Market. FRB of New York Staff Report, (938).

[898] See Section VIII.B.1 for a discussion on the difference between disclosed and anonymous RFQs.

TABLE VIII.6—CORPORATE DEBT SECURITIES AND DOLLAR VOLUME SHARE BY TRADING PROTOCOL

Anonymous RFQ	Disclosed RFQ	Auction	Limit order book	Non-displayed venue [a]	Portfolio trading	Stream axes [b]	Voice
4.8	13.9	3.0	2.4	0.1	2.2	2.2	71.4

This table reports volume share by trading protocol type in the market for corporate debt securities. *Market Share (%)* is the measure of the dollar volume as a percent of total par dollar volume. Data is based on Coalition Greenwich's Greenwich MarketView data from April 2021 through September 2021. Voice market share is calculated as a remainder of total market volume after accounting for electronic protocols volume reported to Coalition Greenwich.

[a] Non-displayed venues are referred to as ''dark pools'' in the Coalition Greenwich's Greenwich MarketView data.
[b] Coalition Greenwich's Greenwich MarketView refers to this data value as ''Stream/Click-to-Engage.''

Customers may prefer other methods such as bilateral voice trading because they wish to transact in less liquid bonds that may require more intermediation to find a counterparty, despite the possibility that the lack of price competition may lead to higher trading costs. One academic study shows that the movement of corporate bond trading volume from voice trading to an RFQ-type protocol system mainly reduced transaction costs for the most liquid securities.[899] However, one commenter referenced that the electronification of manual trading methods, while improving operational efficiencies, does not fundamentally change liquidity in the corporate bond market as the same intermediaries and interactions between dealers and customers are still involved.[900]

Similarly to the market for government securities, the Commission preliminarily believes that the differences in regulatory regime between ATSs and other trading methods, including Communication Protocol Systems such as RFQs and others, can lead to an uneven competitive landscape and adversely impact the potential for robust competition in the market for corporate debt securities.[901] Specifically, the lack of public disclosure about the operations and potential conflicts of interest of Communication Protocol Systems trading in corporate bonds might hinder competition among these trading systems and between Communication Protocol Systems and ATSs in the market for corporate bond trading services.

The fact that ATSs are subject to numerous regulatory requirements that Communication Protocol Systems, which may perform a similar market place function, are not subject to may place ATSs at competitive disadvantage compared to Communication Protocol Systems as a result of the associated compliance costs and potentially higher barriers to entry. Furthermore, one commenter stated that the different regulatory treatment of fixed income trading platforms, with some platforms regulated as ATSs, some regulated as broker-dealers, and others not regulated at all, leaves room for regulatory arbitrage.[902]

4. Current State of the Municipal Securities Market

The market for municipal securities (''municipal bonds'') represents another important part of the fixed income market. Daily trading volumes in the municipal bond market averaged around $12.4 billion during the 2020 calendar year.[903] Average trade sizes in this market tend to be smaller than in other fixed income markets: In September 2021, 81 percent of trades were for $100,000 or less, reflecting the higher presence of retail investors in this market.[904]

The relatively large role of retail investors in the market for municipal bonds represents one important way in which this market differs from the markets for government securities and corporate bonds. Unlike in the markets for other fixed income securities, which are mostly owned by institutional investors, retail investors play a prominent role in the ownership of municipal bonds, with 45.2 percent of municipal bonds held by households and nonprofits as of 2020.[905] This is largely due to the tax-exempt status of most municipal bonds, which makes them attractive to households but less attractive to institutional investors such as pension funds, whose holdings are already tax-deferred or tax exempt. Municipal bond markets also tend to be highly localized, as investors that are located in geographic proximity to an issuer are more likely to be informed about that issuer, and tax benefits are often conferred on investors that are located in the same state as the issuer.[906]

Households tend to be buy-and-hold investors, which may contribute to overall low liquidity levels in the secondary market for municipal bonds. In 2018, less than one percent of outstanding municipal bonds traded on a typical day, and, as in the corporate bond market, liquidity is mostly concentrated in newly-issued bonds.[907] Furthermore, there is evidence that trading in municipal bonds has declined in recent years, as secondary market trading volume declined by about 19 percent between 2019 and 2021.[908]

The market for municipal bonds is highly heterogeneous, and perhaps even more fragmented than the market for corporate bonds. In addition to a wide diversity of bond characteristics, including maturity, tax status, and coupon type, there are more than 50,000 different issuers in the municipal bond market, including state and local governments, towns, cities, and counties, who as of 2020 have issued

[899] *See* Hendershott, T., & Madhavan, A. (2015). Click or call? Auction versus search in the over-the-counter market. *The Journal of Finance,* 70(1), 419–447.

[900] *See* Bloomberg Letter at 9 and10, citing Treasury Report.

[901] *See supra* Section VIII.B.2.d.

[902] *See* Tradeweb Letter at 6.

[903] *See* Municipal Securities Rulemaking Board, Muni Facts, *available at https://www.msrb.org/News-and-Events/Muni-Facts.*

[904] *See* Municipal Securities Rulemaking Board, Municipal Trade Statistics, *available at https://emma.msrb.org/MunicipalTradeStatistics/ByTradeCharacteristic.aspx.*

[905] *See* ''Trends in Municipal Bond Ownership'' (2021), Municipal Securities Rulemaking Board, *available at https://www.msrb.org/Market-Topics/Other-Market-Topics.* Note that this source groups together households and nonprofit organizations. One commenter pointed out the role of registered investment companies (''funds'') in this market, stating that funds held 29 percent of municipal bonds outstanding as of year-end 2019. *See* ICI Letter at 1–2.

[906] *See* Schultz, P. (2012). The market for new issues of municipal bonds: The roles of transparency and limited access to retail investors. Journal of Financial Economics, 106(3), 492–512.

[907] *See* Bessembinder, H., Spatt, C., & Venkataraman, K. (2020). A survey of the microstructure of fixed-income markets. Journal of Financial and Quantitative Analysis, 55(1), 1–45.

[908] *See* ''2021 Municipal Market Trading Update,'' (2021), Municipal Securities Rulemaking Board, *available at https://www.msrb.org/Market-Topics/Reports.*

around one million unique bonds valuing $3.9 trillion.[909]

The market for municipal bonds is largely an OTC market, in which investors place orders with dealers who execute these orders by either committing their own capital (via principal trades) or by searching the market for counterparties (via riskless principal trades or agency trades).[910] Academic research of regulatory data has shown that the interdealer market in municipal bonds has a decentralized network structure composed of between 10 to 30 central dealers and more than 2,000 periphery dealers.[911] Further research shows that the highly geographically localized nature of this market can limit competition between dealers.[912]

a. ATSs in the Market for Municipal Securities

ATSs play an increasingly important role in the municipal bond market. Between August 2016 and April 2021, an estimated 56.4 percent of municipal bond interdealer trades (26 percent in terms of dollar volume) were conducted via ATSs.[913] One commenter stated that, in 2020, more than 1.7 million trades were reported to the MSRB as being executed on an ATS, 1.55 million of which were for $100,000 or less, showing that ATSs are of particular significance for individual investors.[914] The Commission understands that there are currently 6 reporting ATSs trading in municipal securities. One commenter stated that tremendous consolidation in the municipal securities ATS market has occurred over time, such that there are only a few remaining ATSs with significant trading in municipal bonds.[915]

As mentioned in the introduction to Section VIII.B.4 above, municipal bond owners are typically retail investors. Retail investors are unlikely to subscribe directly to ATSs, and so almost all trades executed on ATSs are from dealer quotes.[916] A DERA white paper found that, during a three-month period in 2014, 62 percent of trades on ATSs were between dealers and customers, including both retail and institutional investors, while the remainder were interdealer trades.[917] The white paper also found that large broker-dealers are more likely to post quotes on ATSs than small broker-dealers.[918]

In terms of available protocols, municipal bond ATSs offer LOB-based protocols, but many also offer protocols similar to RFQs. For the latter, quote information is only available to a limited subset of ATS participants. This shortage of public pre-trade information may make it more difficult for retail investors in this market, who may not have access to quote information, to ensure that they are getting the best prices; in fact, the DERA white paper found that smaller retail-sized municipal bond trades tend to receive worse prices than large trades.[919]

80 percent of all quoted municipal bonds have only a single quote offered by a single broker at any given point in time, which corresponds to the heterogeneous nature of this market.[920] Another reason why municipal bonds tend to be thinly quoted may be the difficulty in shorting municipal bonds, as Internal Revenue Service (IRS) rules regulating the shorting of tax-exempt securities and difficulties in locating securities to borrow makes shorting in this market costly.[921] A dealer likely will not quote in a bond unless it already owns that bond.

ATSs that trade in municipal bonds face many of the same regulatory requirements as those that trade in corporate bonds, including complying with Regulation ATS.[922] This includes requirements that ATSs with significant volume in municipal securities markets must comply with the Fair Access Rule[923] and with Rule 301(b)(6) of Regulation ATS (''Capacity, Integrity, and Security Rule'').[924]

Broker-dealers operating in the municipal bond market must be registered with the Municipal Securities Rulemaking Board (MSRB), which creates rules governing their conduct and transparency.[925] Since 2005, all MSRB-registered dealers must report municipal bond trades within 15 minutes of the time of execution to the MSRB's Real-Time Transaction Reporting System (RTRS).[926] Since

[909] *See* Municipal Securities Rulemaking Board, Muni Facts, *available at https://www.msrb.org/News-and-Events/Muni-Facts.* This is compared to the corporate bond market, in which there are around 43,000 unique securities with a total market size around $10.6 trillion. *See* also SIFMA letter at 9 (stating that there are 50,000 issuers of municipal securities and one million unique municipal bonds, compared to 30,000 unique corporate bonds).

[910] *See* ''Analysis of Municipal Securities Pre-Trade Data from Alternative Trading Systems'' (2018), Municipal Securities Rulemaking Board, *available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/msrb-staff-analysis-of-municipal-securities-pre-trade-data.pdf.*

[911] *See* Li, D., & Schürhoff, N. (2019). Dealer networks. The Journal of Finance, 74(1), 91–144.

[912] *See* Schultz, P. (2013). State taxes, limits to arbitrage and differences in municipal bond yields across states. Unpublished working paper. University of Notre Dame.

[913] *See* ''Characteristics of Municipal Securities Trading on Alternative Trading Systems and Broker's Broker Platforms'' (2021), Municipal Securities Rulemaking Board, *available at https://www.msrb.org/Market-Topics/Reports. See* also Letter from Edward J. Sisk, Chair, Municipal Securities Rulemaking Board, dated March 1, 2021 (''MSRB Letter''), stating that MSRB trade data shows that ATSs were involved in 21 percent of all trades and 55 percent of all inter-dealer trades in the municipal bond market.

[914] The commenter also stated that the median size of trades reported as occurring on an ATS was $25,000 and that, for trades of $100,000 or less, ATSs accounted for 24 percent of all trades and 59 percent of all inter-dealer trades. *See* MSRB Letter at 2–3.

[915] *See* SIFMA letter at 11.

[916] *See* ''Characteristics of Municipal Securities Trading on Alternative Trading Systems and Broker's Broker Platforms'' (2021), Municipal Securities Rulemaking Board, *available at https://www.msrb.org/Market-Topics/Reports.*

[917] *See* Craig, L., Kim, A., & Woo, S.W. (2018). Pre-Trade Information in the Municipal Bond Market. DERA White Paper, *available at https://www.sec.gov/files/DERA_WP_Pre-trade_Information_in_the_Municipal_Bond_Market.pdf.*

[918] *See id.*

[919] *See id.* The paper defines institutional-size trades as trades greater than $100,000, and retail-size trades as trades less than $100,000, citing Harris and Piwowar (2006), who use trade size of $100,000 to distinguish retail- and institutional-size customer trades. *See* Harris, L.E., & Piwowar, M.S. (2006). Secondary trading costs in the municipal bond market. The Journal of Finance, 61(3), 1361–1397.

[920] *See* ''Characteristics of Municipal Securities Trading on Alternative Trading Systems and Broker's Broker Platforms'' (2021), Municipal Securities Rulemaking Board, *available at https://www.msrb.org/Market-Topics/Reports.*

[921] *See* ''Municipal Securities Pre-Trade Market Activity: What Has Changed Since 2015?'' (2020), Municipal Securities Rulemaking Board, *available at https://www.msrb.org/Market-Topics/~/link.aspx?_id=9089AC4BA1F144B388D090177FADCDD6&_z=z.*

[922] *See supra* note 866 and Section VIII.B.2.a.ii for a discussion of the impact of some of the elements of Regulation ATS.

[923] An ATS trading in municipal debt securities is subject to the Fair Access Rule if, during at least four of the preceding six months, the ATS had five percent or more of the average daily volume in municipal debt securities traded in the United States. *See* 17 CFR 242.301(b)(5)(i) and *https://www.sec.gov/tm/faq-regulation-ats-fair-access-rule. See supra* Section VIII.B.2.a.ii for a discussion of the impact of the Fair Access Rule.

[924] *See* 17 CFR 242.301(b)(6) and *supra* note 157 and corresponding text. Rule 301(b)(6) currently applies to an ATS that trades only municipal debt securities with 20 percent or more of the average daily volume traded in the United States during at least four of the preceding six calendar months. *See supra* Section VIII.B.3.a for a discussion of the current impact of being subjected to Rule 301(b)(6).

[925] The MSRB is an SRO that is overseen by the SEC. *See* Municipal Securities Rulemaking Board, The Role and Jurisdiction of the MSRB, *available at https://www.msrb.org/About-MSRB/About-the-MSRB.*

[926] *See* MSRB Rule G–14 requiring brokers, dealers and municipal securities dealers (''dealers'') to report transactions in municipal securities. The following transactions in municipal debt securities are exempt from reporting requirements: Transactions in securities without assigned CUSIP numbers; transactions in Municipal Fund Securities; and inter-dealer transactions for principal movement of securities between dealers that are not inter-dealer transactions eligible for comparison in a clearing agency registered with the Commission. Dealers are exempt from reporting if they do not affect any transactions in municipal securities or if they only deal in exempt transactions.

2016, dealer-reported trades to the MSRB have been required to include an indicator to identify trades that have been executed on an ATS.[927] Trades that take place on an ATS are required to be reported both by the member dealers that transact with the ATS, as well as by the ATS if that ATS has taken a principal position between the buyer and seller. If the ATS only facilitates the connection between the buyer and seller but does not take a principal or agency position, it has no reporting requirement under MSRB rules.[928]

b. Communication Protocol Systems in the Market for Municipal Securities

At least 43.6 percent of interdealer trades (74.1 percent in terms of dollar volume) in the municipal bond market take place via trading methods that are not ATSs, including 38.3 percent direct dealer-to-dealer and 5.3 percent on broker's broker platforms.[929] At least some of these transaction are likely to take place via Communication Protocol Systems. The Commission estimates that there are currently 3 Communication Protocol Systems operating in the municipal debt market that may meet the definition of exchange under the proposed changes to Exchange Act Rule 3b–16.

Of particular interest in this context are broker's broker platforms. A broker's broker is defined by the MSRB as a dealer that principally effects transactions for other dealers or that holds itself out as a broker's broker.[930] The broker's broker does not participate in the decision to buy or sell and does not exercise discretion as to the price at which a transaction is executed or determine the timing of a trade.[931] While broker's brokers traditionally conducted their activities via bilateral means such as voice trading, they have increasingly made use of electronic systems.[932] Most electronic broker's broker platforms use only quote solicitation protocols and do not post quotes; those that do post quotes typically are registered as an ATS with the SEC.[933] However, only about 1.6 percent of all inter-dealer trades take place on broker's broker platforms that are registered as ATSs.

The Commission estimates that 1 Communication Protocol System trading in municipal bonds is not currently operated by a registered broker-dealer. This system is not subject to exchange registration or the requirements of Regulation ATS, and is not subject to FINRA operational regulatory reporting requirements.[934]

If the Communication Protocol System only facilitates the connection between the buyer and seller but does not take a principal or agency position to the transaction, the Communication Protocol System may not currently be required to report post-trade data under MSRB rules.[935] However, trades that take place on a Communication Protocol System will currently be reported to MSRB's RTRS if at least one party to the transaction is a municipal bond dealer.

c. Other Methods of Trading in the Market for Municipal Securities

Similar to other fixed income markets, the market for municipal securities has traditionally relied on bilateral voice trading.[936] As mentioned above in the introduction to Section VIII.B.4, due to the particularly fragmented and localized nature of the municipal bond market, competition between individual dealers may be limited.[937] Therefore, it is likely that the lack of pre-trade price transparency in a market traditionally dominated by bilateral voice trading has been particularly costly for municipal bond customers, who lack both price information and bargaining power when negotiating prices with their dealers over the phone. In fact, transaction costs in the municipal bond market have typically been large compared to other markets, and academic studies have indeed attributed these large transaction costs to a lack of price transparency and subsequent information asymmetry between dealers and customers.[938] One MSRB report found that technological advancements in this market and the movement away from voice trading and towards electronic trading have helped reduce transaction costs for dealer-customer trades by 51 percent between 2005 and 2018.[939]

Transactions that take place via bilateral negotiations will only be reported to MSRB's RTRS if at least one party to the transaction is a MSRB-member dealer.

d. Competition for Municipal Securities Trading Services

The trading of municipal debt securities takes place through a variety of different methods, including electronic protocols through ATSs and Communication Protocol Systems, as well as more traditional methods such as telephone calls. These various methods compete with one another in attracting order flow.

Due to the buy-and-hold nature of municipal bond trading, usually brokers' main task is to locate investors that are willing to buy new issues.[940] ATSs may help to reduce search costs. Indeed, one study finds that dealers are more likely access ATS systems for trades that are more difficult to price and that face substantial search costs, such as smaller-sized trades and trades involving municipal bonds with complex features.[941] Accordingly, 90 percent of quotes on municipal bond ATSs are offer quotes.[942] On the other hand, the vast majority of RFQs on municipal bond ATSs are requests for

[927] *See* MSRB Letter at 3. One commenter stated that a difference between ATS trade reporting requirements between FINRA and MSRB is that, while the MSRB, like FINRA, requires an ATS flag for reports to their Real-time Trade Reporting System, this only applies to interdealer trades conducted on ATSs, not trades with customers. *See* BDA Letter at 3.

[928] *See* Regulatory Notice 2015–07, Municipal Securities Rulemaking Board, May 26, 2015, *available at https://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices?type=All&filter=2015.*

[929] *See id.*

[930] *See* Municipal Securities Rulemaking Board, MSRB Rule G–43.

[931] *See* SIFMA, ''The Role of Municipal Securities Broker's Brokers in the Municipal Markets,'' 2017.

[932] *See* ''Characteristics of Municipal Securities Trading on Alternative Trading Systems and Broker's Broker Platforms'' (2021), Municipal Securities Rulemaking Board, *available at https://www.msrb.org/Market-Topics/Reports.*

[933] *See* ''Characteristics of Municipal Securities Trading on Alternative Trading Systems and Broker's Broker Platforms'' (2021), Municipal Securities Rulemaking Board, *available at https://www.msrb.org/Market-Topics/Reports.*

[934] In this respect they are similar to Communication Protocol Systems in the market for corporate debt. *See supra* Sections VIII.B.3.b and VIII.B.3.d for a discussion of the impact of not being subject to these regulations.

[935] *See* Regulatory Notice 2015–07, Municipal Securities Rulemaking Board, May 26, 2015, *available at https://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices?type=All&filter=2015.*

[936] One commenter estimated only 15 percent of daily dollar trading volume in municipal bonds is executed electronically. *See* BDA Letter at 1.

[937] *See* Schultz, P. (2012). The market for new issues of municipal bonds: The roles of transparency and limited access to retail investors. Journal of Financial Economics, 106(3), 492–512.

[938] *See* Harris, L.E., & Piwowar, M.S. (2006). Secondary trading costs in the municipal bond market. The Journal of Finance, 61(3), 1361–1397.

[939] *See* ''Transaction Costs for Customer Trades in the Municipal Bond Market: What is Driving the Decline?'' (2018), Municipal Securities Rulemaking Board, *available at https://www.msrb.org/Market-Topics/~/link.aspx?_id=9089AC4BA1F144B388D090177FADCDD6&_z=z.*

[940] *See* Schultz, P. (2012). The market for new issues of municipal bonds: The roles of transparency and limited access to retail investors. Journal of Financial Economics, 106(3), 492–512.

[941] *See* ''Characteristics of Municipal Securities Trading on Alternative Trading Systems and Broker's Broker Platforms'' (2021), Municipal Securities Rulemaking Board, *available at https://www.msrb.org/Market-Topics/Reports.*

[942] *See* ''Municipal Securities Pre-Trade Market Activity: What Has Changed Since 2015?'' (2020), Municipal Securities Rulemaking Board, *available at https://www.msrb.org/Market-Topics/~/link.aspx?_id=9089AC4BA1F144B388D090177FADCDD6&_z=z.*

bids, reflecting that RFQ protocols are more likely to be used when customers want to sell.[943]

Meanwhile, empirical results show that broker's broker platforms, which may have functionalities similar to Communication Protocol Systems, are more likely to be used for large-sized trades, and less likely to be used for municipal bonds with complex features.[944] The study implied that this is because the lower price transparency on many broker's broker platforms, which do not post quotes, makes these systems less useful for trading securities that are difficult to price.

Meanwhile, similar to the case of corporate bond markets, RFQs may instead be preferred by traders that want to limit information leakage, such as in case of large-sized trades.[945] Furthermore, as in the market for corporate bonds, one commenter stated that the majority of municipal bonds are not liquid enough to support order book trading.[946]

More generally, for the reasons described in Section VIII.B.4.c, the movement of municipal bond trading onto electronic platforms has helped to reduce transaction costs. Specifically, an increase in transparency in this market has particularly been beneficial for retail investors who otherwise have little access to municipal bond information.[947]

The Commission preliminarily believes that, as in other fixed income markets, the differences in regulatory regime between ATSs and other trading methods can lead to an uneven competitive landscape and adversely impact the potential for robust competition in the market for municipal debt securities.

5. Current State of the Equity Market

The market for U.S. equity securities represents one of the largest U.S. and global financial markets. As of 2020, the capitalization of the U.S. equity market was estimated to be more than $40 trillion.[948] The market for equity trading services is served by exchanges, ATSs, other trading systems, such as OTC systems, and other liquidity providers (such as internalizers). The type of trading system on which an equity security is eligible to trade will depend on the equity security's characteristics, including whether the issuing company periodically reports its financial information and whether the security is exchange-listed and/or registered with the SEC. U.S. equity securities contain NMS stocks (including ETFs), OTC securities, and restricted stocks, in addition to other types of securities.

a. Categorization and Trading Characteristics of U.S. Equity Securities

The largest and most liquid part of the U.S. equity market consists of national market system (NMS) stocks. In general, NMS stocks are exchange-listed equity securities for which transactions are reported pursuant to an effective transaction reporting plan.[949] As of August 2021, there were around 5,669 equities listed across five exchanges.[950] In September 2021, the average daily trading volume in NMS stocks across all market centers was $545 billion.[951] The market for trading services in NMS stocks consists of 16 national securities exchanges, and 34 ATSs, as well as other off-exchange trading venues, including broker-dealer internalizers and wholesalers.[952]

One subset of NMS stocks that has been increasing in popularity in recent years includes exchange-traded funds (ETFs). ETFs are securities that are registered as open-end investment companies or unit investment trusts under the Investment Company Act of 1940 (the ''1940 Act''),[953] that typically track financial instruments or bundles of financial instruments (such as an index), and are listed on national securities exchanges. ETFs are investment vehicles that issue shares that can be bought or sold throughout the day on securities exchanges in the secondary market at a market-determined price. The ETF market has seen significant growth in the past decade, as the number of ETFs nearly doubled from 1,134 to 2,204 and net assets more than quintupled, from $939 billion to more than $5.3 trillion.[954] ETF secondary market trading made up 26 percent of total daily U.S. stock market trading on average in 2020.[955] At the same time, ETF liquidity may be highly concentrated, with studies estimating that more than 85 percent of all ETF value traded is concentrated in around 150 ETFs, or around five percent of all ETFs.[956] As with other NMS securities, ETFs can be traded on exchanges and at off-exchange venues.

There is also a significant market for stocks that are not listed on a national securities exchange, which are often referred to as over-the-counter (OTC) equities.[957] As of August 2021, there were 8,777 unlisted stocks that fell under FINRA reporting requirements.[958] Unlike NMS stocks, which may trade on- or off-exchange, OTC equities may only trade off-exchange, on ATSs or through Communication Protocol Systems for example.[959] Liquidity in OTC equities can be limited: A 2019 Commission analysis estimated that only 44 percent of quoted OTC equities are traded per day, and two percent did not trade at all during the 2019 calendar year.[960]

OTC equities tend to be held by small investors. One academic study found that institutions only held about 26 percent of OTC stocks, as compared to 71 percent of listed stocks, implying

[943] *See id.*

[944] *See id.*

[945] *See* Section VIII.B.3.

[946] *See* ICI Letter at 6–7.

[947] *See* Craig, L., Kim, A., & Woo, S.W. (2018). Pre-Trade Information in the Municipal Bond Market. DERA White Paper, *available at https://www.sec.gov/files/DERA_WP_Pre-trade_Information_in_the_Municipal_Bond_Market.pdf.*

[948] *See* ''Market capitalization of listed domestic companies (current US$)—United States,'' The World Bank, *available at https://data.worldbank.org/indicator/CM.MKT.LCAP.CD?locations=US.*

[949] *See* Regulation NMS Rules 600(b)(46) and (47) (17 CFR 242.600(b)(46) and (47)).

[950] *See https://www.finra.org/filing-reporting/oats/oats-reportable-securities-list.* This includes NYSE Arca, NYSE MKT, BZX Exchange (BATS), NASDAQ, and New York Stock Exchange (NYSE).

[951] *See* CBOE Historical Market Volume Data, *available at https://www.cboe.com/us/equities/market_statistics/historical_market_volume/market_history_monthly_2019.csv.* The statistic is calculated by summing the ''Total Notional'' value for all entries in September 2021, and then dividing this sum by the number of trading days in September 2021 (21).

[952] There are 34 NMS Stock ATSs operating with a Form ATS–N on file. *See* Form ATS–N Filings and Information, *available at https://www.sec.gov/divisions/marketreg/form-ats-n-filings.htm.* Wholesalers are broker-dealers to whom retail brokers send their clients' orders to be filled internally (as opposed to sending the trade orders to an exchange). Typically, a wholesaler promises to provide price improvement relative to the NBBO for filled orders. Wholesalers often pay retail brokers for sending their clients' orders to the wholesaler.

[953] This discussion does not address other types of exchange-traded products that are not registered under the 1940 Act, such as exchange-traded commodity funds or exchange-traded notes. *See https://www.sec.gov/investor/alerts/etfs.pdf.* It is estimated that at year-end 2020, less than 3% of net assets were held in ETFs that are not registered with or regulated by the SEC under the Investment Company Act of 1940; *see https://www.icifactbook.org/21_fb_ch4.html.*

[954] *See https://www.icifactbook.org/21_fb_ch4.html.*

[955] *See id.*

[956] *See id.*

[957] The Commission estimates that quoted OTC securities were valued at approximately $32.3 trillion in 2019, with 94.7 percent of the total market capitalization coming from companies that also have securities listed on public foreign exchanges.

[958] *See https://www.finra.org/filing-reporting/oats/oats-reportable-securities-list/.*

[959] *See* ''Unraveling the Mystery of Over-the-Counter Trading'' (2016), FINRA, *available at https://www.finra.org/investors/insights/unraveling-mystery-over-counter-trading.*

[960] *See* SEC Release No. 34–87115, ''Publication or Submission of Quotations Without Specified Information'' Proposed Rule and Concept Release, *available at https://www.sec.gov/rules/proposed/2019/34-87115.pdf.*

that most owners of OTC stocks are retail investors.[961] A study found that retail investors may be attracted to the low price of OTC equities, which include equities that trade under $5 per share (so-called ''penny stocks'').[962]

Transparency in the market for OTC securities can be limited. While some OTC equity trading systems require issuers to register their securities with the SEC and/or periodically file their financial statements (either with the SEC or with the trading venue), other systems may trade in OTC equities without any reporting standards or eligibility requirements.[963] The market for OTC equities is largely regulated by FINRA under Section 15A of the Securities Exchange Act of 1934, which requires FINRA to, among other things, establish rules governing the form and content of quotations for securities sold otherwise than on an exchange.

One particular type of unlisted securities is referred to as restricted (or sometimes ''control'') stocks. Restricted stocks are either unregistered shares issued by public companies in private placements [964] or shares (both registered and unregistered) held by an issuer or its affiliates (such as insiders and large shareholders). The secondary market for restricted stocks is governed by SEC Rule 144, and allows restricted stocks to be sold to the public if several conditions are met.[965] While investments in restricted stocks are typically limited to only accredited investors, new SEC rules adopted in 2015 under Section 401 of the Jumpstart Our Business Startups (JOBS) Act, often referred to as ''Regulation A+,'' expanded the ability for non-accredited investors to trade in certain unregistered equities. Eligible restricted stocks can be traded on a number of electronic platforms that specialize in the secondary market for restricted shares, as well as through broker-dealers.[966]

b. ATSs in the Equity Market

As mentioned above, NMS stocks that are listed on national securities exchanges may trade both on exchanges and at off-exchange trading venues, including on ATSs. Currently there are 34 NMS Stock ATSs, collectively handling an average of around 453 million trades during Q3 2021.[967] Since the adoption of Regulation NMS in 2005, the market for trading services has become more fragmented, and the proportion of NMS stocks trading off-exchange has increased. For example, as of July 2020, NMS Stock ATSs comprised approximately 10 percent of consolidated dollar volume, and other off-exchange volume totaled approximately 23 percent of consolidated dollar volume.[968]

NMS Stock ATSs generally operate as non-displayed venues, which do not display quotes. Traditionally, market participants that used non-displayed venues to trade listed stocks have been large institutional investors seeking to execute block trades. However, average trade sizes in many ATSs have shrunk from block-size trades to smaller trade sizes that match those of traditional exchanges. In 2018, the Commission found that, while eight NMS Stock ATSs had average trade sizes larger than 10,000 shares, the vast majority had average trade sizes between 100 and 460 shares, which is similar to average trade sizes on the national securities exchanges.[969] One feature, among others, that may attract some market participants to non-displayed venues is their lower information leakage as compared to trades on exchanges.

NMS Stock ATSs are subject to Regulation ATS and are also required to file and publicly disclose Form ATS–N. Furthermore, those with significant volume are required to comply with the requirements of Regulation SCI [970] and the Fair Access Rule.[971] Trades in NMS stocks that are transacted off-exchange, which includes transactions on ATSs, are required to be reported to one of three FINRA Trade Reporting Facilities (TRF).[972] If the execution is handled by an ATS, then in most cases the ATS has the reporting obligation and must report itself as a counterparty to both sides of the trade.[973]

Furthermore, national securities exchanges, national securities associations and Industry Members [974] that receive or originate orders [975] in Eligible Securities [976] are required to

[961] *See* Andrew Ang et al., Asset Pricing in the Dark: The Cross-Section of OTC Stocks, 26 Rev. Fin. Studs. 2985–3028 (2013).

[962] *See* ''Unraveling the Mystery of Over-the-Counter Trading'' (2016), FINRA, *available at https://www.finra.org/investors/insights/unraveling-mystery-over-counter-trading.*

[963] *See https://www.sec.gov/reportspubs/investor-publications/investorpubsmicrocapstockhtm.html.* Note that, as discussed in *infra* Section VIII.5.d, recent amendments to 17 CFR 240.15c2–11 (Rule 15c2–11 of the Exchange Act) adopted in September 2020 limit public quoting in OTC equities for which current financial statement information is not publically available.

[964] Unregistered securities typically avoid SEC registration through one of two exemptions: Regulation D offerings, which are mostly limited to accredited (*i.e.,* institutional or high-net-worth) investors, and Regulation A offerings, which are open to unaccredited investors.

[965] *See https://www.sec.gov/reportspubs/investor-publications/investorpubsrule144htm.html.* These conditions include a minimum holding period, the availability of up-to-date information about the issuing company, and certain limits to the size of the trade. In addition, notice of trades by affiliates are required to be filed with the SEC, and the trades themselves must be handled by a broker as a routine transaction (*e.g.,* no special commissions).

[966] *See, e.g.,* Private Equity Exchange (*http://peqx.com/*); Nasdaq Private Market (*https://www.nasdaq.com/secondmarket*).

[967] *See https://www.finra.org/filing-reporting/otc-transparency/ats-quarterly-statistics.*

[968] *See* Market Data Infrastructure Final Rule, Release No. 90610 (Dec. 9, 2020), *available at https://www.sec.gov/rules/final/2020/34-90610.pdf.*

[969] *See* SEC Release No. 34–83663, ''Regulation of NMS Stock Alternative Trading Systems,'' *available at https://www.sec.gov/rules/final/2018/34-83663.pdf.*

[970] An ATS trading in NMS stock is subject to Regulation SCI if, during at least four of the preceding six months, the ATS had five percent or more in any single NMS stock, and 0.25 percent or more in all NMS stocks, of the average daily dollar volume reported by applicable effective transaction reporting plans, or one percent or more, in all NMS stocks, of the average daily dollar volume reported by applicable effective transaction reporting plans. *See https://www.sec.gov/divisions/marketreg/regulation-sci-faq.shtml. See supra* Section VIII.B.2.a.ii for a discussion of the impact of Regulation SCI.

[971] An ATS trading in NMS stock is subject to the Fair Access Rule if, during at least four of the preceding six months, the ATS had five percent or more of the average daily volume in an NMS stock reported by an effective transaction reporting plan. *See* 17 CFR 242.301(b)(5)(i) and *https://www.sec.gov/tm/faq-regulation-ats-fair-access-rule. See supra* Section VIII.B.2.a.ii for a discussion of the impact of the Fair Access Rule.

[972] These include FINRA/Nasdaq TRF Carteret, FINRA/Nasdaq TRF Chicago, and FINRA/NYSE TRF. *See https://www.finra.org/filing-reporting/trf/trf-exchange-participants.*

[973] *See https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq.* Certain transactions are exempt from FINRA TRF reporting requirements; see *https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq#500* and FINRA Rules 6282(f)(1), 6380A(e)(1), 6380B(e)(1), and 6622(e)(1).

[974] The National Market System Plan Governing the Consolidated Audit Trail (CAT NMS Plan) is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016). The CAT NMS Plan and subsequent amendments to the Plan are *available at https://catnmsplan.com/about-cat/cat-nms-plan.* Section 1.1 of the CAT NMS Plan defines an Industry Member as a member of a national securities exchange or a member of a national securities association. ''CAT Reporters'' include national securities exchanges, national securities associations and Industry Members that are required to record and report information to the Central Repository pursuant to SEC Rule 613(c).

[975] Section 1.1 of the CAT NMS Plan defines the term ''order,'' with respect to Eligible Securities, as having the meaning set forth in 17 CFR 242.613(j)(8) (SEC Rule 613(j)(8)). SEC Rule 613(j)(8) defines an ''order'' as any order received by a member of a national securities exchange or national securities association from any person; any order originated by a member of a national securities exchange or national securities association; or any bid or offer.

[976] Section 1.1 of the CAT NMS Plan defines Eligible Securities as'' (a) all NMS Securities and (b) all OTC Equity Securities,'' where OTC Equity Securities are defined as any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such

Continued

report any Reportable Event[977] to the Consolidated Audit Trail (CAT), which is designed to capture customer and order event information from the time of order inception through routing, cancellation, modification, or execution in a single, consolidated data source. The Participants[978] have issued guidance stating that trading interest must be ''firm'' to fall within the definition of an ''order,'' and thus be reportable to CAT, and so certain trading interest (*e.g.,* conditional orders) that may be available on some ATSs is not reportable to the CAT until it is ''firmed up''/confirmed.[979]

OTC equities also trade on ATSs. There are currently five ATSs operating in the OTC equity market. As of Q3 2021, FINRA reports that OTC equity ATSs collectively handled around 4 million trades.[980] ATSs that offer trading services in OTC equities also typically operate as interdealer quotation systems (IDQS), which regularly disseminate broker-dealer quotes.[981] The majority of OTC equity trading on ATSs is concentrated on one platform, which executed more than 60 percent of OTC equity ATS trading in Q1 2021. ATSs that trade in OTC equities usually segment securities into different markets or use eligibility status symbols to inform investors regarding issuers' regulatory compliance and disclosure.[982] This is designed to inform investors whether companies are current or delinquent in their filing requirements in the interest of transparency.[983] One academic study found that OTC equities that are subject to stricter disclosure requirements have higher market quality, including higher liquidity and lower crash risk.[984]

FINRA is the SRO that regulates trading in OTC securities. The Commission understands that the current ATS market place for OTC equities has evolved to replace the functions formally performed by the OTC Bulletin Board (OTCBB), a FINRA-operated inter-dealer quotation system for OTC equities that was retired by FINRA in November 2021.[985] In its filing with the SEC, FINRA cited technological advancements and ''the subsequent increase in alternative electronic venues with more extensive functionality than the OTCBB'' as reasons for its retirement, which highlights market participants' preference for electronic trading systems in this market.[986] Concurrently to its retirement of the OTCBB, FINRA has adopted new Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems), which implements additional requirements for firms that operate systems that regularly disseminate quotes in OTC equities, including requirements related to fair access, transparency, and systems integrity.[987] Furthermore, trades to which a FINRA member is a party must be reported to FINRA's OTC Reporting Facility (ORF) within ten seconds of execution.[988] This includes executions in OTC equities, as well as executions in restricted stocks effected under 17 CFR 230.144A (Securities Act Rule 144A); however, trades in restricted equity securities effected under Rule 144A are reported to the ORF for regulatory purposes only and are not publicly disseminated. Similarly to requirements for FINRA's TRF described above, if the execution is handled by an ATS, then in most cases the ATS has the reporting obligation and must report itself as a counterparty to both sides of the trade.[989] In addition, OTC equities fall within the definition of ''Eligible Securities'' under the CAT NMS Plan, and therefore any eligible events in OTC equities are reportable to CAT.[990]

In addition to its requirements under FINRA, ATSs that trade in OTC equities must comply with Regulation ATS, including filing Form ATS and periodically filing Form ATS–R, and complying with Regulation SCI[991] and the Fair Access Rule if volume thresholds are met.[992] However, ATSs that trade in OTC equities are not required to file and publicly disclose Form ATS–N.

c. National Securities Exchanges for NMS Stock

NMS Stock ATSs compete with national securities exchanges in the market for trading services in NMS securities. Currently, 16 national securities exchanges effect transactions in NMS stocks. These exchanges

association's equity trade reporting facilities.'' This includes both OTC Equity Securities and transactions in Restricted Equity Securities effected pursuant to Securities Act Rule 144A. *See* CAT NMS Plan, *supra* note 974.

[977] According to Section 1.1 of the CAT NMS Plan, ''Reportable Event'' includes, but is not limited to, the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order. *See* CAT NMS Plan, *supra* note 974.

[978] The Participants are the national securities exchanges and national securities associations who collectively control and operate the CAT.

[979] *See* CAT FAQ B40, *available at https://www.catnmsplan.com/faq*. This release refers to the FAQs published by the Participants because the Commission believes those FAQs are guiding the how Industry Members are reporting information to the CAT. The Commission has not approved the FAQs so is expressing no view in this release regarding such FAQs.

[980] *See https://www.finra.org/filing-reporting/otc-transparency/ats-quarterly-statistics*. Note that this dataset aggregates volume across two OTC Link LLC-operated ATSs under the label OTC LINK ECN ATS.

[981] Rule 15c2–11 of the Exchange Act defines an inter-dealer quotation system as any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers, and further defines a qualified inter-dealer quotation system as any inter-dealer quotation system that meets the definition of an ''alternative trading system'' and operates pursuant to the exemption from the definition of an ''exchange.''

[982] For example, the OTC Link LLC ATS is organized into several market places, broadly organized according to the issuers' regulatory compliance and disclosure: OTCQX, which includes equities that are subject to and current with the reporting requirements of the Exchange Act, and that additionally meet numerous other eligibility requirements; OTCQB, which includes equities that are subject to and current with the reporting requirements of the Exchange Act, but not subject to any additional eligibility requirements; and Pink Sheets, which includes equities without any reporting or eligibility requirements. A fourth tier, the so-called ''Expert Market'' or ''Grey Market,'' contains equities that are not or cannot be publically quoted, either due to regulatory restrictions or lack of investor interest. *See https://www.sec.gov/reportspubs/investor-publications/investorpubsmicrocapstockhtm.html.* Additionally, for another example, *see https://www.globalotc.com/brokers/eligible-securities.*

[983] *See* Cass Sanford, *Understanding the Expert Market,* OTC Markets Blog (March 25, 2021), *available at https://blog.otcmarkets.com.*

[984] *See* Brüggemann, U., Kaul, A., Leuz, C., & Werner, I.M. (2018). The twilight zone: OTC regulatory regimes and market quality. The Review of Financial Studies, 31(3), 898–942.

[985] *See https://www.finra.org/rules-guidance/notices/21-38.*

[986] *See* SEC Release No. 34–90067, October 1, 2020, ''Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems) and Delete the Rules Related to the OTC Bulletin Board Service,'' *available at https://www.sec.gov/rules/sro/finra/2020/34-90067.pdf.*

[987] *See https://www.finra.org/rules-guidance/notices/21-28.*

[988] FINRA Rule Series 6620 and 7300 govern OTC and restricted equity trade reporting to FINRA Facilities. *See https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq.*

[989] *See supra* note 973.

[990] *See supra* notes 974 to 979 and corresponding discussion.

[991] An ATS trading in non-NMS stock is subject to Regulation SCI if, during at least four of the preceding six months, the ATS had five percent or more of the average daily volume in transactions that are reported to and calculated by a self-regulatory organization, such as FINRA. *See https://www.sec.gov/divisions/marketreg/regulation-sci-faq.shtml. See supra* Section VIII.B.2.a.ii for a discussion of the impact of Regulation SCI.

[992] An ATS trading in non-NMS stock is subject to the Fair Access Rule if, during at least four of the preceding six months, the ATS had five percent or more of the average daily volume in non-NMS stock transactions that are reported to and calculated by a self-regulatory organization, such as FINRA. *See* 17 CFR 242.301(b)(5)(i) and *https://www.sec.gov/tm/faq-regulation-ats-fair-access-rule. See supra* Section VIII.B.2.a.ii for a discussion of the impact of the Fair Access Rule.

accounted for 58 percent of NMS security share volume and 65 percent of NMS security dollar volume in September 2021.[993] National securities exchanges have greater regulatory obligations than NMS Stock ATSs. They must register with the Commission on Form 1, file proposed rule changes with the Commission under Section 19(b) of the Exchange Act, and are SROs. The proposed rule changes of national securities exchanges must be made available for public comment,[994] and in general, these proposed rule changes publicly disclose, among other things, details relating to the exchange's operations, procedures, and fees. 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 national securities exchange's proposed rule changes are consistent with the Exchange Act.[995] 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 market participants such as ATSs.[996]

While national securities exchanges have more regulatory obligations than NMS Stock ATSs, they also enjoy certain unique benefits that are not afforded to NMS Stock ATSs. While national securities exchanges are SROs, and are thus subject to surveillance and oversight by the Commission, they can still establish norms regarding conduct, trading, and fee structures for external access. Trading venues that elect to register as national securities exchanges may gain added prestige by establishing listing standards for their securities. Additionally, national securities exchanges can be direct participants in NMS plans, which provides additional sources of revenue and input into the operation of the national market system that is not available to NMS Stock ATSs.[997]

d. Communication Protocol Systems in the Equity Market

The Commission estimates that there are currently 4 Communication Protocol Systems operating in the market for NMS stocks that may meet the definition of exchange under the proposed changes to Exchange Act Rule 3b–16. Furthermore, the Commission understands that some NMS Stock ATSs offer functionalities similar to Communication Protocol Systems, such as conditional orders and indications of interest (IOIs), both of which can interact with their limit order books. As mentioned in Section II.B.2, the Commission has observed that 26 NMS Stock ATSs have disclosed on their public Form ATS–N that they send or receive messages indicating trading interest, such as conditional orders.

While NMS Stock ATSs may make use of Communication Protocol System functionalities, there is limited evidence that Communication Protocol Systems play a significant role in the non-ATS OTC market for liquid NMS stocks in the U.S.[998] One commenter stated that NMS stocks and ETFs with limited liquidity are now beginning to use protocols such as RFQ to bridge liquidity gaps.[999] However, because the Commission lacks data on the use of protocols that would qualify as Communication Protocol Systems by non-ATS trading systems operating in the OTC equity market, it is unable to quantify to what extent Communication Protocol Systems are used in the non-ATS OTC market for NMS stocks. The Commission requests comment on this issue.

Communication Protocol System operators cite their protocols' abilities to service very large orders, the option for participants to pick and choose which aspects of their order to disclose (*e.g.,* price or size), and higher discretion as advantages of these protocols over trading on exchanges or ATSs.[1000] However, some market participants have expressed skepticism over information leakage in the use of RFQs for equity transactions, as their use may signal that the participants are unable to locate ''natural'' sources of liquidity.[1001]

Communication Protocol Systems may also play a role in the trading of U.S.-listed ETFs. However, the Commission lacks data to quantify what proportion of ETF volume trades via Communication Protocol Systems. At least one trading system operator claims to offer several protocols, including RFQ, for trading in U.S.-listed ETFs.[1002] The use of Communication Protocol Systems for trading in ETFs may be motivated by a lack of liquidity in some ETF securities, and associated risks involved in trading in illiquid ETFs.[1003] Similar to the corporate bond market, the use of Communication Protocol Systems may also be used for the trading of bundles of securities in order to facilitate transaction services for participants that may be using the same Communication Protocol System to trade in the securities underlying ETFs.[1004]

Unlike NMS Stock ATSs, Communication Protocol Systems that trade NMS stocks are not subject to any of the requirements of Regulation SCI or Regulation ATS, including the requirement to file the public Form ATS–N. Trades in NMS stocks that are transacted elsewhere than on an exchange, which may include transactions executed on a Communication Protocol System, are required to be reported to FINRA TRF as discussed in Section VIII.B.5.a if at least one of the parties to the transaction is a FINRA member.

Trading interest on Communication Protocol Systems may not be required to be reported to CAT, depending on the nature of the solicitation and/or response(s) as firm or non-firm. CAT guidance issued by the Participants

[993] *See* CBOE Historical Market Volume Data, *available at https://www.cboe.com/us/equities/market_statistics/historical_market_volume/, market_history_monthly_2021.csv.* This statistic is calculated by dividing the sum of all non-FINRA entries for the month of September 2021 divided by the sum of all entries for the month of September 2021.

[994] *See* 15 U.S.C. 78s(b)(1).

[995] *See* 15 U.S.C. 78s(b).

[996] *See, e.g.,* Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b)(1), and Section 6(b) of the Exchange Act, 15 U.S.C. 78f(b).

[997] *See* Regulation ATS Adopting Release, *supra* note 31, at 70880, 70902–70903 (Section discussing generally some of the obligations and benefits of registering as a national securities exchange).

[998] On the contrary, RFQ platforms are increasingly playing a role in block trading in European equities, particularly in the wake of the 2018 adoption of MiFID II, which placed limits on other off-exchange sources of liquidity. *See, e.g.,* Basar, Shanny. (2020, March 31). *MarketsMedia, available at https://www.marketsmedia.com/icap-adds-to-equity-rfqs/.*

[999] *See* Bloomberg Letter at 3, 10, 20, and 23. The commenter also referenced that trading in small and micro NMS stocks on exchanges has been difficult and has not necessarily improved with recent technological changes. *See* Bloomberg Letter at 21, citing *https://www.nasdaq.com/articles/nasdaqs-proposal-improve-trading-environment-small-and-medium-growth-companies-and.*

[1000] *See* ''RFQ for Equities: One Year On,'' (2019), *Tradeweb, available at https://www.tradeweb.com/newsroom/media-center/insights/blog/rfq-for-equities-one-year-on/.*

[1001] *See, e.g.,* McDowell, Hayley. (2018, October 23). ''Buy-side throws doubt on RFQ for equities as 'last chance saloon' for liquidity,'' *THETRADE, available at https://www.thetradenews.com/buy-side-throws-doubt-rfq-equities-last-chance-saloon-liquidity/.*

[1002] *See, e.g.,* ''ETFs'', *Tradeweb, available at https://www.tradeweb.com/our-markets/institutional/equities/ETPs_Funds/.* Additional market participants may also be developing Communication Protocol Systems for U.S.-listed ETFs. *See, e.g.,* Rennison, Joe, April 4, 2019, ''MarketAxess muscles into ETF industry with Virtu tie-up,'' Financial Times, *available at https://www.ft.com/content/b88d53b6-5709-11e9-a3db-1fe89bedc16e.*

[1003] *See, e.g.,* Bae, K., & Kim, D. (2020). Liquidity risk and exchange-traded fund returns, variances, and tracking errors. Journal of Financial Economics, 138(1), 222–253.

[1004] *See supra* Section VIII.B.3.b for a discussion of portfolio trading on Communication Protocol Systems in the corporate bond market.

provides that non-firm expressions of trading interest that contain information about the security name, side, size, capacity and/or price, which includes IOIs and RFQs, do not fall within the definition of an ''order'' and are therefore not reportable to CAT.[1005] However, this guidance also states that any response to an RFQ or other form of solicitation response that is accessible electronically and is immediately actionable (*i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed) is reportable whether or not it is ultimately accepted. Furthermore, once an order is ''firmed up'' by the initiating participant and winning bidder, the origination of the new order by the initiating participant, the routing of that new order to the winning bidder, and the acceptance of that order by the winning bidder are all reportable events, with the initiating participant reporting the new order and routing events, and the winning bidder reporting the order acceptance, as well as any subsequent actions taken to process the order.[1006]

The Commission understands that the majority of trading in OTC equities takes place on IDQS, most of which are registered as ATSs. However, there may be some IDQS or other OTC equity trading systems that are not registered as ATSs and that operate using trading protocols that would qualify as Communication Protocol Systems.[1007] The Commission estimates that there may currently be 1 Communication Protocol System operating in the OTC equity market. Such a trading system may not be subject to FINRA Rule 6439 or trade reporting requirements, or quoting requirements under the amended Rule 15c2–11 discussed in the next paragraph, if it is not operated by a FINRA member and does not meet the definition of a ''qualifying'' IDQS. The Commission lacks the data to estimate the number or trading volume of IDQS or other OTC equity trading systems that operate as Communication Protocol Systems and are not registered as broker-dealers. The Commission requests comment on this topic.

Communication Protocol Systems may also play a role in the Grey Market for OTC equities.[1008] Recent amendments to Rule 15c2–11 of the Exchange Act adopted in September 2020 limit public quoting in OTC equities for which current financial statement information is not publically available.[1009] This limits the ability of many OTC equities to trade on ATSs,[1010] but many OTC securities are still traded even without publically available quotes.[1011] However, due to the opacity of this market, the Commission lacks data to estimate the extent to which broker-dealers trading in Grey Market equities are using protocols that would qualify as Communication Protocol Systems and requests comment on this issue.

Communication Protocol Systems may play a role in the secondary market for restricted shares. The Commission preliminarily estimates that there are currently 10 Communication Protocol Systems operating in the market for restricted shares. Furthermore, an estimated 2 of these are run by non-broker-dealers, who therefore would not currently be subject to the associated costs of complying with broker-dealer filing and conduct obligations, including becoming a member of an SRO, such as FINRA.[1012]

Unlike ATSs that trade OTC equities, Communication Protocol Systems that trade OTC equities are not subject to any of the requirements of Regulation ATS. Trades in OTC equities and restricted equities effected under Securities Act Rule 144A that are transacted elsewhere than on an exchange, which may include transactions executed on a Communication Protocol System, are required to be reported to FINRA's OTC ORF as described in Section VIII.B.5.a, if at least one of the parties to the transaction is a FINRA member.

e. Other Methods of Trading in Equities

The majority of off-exchange trading in NMS stocks occurs outside of ATSs. A DERA white paper estimated that, in 2014, non-ATS off-exchange trading in NMS stocks represented nearly 17 percent of total equity market dollar volume;[1013] by July 2020, this number increased to 23 percent, while trading on ATSs was composed of only 10 percent of total equity market dollar volume.[1014] The DERA white paper found that more than a third of non-ATS trading volume in NMS stock comprised of retail orders executed by OTC market makers.[1015] Block trades (*i.e.,* trades larger than 10,000 shares) made up a higher percentage of non-ATS trading volume than ATS trading volume.[1016] Additionally, single-dealer platforms (SDPs) accounted for nine percent of off-exchange trading volume in Q3 2021.[1017]

The Commission believes that manually negotiated trades via the telephone are still taking place in the market for NMS stocks, in particular for large block trades by institutional investors.[1018] A survey taken in April 2014 estimated that more than 55 percent of buy-side U.S. equity trading was still being executed via phone calls.[1019]

Additionally, it is likely that traditional bilateral negotiations are still actively used in the market for OTC equities as well, particularly in the Grey Market and the market for restricted equities, where electronic trading may be limited due to restrictions on public quoting activity. However, due to the opacity of this market, it is difficult to estimate the extent to which voice trading still plays a role in the market for OTC and restricted equities.

As described above in Section VIII.B.5.a, trades in equities that are transacted elsewhere than on an

[1005] *See* CAT FAQ B3, *available at https://www.catnmsplan.com/faq.*

[1006] *See* CAT FAQ B45, *available at https://www.catnmsplan.com/faq.*

[1007] *See* SEC Release No. 34–87115, ''Publication or Submission of Quotations Without Specified Information'' Proposed Rule and Concept Release, *available at https://www.sec.gov/rules/proposed/2019/34-87115.pdf.*

[1008] *See supra* note 982.

[1009] *See https://www.sec.gov/news/press-release/2020-212.*

[1010] In compliance with the amendments, in March 2021 OTC Markets announced that OTC equities without current public information would be moved off its Pink Sheets market place. *See https://blog.otcmarkets.com/2021/03/25/understanding-the-expert-market/.*

[1011] In 2018, the Commission estimated that 5,915 OTC securities were traded at some point during the year without having published quotations, and 3% of these securities had average daily trading volumes above $100,000. *See* SEC Release No. 34–87115, ''Publication or Submission of Quotations Without Specified Information'' Proposed Rule and Concept Release, *available at https://www.sec.gov/rules/proposed/2019/34-87115.pdf.*

[1012] *See supra* Section III.B.1.

[1013] *See* Tuttle, L.A. (2014). OTC trading: Description of non-ATS OTC trading in National Market System stocks. DERA White Paper.

[1014] *See* Market Data Infrastructure Final Rule, Release No. 90610 (Dec. 9, 2020), *available at https://www.sec.gov/rules/final/2020/34-90610.pdf.*

[1015] *See* Tuttle, L.A. (2014). OTC trading: Description of non-ATS OTC trading in National Market System stocks. DERA White Paper. A more recent study found that retail wholesalers accounted for 49.9 percent of off-exchange trading in Q3 2021. *See* Rosenblatt Securities, November 4, 2021, ''A Closer Look at Off Exchange and Retail Market Share.''

[1016] *See* Tuttle, L.A. (2014). OTC trading: Description of non-ATS OTC trading in National Market System stocks. DERA White Paper. Specifically, defining block trades as trades of 10,000 or more shares, block trades comprised only 0.10 percent of dark ATS trading while they comprise 2.53 percent of non-ATS OTC trading.

[1017] SDPs do not permit participants to post liquidity, but rather offer bilateral trading with the counterparty operating the venue. *See id.*

[1018] *See, e.g., https://www.ft.com/content/44841008-3cf7-11e4-a2ab-00144feabdc0.*

[1019] In the survey, market participants cited the expertise and consulting services offered by brokers as some of the benefits of using the phone to conduct ''high touch'' trades. *See https://www.greenwich.com/press-release/high-touch-execution-consulting-services-and-performance-driving-technologies-spell.*

exchange, which may include transactions executed via voice trading, are required to be reported to either FINRA's TRF (in the case of NMS stocks) or ORF (in the case of OTC or restricted equities) if at least one of the parties to the transaction is a FINRA member. As described above, trades in restricted equity securities are reported for regulatory purposes only and are not publicly disseminated.

f. Competition in the Market for Equity Trading Services

As discussed above, since Regulation NMS was adopted in 2005, the market for equity trading services has become more fragmented, with trading fragmented not only across exchanges, but across different trading systems (exchanges, ATSs, and non-ATS off-exchange trading venues). For instance, from 2005 to 2013, there was a decline in the market share of trading volume for exchange-listed stocks on NYSE.[1020] At the same time, there was an increase in the market share of newer national securities exchanges such as NYSE Arca, Cboe BYX, and Cboe BZX.[1021] This development increased competition in the market for trading services. Several academic studies have shown that an increase in competition between exchanges, or between exchanges and ATSs, improves market quality by reducing transactions costs and increasing liquidity.[1022]

Trading venues compete with each other along a number dimensions in order to attract order flow. For example, in addition to other ways, trading venues can compete via fees, rebates, speed, and trading protocols in order to attract order flow.[1023] However, the actual level of competition that any given trading venue faces may depend on multiple factors including the liquidity of a stock as well as the type of trading venue and market participant engaging in the trade. A market participant's preference for where to trade can depend on a number of factors, including, among other things, speed, anonymity, and price impact. The choice of trading venue may also be limited by regulatory restrictions on where certain equities may be traded and by whom, as quoting activities in some OTC stocks are restricted, and some investors are prohibited from trading in certain types of equities, such as restricted stocks.

6. Current State of Options Markets

There are currently 16 exchanges (''options exchanges'') and 1 ATS offering listed options trading services. During the month of October 2021, approximately 39 million options contracts, equating to approximately $21 billion in total premiums, were traded daily on exchanges.[1024] The market for listed options has been historically dominated by institutional investors;[1025] however, the market has seen a dramatic increase in retail investor participation in recent years.[1026]

a. Currently Regulated Trading Systems in the Market for Listed Options

The market for listed options trading services is dominated by registered exchanges. This dominance stems from the role of the Options Clearing Corporation (OCC), which is the sole entity clearing trades for exchange-listed options, security futures, and OTC options.[1027] Central clearing of listed options incentivizes the use of exchanges. Exchanges offer traders a centralized location to interact with other traders in the market. Exchanges compete with each other by offering different cost structures to participate on the exchange, and differing order types to allow customers advanced trading strategies. Largely due to regulation,[1028] options exchanges offer the ability to route orders to competing options exchanges in the event of a competing option exchange having the best price for a given options order. Thus, while there is competition amongst options exchanges for trading services, they are joined together in an integrated market system.

There is one ATS in the market for listed options. As the Commission understands, this ATS offers participants an RFQ protocol.[1029] A customer may accept the quote the ATS returns from the RFQ protocol. However, the orders are routed to an exchange for execution.

As described above, the ATS in the market for listed option trading services competes with exchanges by offering the potential of price improvement on orders, the ability to view market liquidity without submitting a firm order, and the ability to interact with multiple market makers, across multiple exchanges, simultaneously. It should be noted, however, that this competition is not direct; the ATS ultimately sends orders to exchanges, and thus could be seen as complementary to exchanges.

Options exchanges are subject to many of the same regulations as NMS Stock trading systems. Options exchanges are part of the NMS and are required to participate in many NMS plans. Options exchanges also are subject to Regulation SCI.

Similar to other security types, an ATS that trades in listed option securities must comply with Regulation ATS and broker-dealer filing and conduct obligations, including becoming a member of an SRO, such as FINRA. In addition, listed options fall within the definition of ''eligible securities'' under the CAT NMS Plan, and therefore any eligible events in listed options are reportable to CAT.[1030]

b. Communication Protocol Systems in the Market for Listed Options

As the Commission understands, there is currently 1 Communication Protocol System trading in listed options that may meet the definition of exchange under the proposed changes to Exchange Act Rule 3b–16.[1031] This Communication Protocol System operates in a similar fashion to the single ATS in the market for listed options described above in Section VIII.B.6.a. This system offers an RFQ protocol that allows a customer to request a quote for a specified option. The system then surveys market makers

[1020] *See* Securities Exchange Act Release No. 76474 (Nov. 18, 2015), 80 FR 80998, 81112 (Dec. 28, 2015) (Regulation of NMS Stock Alternative Trading Systems Proposing Release).

[1021] *See id.*

[1022] *See, e.g.,* Foucault, T., & Menkveld, A.J. (2008). Competition for order flow and smart order routing systems. The Journal of Finance, 63(1), 119–158; O'Hara, M., & Ye, M. (2011). Is market fragmentation harming market quality? Journal of Financial Economics, 100(3), 459–474.

[1023] *See, e.g.,* Cantillon, E., & Yin, P.L. (2011). Competition between exchanges: A research agenda. International journal of industrial organization, 29(3), 329–336; Budish, E., Lee, R.S., & Shim, J.J. (2019). A Theory of Stock Exchange Competition and Innovation: Will the Market Fix the Market? National Bureau of Economic Research.

[1024] *See* OCC Monthly & Weekly Volume Statistics, *available at https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.* These statistics were calculated by downloading the monthly files for ''Equity,'' ''Index,'' and ''ETF'' options for October 2021. The OCC combined value from each file was added together and divided by the trading days in October 2021 to generate these statistics.

[1025] *See* Bennett, Jay, John Colon, and John Feng. (2010). *FIA, available at https://secure.fia.org/files/css/magazinearticles/article-1446.pdf.*

[1026] *See* Thyagaraju Adinarayan, ''Retail trading fever drives U.S. equity option volumes to record monthly high'', Reuters, (2021, February 3). (Retrieved from Factiva database).

[1027] *See* ''What Is OCC?'' *The Options Clearing Corporation, available at https://www.theocc.com/Company-Information/What-Is-OCC.*

[1028] *See https://www.sec.gov/rules/final/34-43591.htm.*

[1029] *See* ''Liquidity Management Software For US Listed Options Market'', *DASH Financial, available at https://dashfinancial.com/execution-services/dash-ats/.*

[1030] *See* supra notes 974 to 979 and corresponding discussion.

[1031] *See* ''Request-for-Quote Options Trading'', *Tradeweb, available at https://www2.tradeweb.com/optionsweb.*

of options exchanges. The system returns the quotes to the customer, where the customer has the ability to accept one of the proposed trades. The trade is then executed on the option exchange. The Commission requests comment on the full role of Communication Protocol Systems in the market for listed options.

Communication Protocol Systems compete with options exchanges and ATSs for trading services. Similar to ATSs, Communication Protocol Systems in the market for listed options ultimately interact with exchanges in their trading operations; thus, the competition between Communication Protocol Systems and exchanges might be better characterized as a complementary relationship. As the Commission understands, competition between ATSs and Communication Protocol Systems in the market for listed options occurs primarily through the quality of their trading systems, cost structures, and speed of RFQ protocol completion.

Communication Protocol Systems in the market for listed options are not formally regulated by any regulatory authority. This lack of regulation puts listed option ATSs at a disadvantage compared to Communication Protocol Systems. The Commission believes that the participation of the OCC in centrally clearing options trades on exchanges is a major factor contributing to the decision of traders to trade on options exchanges compared to using Communication Protocol Systems and ATSs.

As in the market for equities, trading interest in listed options on Communication Protocol Systems may not be required to be reported to CAT, depending on the nature of the solicitation and/or response(s) as firm or non-firm.[1032]

7. Other Securities

a. Repurchase and Reverse Repurchase Agreements

The market for repurchase and reverse repurchase agreements[1033] plays a role both in the stability of the banking and financial system and in the transmission of U.S. monetary policy. Repurchase agreements account for between $4 trillion and $6 trillion in notional value trades daily.[1034] Moreover, reverse repurchase agreements have become an important tool of monetary policy. Specifically, the market for reverse repurchase agreements is used by banks to lend out excess reserves, while the market for repurchase agreements is used to borrow to meet reserve requirements.[1035]

The Commission estimates that there are currently 4 ATSs[1036] facilitating trades in repurchase and reverse repurchase agreements. Furthermore, the Commission estimates that 3 Communication Protocol Systems facilitate trading in repurchase and reverse repurchase agreements that may meet the definition of exchange under the proposed changes to Exchange Act Rule 3b–16.[1037] The Commission understands that these systems typically use U.S. Treasury securities as collateral for trades in repurchase and reverse repurchase agreements conducted on their systems. The Commission understands that RFQ systems for repurchase and reverse repurchase agreements are a relatively recent and rapidly growing phenomenon.[1038]

Repurchase and reverse repurchase agreement transactions usually involve collateral haircuts and counterparty risk inherent in the contract. Counterparty risk may give market participants an incentive to maintain balances across multiple liquidity providers to reduce exposure to a single liquidity provider. This incentive to maintain balances across multiple liquidity providers may be alleviated, at least partially, if trades in repurchase and reverse repurchase agreements with liquidity providers are centrally cleared as in triparty repo trades.[1039] The interest in maintaining balances across multiple liquidity provider in bilateral transactions has spurred the introduction and adoption of electronic RFQ platforms.[1040]

Under FINRA Rule 6730(e), repurchase and reverse repurchase agreement transactions involving TRACE-Eligible Securities are not reportable to TRACE.[1041] However, repurchase and reverse repurchase agreement holdings and transactions are currently subject to several other reporting requirements.[1042]

The Commission is unable to determine the full scope of the role

[1032] *See supra* notes 1005 and 1006 and corresponding discussion.

[1033] *See supra* Section III.A for a discussion of ''repos'' (repurchase agreements and reverse repurchase agreements on government securities). While U.S. Treasury Securities are frequently used as the underlying collateral of repurchase and reverse repurchase agreements, other securities may also be used, such as corporate bonds and stocks.

[1034] *See* Board of Governors of the Federal Reserve System (US), All Sectors; Federal Funds and Security Repurchase Agreements; Asset, Level [BOGZ1FL892050005Q], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/BOGZ1FL892050005Q,* December 2, 2021.

[1035] *See, e.g.,* Cheng, Jeffrey and David Wessel. ''What is the repo market, and why does it matter?'' (2020). *Brookings Institute, available at https://www.brookings.edu/blog/up-front/2020/01/28/what-is-the-repo-market-and-why-does-it-matter/.*

[1036] These ATSs are Current Government Securities ATSs. *See supra* note 5.

[1037] *See, e.g.,* ''Tradeweb Reports September 2021 Total Volume of $21.7 Trillion and Average Daily Volume of $1.02 Trillion,'' (2021). *Tradeweb, available at https://www.tradeweb.com/newsroom/media-center/news-releases/tradeweb-reports-september-2021-total-volume-of-$21.7-trillion-and-average-daily-volume-of-$1.02-trillion/;* CME Group. (2021, July 2). ''CME Group Reports Q2 and June 2021 Monthly Market Statistics,'' *CME Group, available at https://www.cmegroup.com/media-room/press-releases/2021/7/02/cme_group_reportsq2andjune2021monthlymarket statistics.html;* ''MarketAxess Announces Monthly Volume Statistics for September 2021,'' (2021). *MarketAxess, available at https://investor.marketaxess.com/news-releases/news-release-details/marketaxess-announces-monthly-volume-statistics-september-2021;* ''MarketAxess 3Q21: Stat Sheet,'' (2021), *MarketAxess, available at https://www.marketaxess.com/pdf/match-repo-stat-sheet.pdf;* ''GLMX Gains ATS and Broker-Dealer Status,'' (2018). *THETRADE, available at https://www.thetradenews.com/glmx-gains-ats-broker-dealer-status/.*

[1038] *See* ''Bloomberg launches electronic repo trading system,'' (2005), *Finextra, available at https://www.finextra.com/newsarticle/14580/bloomberg-launches-electronic-repo-trading-system.*

[1039] *See supra* note 521 defining triparty repos.

[1040] *See also* Trott, Tom, (2018), ''Electronic RFQ Repo Markets,'' *Tradeweb, available at https://www.tradeweb.com/newsroom/media-center/insights/commentary/electronic-rfq-repo-markets/* and Trott, Tom, (2018). ''Electronic RFQ Repo Markets: The Solution for Reporting Challenges and Laying the Building Blocks for Automation,'' *Tradeweb, available at https://www.tradeweb.com/4a6f74/globalassets/newsroom/media-center/insights/commentary/repo_-tradeweb.pdf.*

[1041] *See* ''6730. Transaction Reporting'', *FINRA, available at https://www.finra.org/rules-guidance/rulebooks/finra-rules/6730.*

[1042] *See https://www.financialresearch.gov/briefs/files/OFRbr-2015-03-repo-sec-lending.pdf.* The Treasury's Office of Financial Research (OFR) requires daily reporting by covered central counterparties of centrally cleared U.S. repurchase and reverse repurchase agreement transactions, which covers about half of the estimate U.S. market for repurchase and reverse repurchase agreements. *See* 84 FR 4975 (Feb. 20, 2019) (*https://www.federalregister.gov/documents/2019/02/20/2019-02639/ongoing-data-collection-of-centrally-cleared-transactions-in-the-us-repurchase-agreement-market*). OFR publishes daily aggregate data on rates and volumes of repurchase and reverse repurchase agreement transactions in each segment, by tenor or collateral. *See https://www.financialresearch.gov/data/us-repo-data/.* The Federal Reserve Bank of New York (FRBNY) reports daily demand, utilization, rates and participants of the Federal Reserve's Reverse Repo Facility. Primary dealers are subject to weekly reporting requirements by the Federal Reserve Bank of New York using Form FR2004, which describes the repurchase and reverse repurchase agreement positions, cumulative transactions, and outstanding financial arrangements and becomes publically available a day after reporting. FR2004 does not, however, include information on haircuts, rates, and counterparty exposures. Non-primary dealers are not required to submit FR2004, and consequently there is less available data on their bilateral transactions. U.S. chartered depository institutions and bank holding companies are required to report netted repurchase and reverse repurchase agreement positions on a quarterly basis, which becomes publically available. Much of the publically available data from regulatory agencies is consolidated and produced quarterly by the Federal Reserve Board in the form of the Financial Accounts of the United States (Z.1).

played by Communication Protocol Systems in the market for repurchase and reverse repurchase agreements because the Commission lacks data on the volume facilitated by these systems. The Commission requests comment on the full role of Communication Protocol Systems in this market.

b. Asset-Backed Securities

Asset-backed securities (ABS) are securities that are collateralized by an underlying pool of assets, usually constructed from bundled loans such as mortgages, leases, credit card balances, and student loans. A broad definition of asset-backed securities may include assets such as Collateralized Bond Obligations (CBO), Collateralized Debt Obligations (CDO), Collateralized Loan Obligations (CLO), and Non-Agency Commercial Mortgage Backed Securities (CMBS), along with non-agency mortgage-backed securities (MBS). The majority of holders of ABS are large institutional investors. Data from 2015 shows that asset managers are the largest holders of ABS, making up around 60 percent of buyers, followed by hedge funds (18 percent) and banks (10 percent).[1043]

The presence of large institutions in this market is also evident in looking at the secondary market trading data. In September 2021, average daily trading volume in the ABS market was around $8 billion. At the same time, there was only an average of 823 trades per day, reflecting that average trade sizes in this market are very large.[1044] Due to the complexity and heterogeneity of ABS products, liquidity in this market tends to be low. The majority of ABS never trade after issuance.[1045]

There is evidence that the size of the ABS market has shrunk since the 2008 financial crisis. Not only have new issues of ABS declined sharply after the financial crisis, but overall daily trading volume in secondary ABS markets fell by 16 percent between 2013 and 2017.[1046] The Commission understands that very little ABS trading takes place on ATSs. In September 2021, less than 0.1 percent of the average daily trading volume in ABS was reported to TRACE as having taken place on ATSs.[1047] The Commission estimates that there are currently 3 ATSs offering trading in ABS. Additionally, the Commission estimates that 1 ATS trades non-agency MBS securities.[1048]

As the data mentioned above shows, 99.9 percent of ABS trading volume takes place through trading methods other than ATSs, and some of this trading volume may take place using protocols that qualify as Communication Protocol Systems. The Commission estimates that there are 3 Communication Protocol Systems trading in ABS that may meet the definition of exchange under the proposed changes to Exchange Act Rule 3b–16. As in other fixed income markets, Communication Protocol Systems trading in ABS do not meet the current definition of an exchange and thus are not subject to the exchange regulatory framework. The Commission estimates that 1 Communication Protocol System trading in ABS is not currently operated by a registered broker-dealer. This system does not currently incur the costs of registering with the Commission as well as the costs of SRO membership, and is not subject to FINRA operational regulatory reporting requirements.

It is likely that the vast majority of trading in ABS still takes place via bilateral voice trading. Industry participants have pointed out that the complexity of this market makes it more likely that traders want discussions with and access to individualized guidance from dealers and analysts in deciding whether to trade, which can be difficult to achieve on more automated electronic platforms.[1049]

Since 2011, FINRA has required FINRA members to report transaction prices and quantities in ABS to TRACE.[1050] In 2015, FINRA began publishing post-trade price information for ABS, which is available to the public no later than 15 minutes after the trade is executed.[1051]

C. Economic Effects and Effects on Efficiency, Competition, and Capital Formation

The Commission has considered the economic effects of the proposed amendments to Exchange Act Rule 3b–16, Regulation ATS, and Regulation SCI.

The Commission recognizes that under the proposed amendments, a bank-operated Currently Exempted Government Securities ATS or Communication Protocol System could choose to register as an exchange rather than choose to comply with the Regulation ATS exemption, which includes registering as a broker-dealer.[1052] A bank-operated Currently Exempted Government Securities ATS or Communication Protocol System that chooses to register as an exchange would be an SRO and subject to the requirements under Section 6 of the Exchange Act.[1053] The Commission preliminarily believes that registering as a national securities exchange would enhance regulatory oversight, market surveillance, and investor protection.[1054] Registering as an exchange would also result in costs associated with applying to register as a national securities exchange and complying with the requirements under Section 6(b) of the Exchange Act, such as the requirement to be so organized and have the capacity to carry out the

[1043] *See https://www.greenwich.com/fixed-income-fx-cmds/understanding-us-fixed-income-market.*

[1044] *See https://www.finra.org/finra-data/browse-catalog/trace-volume-reports/trace-monthly-volume-files.* We include trading data for Asset Backed Securities (''ABS'') and Collateralized Bond Obligations (CBO), Collateralized Debt Obligations (CDO), Collateralized Loan Obligations (CLO), and Non-Agency Commercial Mortgage Backed Securities (CMBS). *See https://www.finra.org/finra-data/browse-catalog/trace-volume-reports/about-trace-monthly-volume-reports* for definitions.

[1045] *See* Bessembinder, H., Maxwell, W.F., & Venkataraman, K. (2013). Trading activity and transaction costs in structured credit products. Financial Analysts Journal, 69(6), 55–67.

[1046] *See* He, A., & Mizrach, B. (2017). Analysis of securitized asset liquidity. Research Note, FINRA Office of the Chief Economist.

[1047] *See https://www.finra.org/finra-data/browse-catalog/trace-volume-reports/trace-monthly-volume-files.*

[1048] Note that Form ATS doesn't have a specific category for ABS. The number of ATSs trading in ABS is estimated from a combination of the number of ATSs that report Form ATS–R volume for ''Other Debt Securities,'' which could include asset-backed securities, and TRACE MPIDs with ABS-related volumes and ATS flags.

[1049] *See* ''ABS East 2014: Securitization Shrugs off Electronic Trading,'' (2014). *American Banker, available at https://asreport.americanbanker.com/news/abs-east-2014-securitization-shrugs-off-electronic-trading.*

[1050] *See* FINRA Rule 6730(a)(1) requiring FINRA members to report transactions in TRACE-Eligible Securities, which FINRA Rule 6710 defines to include asset-backed securities. For each transaction in asset-backed securities, a FINRA member would be required to report the CUSIP number or similar numeric identifier or FINRA symbol; size (volume) of the transaction; price of the transaction (or elements necessary to calculate price); symbol indicating whether transaction is a buy or sell; date of trade execution (''as/of'' trades only); contra-party's identifier; capacity (principal or agent); time of execution; reporting side executing broker as ''give-up'' (if any); contra side introducing broker (in case of ''give-up'' trade); the commission (total dollar amount), if applicable; date of settlement; if the member is reporting a transaction that occurred on an ATS pursuant to FINRA Rule 6732, the ATS's separate Market Participant Identifier (''MPID''); and trade modifiers as required. *See* FINRA Rule 6730(c).

[1051] *See https://www.finra.org/media-center/news-releases/2015/finra-brings-transparency-asset-backed-securities-market.*

[1052] As proposed, Currently Exempted Government Securities ATSs that are operated by banks would be required to structure their business to either comply with Regulation ATS or register as a national securities exchange. *See supra* footnote 261. The Commission also expects Currently Exempted Government Securities ATSs currently registered as broker-dealers will continue to operate as broker-dealers under the proposal rather than register as a national securities exchange.

[1053] *See supra* Section II.A.

[1054] *See* Regulation ATS Adopting Release at 70903–07 for a discussion of benefits and costs for registering as a national securities exchange.

purposes of the Exchange Act and enforce member compliance with Federal securities laws and the rules of the exchange.[1055] However, the Commission expects that many Communication Protocol Systems would not elect to register as an exchange but instead would register as a broker-dealer and comply with Regulation ATS because the regulatory costs associated with registering and operating as an exchange would be higher than those associated with registering as a broker-dealer and complying with Regulation ATS.[1056] Similarly, the Commission preliminarily believes that a bank-operated Currently Exempted Government Securities ATS would also choose to structure its business to comply with the relatively lighter regulatory requirements of Regulation ATS.

The Commission has attempted, where possible, to quantify the benefits and costs anticipated to result from the amendments to Exchange Act Rule 3b–16, Regulation ATS, and Regulation SCI. However, as explained in more detail below, because the Commission does not have, and in certain cases does not believe it can reasonably obtain data to inform the Commission on certain economic effects, the Commission is unable to quantify certain economic effects. Further, even in cases where the Commission has some data, it might not be practicable to perform a quantitative analysis due to the number and type of assumptions necessary to quantify certain economic effects, which would likely render any such quantification unreliable. Therefore, certain parts of the discussion below are qualitative in nature and focus on the direction of the various effects of the amendments. The inability to quantify certain benefits and costs, however, does not mean that the overall benefits and costs of the proposed amendments are insignificant.

1. Benefits

The Commission has considered the benefits of the proposed amendments to Exchange Act Rule 3b–16, Regulation ATS, and Regulation SCI.

a. Enhancement of Regulatory Oversight and Investor Protection

The proposed amendments to Exchange Act Rule 3b–16, which would include Communication Protocol Systems within the definition of exchange, along with the proposed amendments to remove the exemption from compliance with Regulation ATS for Currently Exempted Government Securities ATSs and apply the enhanced disclosure and filing requirements of Rule 304 to all Government Securities ATSs would enhance regulatory oversight and investor protection.[1057]

The proposed amendments would enhance regulatory oversight and investor protection and help facilitate market surveillance by extending the broker-dealer registration requirement of Regulation ATS to Currently Exempted Government Securities ATSs that are operated by banks (*i.e.,* bank-operated Currently Exempted Government Securities ATSs) and Communication Protocol Systems that are not operated by registered broker-dealers (*i.e.,* non-broker-dealer-operated Communication Protocol Systems).[1058] Registering as a broker-dealer would require, among other things, the filing of Form BD and SRO membership. Such requirements would allow the Commission and an SRO to examine bank-operated Currently Exempted Government Securities ATSs and non-broker-dealer-operated Communication Protocol Systems for compliance with Federal securities laws.[1059] Furthermore, upon registering as broker-dealers and becoming members of an SRO, these Currently Exempted Government Securities ATSs and Communication Protocol Systems would be required to report certain transactions to an SRO for public dissemination, which would help facilitate market surveillance by the SRO.[1060]

The magnitude of benefits from this increase in transaction transparency depends on the portion of transactions executed by bank-operated Currently Exempted Government Securities ATSs and non-broker-dealer-operated Communication Protocol Systems. However, these platforms are not subject to transaction reporting obligations, and thus, the Commission cannot estimate the magnitude of this benefit because the Commission does not have data on transactions executed by the estimated 1 bank-operated Currently Exempted Government Securities ATS and 9 non-broker-dealer-operated Communication Protocol Systems.[1061]

[1055] *See generally supra* Section II.D.1 (discussing the national securities exchange registration requirements under Sections 6 of the Exchange Act).

[1056] *See supra* Section II.B.3.

[1057] The proposed amendments would enhance regulatory oversight and investor protection by requiring: Non-broker-dealer-operated Communication Protocol Systems and bank-operated Currently Exempted Government Securities ATSs to register as a broker-dealers; Communication Protocol Systems and Currently Exempted Government Securities ATSs to safeguard subscribers' confidential trading information; Communication Protocol Systems and Currently Exempted Government Securities ATSs to comply with recordkeeping and reporting requirements; Communication Protocol Systems that are not Government Securities ATSs nor NMS Stock ATSs to file Form ATS; and Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs to file Form ATS–N. One commenter on the 2020 Proposal stated that removing the exemption for Currently Exempted Government Securities ATSs would significantly improve market transparency and resiliency, and that requirements to provide transparency to market participants regarding key aspects of the platform, and comply with fair access requirements would promote market integrity and help to ensure that multilateral U.S. Treasury trading venues are subject to appropriate regulatory oversight. *See* Citadel Letter at 1. Another commenter stated that the extension of Regulation ATS to include Currently Exempted Government Securities ATSs would help foster investor protection and market integrity. *See* FINRA Letter at 2.

[1058] Non-broker-dealer-operated Communication Protocol Systems without a broker-dealer affiliate would be required to register as broker-dealers with the Commission and become members of an SRO under the proposed Rule 301(b)(1). Proposed Rule 301(b)(1) would enhance regulatory oversight over the estimated 1 bank-operated Currently Exempted Government Securities ATS and 9 non-broker-dealer-operated Communication Protocol Systems (6 non-broker-dealer-operated Communication Protocol Systems without a broker-dealer affiliate and 3 non-broker-dealer-operated Communication Protocol Systems with a broker-dealer affiliate). *See also* Section VIII.C.2.a.ii for a discussion about a bank-operated Currently Exempted Government Securities ATS and non-broker-dealer-operated Communication Protocol Systems with a broker-dealer affiliate adopting a registered affiliate structure to comply with the proposed Rule 301(b)(1).

[1059] The broker-dealer registration would enable the Commission to examine the trading operations of registered broker-dealer operators and FINRA to examine its members and markets that its members operate. *See also supra* Section II.D.2.

[1060] FINRA Rule 6730(a)(1) would require its members to report transactions of certain securities to FINRA. *See* FINRA Rule 6730(a)(1) requiring FINRA members to report transactions in TRACE-Eligible Securities, which FINRA Rule 6710 defines to include any debt security that is U.S. dollar-denominated and is: Issued by a U.S. or foreign private issuer, and, if a restricted security, sold pursuant to Securities Act Rule 144A; issued or guaranteed by an Agency or a Government-Sponsored Enterprise; or a U.S. Treasury Security. Debt securities issued by foreign sovereigns and Money Market Instruments are explicitly excluded. Note that, under FINRA Rule 6730(e), repurchase and reverse repurchase transactions involving TRACE-Eligible Securities are not reportable to TRACE. *See also* MSRB Rule G–14 requiring brokers, dealers and municipal securities dealers (''dealers'') to report transactions in municipal securities. *See supra* note 829 describing exemptions for ATS transaction reporting to TRACE and *supra* note 926 describing exemptions for transaction reporting to MSRB's RTRS. Trades in restricted equities effected under Securities Act Rule 144A that are transacted elsewhere than on an exchange are required to be reported to FINRA's OTC Reporting Facility (ORF) if at least one of the parties to the transaction is a FINRA member. *See supra* note 988.

[1061] The Commission estimates that there is currently 1 non-broker-dealer-operated Communication Protocol System trading in government and agency securities, corporate and municipal debt securities, and ABS/MBS. The Commission also estimates that there are 5 additional non-broker-dealer-operated Communication Protocol Systems trading in corporate debt securities, 2 trading in restricted equities, and 1 trading in repos. One commenter on the 2020 Proposal stated that, even if benefits from

Furthermore, the proposed requirements with respect to safeguarding subscribers' confidential trading information would enhance investor protection by helping to prevent Currently Exempted Government Securities ATSs and Communication Protocol Systems from potentially abusing such information. The requirements to establish written safeguards and procedures to protect subscribers' confidential trading information and to separate ATS functions from other broker-dealer functions for Currently Exempted Government Securities ATSs and Communication Protocol Systems would reduce the chance that a subscriber's confidential information is accessed or shared inappropriately.[1062] While the Commission lacks information on the extent to which the confidential trading information of subscribers to Currently Exempted Government Securities ATSs and Communication Protocol Systems is currently accessed or shared inappropriately,[1063] the requirements would promote the protection of confidential information even if such information is not being inappropriately accessed or shared.

Moreover, the proposed amendment to apply the recordkeeping [1064] and reporting requirements [1065] of Regulation ATS to Currently Exempted Government Securities ATSs and Communication Protocol Systems would help improve regulatory oversight because the requirements to keep and preserve records of customer trading interest and transactions would create an audit trail of trading activities on these systems.[1066] This information would allow the Commission to better monitor the types of investors that trade on these systems, help the Commission understand the role these systems play in their respective securities markets, and improve the ability of the Commission or an SRO to detect and investigate potential irregularities that might occur in markets in which these systems operate.

By requiring Currently Exempted Government Securities ATSs and Communication Protocol Systems to provide certain information on Form ATS–R, such as a list of all securities traded and all subscribers that were participants on the ATS during a reporting quarter, the Commission would be able to better monitor the trading on ATSs and evaluate for compliance with the Federal securities laws including Fair Access Rule and Regulation SCI, if applicable. The information collected on Form ATS–R regarding fair access grants, denials, and limitations of access to ATSs along with the proposed amendment to ask the ATS to indicate whether it was subject to the Fair Access Rule during any portion of the period covered by the report would help the Commission oversee those ATSs to evaluate for compliance with the Fair Access Rule. Furthermore, requiring information with respect to repurchase and reverse repurchase transactions on Form ATS–R would help the Commission identify and monitor important ATSs in the market for repurchase and reverse repurchase agreements.

The proposed amendments to require Government Securities ATSs [1067] and Communication Protocol Systems that are NMS Stock ATSs [1068] to file Form ATS–N would help facilitate the Commission's regulatory oversight and enhance investor protection. Under the proposed amendments, Current Government Securities ATSs would file Form ATS–N in lieu of Form ATS for their government securities trading operations. In addition, under the proposed amendments, Currently Exempted Government Securities ATSs and Communication Protocol Systems that are either Government Securities ATSs or NMS Stock ATSs would be required to file Form ATS–N. Information reported on Form ATS–N would provide the Commission with increased and better quality information on Current Government Securities ATSs and improve the effectiveness and efficiency of the examination process of Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs by facilitating the Commission and the ATS SRO's ability to better examine for compliance with the Federal securities laws.

Furthermore, the Commission's review process to declare Form ATS–N ineffective that is set forth in the proposed amendments would help ensure the quality of information disclosed in Form ATS–N. One commenter on the 2020 Proposal stated that market participants are incentivized to make disclosures that are robust, readable and sufficient because of the competitive forces and the variety of regulatory tools the Commission and other regulators have at their disposal to police the quality and content of statements made on the previously proposed Form ATS–G.[1069] While competitive forces would likely incentivize Government Securities ATSs to make robust, readable and sufficient disclosures, the Commission preliminarily believes that extending the ability for the Commission to be able to declare a Government Securities ATS's Form ATS–N or Form ATS–N amendment ineffective would improve the quality of information disclosed by these ATSs as compared to the information currently filed on Form ATS by Current Government Securities ATSs, which is not subject to the Commission's review and effectiveness process. The Commission's recent experience with Form ATS–N for NMS Stock ATSs informs this belief. Since February 2019, the Commission has reviewed initial Form ATS–N filings and amendments thereto and engaged in direct conversation with all NMS Stock

expanding Regulation ATS to bank-operated Currently Exempted Government Securities ATSs are limited by the Commission's estimate that there is only one bank-operated Currently Exempted Government Securities ATS today, the Proposal will also help maintain and promote the integrity of the Treasuries audit trail in the future to the extent it limits the opportunity for trades to be done on non-broker-dealer ATSs to avoid inclusion in the TRACE audit trail. *See* FINRA Letter at 4.

[1062] One commenter on the 2020 Proposal stated that requiring Currently Exempted Government Securities ATSs to adopt written safeguards and written procedures to protect subscribers' confidential trading information and to separate ATS functions from other broker-dealer functions can help protect the integrity of a subscriber's confidential trading information that could otherwise be at risk of unauthorized disclosure and subject to potential misuse, and that such safeguards and practices also can help prevent the sharing of confidential subscriber trading information by ATSs with other customers or having the operator of the ATS use the confidential trading information of other subscribers to advantage its own trading on the ATS. *See* MFA Letter at 3.

[1063] Although the Commission currently lacks this information, we describe above a potential scenario where the confidential trading information of a subscriber could be impermissibly shared with the personnel of the broker-dealer operator or any of its affiliates, and the broker-dealer operator, in turn, could potentially abuse that relationship to provide itself or its affiliates with a direct competitive advantage over that subscriber. *See supra* Section VIII.B.2.a.ii.

[1064] *See supra* Section II.D.2 for a discussion about the requirements of Rule 302 and 303.

[1065] Rule 301(b)(9) would require filing of Form ATS–R.

[1066] One commenter on the 2020 Proposal stated that requiring currently exempted Government Securities ATSs to comply with the recordkeeping and reporting requirements of Regulation ATS and requiring such ATSs to file a confidential Form ATS–R with the Commission would improve the Commission's ability to monitor currently exempted Government Securities ATSs and improve its oversight of the market for government securities execution services overall. *See* MFA Letter 3.

[1067] Government Securities ATSs would include Currently Exempted Government Securities ATSs, Current Government Securities ATSs, and Communication Protocol Systems that trade government securities.

[1068] The filing of Form ATS–N would be a new requirement for Government Securities ATSs. Currently, NMS Stock ATSs are required to file Form ATS–N. *See* NMS Stock ATS Adopting Release, *supra* note 2.

[1069] *See* SIFMA Letter at 4.

ATSs about their Form ATS–N filings. The Commission believes that this review process has helped ensure that such disclosures are complete and comprehensible. Many NMS Stock ATSs have opted to seek the Commission staff's input about pending material amendments prior to filing, which has contributed to clearer and more effective disclosures. When new NMS Stock ATSs seek to begin operations, the initial Form ATS–N provides the Commission with detailed information about how the ATS will operate. With this knowledge, the Commission is better able to monitor for compliance and evaluate how NMS Stock ATSs as a group are evolving. Requiring Communication Protocol Systems that are not NMS Stock ATSs nor Government Securities ATSs to file confidential Form ATS would improve the Commission oversight of those Communication Protocol Systems and promote investor protection. The information regarding the manner of operation, the procedures governing execution, reporting, clearance, and settlement of transactions, types of securities traded, and subscriber information disclosed in Form ATS would help the Commission monitor securities markets for which Communication Protocol Systems provide trading services, and oversee the compliance with Federal securities laws. These benefits from requiring Form ATS, while similar in kind, would be smaller in magnitude compared to the benefits from requiring Form ATS–N because of the differences between the information disclosed in Form ATS and Form ATS–N.[1070]

b. Reduction of Trading Costs and Improvements to Execution Quality

The proposed amendments would help enhance operational transparency, reduce trading costs, and improve execution quality for market participants [1071] by requiring public disclosure of Form ATS–N and applying the Fair Access Rule to certain ATSs. The public disclosure of Form ATS–N for Government Securities ATSs and Communication Protocol Systems that trade NMS stocks would also help enhance operational transparency, and thus, reduce search costs and trading costs for market participants.[1072] The reduced search costs and trading costs would result in better execution quality for market participants. Specifically, based on Commission staff's experience with its review of initial Form ATS–N filings for NMS Stock ATSs, Form ATS–N would result in more standardized public information about Government Securities ATSs and Communication Protocol Systems that trade NMS stocks including how trading interests are handled, fee structures, the ATS's interaction with related markets, liquidity providers, activities the ATS undertakes to surveil and monitor its market, and any potential conflicts of interest that might arise from the activities of the broker-dealer operator or its affiliates. As a result, search costs for market participants would be lower because consistent disclosure requirements for all Government Securities ATSs and NMS Stock ATSs, including Communication Protocol Systems, would facilitate market participants' comparison of Government Securities ATSs and NMS Stock ATSs when deciding which venue best suits their trading objectives. In addition, based on the Commission's experience, fees can be a primary factor for market participants in deciding where to send their orders.[1073] Fee disclosures on Form ATS–N and requiring consistent and timely fee amendments on Form ATS–N would help market participants compare and analyze the fee structures and fee ranges across Government Securities ATSs and NMS Stock ATSs in an expedited manner and decide which ATS offers them the best pricing according to the characteristics of their order flow and the type of participant they are, which would lower their search costs and hence trading costs.

Furthermore, the proposed requirement that Government Securities ATSs [1074] and Communication Protocol Systems that trade NMS stocks file Form ATS–N subject to the Commission's review and effectiveness process would help ensure the quality of information disclosed in Form ATS–N with attendant benefits to market participants who utilize Form ATS–N, including helping market participants select a trading venue that best suits their trading objectives.[1075]

With regard to the Commission's proposal to require Government Securities ATSs and NMS Stock ATSs to file fee amendments with respect to fee changes, under the current filing requirements of Form ATS–N, there could be a considerable lapse of time from the actual fee change to the public disclosure of the fee change on Form ATS–N if an NMS Stock ATS files a fee change as an updating amendment.[1076] If there is such delay in the public disclosure of fee changes on Form ATS–N, requiring NMS Stock ATSs to file a fee amendment no later than the date it makes a change to a fee or fee disclosure would result in more timely public disclosure of fee changes for NMS Stock ATSs. Because the fee is an important factors in the selection of trading venues, the proposed fee amendment on Form ATS–N would allow market participants to use more up-to-date fee information in the selection of trading venues, which could lower trading costs for market participants.

However, the Commission is unable to quantify these benefits to market participants because the Commission lacks data on the amount of information that is currently available to different market participants regarding the operations of Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs operations and the activities of their broker-dealer operators and their affiliates. The magnitude of the anticipated benefits discussed above

[1070] Form ATS–N requires detailed disclosure about the manner of operations of ATSs, including display, execution and priority procedures, order segmentation, counterparty selection, fair access, eligibility of services, fees, and suspension of trading. *See* NMS Stock ATS Adopting Release, *supra* note 2.

[1071] Market participants would include prospective subscribers of Government Securities ATSs and Communication Protocol Systems that trade NMS stocks. For example, prospective subscribers would benefit from the public disclosure of Form ATS–N in their selection of trading venues.

[1072] One commenter on the 2020 Proposal stated that it agrees with the Commission that the proposed public disclosure of the operational aspects of Government Securities ATSs could improve investors' ability to select trading venues and lower trading costs. *See* FINRA Letter at 2. Another commenter stated that increasing accessibility to and standardizing information regarding the operations and activities of fixed income trading venues benefits investors by helping them make more informed decisions about where to send their orders. *See* MFA Letter at 9. A third commenter stated that more operational transparency would aid investors in conducting analysis of executions, and that transparency regarding pricing, market activity and market quality promotes healthy competition in the market place, supports fair and equitable access to potential participants and offers investor protection. *See* SIFMA Letter at 1 and 2.

[1073] As discussed above, market participants may select trading venues based on factors other than fees. For example, investors interested in effecting transactions in U.S. Treasury Securities and corporate debt securities simultaneously may find information regarding a trading venue's interaction with related markets on Form ATS–N useful in the selection of trading venue.

[1074] Government Securities ATSs would include Currently Exempted Government Securities ATSs, Current Government Securities ATSs, and Communication Protocol Systems that trade government securities.

[1075] For more discussion on the impact of the effective process on the quality of Form ATS–N disclosures, *see supra* Section VIII.C.1.a.

[1076] In the Commission staff's experience reviewing Form ATS–N amendments, some NMS Stock ATSs have filed updating amendments no later than 30 days from the end of the calendar quarter in which the ATS implemented the fee change. *See also supra* Section IV.A.

would also depend on a number of factors, including the extent to which market participants would change their behavior as a result of receiving the public disclosure of more comprehensive, comparable, and uniform information of this type in Form ATS–N. It is inherently difficult to predict how different market participants would use the information contained in Form ATS–N in evaluating and choosing the Government Securities ATSs and NMS Stock ATSs that best serve their trading objectives.

The Commission believes that applying the Fair Access Rule to Government Securities ATSs, which would require the establishment and objective application of fair access standards, would increase trading venue options available to market participants who are currently excluded. To the extent that there are market participants that wish to trade on significant Government Securities ATSs but are currently excluded from doing so, applying the Fair Access Rule to Government Securities ATSs would lower their trading costs.[1077] As discussed in Section VIII.B.2.a.ii, market forces alone may not be sufficient to prevent a significant Government Securities ATS from unreasonably denying access to some market participants.[1078] Under the proposed amendments, if a Government Securities ATS meets certain aggregate volume thresholds,[1079] the ATS would be required to establish and apply reasonable written standards for granting, limiting, and denying access to subscribers and applicants.[1080] As a result, for example, there would be a mechanism to prevent a Government Securities ATS that met the aggregate volume thresholds [1081] from unreasonably denying access to one institutional investor while granting access to another similarly-situated institutional investor.[1082]

Significant ATSs that trade NMS stocks, non-NMS stock equity securities, corporate debt securities, or municipal securities are subject to the Fair Access Rule of Regulation ATS.[1083] However, Communication Protocol Systems and passive systems that trade NMS stocks are currently not subject to the Fair Access Rule, but would be under the proposed amendments.[1084] Applying the Fair Access Rule to those significant Communication Protocol Systems would generate the benefits discussed above for market participants in the markets for corporate debt securities, municipal securities, and non-NMS stocks. Additionally, the proposed amendments would help ensure that the benefits of the Fair Access Rule would also apply if a Communication Protocol System or passive system reached significant size and met the aggregate volume thresholds in the future.

To the extent that there are market participants currently excluded from trading on significant ATSs, the proposed amendments to aggregate volume across affiliated ATSs in calculating certain volume thresholds under the Fair Access Rule would increase the number of smaller affiliate ATSs available to market participants who are currently excluded, which would lower their trading costs for them. The proposed amendments to apply certain aggregate volume thresholds would increase the number of smaller affiliate ATSs that would be subject to the Fair Access Rule. Smaller affiliate ATSs that would not have met the current volume thresholds individually would be subject to the Fair Access Rule if they meet the proposed aggregate volume thresholds. The Commission estimates that no current smaller affiliate ATS that trades NMS stocks, non-NMS stock equity securities, corporate debt securities, or municipal securities and does not already currently meet the Fair Access volume thresholds would meet the volume thresholds if volume is aggregated across affiliated ATSs.[1085]

c. Enhancement of Price Discovery and Liquidity

Applying broker-dealer registration requirements of Regulation ATS, Regulation SCI, and the Capacity, Integrity, and Security Rule (*i.e.,* Rule 301(b)(6) of Regulation ATS) under the proposed amendments would help enhance the price discovery process and liquidity in securities markets.[1086]

The proposed broker-dealer registration requirements of Regulation ATS, including SRO membership requirements, for bank-operated Currently Exempted Government Securities ATSs and non-broker-dealer-operated Communication Protocol Systems would enhance the price discovery process in securities markets. As discussed in Section II.B.3, upon registering as broker-dealers and becoming members of an SRO, bank-operated Currently Exempted Government Securities ATSs and non-broker-dealer-operated Communication Protocol Systems would be required to report certain transactions to an SRO for

[1077] The Commission estimates 8 Government Securities ATSs would be subject to the Fair Access Rule. One commenter on the 2020 Proposal stated that registered investment companies generally are not able to directly access liquidity on most Treasury interdealer platforms. *See* ICI Letter at 4. Other commenters stated that applying the Fair Access Rule to Government Securities ATSs would ensure that market participants are not unreasonably denied access from important sources of liquidity for a particular security (*see* SIFMA Letter at 5) and would ensure that qualified market participants have access to the U.S. Government Securities market (*see* FIA PTG Letter at 2). Another commenter stated that including the trading of U.S. Treasury Securities and Agency Securities in the Fair Access Rule can prevent discriminatory actions that would otherwise result in higher trading costs for investors and the reduction in trading efficiency. *See* MFA Letter at 4.

[1078] *See also supra* note 833 and accompanying text.

[1079] The proposed Fair Access threshold for U.S. Treasury Securities is 3 percent or more of the average weekly dollar volume traded in the United States. The proposed Fair Access threshold for Agency Securities is 5 percent or more of the average daily dollar volume traded in the United States. The Fair Access threshold for NMS stocks and equity securities are 5 percent or more of the average daily share volume in an individual security. The Fair Access threshold for corporate debt and municipal securities is 5 percent or more of the average daily dollar volume. *See supra* Section III.B.4 for a discussion about the volume thresholds for government securities in applying the Fair Access Rule. *See also supra* Section V.A.2 for a discussion about the aggregation of volume threshold.

[1080] *See supra* Section V.A.3.

[1081] *See supra* Section III.B.4 for discussion about volume thresholds.

[1082] One commenter on the 2020 Proposal stated that applying fair access requirements to Government Securities ATSs would enhance the ability of funds to onboard and participate on these platforms directly, and that the fair access to these additional pools of liquidity would benefit fund shareholders. *See* ICI Letter at 4.

[1083] The Commission estimates 2 Communication Protocol Systems that trade corporate debt securities and 1 Communication Protocol System that trades municipal securities would be subject to the Fair Access Rule. Furthermore, the Commission estimates that 3 Communication Protocol Systems that trade non-NMS stock equity securities would be subject to the Fair Access Rule, but that no Communication Protocol System and no passive system that trades NMS stocks would be subject to the Fair Access Rule.

[1084] Communication Protocol Systems would be subject to Rule 3b–16 and Regulation ATS. *See supra* Section II.D. The exemption for passive systems under Rule 301(b)(5)(iii) of Regulation ATS would be removed. *See supra* Section V.A.5.

[1085] This estimate is computed using the regulatory version of FINRA's Trade Reporting Facility data and NYSE's TAQ data (accessed via WRDS). *See supra* note 1079 for details on the Fair Access thresholds. *See supra* note 310 for the application of the Fair Access Rule on the trading of NMS stocks, non-NMS stock equity securities, municipal securities, and corporate debt securities. *See also supra* Section V.A.2 for a discussion about the aggregation of volume threshold.

[1086] The proposed amendments would help enhance the price discovery process and liquidity in securities markets through: Applying the broker-dealer registration requirements of Regulation ATS to bank-operated Currently Exempted Government Securities ATSs and non-broker-dealer-operated Communication Protocol Systems; applying Regulation SCI to Government Securities ATSs that meet certain volume thresholds; applying Rule 301(b)(6) to significant Communication Protocol Systems that trade corporate debt securities or municipal securities; and applying Regulation SCI to significant Communication Protocol Systems that trade NMS stocks and non-NMS stock equity securities.

public dissemination, which would help enhance price discovery by providing the market with better post-trade price transparency in the government securities market and other securities markets in which the Communication Protocol Systems provide trading services.[1087]

The Commission believes that applying the proposed requirements of Regulation SCI to Government Securities ATSs that meet certain volume thresholds would help prevent systems issues from occurring and reduce their severity when they do occur, and thus, limit interruptions to the price discovery process and liquidity flow in the government securities market.[1088] As discussed in Section VIII.B.2.a.ii, market forces alone may not be sufficient to induce significant Government Securities ATSs to establish standards that would help significantly reduce systems issues.[1089] A systems outage at a significant Government Securities ATS would not only disrupt price discovery[1090] and liquidity flow, but also would reduce trading venue options resulting in higher trading costs for market participants.

The Commission recognizes that one Government Securities ATS is operated by a broker-dealer operator of an NMS Stock ATS that is a SCI entity, and therefore, might already have modified some of the policies and procedures of Regulation SCI as needed for systems related to trading of U.S. Treasury Securities and Agency Securities.[1091] However, imposing the requirements of Regulation SCI on this ATS's systems related to trading of U.S. Treasury Securities and Agency Securities would further strengthen these policies and procedures, which would help improve the robustness of SCI systems and SCI indirect systems.

Furthermore, extending Regulation SCI to significant Government Securities ATSs would help prevent disruptions in trading of linked fixed income securities, such as corporate debt securities, and thus, enhance the price discovery process and liquidity in those fixed income securities markets. U.S. Treasury Securities are used as a hedging instrument for hedging interest rate risk. The Commission understands that investors trading corporate debt securities simultaneously trade U.S. Treasury Securities in the direction that offsets the interest rate risk from the corporate debt securities trades. Systems issues at significant Government Securities ATSs would disrupt these hedging activities that use U.S. Treasury Securities, which in turn, would disrupt and the price discovery process and liquidity flow in corporate debt securities.

One commenter on the 2020 Proposal stated that it did not support applying Regulation SCI to Government Securities ATSs because trading venues for government securities are not interconnected.[1092] This commenter stated that unlike the equities markets, where linkages among venues under Regulation NMS can cause systems issues at a single ATS with a relatively more modest trading volume to present issues for the broader market, the government securities market has no similar linkages among venues.[1093] Other commenters on the 2020 Proposal expressed the view that application of Regulation SCI is appropriate.[1094]

The Commission believes that a system outage at a significant Government Securities ATS could disrupt trading at another significant Government Securities ATS even if these Government Securities ATSs are not connected. For example, if a significant Government Securities ATS is experiencing a system outage, there could be a sudden surge in message traffic (*e.g.,* quoting activities) and trading at other significant Government Securities ATSs. If a sudden surge in message traffic and trading exceeds the system capacity of the Government Securities ATS, this could result in systems issues and disrupt trading at the ATS. The requirements of Regulation SCI, including the requirements with respect to capacity planning, would help prevent such systems issues at significant Government Securities ATSs and enhance the price discovery process and liquidity in the government securities market.

NMS Stock ATSs that meet certain volume thresholds are subject to the requirements of Regulation SCI for SCI ATS.[1095] Subjecting significant Communication Protocol Systems that are NMS Stock ATSs to Regulation SCI would likely generate the benefits discussed in the Regulation SCI Adopting Release.[1096]

Significant ATSs that trade corporate debt securities or municipal securities are subject to Rule 301(b)(6).[1097] The application of Rule 301(b)(6) to significant Communication Protocol Systems that trade corporate debt securities or municipal securities would help reduce disruptions in the price discovery process of corporate debt

[1087] FINRA members are subject to transaction reporting obligation under FINRA Rule 6730, while municipal bond dealers are subject to transaction reporting obligations under MSRB Rule G–14. *See supra* note 1060, discussing transaction reporting requirements for fixed income securities and *supra* note 1061, describing the non-broker-dealer-operated Communication Protocol Systems that are not currently subject to reporting requirements. As discussed in *supra* Section VIII.C.1.a, the Commission is unable to estimate the magnitude of this benefit because the Commission lacks the necessary data. Except for government securities, reported transactions in all other TRACE-Eligible Securities (which includes Agency securities, corporate debt securities, and ABS) are publically disseminated via FINRA TRACE. FINRA disseminates weekly summary of U.S. Treasury Securities transactions produced from TRACE data. *See* FINRA Rule 6740. Reported transactions in municipal debt securities are publicly disseminated via EMMA, which is a service operated by the MSRB. *See supra* note 658. Trades in restricted equity securities effected pursuant to Rule 144A are reported to the FINRA's ORF for regulatory purposes only and are not publicly disseminated.

[1088] The Commission estimates that 4 Government Securities ATSs would be subject to Regulation SCI. *See* Table VIII.1 in *supra* Section VIII.B.2.a.i and Section VIII.B.2.d. *See* Sections VIII.B.2.a and VIII.B.2.b for discussions about the importance of real-time price information on Government Securities ATS and indicative quotes on Communication Protocol Systems that trade U.S. Treasury Securities in price discovery of various securities. The proposed amendments to Regulation SCI would promote the establishment of more robust systems that are less likely to experience a system disruption by requiring Government Securities ATSs that meet the definition of SCI entity to establish and enforce written policies and procedures to ensure that their SCI systems have adequate levels of capacity, integrity, resiliency, availability, and security to maintain the SCI entity's operational capability. Furthermore, the extension of Regulation SCI would help strengthen the infrastructure and improve the resiliency of the automated systems of Government Securities ATSs that are important to the government securities markets. *See also* Section III.C.

[1089] *See also supra* note 838 and accompanying text.

[1090] *See supra* Sections VIII.B.2.a and VIII.B.2.b for discussions about the importance of real-time price information on Government Securities ATS and indicative quotes on Communication Protocol Systems that trade U.S. Treasury Securities in price discovery of various securities.

[1091] *See supra* Section VIII.B.2.a.ii for a discussion of Government Securities ATSs of existing SCI entities.

[1092] *See* Tradeweb Letter at 3.

[1093] *See* Tradeweb Letter at 3.

[1094] *See supra* notes 357–362 and corresponding text. One commenter stated that applying Regulation ATS and Regulation SCI to interdealer Treasury platforms is appropriate and would promote operational transparency, fair access, and system security and resiliency and that, given the linkage between the interdealer and the dealer-to-customer segments of the market, these benefits in turn would help dealers and other liquidity providers better facilitate trading with customers such as funds. *See* ICI Letter at 3 and 4. Other commenters on the 2020 Proposal opposed requiring Government Securities ATSs to comply with Regulation SCI. *See supra* notes 363–367 and corresponding text.

[1095] The Commission estimates that no Communication Protocol System that trades NMS stocks would be subject to Regulation SCI.

[1096] *See* Regulation SCI Adopting Release, *supra* note 3.

[1097] *See supra* Section II.D.2 for a discussion about volume threshold for Rule 301(b)(6) of Regulation ATS. The Commission estimates that 2 Communication Protocol Systems that trade corporate debt securities and no Communication Protocol Systems that trade municipal securities would be subject to Rule 301(b)(6).

securities and municipal securities due to failures or capacity issues with respect to automated systems of significant Communication Protocol Systems, and thus, enhance the price discovery process and liquidity in those markets.

d. Electronic Filing Requirements

With respect to the filing location and data language of the proposed disclosure requirements for Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs, requiring these disclosures to be filed on Form ATS–N would benefit market participants by improving the usability, accessibility, and reliability of the new disclosures. Form ATS–N is filed on the EDGAR system in a structured, machine-readable XML-based data language that is specific to Form ATS–N (''custom XML,'' here ''ATS–N-specific XML'').[1098] By requiring a structured data language and a publicly accessible filing location for the required disclosures, the Commission would allow market participants to download the disclosed information directly into their databases and analyze the information using various tools and applications. This would make it easier for market participants to aggregate the information and compare multiple ATSs to help select the venue that best suits their trading objectives, thereby potentially avoiding the cost of paying a third party data vendor to extract and structure the disclosed information on their behalf.

The Commission believes requiring all Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs to submit the required disclosures in ATS–N-specific XML will facilitate more effective and thorough review and analysis of those ATSs by the Commission, which should yield greater insights into the operations of those ATSs and the activities of their operators and affiliates. Additionally, Commission staff would be better able to assemble and review a larger pool of data regarding Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs. Both of these outcomes would benefit market participants by facilitating the Commission's examination process, and thus, would help protect investors and ensure the sufficiency of information in the market related to Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs.

Requiring all Government Securities ATSs to file the required disclosures on EDGAR would benefit market participants by ensuring that the disclosures are in a centralized, publicly accessible filing location with validation capabilities. Providing a centralized filing location would prevent market participants from incurring additional costs to locate and retrieve Government Securities ATS disclosures from various filing or posting locations. Similarly, because EDGAR is a publicly accessible system, an EDGAR requirement would prevent market participants from incurring additional costs that will arise if an operator or other party were to place any barriers to access the Government Securities ATS disclosures (such as a website registration requirement). Because EDGAR provides basic validation capabilities, an EDGAR requirement would reduce the incidence of non-discretionary errors, thereby improving the quality of the Government Securities ATS disclosures.

Requiring all Forms ATS and ATS–R to be filed on EDGAR would provide a centralized filing location with validation capabilities for submitted filings, and would also increase filing efficiencies for ATSs by removing the need to print and mail paper versions.[1099] All ATSs subject to Regulation ATS are required to file a Form ATS–R, and all ATSs that do not trade NMS stocks or government securities (which, under the proposal, would include Communication Protocol Systems), would file a Form ATS.

2. Costs

The Commission has considered the costs of the proposed amendments to Exchange Act Rule 3b–16, Regulation ATS, and Regulation SCI. The aggregate compliance costs are presented in Table VIII.7 below.

TABLE VIII.7—TOTAL IMPLEMENTATION COSTS [a] AND OTHER COMPLIANCE COSTS [b]

Type of entity	Number of entities	Aggregate initial costs	Aggregate ongoing costs
Communication Protocol Systems (Government Securities ATS)	4	$2.4 million ~ $6.6 million [c]	$2.4 million ~ $5.1 million.[d]
Currently Exempted Government Securities ATSs	7	$1.5 million ~ $3.5 million [e]	$1.3 million ~ $2.7 million.[f]
Current Government Securities ATSs	17	$1.4 million ~ $3.5 million [g]	$1.3 million ~ $2.6 million.[h]
Communication Protocol Systems (NMS Stock ATS)	4	$209,000 [i]	$59,000.[j]
Current NMS Stock ATSs	34	$77,000 [k]	$16,000.[l]
Other Communication Protocol Systems	14	$2 million [m]	$660,000.[n]
Other Current ATSs	59	$374,000 [o]	$115,000.[p]
Subscriber			$10,000.[q]
Total	139	$8 million ~ $16 million	$5.9 million ~ $11 million.

[a] *See infra* note 1127.
[b] *See id.*
[c] *See infra* Table VIII.9.
[d] *See id.*
[e] *See infra* Table VIII.10.
[f] *See id.*
[g] *See infra* Table VIII.11.
[h] *See id.*
[i] *See infra* Table VIII.12.
[j] *See id.*
[k] *See infra* Table VIII.13.
[l] *See id.*
[m] *See infra* Table VIII.14.
[n] *See id.*
[o] *See infra* Table VIII.15.
[p] *See id.*
[q] This figure represents costs per ATS subscriber. *See also infra* note aa in Table VII.8.

[1098] *See supra* Section V.B.

[1099] *See id.*

a. Compliance Costs [1100]

The proposed amendments to extend Regulation ATS to Communication Protocol Systems, Currently Exempted Government Securities ATSs, and Current Government Securities ATSs and Regulation SCI to significant Government Securities ATSs and certain Communication Protocol Systems would result in a number of compliance costs. The Commission believes that compliance costs could be passed through (*e.g.,* via higher fees) to market participants, resulting in higher trading costs.

The requirements with respect to becoming a broker-dealer, filing Form ATS and Form ATS–N, and complying with the Fair Access Rule of Regulation ATS and Regulation SCI under the proposed amendments would result in compliance costs.[1101] The initial and ongoing implementation costs and other compliance costs per entity associated with these requirements are presented in Table VIII.8.[1102] The aggregates of these compliance costs are presented in Table VIII.9 through Table VIII.15.

TABLE VIII.8—PER ATS IMPLEMENTATION COSTS AND OTHER COMPLIANCE COSTS FOR EACH PROPOSED AMENDMENT

Rule	Compliance action	Initial costs per entity	Ongoing costs per entity
Reg ATS, 301(b)(1)	Form BD filing	$900 [a]	$300 [d]
	Form ID filing	50 [b]	
	Other compliance costs (non-PRA based)	316,000 [c]	57,700 [e]
Reg ATS, 301(b)(2)	Form ATS filing	6,400 [f]	1,500 [g]
Reg ATS, 301(b)(5)	Fair Access		17,000 [h]
Reg ATS, 301(b)(6)	Capacity, Integrity, and Security of automated systems		5,000 [i]
Reg ATS, 301(b)(9)	Form ATS–R filing		6,000 [j]
			500 [k]
Reg ATS, 301(b)(10)	Written safeguards and procedures to protect subscribers' trading information.	3,200 [l]	1,000 [m]
Reg ATS, 302	Recordkeeping		3,400 [n]
Reg ATS, 303	Record preservation		1,100 [o]
Reg ATS, 304	Form ATS–N filing	49,000 [p]	3,300 [s]
		43,000 [q]	3,300 [t]
		2,300 [r]	
Reg SCI	Implementation costs (PRA based)	777,000 [u]	924,000 [w]
		388,000 [v]	924,000 [x]
Reg SCI	Other compliance costs (non-PRA based)	320,000 ~ 2.4 million [y]	214,000 ~ 1.6 million [z]
Reg SCI	Subscriber costs (non-PRA based)		10,000 [aa]

[a] Compliance Manager at $332 × 2.75 hours = $914. *See also supra* note 787.
[b] Compliance Manager at $332 × 0.15 hour = $50. *See also supra* note 790.
[c] *See infra* note 1120.
[d] Compliance Manager at $332 × 0.95 hour = $316. *See also supra* note 788.
[e] *See infra* note 1120.
[f] (Attorney at $446 × 13 hours) + (Compliance Clerk at $75 × 7.5 hours) = $6,366. *See also supra* note 759.
[g] (Attorney at $446 × 3 hours) + (Compliance Clerk at $75 × 2 hours) = $1,489. *See also supra* note 760.
[h] Attorney at $446 × 37 hours = $16,513. *See also supra* note 764.
[i] Attorney at $446 × 11.25 hours = $5,021. *See also supra* note 766.
[j] ((Attorney at $446 × 3 hours) + (Compliance Manager at $332 × 0.25 hour)) × 4 times = $6,114. *See also supra* note 770.
[k] ((Compliance Manager at $332 × 0.25 hour) + (Compliance Clerk at $75 × 0.5 hour)) × 4 times = $483. *See also supra* note 771.
[l] (Attorney at $446 × 7 hours) + (Compliance Clerk at $75 × 1 hour) = $3,199. *See also supra* note 773.
[m] (Attorney at $446 × 2 hours) + (Compliance Clerk at $75 × 2 hours) = $1,043. *See also supra* note 774.
[n] Compliance Clerk at $75 × 45 hours = $3,383. *See also supra* note 776.
[o] Compliance Clerk at $75 × 15 hours = $1,128. *See also supra* note 777.
[p] (Attorney at $446 × 57.1 hours) + (Chief Compliance Manager at $570 × 0.5 hour) + (Compliance Manager at $332 × 36.05 hours) + (Sr. Systems Analyst at $305 × 33.75 hours) + (Sr. Marketing Manager at $328 × 1 hour) + (Compliance Clerk at $75 × 8 hours) = $48,987. *See also supra* note 781.
[q] (Attorney at $446 × 44.1 hours) + (Chief Compliance Manager at $570 × 0.5 hour) + (Compliance Manager at $332 × 36.05 hours) + (Sr. Systems Analyst at $305 × 33.75 hours) + (Sr. Marketing Manager at $328 × 1 hour) + (Compliance Clerk at $75 × 1 hour) = $42,659. *See also supra* note 782.
[r] (Attorney at $446 × 2.5 hours) + (Compliance Manager at $332 × 1.5 hours) + (Sr. Systems Analyst at $305 × 1.5 hours) + (Compliance Clerk at $75 × 2.5 hours) = $2,260. *See also supra* note 783.

[1100] Compliance costs consist of implementation costs, which are the monetized costs of PRA burdens and other compliance costs (non-PRA based costs).

[1101] The proposed requirements would include: broker-dealer registration requirements for non-broker-dealer-operated Communication Protocol Systems and bank-operated Currently Exempted Government Securities ATSs; the requirements with respect to written safeguards and procedures for subscribers' trading information, recordkeeping, record preservation, and Form ATS–R for Communication Protocol Systems and Currently Exempted Government Securities ATSs; the requirements of Form ATS for Communication Protocol Systems that are not Government Securities ATSs nor NMS Stock ATSs; the requirements with respect to capacity, integrity, and security of automated systems for Communication Protocol Systems that trade corporate debt securities or municipal securities; the requirements of Form ATS–N for Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs; the requirements to amend Form ATS–N for NMS Stock ATSs; the requirements to amend Form ATS and Form ATS–R and such forms be filed electronically; the requirements of the Fair Access Rule for significant Government Securities ATSs and significant Communication Protocol Systems; and the requirements of Regulation SCI for significant Government Securities ATSs and significant Communication Protocol Systems.

[1102] The Commission estimates the wage rate associated with PRA burden hours based on salary information for the securities information 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/*. The 2013 professional wage rates are adjusted for an inflation rate of 17.45 percent based on the Bureau of Labor Statistics data on Consumer Price Index for all Urban Consumers (CPI–U) between September 2013 and September 2021. Therefore, the current inflation adjusted effective hourly wage rates for attorneys are estimated at $446 ($380 × 1.1745), $570 ($485 × 1.1745) for chief compliance managers, $332 ($283 × 1.1745) for compliance managers, $305 ($260 × 1.1745) for senior systems analysts, $328 ($279 × 1.1745) for senior marketing manager, and $75 ($64 × 1.1745) for compliance clerks.

[s] ((Attorney at $446 × 5.5 hours) + (Compliance Manager at $332 × 2 hours) + (Compliance Clerk at $75 × 1.9 hours)) × 5 times = $3,262. *See also supra* note 784.
[t] *See id.*
[u] The PRA burden hours are based on the 2018 SCI PRA Supporting Statement. The Commission estimates an initial PRA burden for new SCI entities of 2,034.3 hours. *See also supra* note 794. The PRA burden hours are monetized by applying inflation adjusted professional wage rates obtained via the methodology presented in *supra* note 1102.
[v] *See id.* The Commission estimates an initial PRA burden for existing SCI entities of 1,017.15 hours. *See also supra* note 793.
[w] *See id.* The Commission estimates an ongoing PRA burden for all SCI entities of 2,458.65 hours. *See also supra* note 795.
[x] *See id.*
[y] *See infra* Section VIII.C.2.a.vi for discussion about non-PRA based initial compliance costs per entity.
[z] *See infra* Section VIII.C.2.a.vi for discussion about non-PRA based ongoing compliance costs per entity.
[aa] *See infra* Section VIII.C.2.a.vi for discussion about non-PRA based compliance costs per ATS subscriber.

TABLE VIII.9—COMMUNICATION PROTOCOL SYSTEMS THAT ARE GOVERNMENT SECURITIES ATSS

Compliance	Number of entities	Aggregate initial costs	Aggregate ongoing costs
Regulation SCI	2	$2.2 million ~ $6.4 million [a]	$2.3 million ~ $5 million.[b]
BD Registration.			
Fair Access	2		33,000.[c]
Other	4	209,000.[d]	59,000.[e]
Total	4	2.4 million ~ 6.6 million	2.4 million ~ 5.1 million.

[a] This cost figure is obtained by the summing initial implementation costs ($777,000) and non-PRA based compliance costs ($320,000 ~ $2.4 million) associated with Regulation SCI presented in *supra* Table VIII.8 for 2 Communication Protocol Systems that trade government securities.
[b] This cost figure is obtained by summing the ongoing implementation costs ($924,000) and non-PRA based compliance costs ($214,000 ~ $1.6 million) associated with Regulation SCI presented in *supra* Table VIII.8 for 2 Communication Protocol Systems that trade government securities.
[c] This cost figure is the ongoing implementation cost associated with Rule 301(b)(5) presented in *supra* Table VIII.8 for 2 Communication Protocol Systems that trade government securities.
[d] This cost figure is obtained by summing the initial implementation costs associated with Rule 301(b)(10) and 304 ($49,000) presented in *supra* Table VIII.8 for 4 Communication Protocol Systems that trade government securities.
[e] This cost figure is obtained by summing the ongoing implementation costs associated with Rule 301(b)(9) ($6,000), 301(b)(10), 302, 303, and 304 ($3,300) presented in *supra* Table VIII.8 for 4 Communication Protocol Systems that trade government securities.

TABLE VIII.10—CURRENTLY EXEMPTED GOVERNMENT SECURITIES ATSS

Compliance	Number of entities	Aggregate initial costs	Aggregate ongoing costs
Regulation SCI	1	$1.1 million ~ $3.2 million [a]	$1.1 million ~ $2.5 million.[b]
BD Registration.			
Fair Access	3		50,000.[c]
Other	7	365,000 [d]	103,000.[e]
Total	7	1.5 million ~ 3.5 million	1.3 million ~ 2.7 million.

[a] This cost figure is obtained by summing the initial implementation costs ($777,000) and non-PRA based compliance costs ($320,000 ~ $2.4 million) associated with Regulation SCI presented in *supra* Table VIII.8 for 1 Currently Exempted Government Securities ATS.
[b] This cost figure is obtained by summing the ongoing implementation costs ($924,000) and non-PRA based compliance costs ($214,000 ~ $1.6 million) associated with Regulation SCI presented in *supra* Table VIII.8 for 1 Currently Exempted Government Securities ATS.
[c] This cost figure is the ongoing implementation cost associated with Rule 301(b)(5) presented in *supra* Table VIII.8 for 3 Currently Exempted Government Securities ATSs.
[d] This cost figure is obtained by summing the initial implementation costs associated with Rule 301(b)(10) and 304 ($49,000) presented in *supra* Table VIII.8 for 7 Currently Exempted Government Securities ATSs.
[e] This cost figure is obtained by summing the ongoing implementation costs associated with Rule 301(b)(9) ($6,000), 301(b)(10), 302, 303, and 304 ($3,300) presented in *supra* Table VIII.8 for 7 Currently Exempted Government Securities ATSs.

TABLE VIII.11—CURRENT GOVERNMENT SECURITIES ATS

Compliance	Number of entities	Aggregate initial costs	Aggregate ongoing costs
Regulation SCI	1	$708,000 ~ $2.8 million [a]	$1.1 million ~ $2.5 million.[b]
Fair Access	3		50,000.[c]
Other	17	725,000 [d]	64,000.[e]
Total	17	1.4 million ~ 3.5 million	1.3 million ~ 2.6 million.

[a] This cost figure is obtained by summing the ongoing implementation costs ($924,000) and non-PRA based compliance costs ($214,000 ~ $1.6 million) associated with Regulation SCI presented in *supra* Table VIII.8 for 1 Current Government Securities ATS.
[b] This cost figure is obtained by summing the ongoing implementation costs ($924,000) and non-PRA based compliance costs ($214,000 ~ $1.6 million) associated with Regulation SCI presented in *supra* Table VIII.8 for 1 Current Government Securities ATS.
[c] This cost figure is the ongoing implementation cost associated with Rule 301(b)(5) presented in *supra* Table VIII.8 for 3 Current Government Securities ATSs.
[d] This cost figure is the initial implementation cost associated with Rule 304 ($43,000) presented in supra Table VIII.8 for 17 Current Government Securities ATSs.
[e] This cost figure is obtained by summing the ongoing implementation costs associated with Rule 301(b)(9) ($500) and 304 ($3,300) presented in *supra* Table VIII.8 for 17 Current Government Securities ATSs.

TABLE VIII.12—COMMUNICATION PROTOCOL SYSTEMS THAT ARE NMS STOCK ATSS

Compliance	Number of entities	Aggregate initial costs	Aggregate ongoing costs
Regulation SCI. Fair Access. BD Registration. Other	4	209,000 [a]	59,000.[b]
Total	4	209,000	59,000.

[a] This cost figure is obtained by summing the initial implementation costs associated with Rule 301(b)(10) and 304 ($49,000) presented in *supra* Table VIII.8 for 4 Communication Protocol Systems that trade NMS stocks.
[b] This cost figure is obtained by summing the ongoing implementation costs associated with Rule 301(b)(9), 301(b)(10), 302, 303, and 304 ($3,300) presented in *supra* Table VIII.8 for 4 Communication Protocol Systems that trade NMS stocks.

TABLE VIII.13—CURRENT NMS STOCK ATSS

Compliance	Number of entities	Aggregate initial costs	Aggregate ongoing costs
Regulation SCI. Fair Access. Other	34	77,000 [a]	16,000.[b]
Total	34	77,000	16,000.

[a] This cost figure is the initial implementation cost associated with Rule 304 ($2,300) presented in *supra* Table VIII.8 for 34 Current NMS Stock ATSs.
[b] This cost figure is the ongoing implementation cost associated with Rule 301(b)(9) ($500) presented in *supra* Table VIII.8 for 34 Current NMS Stock ATSs.

TABLE VIII.14—OTHER COMMUNICATION PROTOCOL SYSTEMS

Compliance	Number of entities	Aggregate initial costs	Aggregate ongoing costs
Rule 301(b)(6)	2		$10,000.[a]
Fair Access	6		99,000.[b]
BD Registration	6	1.9 million [c]	360,000.[d]
Other	14	133,000 [e]	191,000.[f]
Total	14	2 million	660,000.

[a] This cost figure is the ongoing implementation cost associated with Rule 301(b)(6) presented in *supra* Table VIII.8 for 2 Communication Protocol Systems that trade corporate debt securities.
[b] This cost figure is the ongoing implementation cost associated with Rule 301(b)(5) presented in *supra* Table VIII.8 for 6 Communication Protocol Systems that trade corporate debt securities or municipal securities.
[c] This cost figure is obtained by summing the initial implementation costs associated with Rule 301(b)(1) presented in *supra* Table VIII.8 for 6 Communication Protocol Systems that trade neither government securities nor NMS stocks.
[d] This cost figure is obtained by summing the ongoing implementation costs associated with Rule 301(b)(1) presented in *supra* Table VIII.8 for 6 Communication Protocol Systems that trade neither government securities nor NMS stocks.
[e] This cost figure is obtained by summing the initial implementation costs associated with Rule 301(b)(2) and 301(b)(10) presented in *supra* Table VIII.8 for 14 Communication Protocol Systems that trade neither government securities nor NMS stocks.
[f] This cost figure is obtained by summing the ongoing implementation costs associated with Rule 301(b)(2), 301(b)(9) ($6,000), 301(b)(10), 302, and 303 presented in *supra* Table VIII.8 for 14 Communication Protocol Systems that trade neither government securities nor NMS stocks.

TABLE VIII.15—OTHER CURRENT ATSS

Compliance	Number of entities	Aggregate initial costs	Aggregate ongoing costs
Rule 301(b)(6). Fair Access. Other	59	374,000 [a]	115,000.[b]
Total	59	374,000	115,000.

[a] This cost figure is the initial implementation cost associated with Rule 301(b)(2) presented in *supra* Table VIII.8 for 59 Current ATSs that trade neither government securities nor NMS stocks.
[b] This cost figure is obtained by summing the ongoing implementation costs associated with Rule 301(b)(2) and 301(b)(9) ($500) presented in *supra* Table VIII.8 for 59 Current ATSs that trade neither government securities nor NMS stocks.

One commenter stated that the proposed amendments in the 2020 Proposal would require a Legacy Government Securities ATS to separate trading activity in government securities and repos from non-NMS stock trading activity, which could impose administrative and operational burdens on both Government Securities ATSs

and subscribers.[1103] The Commission believes that the proposed amendments do not require separating operations, and thus, Legacy Government Securities ATSs would not incur costs associated with separating operations.[1104]

i. Implementation Costs: [1105]

Currently Exempted Government Securities ATSs and Communication Protocol Systems that would be newly subject to the requirements of Regulation ATS would incur implementation costs associated with, among other things, written safeguards and procedures to protect subscribers' trading information,[1106] recordkeeping,[1107] record preservation,[1108] and Form ATS–R.[1109] Currently Exempted Government Securities ATSs and Communication Protocol Systems that trade NMS stocks or government securities would incur higher implementation costs due to the heightened requirements of filing Form ATS–N compared to other Communication Protocol Systems that would file Form ATS.[1110]

Current ATSs and Communication Protocol Systems that trade neither NMS stocks nor government securities would incur implementation costs associated with re-filing or filing the modernized Form ATS.[1111] Current NMS Stock ATSs would incur implementation costs associated with amending revised Form ATS–N.[1112] Furthermore, all current ATSs, Currently Exempted Government Securities ATSs, and Communication Protocol Systems would incur implementation costs to re-file or file the revised electronic Form ATS–R.[1113]

Government Securities ATSs that meet certain volume thresholds would be subject to the Fair Access Rule of Regulation ATS. The Commission estimates 3 Currently Exempted Government Securities ATSs, 3 Current Government Securities ATSs, and 2 Communication Protocol Systems that trade government securities would be subject to the Fair Access Rule. These entities would incur the implementation costs per entity presented in Table VIII.8.

Significant NMS Stock ATSs and ATSs that trade corporate debt securities, municipal securities, or non-NMS stock equity securities are subject to the Fair Access Rule. The Commission estimates 2 Communication Protocol Systems that trade corporate debt securities, 1 Communication Protocol System that trades municipal securities, and 3 Communication Protocol Systems that trade non-NMS stock equity securities would be subject to the Fair Access Rule. These entities would incur the same implementation costs per entity presented in Table VIII.8.

Significant ATSs that trade corporate debt securities or municipal securities are subject to Rule 301(b)(6). The Commission estimates that 2 Communication Protocol Systems that trade corporate debt securities would be subject to Rule 301(b)(6) and incur the implementation costs per entity presented in Table VIII.8.

The Commission believes that the 2018 estimates of initial PRA burdens for new SCI entities and ongoing PRA burdens for all SCI entities under Regulation SCI are largely applicable to Government Securities ATSs.[1114] For the purpose of implementation cost estimation, two groups of Government Securities ATSs are considered: [1115] Government Securities ATSs that are existing SCI entities; and Government Securities ATSs that are entirely new SCI entities currently not subject to Regulation SCI. For the first group (Government Securities ATSs that are existing SCI entities), the Commission believes that such entities would incur approximately 50 percent of the Commission's initial PRA burden estimates for entirely new SCI entities. Furthermore, for the second group (Government Securities ATSs that are new SCI entities currently not subject to Regulation SCI), the Commission believes that such entities would incur the same estimated initial PRA burdens as those estimated for new SCI entities in the 2018 SCI PRA Supporting Statement. The Commission also believes that the same ongoing PRA burdens for all SCI entities estimated in the 2018 SCI PRA Supporting Statement are applicable to Government Securities ATSs in both the first and the second group.

The Commission estimates that 4 Government Securities ATSs would be subject to the requirements of Regulation SCI and incur the implementation costs per entity presented in Table VIII.8. Among the four Government Securities ATSs that satisfy the volume thresholds, the Commission believes that one Government Securities ATS (referred as the first group above) would incur approximately 50 percent of initial PRA burden estimates for an entirely new SCI entity included in the 2018 SCI PRA Supporting Statement, and three Government Securities ATSs (referred as the second group above) would incur the same estimated initial PRA burdens as those estimated for new SCI entities included in the 2018 SCI PRA Supporting Statement. In addition, the Commission believes that all four Government Securities ATSs would incur the same ongoing PRA burdens as all other SCI entities included in the 2018 SCI PRA Supporting Statement.

Significant ATSs that trade either NMS stocks or non-NMS stock equity securities are subject to the requirements of Regulation SCI. The Commission estimates that no Communication Protocol System that trades NMS stocks or non-NMS stock equity securities would be subject to Regulation SCI. If a significant Communication Protocol System that trades NMS stocks or equity securities that are not NMS stocks exists, it would incur the same range of implementation costs per entity presented in Table VIII.8.

The estimated implementation costs for Communication Protocol Systems and Currently Exempted Government Securities ATSs associated with Rule

[1103] *See* ICE Bonds Letter I at 3 and 4. The commenter on the 2020 Proposal stated that this separation requirement would result in fewer venues and higher trading costs for subscribers to trade and hedge and concentrate trading among a few large Government Securities ATSs because smaller Legacy Government Securities ATSs may determine to exit due to the prohibitive costs associated with this separation requirement. This commenter also provided a list of costs associated with separating operation. *See also supra* Section III.B.1 and note 250.

[1104] *See supra* Section III.B.I.

[1105] Implementation costs are the monetized costs of PRA burdens. *See also supra* note 1100.

[1106] *See* the implementation costs associated with Rule 301(b)(10) in *supra* Table VIII.8.

[1107] *See* the implementation costs associated with Rule 302 in *supra* Table VIII.8.

[1108] *See* the implementation costs associated with Rule 303 in *supra* Table VIII.8.

[1109] *See* the implementation costs associated with Rule 301(b)(9) in *supra* Table VIII.8.

[1110] *See* the implementation costs associated with Rule 301(b)(2) and Rule 304 in *supra* Table VIII.8.

[1111] The initial and ongoing implementation costs per entity associated with Rule 301(b)(2) are approximately $6,400 and $1,500, respectively. *See supra* notes f and g in Table VIII.8. *See also supra* Section VII.D.1.a for a discussion about the implementation costs associated with Rule 301(b)(2).

[1112] The implementation cost associated with amending revised Form ATS–N is approximately $2,300 per entity. *See supra* note r in Table VII.8. *See also supra* Section VII.D.3 for a discussion about the implementation costs associated with Rule 304.

[1113] The implementation costs associated with filing or re-filing electronic Form ATS–R is approximately $500 per entity. *See supra* note k in Table VII.8. *See supra* Section VII.D.1.d for a discussion about the implementation costs associated with Rule 301(b)(9).

[1114] *See* 2018 SCI PRA Supporting Statement, *supra* notes 793, 794, and 795.

[1115] Government Securities ATSs are divided into two groups in discussing implementation costs because Government Securities ATSs operated by a broker-dealer operator of an NMS Stock ATS that is a SCI entity would have lower initial implementation costs. *See also* 2018 SCI PRA Supporting Statement, *supra* note 793.

301(b)(9) and (10), Rule 302, and Rule 303 would represent a larger fraction of revenue for a small (measured in trading volume) ATS relative to that for a large ATS. This is because these costs would be fixed costs that these ATSs would incur regardless of the amount of trading activity that takes place on them. Furthermore, regardless of their size and transaction volume, all Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs would need to ensure that their disclosures meet the requirements of Form ATS–N and that they correctly file their Form ATS–N under Rule 304. Such Government Securities ATSs and Communication Protocol Systems might develop internal processes to ensure correct and complete reporting on Form ATS–N, which would result in a fixed implementation cost. These implementation costs would fall disproportionately on smaller (measured in trading volume) such Government Securities ATSs and Communication Protocol Systems in terms of implementation costs relative to trading volume (as opposed to larger such Government Securities ATSs and Communication Protocol Systems in terms of implementation costs relative to trading volume), because all Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs would likely incur these fixed implementation costs. However, smaller such Government Securities ATSs and Communication Protocol Systems that are not operated by multi-service broker-dealer operators and that generally do not engage in other brokerage or dealing activities in addition to their ATSs would likely incur lower implementation costs because certain sections of revised Form ATS–N would not be applicable to Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs.

The implementation costs associated with Rule 304 would also vary across Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs depending on the complexity of the ATS and the services that it offers. For example, some such ATSs might not segment subscriber order flow or offer counterparty selection protocols. These ATSs would not be required to complete Part III, Items 13 and 14 of revised Form ATS–N. As a result, such Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs would incur lower implementation costs because these ATSs would apply lesser burden hours to complete their Form ATS–N.

ii. Costs Associated With Broker-Dealer Requirements

Under the proposed Rule 301(b)(1), Currently Exempted Government Securities ATSs that are banks (*i.e.,* bank-operated Currently Exempted Government Securities ATSs) and Communication Protocol Systems that are non-broker-dealers (*i.e.,* non-broker-dealer-operated Communication Protocol Systems) would be subject to broker-dealer registration requirements.

The Commission believes that non-broker-dealer-operated Communication Protocol Systems without a broker-dealer affiliate would incur additional compliance costs related to registering with the Commission as broker-dealers, becoming members of an SRO, such as FINRA, and maintaining broker-dealer registration and SRO membership, compared to those operated by broker-dealers and those with a broker-dealer affiliate. The initial costs would include the costs associated with filing Form BD and Form ID, FINRA membership application fees, and any legal or consulting costs necessary for effectively completing the application to be a member of FINRA (*e.g.,* ensuring compliance with FINRA rules [1116] including drafting policies and procedures as may be required). The ongoing costs would include the costs associated with amending Form BD, and ongoing fees associated with FINRA membership and legal work relating to FINRA membership.

The Commission recognizes that the costs associated with obtaining and maintaining FINRA membership would vary significantly depending on entity characteristics, activities, and the degree of the firm's reliance on outside legal or consulting for effectively completing the application process and maintaining FINRA membership. The initial registration costs for FINRA membership [1117] would depend on, among other things, the number of associated persons being registered. The ongoing costs to remain a FINRA member would vary based on the scope of brokerage activities, revenue,[1118] size (*i.e.,* the number of registered persons and the number of branch offices), and trading volume.[1119] Thus, entities with a smaller number of registered persons, fewer brokerage activities, smaller trading volume, and lower revenue would face lower costs.

As outlined in Table VIII.8, the Commission estimates an initial cost of approximately $317,000 to register as a broker-dealer with the Commission and become a member of FINRA.[1120] Additionally, the Commission estimates an ongoing annual cost of approximately $58,000 to maintain the broker-dealer registration and FINRA membership.[1121] The Commission preliminarily believes that these costs related to broker-dealer registration and FINRA membership are relevant to non-broker-dealer-operated Communication Protocol Systems without a broker-dealer affiliate. However, these cost estimates are uncertain because the

[1116] *See supra* Section II.D.2 for a discussion about FINRA rules.

[1117] *See https://www.finra.org/registration-exams-ce/classic-crd/fee-schedule#examfees* for the schedule of FINRA registration fees.

[1118] FINRA imposes a Gross Income Assessment as follows: $1,200 on a Member Firm's annual gross revenue up to $1 million; a charge of 0.1215% on a Member Firm's annual gross revenue between $1 million and $25 million; a charge of 0.2599% on a Member Firm's annual gross revenue between $25 million and $50 million; a charge of 0.0518% on a Member Firm's annual gross revenue between $50 million and $100 million; a charge of 0.0365% on a Member Firm's annual gross revenue between $100 million and $5 billion; a charge of 0.0397% on a Member Firm's annual gross revenue between $5 and $25 billion; and a charge of 0.0855% on a Member Firm's annual gross revenue greater than $25 billion. When a firm's annual gross revenue exceeds $25 million, the maximum of current year's revenue and average of the last three years' revenue is used as the basis for the income assessment. *See also https://www.finra.org/rules-guidance/notices/09–68.*

[1119] Fees for reporting trades to FINRA may depend on the types of security, the size of trade, and the types of message (*e.g.,* cancellation message, correction message). For example, fees for reporting trades to FINRA TRACE as follows: $0.475/trade for trade size up to and including $200,000 par value; $0.000002375 times the par value of the transaction (*i.e.,* $0.002375/$1,000) for trade size over $200,000 and up to and including $999,999.99 par value; $2.375/trade for trade size of $1,000,000 par value or more; $1.50/trade for all transactions in securitized products that are Agency Pass-Through Mortgage-Backed Securities traded to be announced (''TBA'') or SBA-Backed ABS traded TBA (each ''TBA transaction''); $1.50/trade for cancellation or correction; and $3/trade for late trades. *See also https://www.finra.org/rules-guidance/rulebooks/finra-rules/7730.*

[1120] *See* Exchange Act Release No. 33–9974 (October 30, 2015), 80 FR 71388, 71509 (November 16, 2015) (''Regulation Crowdfunding Adopting Release''). These estimates are adjusted for an inflation rate of 15.33 percent based on the Bureau of Labor Statistics data on CPI–U between October 2015 and September 2021. In addition to the initial costs to become a member of FINRA, this cost includes the initial implementation costs of $950 for filing Form BD and Form ID tabulated in Table VIII.8. The Commission recognizes that the cost of registering and becoming a member of a national securities association varies significantly among brokers, depending on facts and circumstances. The Commission estimates the range of cost to be between $57,500 and $576,500, and thus, chose the average amount of $317,000 for purposes of this discussion.

[1121] *See id. See also* Regulation Crowdfunding Adopting Release at 71509. In addition to the ongoing annual costs to maintain a membership with FINRA, this cost includes the ongoing annual implementation costs of $300 to amend Form BD tabulated in Table VIII.8.

Commission does not have information on the estimated 6 non-broker-dealer-operated Communication Protocol Systems without a broker-dealer affiliate, such as the number of associated persons of the broker entity and their licensing requirements, the scope of the proposed brokerage activities, and the degree of reliance on outside legal or consulting expertise necessary for effectively completing the application to be a member of FINRA. Furthermore, the Commission is unable to provide cost estimates related to trade reporting obligations [1122] because these costs would depend on various factors, such as the number of trades and the costs of updating systems for trade reporting requirements, for which the Commission does not have information.

In addition to the costs associated with broker-dealer registration and FINRA membership, a non-broker-dealer-operated Communication Protocol System without a broker-dealer affiliate could incur costs related to restructuring its business and incorporating itself or a separate entity (*i.e.,* an affiliate) to be registered as a broker-dealer. Such restructuring costs would include any costs that may be associated with making necessary changes to its business practices, fees for consulting and legal services, fees for incorporation and the amendment of its certificate of incorporation and its bylaws, and tax consequences. Fees for incorporation and amending the certificate of incorporation and its bylaws may be minimal. For example, fees for incorporation and amending the certificate of incorporation and its bylaws in the state of Delaware would range approximately between $89 and $200 depending on the entity type of incorporation.[1123] However, certain restructuring costs, such as costs associated with making changes to business practices to comply with the broker-dealer registration requirements, could be significant. The Commission estimates that up to 6 non-broker-dealer-operated Communication Protocol Systems without a broker-dealer affiliate could be required to restructure their business in order to comply with the broker-dealer registration requirements. The Commission is unable to provide estimates on certain restructuring related costs for a non-broker-dealer-operated Communication Protocol System because the Commission does not have information regarding the scope of its restructuring, such as the need and the extent of required changes in current business practices, the need and the extent of consulting services, and its choice of entity type for incorporation.

Upon becoming broker-dealers, operators of these Communication Protocol Systems would be subject to certain broker-dealer requirements with respect to maintaining net capital, reporting, and recordkeeping.[1124] The compliance costs associated with maintaining net capital, reporting, and recordkeeping would depend on the business structure of a broker-dealer (*i.e.,* the capital structure of a broker-dealer and the scope of a broker-dealer's activities). For example, the costs would vary significantly depending on the types of securities a broker-dealer holds, the level of net capital a broker-dealer maintains, and whether a broker-dealer carries customer accounts, carries for other broker-dealers, is a registered investment adviser, is affiliated with an investment adviser, or transacts in principal capacity. However, to the extent that an operator of Communication Protocol System limits its activities to trading operations and does not expand into these other business activities, the operator would incur minimal costs with respect to net capital, reporting, and recordkeeping requirements upon registering as a broker-dealer. The Commission is unable to estimate the costs associated with these broker-dealer requirements because the Commission does not have information about whether or how the current business structures of the estimated 6 Communication Protocol Systems that are not operated by a registered broker-dealer nor how a broker-dealer affiliate might change upon registering as a broker-dealer.

The Commission believes that a bank-operated Currently Exempted Government Securities ATS or a non-broker-dealer-operated Communication Protocol System would not incur compliance costs associated with registering as a broker-dealer and becoming a member of an SRO (*e.g.,* FINRA) if it has a broker-dealer affiliate. It is the Commission's understanding that ATSs that are banks often are operated by bank affiliates that are themselves registered broker-dealers, rather than by the banks themselves.[1125] A bank-operated Currently Exempted Government Securities ATS might adopt a similar registered affiliate structure for its government securities trading operations. For a non-broker-dealer-operated Communication Protocol System that is affiliated with an existing broker-dealer, it would be more cost-effective for the Communication Protocol System to move its operations to an existing broker-dealer affiliate rather than restructure itself to become a broker-dealer or create a new broker-dealer entity to comply with the broker-dealer registration requirements. Thus, the Commission expects that such non-broker-dealer-operated Communication Protocol Systems would choose the more cost-effective way of moving its trading operations to its registered broker-dealer affiliate.

A broker-dealer affiliate that is adding ATS or Communication Protocol System operations would incur additional ongoing costs associated with maintaining FINRA membership if adding trading operations increases revenue, the number of registered persons or branch offices, trading volume, or expands the scope of brokerage activities.[1126] Furthermore, a broker-dealer affiliate that is adding ATS or Communication Protocol System operations could incur additional costs associated with maintaining adequate net capital level, reporting, and recordkeeping depending on the changes in business structure of the broker-dealer. For the reasons discussed above, the Commission is unable to provide estimates on these additional costs for the estimated 1 bank-operated Currently Exempted Government Securities ATS and 2 non-broker-operated Communication Protocol Systems that are affiliated with an existing broker-dealer.

iii. Costs Associated With Ineffectiveness Declaration

In addition to the implementation costs associated with filing and amending Form ATS–N, the Commission preliminarily believes that the proposed ability for the Commission to declare a Form ATS–N or Form ATS–

[1122] *See supra* note 1119 for fees for reporting trades to FINRA. The Commission estimates that 2 non-broker-dealer-operated Communication Protocol Systems without a broker-dealer affiliate trade restricted securities, which may be subject to FINRA transaction reporting requirements. Thus, with respect to those restricted securities, these Communication Protocol Systems may incur costs associated with reporting trades to FINRA.

[1123] *See* fee schedules for incorporation and amending the certificate of incorporation and its bylaws in the state of Delaware at: *https://corpfiles.delaware.gov/Aug09feesch.pdf.*

[1124] Registered Broker-dealers would be subject to requirements under the rules, such as 17 CFR 240.15c3–1, 204.17a–1, 204.17a–3, 240.17a–4, and 240.17a–5 (Rule 15c3–1, Rule 17a–1, Rule 17a–3, Rule 17a–4, and Rule 17a–5).

[1125] *See supra* Section III.B.2 for a discussion about ATSs that are banks.

[1126] For an entity that may adopt a registered affiliate structure, it is possible that it may have to file a Continuing Membership Application with FINRA noticing material changes to business operations resulting from adding ATS operations. *See* (under material change) *https://www.finra.org/registration-exams-ce/classic-crd/fee-schedule* regarding the fees for the Continuing Membership Application with FINRA.

N amendment ineffective could result in direct costs for Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs.[1127] If the Commission declares a Government Securities ATS's or an NMS Stock ATS's Form ATS–N or Form ATS–N amendment ineffective, then the ATS might have to cease operations, roll back a change in operations, or delay the start of operations until it is able to address the deficiencies in the previously filed form.

An ineffective Form ATS–N could also impose indirect costs on the overall market for government securities and NMS stock trading services resulting from a potential reduction in competition or the removal of a sole provider of a niche service within the market.[1128]

However, the Commission believes that there would not be a substantial burden imposed in connection with resubmitting Form ATS–N or a Form ATS–N amendment or from an ineffective declaration in general.[1129] Because Government Securities ATSs, Communication Protocol Systems that are NMS Stock ATSs, and market participants would not incur these costs unless the Commission declares a Form ATS–N or amendment ineffective, such Government Securities ATSs and Communication Protocol Systems 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. These incentives would encourage such Government Securities ATSs and Communication Protocol Systems to initially submit a more accurate and complete Form ATS–N and amendments thereto, which would reduce the likelihood that they are declared ineffective.

Additionally, Current Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs would not have to bear the costs of immediately ceasing operations under the proposal without having an effective Form ATS–N on file with the Commission because Current Government Securities ATSs would be able to continue operations pursuant to a previously filed initial operation report on Form ATS and Currently Exempted Government Securities ATSs and Communication Protocol Systems that trade NMS stocks would also be able to continue operations pending the Commission's review of their initial Form ATS–N. However, if after notice and opportunity for hearing, the Commission declares an initial Form ATS–N filed by a Current Government Securities ATS, Currently Exempted Government Securities ATS, or Communication Protocol System ineffective, the ATS would be required to cease operations until an initial Form ATS–N is effective.

One commenter stated that the Commission's imposition of an ''effectiveness'' regime to previously proposed Form ATS–G under the 2020 proposal is an unnecessary administrative burden on Government Securities ATSs, and will be particularly burdensome on those Government Securities ATSs with limited volumes in government securities.[1130] The implementation costs associated with the requirements of Form ATS–N, including the costs for developing internal processes to ensure correct and complete reporting on Form ATS–N to avoid an ineffectiveness declaration, would be fixed costs, and thus, would represent a larger fraction of revenue for a small (measured in trading volume) ATS relative to that for a large ATS. However, the Commission preliminarily believes that this adverse effect on small ATSs would be mitigated to some extent, because, as discussed in Section VIII.C.2.a.i, the Commission believes that certain smaller Government Securities ATSs and Communication Protocol Systems that trade NMS stocks would likely incur lower implementation costs.[1131]

iv. Costs Associated With the Fair Access Rule

The Commission preliminarily believes that applying the Fair Access Rule could impose compliance costs (non-PRA based) on Government Securities ATSs, Communication Protocol Systems that trade NMS stocks, non-NMS stock equity securities, corporate debt securities, or municipal securities, and passive systems that trade NMS stocks. Under the proposal, Government Securities ATSs, Communication Protocol Systems that trade NMS stocks, non-NMS stock equity securities, corporate debt securities, or municipal securities, and passive systems that trade NMS stocks that meet the specified aggregate volume thresholds could no longer treat subscribers differently with respect to access to the services of the ATS without a reasonable basis. For example, an ATS could not offer one class of subscriber a service (*e.g.,* an order interaction procedure, order type, trading protocol, or connectivity method) without offering the service to all subscribers unless the ATS had a reasonable basis for the differential treatment. In addition, an ATS could not charge fees that unreasonably prohibit certain market participants from accessing the services of the ATS.[1132] If ATSs must change fee structures, order interaction procedures, trading protocols, or access provisions and adapt their operating model due to the Fair Access Rule, those ATSs would incur costs related to changing business operations.

The Commission, however, is unable to quantify the potential compliance costs discussed above. In particular, the Commission lacks data on the extent to which Communication Protocol Systems that trade NMS stocks, non-NMS stock equity securities, corporate debt securities, or municipal securities, passive systems that trade NMS stocks, and Government Securities ATSs that meet the aggregate volume thresholds currently grant access to the ATS services to all subscribers on the same terms, and on the specific types of services and subscribers in question. In addition, the Commission lacks similar data for other trading venues in the government securities, corporate debt securities, and municipal securities market, which might offer differential access to services. Thus, the Commission is not able to estimate the costs associated with changing fee structures and adapting operating models.

Significant ATSs that trade NMS stocks, non-NMS stock equity securities, corporate debt securities, or municipal securities are subject to the Fair Access

[1127] *See* Rule 304(a)(1)(iv)(B).

[1128] *See infra* Section VIII.C.3.a.i.d for a discussion about the impact of a declaration of ineffectiveness on competition in the market for government securities and repo trading services.

[1129] One commenter on the 2020 Proposal stated that the use of the same initial filing, amendment review, and effectiveness process for the previously proposed Form ATS–G as is currently in place for the Form ATS–N should reduce compliance burdens for market participants and reduce potential market confusion. *See* Tradeweb Letter at 10.

[1130] *See* ICE Bonds Letter I at 5.

[1131] Smaller Government Securities ATSs and Communication Protocol Systems that trade NMS stocks that are not operated by multi-service broker-dealer operators and that generally do not engage in other brokerage or dealing activities in addition to their ATSs would likely incur lower implementation costs because certain sections of revised Form ATS–N would not be applicable to these ATSs. Furthermore, smaller such Government Securities ATSs and Communication Protocol Systems that operate simpler systems would likely incur lower implementation costs associated with the requirements of Form ATS–N because certain sections of revised Form ATS–N would not be applicable to these ATSs.

[1132] *See supra* Section V.A.3 for a discussion about reasonableness and fees under the proposed amendments to the Fair Access Rule.

Rule. The proposed amendments to aggregate volume across affiliated ATSs in calculating certain volume thresholds could increase the number of smaller affiliate ATSs that would be subject to the Fair Access Rule. Smaller affiliate ATSs that would not have met the current volume thresholds individually would be subject to the Fair Access Rule if they meet the proposed aggregate volume thresholds. As discussed above, if ATSs must adapt their operating models as a result of being subject to the Fair Access Rule, those ATSs would incur costs related to changing business operations. The Commission estimates that no current smaller affiliate ATS that trades NMS stocks, non-NMS stock equity securities, corporate debt securities, or municipal securities and does not already currently meet the Fair Access volume thresholds would meet the volume thresholds [1133] and be subject to the Fair Access Rule if volume is aggregated across affiliated ATSs.[1134]

v. Costs Associated With Rule 301(b)(6)

In addition to the implementation costs associated with reporting outages and recordkeeping under the proposed Rule 301(b)(6), the Commission preliminarily believes that significant Communication Protocol Systems that trade corporate debt securities or municipal securities could incur compliance costs (non-PRA based) to ensure adequate capacity, integrity, and security with respect to those systems that support order entry, order routing, order execution, transaction reporting, and trade comparison.[1135] To the extent that these significant Communication Protocol Systems currently do not meet certain standards under the proposed Rule 301(b)(6), they would incur compliance costs associated with, among other things, capacity planning, and conducting periodic capacity stress tests of critical systems that process transactions.[1136] For example, a Communication Protocol System would incur the costs associated with upgrading systems (*e.g.,* investing in computer hardware and software) if its critical systems that process transactions do not have adequate capacity. In addition, significant Communication Protocol Systems would incur costs associated with the independent review of their systems on an annual basis.

The Commission believes that the compliance costs for one of these significant Communication Protocol Systems would depend on the extent to which its existing policies with respect to maintaining adequate capacity, integrity, and security of systems that support order entry, order routing, order execution, transaction reporting, and trade comparison already comply with the standards under the proposed Rule 301(b)(6). The Commission is unable to estimate these compliance costs because it lacks information on the existing policies for maintaining adequate capacity, integrity, and security of such systems for significant Communication Protocol Systems that trade corporate debt securities or municipal securities.[1137] However, the Commission believes that compliance costs associated with Rule 301(b)(6) would be significantly less than those of Regulation SCI because the scope and requirements of Rule 301(b)(6) would be narrower than those of Regulation SCI.[1138]

vi. Costs Associated With Regulation SCI

Government Securities ATSs that meet certain volume thresholds would incur compliance costs (non-PRA based costs) as SCI entities.[1139] The Regulation SCI Adopting Release in 2014 estimated that an SCI entity would incur an initial cost of between approximately $320,000 and $2.4 million. Additionally, an SCI entity would incur an ongoing annual cost of between approximately $214,000 and $1.6 million. The Commission believes that these compliance costs are largely applicable to Government Securities ATSs.

One commenter on the 2020 Proposal stated that Regulation SCI imposes a specific manner in which SCI Entities must organize their asset inventories, and that redesigning and implementing new asset inventories to comply with Regulation SCI would require significant investment and would impose material upfront compliance costs that may divert resources rather than encourage meaningful investment.[1140] Although Regulation SCI would require SCI Entities to identify systems based on their functionality, as discussed above, the Commission believes that Regulation SCI is designed to provide flexibility in applying industry standards to establish policies and procedures.[1141] This flexibility may not require SCI Entities to redesign their systems to comply with Regulation SCI. However, to the extent that an SCI Entity would be required to redesign its systems, the Commission believes that the costs would be included in the compliance costs associated with Regulation SCI discussed above.[1142]

However, the Commission is uncertain about the actual level of costs Government Securities ATSs would incur because these costs might differ from the types of SCI entities considered in the Regulation SCI Adopting Release, which did not include fixed income ATSs.[1143] The Commission is also uncertain about the actual level of costs Government Securities ATSs would incur because the actual costs might differ based on various factors, such as complexity of SCI entities' systems and the degree to which SCI entities employ third-party systems. The Commission believes that Government Securities ATSs with relatively simpler systems would incur lower compliance costs compared to those with more complex systems.[1144] Also, any SCI systems operated by a third-party on behalf of an SCI entity would be subject to the requirements of Regulation SCI. The Commission believes that Government Securities ATSs with higher dependency on SCI systems operated by

[1133] *See supra* note 1079 for details on the Fair Access thresholds. *See supra* note 310 for the application of the Fair Access Rule on the trading of NMS stocks, non-NMS stock equity securities, municipal securities, and corporate debt securities. *See also supra* Section V.A.2 for a discussion about the aggregation of volume threshold.

[1134] *See supra* note 1085.

[1135] The Commission estimates that 2 Communication Protocol Systems that trade corporate debt securities or municipal securities would exceed the thresholds under the proposed Rule 301(b)(6). *See supra* Section VIII.C.2.a.i.

[1136] *See supra* note 157.

[1137] *See supra* note 888 (discussing commenter statements on the extent to which fixed incomes systems already comply with the provisions of Rule 301(b)(6)).

[1138] For example, Rule 301(b)(6) would apply to a narrower set of systems, as compared to Regulation SCI: Rule 301(b)(6) of Regulation ATS applies only to systems that support order entry, order routing, order execution, transaction reporting, and trade comparison, which is narrower than the definition of SCI system. Furthermore, Rule 301(b)(6) would not require significant Communication Protocol Systems that trade corporate debt securities or municipal securities to maintain a geographically diverse backup facility.

[1139] While NMS Stock ATSs that meet certain volume thresholds are also subject to Regulation SCI, the Commission estimates that no Communication Protocol Systems that trade NMS stocks would be subject to Regulation SCI. The Commission preliminarily believes that a Communication Protocol System that trades NMS stocks would incur the same implementation costs and other compliance costs (non-PRA based), including ATS's participant costs, in the same range as those presented in Table VIII.8.

[1140] *See* BrokerTec Letter at 7.

[1141] *See supra* note 374 and accompanying text.

[1142] *See supra* Table VIII.8 for the compliance costs associated with Regulation SCI.

[1143] *See* Regulation SCI Adopting Release, *supra* note 3. In the Regulation SCI Adopting Release, fixed income ATSs are excluded from the regulation.

[1144] *See id.* The Regulation SCI Adopting Release explains that compliance costs would depend on the complexity of SCI entities' systems and they would be higher for SCI entities with more complex systems.

third-party vendors might incur higher compliance costs compared to those with lower dependency on third-party systems.[1145]

In addition, the Commission believes that some Government Securities ATSs' participants required to participate in the testing of business continuity and disaster recovery plans would incur Regulation SCI-related connectivity costs of approximately $10,000 apiece.[1146] If larger members or participants of SCI Government Securities ATSs already maintain connections to backup facilities including for testing purposes, the compliance costs associated with the business continuity and disaster recovery plans testing requirements in Rule 1004 for those larger member or participants might be limited.

The Commission believes that the costs to comply with Regulation SCI discussed above would also fall on third-party vendors employed by Government Securities ATSs to provide services used in their SCI systems. The costs for third-party vendors imposed by Regulation SCI would depend on the extent to which Government Securities ATSs use third-party systems that fall under the definition of SCI systems and the portion of third-party vendors operating SCI systems on behalf of large (*i.e.,* over the volume threshold) Government Securities ATSs that already comply with the requirements of Regulation SCI. It is possible that some third-party vendors operating SCI systems on behalf of large Government Securities ATSs already comply with the requirements of Regulation SCI because they also operate the SCI systems for other SCI (*e.g.,* SCI ATSs, SCI SROs). The additional compliance costs from the proposed amendments of Regulation SCI for these third-party vendors would be minimal. However, at this time, it is difficult to estimate the cost for third-party vendors because the Commission does not know the extent to which Government Securities ATSs use third-party systems that fall under the definition of SCI systems.

b. Indirect Costs

The Commission believes that the proposed amendments could result in indirect costs for market participants and certain Government Securities ATSs and Communication Protocol Systems.

The public disclosure requirements of Form ATS–N under the proposal could generate indirect costs for some subscribers by causing Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs to stop sharing information that they might currently offer to only some subscribers. Form ATS–N would require Government Securities ATSs and NMS Stock ATSs to publicly disclose any platform-wide order execution metrics that they share with any subscriber. To avoid publicly disclosing this information, an ATS might stop sharing the information with subscribers. The trading costs of subscribers that currently use this information to help make trading decisions would increase if the information is no longer available to them. The risk of ATSs disclosing less information than they currently do depends on several factors, such as the commercial purpose for releasing such information. If the subscribers who receive such information demand the information as a condition of subscribing, ATSs would have a commercial incentive to continue disclosing it. Thus, the Commission believes that this risk might be low.

The Commission believes that the public disclosure of Form ATS–N would generate indirect costs, in the form of transfers, for some subscribers of Government Securities ATSs or Communication Protocol Systems that are NMS Stock ATSs who might currently have more information regarding some ATS features, such as order priority and matching procedures, than other subscribers. The public disclosure of these features would reduce informed subscribers' information advantage over other subscribers on such Government Securities ATSs or Communication Protocol Systems and increase their trading costs. In this regard, the Commission recognizes that this effect would be a transfer to those subscribers who would receive the proposed information, from those subscribers currently exclusively receive such information.

Some Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs would experience indirect costs from the public disclosure of Form ATS–N to the extent that this form would reveal information to competitors. If a Government Securities ATS or NMS Stock ATS in part relies on certain operational characteristics (*e.g.,* order types, trading functionalities) to attract customer order flow and generate trading revenues, it is possible that the public disclosure of these characteristics in Form ATS–N would make it easier for other trading venues to adopt the operational characteristics, which would lower trading volume and reduce revenue of the disclosing ATS. Such costs to the disclosing ATS would constitute transfers to competing ATSs rather than a net cost to the market.

That said, the Commission believes that the risk of these transfers is low because it is not likely the responsive information to the revised Form ATS–N would include detailed enough information regarding operational facets such that the public disclosure of the information would allow another ATS to replicate the functionality to the extent it would adversely affect the competitive position of the disclosing ATS in the market.[1147]

The Commission believes that Government Securities ATSs and Communication Protocol Systems that trade NMS stocks, non-NMS stock equity securities, corporate debt securities, or municipal securities, and passive systems that trade NMS stocks could indirectly experience costs in the form of lost revenue if they meet or exceed the Fair Access Rule thresholds and need to alter their business model to comply with the requirements of the Fair Access Rule. If they need to alter their terms of service or operations it may lead some subscribers that currently trade on the venue and benefit from the existing terms of service or operations to reduce the order flow they route to the venue or even leave the venue entirely, which could reduce the ATS's revenue. However, this revenue loss may be mitigated if the ATS is also able to attract new subscribers or additional order flow that was previously not able to access the venue.[1148] The Commission is not able to estimate the loss of revenues that Government Securities ATSs, Communication Protocol Systems that trade NMS stocks, and passive systems that meet the aggregate volume thresholds could incur as a result of applying the Fair Access Rule, because the venues may alter their business operations in response to being subject

[1145] *See id.* The Regulation SCI Adopting Release discusses that compliance costs could in part depend on the extent to which an SCI entity uses third-party systems because ensuring compliance of systems operated by a third-party with Regulation SCI may be more costly than ensuring compliance of internal systems with Regulation SCI.

[1146] *See id.* The Regulation SCI Adopting Release estimated connectivity costs as part of business continuity and disaster recovery plans to be approximately $10,000 per SCI entity member or participant.

[1147] *See supra* note 467 and accompanying text.

[1148] The Commission believes that, even if, an ATS has to change its business operations as a result of exceeding the Fair Access Rule threshold and is able to attract additional order flow or subscribers, the ATS's profits will likely be lower. If an ATS could have increased its profits by altering its business model before it was subject to the Fair Access Requirements, it would presumably have done so.

to the requirements of the Fair Access Rule and how the venue's existing subscribers may consequently alter their order flow or subscription to the ATS.

The Commission believes that market participants could incur indirect costs related to Government Securities ATSs, Communication Protocol Systems that trade NMS stocks, non-NMS stock equity securities, corporate debt securities, or municipal securities, and passive systems that trade NMS stocks being subject to the Fair Access Rule. As discussed in Section VIII.C.1.b, applying the Fair Access Rule could lower trading costs for market participants who are able to gain access to a trading venue from which they were previously excluded. This could impose costs on existing subscribers who may currently benefit from limiting access to the trading venue, though the Commission recognizes these costs would amount to transfers. To the extent this occurs, it is possible that some existing subscribers may redirect some or all of their trading interest to another trading venue that is not subject to the Fair Access Rule in order to preserve some of the benefits they may receive from a trading venue limiting access. These existing subscribers may incur search costs to find other venues to trade on as well as costs associated with administrative and operational procedures (*e.g.,* means of access, connectivity, order entry) to trade on a new trading venue. To the extent that existing subscribers shift their trading from the trading venue that is subject to the Fair Access Rule to a trading venue that is not subject to the rule, the benefits marker participants receive from gaining access to trading venues subject to the Fair Access Rule could be reduced.

Furthermore, compared to larger and more established ATSs, it is possible that younger ATSs rely more on providing catered services, including more advantageous access, to specific clients or a clientele, in order to grow their businesses. If being subject to the Fair Access Rule prohibits these ATSs from doing this, these ATSs could restrict trading on their systems when they are close to meeting the volume thresholds under the Fair Access Rule. This may not result in a significant increase in trading costs for market participants, because the order flow that was being sent to those ATSs would likely be absorbed and redistributed amongst other ATSs or non-ATS venues. However, if an ATS that is the sole provider of a niche service limits the trading in certain securities to avoid being subject to the Fair Access Rule, it could be more difficult for some market participants to find an alternative trading venue for that niche service, which would result in a larger increase in trading costs.

Similarly, the proposed amendments to apply certain aggregate volume thresholds to the Fair Access Rule in the markets for government securities, corporate debt and municipal securities, and equity securities could also cause market participants to incur similar indirect costs. If the aggregate volume of ATSs operated by a common broker-dealer or operated by affiliated broker-dealers approaches the Fair Access volume thresholds, then the operators could restrict trading in one or more securities on their systems in order to avoid being subject to the requirements of the Fair Access Rule. However, ATSs in the markets for government securities, corporate debt securities, and municipal securities may be unlikely to restrict trading in individual securities on their systems because the aggregated volume threshold is applied categorically rather than to individual securities.

Market participants could also incur indirect costs from the proposed amendments to apply certain aggregate volume thresholds to the Fair Access Rule if it causes a broker-dealer or affiliated broker-dealers that operate multiple ATSs to shut down one or more their smaller ATSs in order to avoid triggering the Fair Access threshold. This could cause market participants that subscribed to one of the shutdown platforms to incur search costs to find another venue to trade on.

The Commission believes that market participants could incur indirect costs related to applying Regulation SCI to Government Securities ATSs and Communication Protocol Systems in equity securities and with applying Rule 301(b)(6) to Communication Protocol Systems in the market for corporate debt securities or municipal securities. If a Government Securities ATS or Communication Protocol System that trades NMS stocks is close to satisfying the volume thresholds of Regulation SCI or Rule 301(b)(6), it could limit the trading in certain securities on its systems to stay below the volume thresholds in order to avoid being subject to Regulation SCI or Rule 301(b)(6). If this occurs for a Government Securities ATS or Communication Protocol System that is the sole provider of a niche service, as discussed above, some market participants would incur higher trading costs.

Additionally, in order to stay below the volume thresholds under Regulation SCI or Rule 301(b)(6), an ATS could break itself up into smaller ATSs. If this results in its subscribers changing their administrative and operational procedures (*e.g.,* means of access, connectivity, order entry), the subscribers would incur costs associated with making those administrative and operational changes to utilize the ATS, or otherwise incur search costs to find another venue to trade.

3. Efficiency, Competition, and Capital Formation

The Commission has considered the effects of the proposed amendments on efficiency, competition, and capital formation, and discussed these effects below.

a. Competition

The Commission preliminarily believes that the proposed amendments to Regulation ATS and Regulation SCI would affect competition in the market for trading services.[1149]

i. Regulation ATS

The Commission believes that the proposed amendments to Rule 3b–16 and Regulation ATS would promote competition by requiring current ATSs and Communication Protocol Systems to operate on a more equal basis. Additionally, the Commission believes that the regulatory requirements and compliance costs associated with the proposed amendments to Rule 3b–16 and Regulation ATS could act as a deterrent or a barrier to entry for potential ATSs or cause some smaller existing trading venues to exit the market for trading services.[1150] However, based on the estimated costs in Section VIII.C.2.a.i above, the burdens imposed by these regulatory requirements or compliance costs may not be large enough for these effects to be significant. Even if a smaller trading venue ceased operating, the Commission believes it may not have a significant adverse effect on overall competition among trading venues, because the market for trading services is competitive and the trading volume from the venue would likely be

[1149] *See supra* Section VIII.C.1 for a discussion about benefits from the requirements of Regulation ATS and Regulation SCI and Section VIII.C.2 for a discussion about costs of the requirements of Regulation ATS and Regulation SCI.

[1150] The expected compliance costs of Regulation SCI could act as a barrier to entry for new entrants who expect to eventually become SCI ATSs. If the expected compliance costs reduce the number of potential new entrants, this would reduce the potential competition from new entrants. However, these effects may not be significant because the entry decision at the margin, when the venue is small, may not be significantly influenced by what would happen if the venue later became large enough and met the requirements of Regulation SCI.

absorbed and redistributed amongst other ATSs or non-ATS venues.[1151]

Although the proposed amendments to Exchange Act Rule 3b–16 and Regulation ATS may not significantly increase the barriers to entry for new trading venues or cause some existing smaller trading venues to exit the market, the Commission lacks certain information necessary to quantify the extent to which entities that otherwise would seek to operate as a trading venue in the markets for government securities, repos, corporate, municipal, or equity securities would be dissuaded from doing so. Specifically the decision for a trading venue to continue operating or to cease operating depends on numerous factors and the Commission lacks information about many of those factors. For example, the Commission does not have information on the extent to which an existing Communication Protocol Systems would potentially need to alter its operations or business model as a result of the proposed amendments to Rule 3b–16 and Regulation ATS.

(a) Regulatory Framework

To the extent that current ATSs and Communication Protocol Systems compete,[1152] the proposed changes to Exchange Act Rule 3b–16, which would subject Communication Protocol Systems to the exchange regulatory framework, which can include complying with Regulation ATS,[1153] would promote competition by requiring current ATSs and Communication Protocol Systems to operate on a more equal basis in securities markets. One commenter on the Concept Release stated that non-ATS trading platforms that are neither registered as exchanges nor as ATSs perform core market place functions in fixed income securities (*e.g.,* corporate and municipal bonds) trading.[1154] This commenter also noted that these non-ATS trading platforms are operated by either broker-dealers or unregulated entities. Furthermore, this commenter stated that the significant regulatory burdens on ATSs put ATSs at a competitive disadvantage to non-ATS trading platforms that are not subject to the same regulatory obligations. Extending the requirements of Regulation ATS to Communication Protocol Systems would help eliminate a competitive disadvantage for ATSs arising from uneven regulatory requirements in the market for trading services.[1155] As discussed in Section II.B.3, the proposed amendment would subject both broker-dealer-operated and non-broker-dealer-operated Communication Protocol Systems to the requirements of Regulation ATS. To comply with the broker-dealer registration requirements of Regulation ATS, a non-broker-dealer-operated Communication Protocol System would be required to become a member of an SRO (*e.g.,* FINRA) and comply with the requirements of the SRO, to which ATSs are currently required.

Similarly, extending Regulation ATS to Currently Exempted Government Securities ATSs [1156] and Communication Protocol Systems that trade government securities would help promote competition by eliminating a Current Government Securities ATS's competitive disadvantage that might arise due to uneven regulatory requirements in the market for government securities and repo trading services.[1157]

The Commission acknowledges that some Government Securities ATSs and Communication Protocol Systems could restructure their operations to be non-ATSs to avoid being subject to Regulation ATS and Regulation SCI if the requirements are too burdensome or impair the ability of the trading venue to compete. However, the risk of this occurring may be mitigated because the proposed amendments to Rule 3b–16 may make it difficult for Government Securities ATSs and Communication Protocol Systems to restructure their operations to be non-ATSs.[1158] To the extent this does occur, the benefits and enhancements to competition discussed above would be reduced.[1159]

One commenter on the Concept Release stated that the flexibility of the current regulatory framework allows financial technology firms[1160] to

[1151] The competitive effects would vary based on the types of securities and the role that ATSs and Communication Protocol Systems play in each securities market. *See supra* Sections VIII.B.2.d, VIII.B.3.d, VIII.B.4.d, and VIII.B.5.f for a discussion about competition in the market for trading services in different securities markets. Furthermore, the Commission acknowledges that the effects on competition could be greater if a smaller trading venue that is the sole provider of a niche service were shut down. To the extent this occurs, it could adversely impact competition because it would require some market participants to find other venues to trade on that may not minimize their trading costs to the same extent. However, even in this case, the overall effects on competition may still be limited because a competitor could create similar business models if demand were adequate, and if it did not do so, it seems likely new entrants would do so if demand were sufficient.

[1152] *See supra* Sections VIII.B.2.d, VIII.B.2.d, VIII.B.2.d, and VIII.B.7 (discussing how current ATSs in some markets tend to be interdealer markets and Communication Protocol Systems tend to be dealer-to-customer markets).

[1153] Under the proposal, Communication Protocol Systems that choose not to register as exchanges can instead register as broker-dealers and comply with Regulation ATS. Furthermore, under the proposal, Communication Protocol Systems operated by non-broker-dealers would be subject to the same regulatory requirements as ATSs, including the broker-dealer registration requirement of Regulation ATS. The Commission estimates that 6 non-broker-dealer-operated Communication Protocol Systems without a broker-dealer affiliate exist. The Commission assumes that, under the proposed amendments, Communication Protocol Systems would choose to register as broker-dealers and comply with Regulation ATS, rather than register as exchanges. *See supra* note 1056 and accompanying text.

[1154] *See* ICE Bonds Letter II at 2 and 3.

[1155] *See supra* Sections VIII.B.2, VIII.B.3, VIII.B.4, VIII.B.5, and VIII.B.6 for discussions regarding regulatory requirements for ATSs in the government securities, corporate debt securities, municipal securities, equities, and options market, respectively. One commenter on the Concept Release stated that applying a consistent regulatory framework to trading platforms that provide equivalent services to market participants, while also distinguishing between platforms that offer distinct trading protocols, would level the competitive landscape and allow market participants to choose trading platforms and protocols based on the merits of the services provided. Furthermore, this commenter also stated that it would not be appropriate to regulate all types of electronic trading protocols in the same manner regardless of their systemic risk profiles or to regulate electronic trading protocols more strictly than equivalent non-electronic trading protocols. *See* Tradeweb Letter at 4.

[1156] Under the proposal, bank-operated Currently Exempted Government Securities ATSs would be subject to the same regulatory requirements as non-bank-operated Currently Exempted Government Securities ATSs and Current Government Securities ATSs. The Commission estimates that 1 bank-operated Currently Exempted Government Securities ATS exists.

[1157] Current Government Securities ATSs might be at a competitive disadvantage to Currently Exempted Government Securities ATSs and Communication Protocol Systems, which do not currently incur compliance costs associated with the requirements of Regulation ATS. As discussed above, Currently Exempted Government Securities ATSs, bank-operated Currently Exempted Government Securities ATSs, Communication Protocol Systems, and Current Government Securities ATSs compete in the market for government securities and repo trading services with different regulatory requirements. For example, due to reporting requirements of Regulation ATS, it would be more difficult or costly for a Current Government Securities ATS to implement significant operational changes to compete with Currently Exempted Government Securities ATSs and Communication Protocol Systems if the Current Government Securities ATS's competitive advantage is driven by operational facets that would be reported on Form ATS. *See also supra* Sections II, III, VIII.B.2.a, and VIII.B.2.b for a discussion about the differences in regulatory requirements between Current Government Securities ATSs, Currently Exempted Government Securities ATSs, and Communication Protocol Systems under the current regulatory framework.

[1158] Additionally, although non-ATS venues would compete with ATSs in the market for government securities and repo trading services, non-ATS venues cannot offer the same services as ATSs without becoming ATSs.

[1159] *See supra* Section VIII.C.1 for a discussion about benefits from the requirements of Regulation ATS and Regulation SCI.

[1160] For the purpose of this discussion, financial technology firm is interpreted to be a type of Communication Protocol System (*e.g.,* RFQ system).

innovate and compete fiercely.[1161] This commenter also stated that this structure creates relatively low costs for entry (and exit) in the development of new technologies.[1162] Subjecting Communication Protocol Systems to the requirements of Regulation ATS could reduce operational flexibility. For example, it would be more costly for a Communication Protocol System to implement significant changes to operational facets that would be required to be reported on Form ATS or Form ATS–N. The Commission acknowledges that this reduction in operational flexibility could, under certain circumstances, make it more difficult to innovate.[1163] That said, in addition to the other benefits discussed above,[1164] the Commission believes that the proposed amendments would foster competition by requiring current ATSs and Communication Protocol Systems to operate on a more equal basis in the market for trading services. This, in turn, would help promote innovation.

(b) Compliance Costs of Regulation ATS

The Commission preliminarily believes that the compliance costs associated with the requirements of Regulation ATS would have different effects on the competitive position of ATSs depending on their size. However, the Commission believes that these initial and ongoing compliance costs may not have a significant adverse impact on overall competition in the market for trading services.

As a result of the proposed extension of Regulation ATS to Communication Protocol Systems and Currently Exempted Government Securities ATSs, these ATSs would be subject to Rule 301(b)(9) and (10), Rule 302, and Rule 303. Most of the estimated compliance costs [1165] associated with these rules would be fixed costs to those ATSs regardless of the amount of trading activity that takes place on them, and thus, these compliance costs would represent a larger fraction of revenue for a small (measured in trading volume) ATS relative to that for a large ATS.[1166] Furthermore, most of the estimated compliance costs associated with the requirements of Form ATS–N under Rule 304, which all Government Securities ATSs and Communication Protocol Systems that trade NMS stocks would incur, would be fixed costs. This could have an adverse impact on small ATSs in competing against larger ATSs, which could act as a deterrent or a barrier to entry for potential ATSs or result in small ATSs exiting the market for trading services.[1167] However, if small Government Securities ATSs and Communication Protocol Systems that trade NMS stocks engage in providing simpler services, these small ATSs are likely to incur lower compliance costs.[1168]

One commenter on the Concept Release stated that the regulatory burdens associated with subjecting all electronic platforms to the requirements of Regulation ATS could ultimately reduce the number of different platforms available.[1169] Another commenter on the Concept Release stated that the changes contemplated to Rule 3b–16 could end up raising costs for new financial technology (*i.e.,* fintech) [1170] entrants (liquidity solutions) to enter, stifle innovation and damage the current ability of market participants to locate liquidity in all illiquid security markets.[1171] This commenter also stated that a change in the definition of exchange would insert unnecessary intermediation between dealers and their customers and damage liquidity formation.[1172]

As discussed above, the compliance costs from the proposed amendments to Regulation ATS may not significantly increase the barriers to entry for new trading venues or cause some existing Communication Protocol Systems and Currently Exempted Government Securities ATSs to exit the market. Therefore, the Commission believes that the compliance costs associated with Regulation ATS may not have a significant adverse impact on competition in the markets for trading services. As discussed above, while the Commission acknowledges the proposed amendments could reduce operational flexibility, which could, under certain circumstances, make it more difficult to innovate, the Commission believes increased competition from the proposed amendments providing a more equal regulatory basis would help promote innovation.[1173] To the extent the proposed amendments force an innovative fintech to exit the market, it may be able to restructure itself (rather than operate as an ATS) as a third-party vendor and continue to provide certain innovative services, or otherwise sell its technology to another ATS, which would mitigate to some extent any adverse impact the proposed amendments may have on innovation.

To the extent the proposed amendments result in a Communication Protocol System that trades less liquid securities exiting the market for trading services, it could increase the trading costs of its subscribers if they need to find a new trading venue or are forced to go through multiple intermediaries (*i.e.,* broker-dealers) to find counterparties. However, as discussed above, the Commission preliminarily believes this may not result in a significant increase in trading costs for market participants because the trading

[1161] *See* Bloomberg Letter at 10 and 17.

[1162] *See* Bloomberg Letter at 23.

[1163] For example, it would take longer for a Communication Protocol System that trades government securities to implement an innovative operational facet that required a significant change to its systems, *e.g.* an innovative trading protocol, because they it need to file a Form ATS–N material amendment 30 days before implementing the system change. *See supra* IV.A.

[1164] *See supra* Section VIII.C.1.

[1165] The compliance costs associated with the requirements of Regulation ATS are generally represented by implementation costs (the monetized costs of PRA burdens). *See also supra* note 1100. *See supra* Section VIII.C.2.a.i for a discussion on the implementation costs associated with Rule 301(b)(9) and (10), Rule 302, and Rule 303. Communication Protocol Systems that are not broker-dealers and Currently Exempted Government Securities ATSs that are banks would incur additional compliance costs associated with the broker-dealer registration requirements under Rule 301(b)(1). *See infra* Section VIII.C.3.1.i.c) for a discussion of the competitive effects of broker-dealer registration requirements.

[1166] *See supra* Section VIII.2.a.i for a discussion about the impact of implementation costs for small ATSs.

[1167] Based on the estimated costs in Section VIII.C.2.a.i above, the Commission preliminarily believes that the compliance costs may not be large enough for these effects to be significant. *See supra* note 1151 and accompanying text.

[1168] *See supra* Section VIII.C.2.

[1169] *See* SIFMA Letter at 9 and 11. Another commenter on the Concept Release stated that the revision of the definition of ''exchange'' in Exchange Act Rule 3b–16 (''Rule 3b–16'') to expand the applicability of Regulation ATS to firms currently regulated as non-ATS broker-dealers may cause disruption if not undertaken carefully. *See* Tradeweb Letter at 2. An additional commenter stated that the Commission must be careful in implementing any reforms to the oversight of corporate bond and municipal securities trading venues to ensure that there are no unintended consequences for investors, such as the reduction in the availability of the types of platforms that investors utilize to effect transactions in these securities. *See* MFA Letter at 8.

[1170] For the purpose of this discussion, fintech is interpreted to be a type of Communication Protocol System (*e.g.,* RFQ system).

[1171] *See* Bloomberg Letter at 3. This commenter on the Concept Release stated that adding fintechs, such as RFQ systems, to the definition of exchange would erect high regulatory hurdles for innovation and new fintech entrants. *See also* Bloomberg Letter at 28. Another commenter on the Concept Release similarly expressed concern that any revisions to the regulatory framework for fixed income electronic trading should not stifle the investment and innovation that has led to the variety of existing trading protocols, and that it would be a mistake to interrupt this evolution through the increased imposition of an equity-based regulatory framework. *See* MarketAxess Letter at 3.

[1172] *See* Bloomberg Letter at 20. This commenter also stated that a change in the definition of exchange would threaten to distort the market structure by creating a one-size-fits-all approach that is biased against the trading of less-liquid instruments, damaging liquidity formation. *See id.*

[1173] *See supra* Section VIII.C.3.a.i.a).

interest that was being sent to the Communication Protocol System would likely be absorbed and redistributed amongst other ATSs or non-ATS venues.[1174]

(c) Broker-Dealer Registration Requirements

In addition to the compliance costs associated with the requirements of Regulation ATS, non-broker-dealer-operated Communication Protocol Systems without a broker-dealer affiliate would incur additional compliance costs related to registering with the Commission as broker-dealers, becoming members of an SRO, such as FINRA, and maintaining broker-dealer registration and SRO membership.[1175] Although these additional compliance costs could harm the competitive position of these Communication Protocol Systems and raise barriers to entry for entrants who are not broker-dealers nor affiliated with another broker-dealer, the Commission preliminarily believes that the compliance costs associated with the proposed broker-dealer registration requirements may not have a significant adverse effect on overall competition in the market for trading services.

Although the Commission acknowledges uncertainty about the compliance costs associated with the proposed broker-dealer registration requirements,[1176] there are two reasons why these costs may not be significant enough to make a non-broker-dealer-operated Communication Protocol Systems exiting the market likely. First, the Commission believes that the estimated average costs may not be significant enough to make exiting the market likely.[1177] Second, the Commission believes that the adverse effect on competition may be limited to existing small Communication Protocol Systems and this adverse effect may be mitigated to some extent because small Communication Protocol Systems would incur lower compliance costs associated with the broker-dealer registration requirements.[1178] To the extent that one of these Communication Protocol Systems ceased operating, the Commission believes it may not have a significant adverse effect on overall competition among trading venues, because the market for trading services is competitive and the trading volume from the venue would likely be absorbed and redistributed amongst other ATSs or non-ATS venues.[1179]

(d) Ineffectiveness Declaration

The proposed ability for the Commission to be able to declare a Form ATS–N or Form ATS–N amendment ineffective could result in compliance costs for Government Securities ATSs and Communication Protocol Systems that are NMS Stock ATSs and may affect competition in the market for government securities, repos, and NMS stock trading services. However, based on Commission staff's experience with NMS Stock ATSs that filed an initial Form ATS–N, the Commission preliminarily believes this would be an unlikely result.[1180] To the extent the Commission declares an initial Form ATS–N or amendment ineffective, the ATS would either have to cease operations [1181] or, in the case of an amendment, roll back any changes it made and operate pursuant to its previous Form ATS–N that is effective until it is able to address the deficiencies and file a new Form ATS–N that becomes effective.[1182] To the extent the Commission declares an initial Form ATS–N or amendment ineffective, some broker-dealer operators of Government Securities ATSs and Communication Protocol Systems in NMS Stocks might find that the costs of addressing deficiencies in Form ATS–N outweigh the benefits of continuing to operate the trading venue, particularly if the trading venue does not constitute a significant source of profit for a broker-dealer operator.

The ability of the Commission to declare Form ATS–N ineffective could also raise barriers to entry for new ATSs, as it might create uncertainty as to whether the Commission would declare its initial Form ATS–N effective or ineffective and as to the cost of avoiding an ineffective declaration. If a new ATS's initial Form ATS–N is declared ineffective, it would require time and additional expenditures to address the deficiencies delaying the commencing of operations, which would deter some potential ATSs from entry into the market for trading services. However, because an ineffectiveness declaration would be an unlikely result,[1183] the Commission believes it would not significantly raise the barriers to entry for new ATSs.

(e) Fair Access

The Commission believes that applying the Fair Access Rule to Government Securities ATSs, Communication Protocol Systems, and passive systems could increase competition between market participants in the markets for government securities, repos, corporate and municipal securities, and equity securities. As discussed above, to the extent that there are market participants currently excluded from trading on significant Government Securities ATSs, Communication Protocol Systems, or passive systems, applying the Fair Access Rule to Government Securities ATSs, Communication Protocol Systems, and passive systems could increase trading venue options available to these market participants, which could lower their trading costs.[1184] This, in turn, could increase competition among market participants trading on these platforms, which could be significant sources of liquidity and represent a significant portion of trading volume in their respective markets.[1185] However, these competitive effects may be reduced to the extent that some existing subscribers of trading venues that are subject to the Fair Access Rule redirect their trading interest to other trading venues not subject to the Fair Access Rule in order to preserve some of the benefits they may receive from a trading venue limiting access.[1186] If the

[1174] *See supra* Section VIII.C.2.b.

[1175] The Commission estimates there are 6 non-broker-dealer-operated Communication Protocol Systems without a broker-dealer affiliate. *See supra* Section VIII.C.2.a.ii.

[1176] As discussed above, the costs would vary significantly across firms and the Commission's estimate is uncertain because it does not have information on the non-broker-dealer-operated Communication Protocol Systems without a broker-dealer affiliate. *See id.*

[1177] The Commission estimates an initial cost of approximately $317,000 to register as a broker-dealer with the Commission and become a member of FINRA and an ongoing annual cost of approximately $58,000 to maintain the broker-dealer registration and FINRA membership. *See id.*

[1178] *See id* for a discussion about the costs associated with the broker-dealer registration requirements under Rule 301(b)(1).

[1179] *See supra* note 1151 and accompanying text.

[1180] Unlike the current rules applicable to NMS Stock ATSs under Rule 304 of Regulation ATS with respect to ineffectiveness, the Commission does not have a process to declare a Form ATS ineffective because of the quality of the disclosures and cause the ATS cease operating pursuant the exemption. *See* Rule 304(a)(1)(iv)(B).

[1181] *See* Rule 304(a)(1)(iv)(B).

[1182] *See id.*

[1183] *See supra* Section VIII.C.2.a.iii (discussing the Commission's belief that the potential costs of an ineffectiveness declaration would incentivize Government Securities ATSs and Communication Protocol Systems to initially submit a more accurate and complete Form ATS–N and amendments, which would reduce the likelihood that they are declared ineffective).

[1184] *See supra* Section VIII.C.1.b.

[1185] One commenter on the 2020 Proposal stated that, since the bilateral fixed-income market is a heavily relationship-driven business, the Fair Access rule would better ensure that broker-dealers and their affiliates cannot engage in retaliatory behavior, and thus improve access and competition for the largest, most systemically important markets. *See* AFREF Letter at 3.

[1186] *See supra* Section VIII.C.2.b (discussing the indirect costs to market participants related to the requirements of the Fair Access Rule).

proposed amendments to apply certain aggregate volume thresholds increase the number of smaller affiliate ATSs that would be subject to the Fair Access Rule, it could also increase competition among market participants, to the extent certain market participants are currently excluded from accessing these platforms.

The Commission believes that the proposed amendments to apply certain aggregate volume thresholds to the Fair Access Rule could harm competition among trading venues in the markets for government securities, corporate debt and municipal securities, and equity securities. As discussed above, if the aggregate volume of ATSs operated by a common broker-dealer or operated by affiliated broker-dealers approaches the Fair Access volume thresholds, then the operators could restrict trading on their systems in one or more securities in order to avoid being subject to the requirements of the Fair Access Rule.[1187] However, ATSs in the markets for government securities and corporate debt and municipal securities may be unlikely to restrict trading in individual securities on their systems because the aggregated volume threshold is applied categorically rather than to individual securities. If these venues restrict trading in some securities, it would reduce competition among trading venues to attract order flow in these securities.

Additionally, the proposed amendments to apply certain aggregate volume thresholds to the Fair Access Rule could also harm competition among trading venues if they cause a broker-dealer or affiliated broker-dealers that operate multiple ATSs to shut down one or more their smaller ATSs in order to avoid triggering the Fair Access threshold.[1188] However, because the trading volume on these smaller ATSs would likely be absorbed and redistributed amongst other ATSs or non-ATS venues, the Commission believes that the overall effects on competition among trading venues may not be significant.

(f) Public Disclosure

The increase in transparency due to the public disclosure of Form ATS–N would promote competition in the markets for government securities, repos, and NMS stock trading services. The increase in competition could result in lower venue fees, improve the efficiency in customer trading interest or order handling procedures, and promote innovation. For instance, because the public disclosure of Form ATS–N would make it easier for market participants to compare fees across ATSs,[1189] market participants could choose to send their orders to ATSs that offer lower fees, which in turn, could induce ATSs to lower their fees to attract new subscribers. If non-ATS venues compete with ATSs for trading services, the increased operational transparency of ATSs might also incentivize non-ATS trading venues to reduce their fees to compete with ATSs.

Because the public disclosure of Form ATS–N would make it easier for market participants to compare the quality of trading services, such as innovative trading functionalities, order handling procedures, and execution statistics—if they are made available, across venues,[1190] market participants would be more likely to send their trading interests or orders to ATSs that offer better trading services. This would promote greater competition in the market for trading services and incentivize ATSs to innovate, including, in particular, technology related to trading services to improve the quality of such services to attract more subscribers.

Similarly, the public disclosure of Form ATS–N would also result in market participants redirecting their trading interest away from ATSs that offer lower quality trading services compared to other ATSs, which could result in these ATSs earning less revenue. If the loss in revenue causes these ATSs to become unprofitable, they might choose to exit the market.[1191]

The proposed amendment to require timely fee change disclosure on Form ATS–N would promote competition between current NMS Stock ATSs and other trading venues in the market for NMS stocks, including exchanges.[1192] In the Commission staff's experience, NMS Stock ATSs have taken varied approaches to the reporting of fees. Current NMS Stock ATSs that treat fee changes as material changes in filing Form ATS–N are required to wait 30 calendar days from the filing date to implement a fee change.[1193] In other cases, NMS Stock ATSs have filed updating amendments no later than 30 days following the end of the calendar quarter in which a fee change was made. The Commission believes that requiring NMS Stock ATSs to file a fee amendment no later than the date it makes the change to a fee or fee disclosure would require those NMS Stock ATSs to provide the public with sufficient notice about a fee change while enabling those NMS Stock ATSs to nimbly change fees in competing against other trading venues. Furthermore, under Section 19(b) of the Exchange Act, national securities exchanges can implement fee changes upon filing with the Commission.[1194] To the extent that NMS Stock ATSs compete with exchanges in fees to attract order flow, the proposed amendment would promote competition by helping to level the playing field between NMS Stock ATSs and exchanges in terms of the timeframes in which they can initiate and disclose fee changes.[1195]

[1187] *See supra* Section VIII.C.2.b.

[1188] *See id.*

[1189] Under the proposed amendments, Government Securities ATSs (inclusive of Communication Protocol Systems, as proposed) and Communication Protocol Systems that trade NMS stocks would need to begin disclosing their Form ATS–N. Current NMS Stock ATSs already publically disclose their Form ATS–N.

[1190] *See supra* Section VIII.C.1.b for a discussion about benefits from public disclosure of Form ATS–N.

[1191] *See supra* note 1151 and accompanying text for a discussion on the effects of ATSs exiting the market for trading services.

[1192] Under the proposed amendments, Government Securities ATSs would also be required to file fee amendments on Form ATS–N. This could promote competition among Government Securities ATSs because timely fee disclosure of fee changes by Government ATSs would make it easier for market participants to compare fees between trading venues. This could incentivize trading venues in the market for Government Securities to reduce their fees to compete to attract order flow.

[1193] *See supra* Section IV.A for a discussion about fee amendments on Form ATS–N.

[1194] Under Section 19(b)(3), SRO rule changes that: Constitute a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO; establish or changing a due, fee, or other charge imposed by the SRO; or are concerned solely with the administration of the SRO, are immediately effective upon filing. However, the Commission may suspend one of these SRO rule changes within 60 days of the date the SRO rule change is filed with the Commission, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission does suspend a SRO rule change, then it shall institute proceedings under Section 19(b)(2)(B) to determine whether the proposed SRO rule change should be approved or disapproved. *See* 15 U.S.C. 78s(b)(2) and 15 U.S.C. 78s(b)(3).

[1195] Currently, an amendment to a fee could result in an ATS filing an updating amendment or a material amendment, depending on the nature of the change and the ATS's assessment of whether such change was material. If an NMS Stock ATS would file an updating amendment to disclose a fee change, then the proposed amendment would help level the playing field by reducing the amount of time that the NMS Stock ATS would have before it had to disclose a fee change, bringing it more in line with the disclosure timeframes of exchanges. If an NMS Stock ATS would file a material amendment to disclose a fee change, then the proposed amendment would help level the playing field because the NMS Stock ATS would no longer have to give 30 days' notice before initiating the fee

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The public disclosure of a Government Securities ATS's or Communication Protocol System that trades NMS stock's previously non-public information regarding innovative operational facets could adversely impact competition in the market for trading services and also reduce the incentives for these trading venues to innovate. If the competitive advantage of an ATS in the market is driven by certain operational innovations, the disclosure of this information could result in other competing ATSs with similar operational platforms implementing similar methodologies, which could cause market participants to send their trading interest or orders to those other ATSs. To the extent some ATSs may rely on these innovations to attract trading interest, this could cause some existing ATSs to exit the market or raise the barriers to entry for new ATSs, which could adversely impact competition.[1196] Additionally, it could reduce the incentives for ATSs to innovate if publicly disclosing new innovations results in the disclosing ATS earning less revenue from new innovations it develops. However, the Commission believes that the risk of these adverse effects occurring would be low, because the information disclosed on Form ATS–N is not likely to include detailed enough information regarding operational facets or innovations such that the public disclosure would adversely affect the competitive position of the disclosing ATS.[1197]

One commenter on the 2020 Proposal stated that the Commission should not require making commercially sensitive information filed on the previously proposed Form ATS–G publicly available, which the commenter classified as information on certain fees or charges for use of the ATS's services and on aggregate, platform-wide order flow and execution statistics that the ATS already otherwise collects and publishes to one or more subscribers.[1198] The commenter stated that the public disclosure of such information would have a negative impact on innovation and competition among ATSs. As discussed above, the Commission believes that the responsive information to the Form ATS–N is not likely to include commercially sensitive or other information the public disclosure of which would result in the disclosing ATSs exiting the market for trading services and ultimately reduce transparency.

One commenter on the 2020 Proposal stated that if the disclosure requirements of previously proposed Form ATS–G are too burdensome or impair the ability of Government Securities ATSs to compete, it will discourage the expansion of ATSs and potentially encourage operators of Government Securities ATS to restructure their operations to avoid being characterized as an ATS, which would ultimately result in less transparency rather than more.[1199] As discussed above, although the Commission acknowledges that some Government Securities ATSs could restructure their operations to be non-ATSs to avoid being subject to the public disclosure of Form ATS–N, the risk of this occurring may be mitigated because the proposed amendments to Rule 3b–16 may make it difficult for them to restructure their operations to be non-ATSs.[1200]

ii. Regulation SCI

The Commission believes that the requirements imposed by Regulation SCI may not have a significant adverse effect on competition in the market for trading services or on market participants' trading costs.

The Commission believes that the compliance costs imposed by Regulation SCI may not have a significant adverse effect on competition among SCI ATSs, non-SCI ATSs, and non-ATS venues in the government securities market due to mitigating factors.[1201] The compliance costs imposed by Regulation SCI would have some impact on competition in the market for government securities trading services. Specifically, because non-SCI ATSs do not have to incur the compliance costs associated with Regulation SCI, non-SCI ATSs and non-ATS venues would gain a competitive advantage in the market for trading services over SCI ATSs, with which they compete.[1202] If SCI ATSs pass on the compliance costs to their subscribers in the form of higher fees, SCI ATSs would lose order flow or their subscribers to other non-SCI ATSs and non-ATS venues with lower fees. Adverse competitive effects, however, would be mitigated because an SCI ATS would likely have more robust systems, fewer disruptive systems issues, and better up-time compared to non-SCI ATSs. Furthermore, any adverse competitive effect may be minor if an SCI ATS is large and has a more stable and established subscriber base than other ATSs and non-ATS venues.

The compliance costs associated with participating in business continuity and disaster recovery plan testing would affect competition among subscribers of SCI ATSs and also would raise barriers to entry for new subscribers. Because some subscribers would incur compliance costs associated with Rule 1004 and others would not, it would adversely impact the ability for those subscribers of SCI ATSs to compete. However, it is difficult to gauge the extent of impact on competition because the Commission does not have sufficient information, for example, on whether certain subscribers of SCI ATSs currently maintain connections to backup facilities, including for testing purposes. If larger subscribers of SCI ATSs already maintain connections to backup facilities including for testing purposes, the adverse impact on competition would be mitigated because the incremental compliance costs associated with the business continuity and disaster recovery plan testing requirements under Rule 1004 would be limited for those larger subscribers. The Commission believes that new subscribers are less likely to be designated immediately to participate in business continuity and disaster recovery plan testing than are existing larger subscribers because new subscribers might not initially satisfy the ATS's designation standards as they establish their businesses.

It is difficult to estimate the costs of Regulation SCI for third-party vendors that operate SCI systems or indirect SCI systems[1203] on behalf of SCI ATSs.[1204] If Regulation SCI imposes compliance costs on such vendors, the compliance costs would affect the competition

change, bringing it more in line with the notice timeline in which exchanges can initiate fee changes.

[1196] *See supra* note 1151 and accompanying text for a discussion on the effects of ATSs exiting the market for trading services.

[1197] *See supra* note 467 and accompanying text.

[1198] *See* Tradeweb Letter at 3, 10, and 11. Similarly, another commenter stated that publication of compliance procedures/processes is not commonplace and risks requiring disclosure of proprietary information. *See* ICE Bonds Letter I at 6.

[1199] *See* ICE Bonds Letter I at 5 and ICE Bonds Letter II at 4.

[1200] *See supra* Section VIII.C.3.a.i.a).

[1201] NMS Stock ATSs that meet certain volume thresholds are subject to Regulation SCI. The Commission estimates that no Communication Protocol System that is an NMS Stock ATS would be subject to Regulation SCI. The Commission preliminarily believes that subjecting significant Communication Protocol Systems that are NMS Stock ATSs to Regulation SCI would affect competition as discussed in the Regulation SCI Adopting Release.

[1202] The expected compliance costs could act as a barrier to entry for new entrants who expect to eventually become SCI ATSs, but the Commission preliminarily believes this would not be a likely possibility. *See supra* note 1150.

[1203] *See supra* note 348 for the definition of indirect SCI systems.

[1204] *See supra* Section VIII.C.2.a.vi.

among third-party vendors in the market for SCI systems or indirect SCI systems. If the costs associated with Regulation SCI for third-party vendors outweigh the benefits of continuing to operate SCI systems or indirect SCI systems on behalf of SCI ATSs, these third-party vendors would exit the market for SCI systems or indirect systems. In this respect, Regulation SCI would adversely impact such vendors and reduce the ability for some third-party vendors to compete in the market for SCI systems and indirect SCI systems, with attendant costs to SCI ATSs. If this happens, SCI ATSs would incur costs from having to find a new vendor, form a new business relationship, and adapt their systems to those of the new vendor. SCI ATSs might also elect to perform the relevant functions internally. If the current third-party vendors are the most efficient means of performing certain functions for SCI ATSs, and to the extent that any third-party vendor exits the market, finding new vendors or performing the functions internally would represent a reduction in efficiency for SCI ATSs.

b. Efficiency and Capital Formation

The Commission believes the proposed amendments to Rule 3b–16, Regulation ATS, and Regulation SCI could promote price efficiency and capital formation by reducing trading costs and the potential for systems disruptions on ATSs that capture a significant portion of trading volume.[1205] However, if ATSs restrict trading volume in certain securities to stay below the Fair Access Rule, Regulation SCI, and Rule 301(b)(6) thresholds, it could adversely affect price efficiency and capital formation.

As discussed above, the proposed requirement for certain Communication Protocol Systems and Government Securities ATSs to publically disclose Form ATS–N could help reduce trading costs for market participants.[1206] Additionally, subjecting significant Communication Protocol Systems and Government Securities ATS to the Fair Access Rule could also help reduce market participants' trading costs.[1207] A reduction in trading costs could, in turn, reduce limits to arbitrage and help facilitate informed traders impounding information into security prices, which could enhance price efficiency.[1208] Furthermore, extending Regulation SCI and Rule 301(b)(6) would help improve systems up-time [1209] for ATSs and would also promote more robust systems that directly support execution facilities, order matching, and the dissemination of market data, which could also enhance price efficiency.[1210] In particular, enhanced price efficiency in the secondary market for on-the-run U.S. Treasury Securities might also enhance the price efficiency of risky securities because the transaction prices of on-the-run U.S. Treasury Securities are used as risk-free rate benchmarks to price risky securities transactions.[1211]

Enhanced price efficiency could also promote capital formation. Price efficiency of securities is important because prices that accurately convey information about fundamental value improve the efficiency in allocating capital across projects and entities, which helps promote capital formation.

On the other hand, the Commission believes that the proposed amendments of the Fair Access Rule, Regulation SCI, and Rule 301(b)(6) could also adversely affect price efficiency and capital formation if ATSs that are close to satisfying the volume threshold limit trading over some period restrict trading or cease operating to stay below the volume thresholds and avoid being subject to these rules.[1212] To the extent that this keeps ATSs from getting larger, it would increase fragmentation, and thus, adversely affect price efficiency in those markets, harming capital formation.

D. Reasonable Alternatives

The Commission considered several alternatives to the proposal: (1) Require Currently Exempted Government Securities ATSs and certain Communication Protocol Systems to file Form ATS, but not publicly disclose Form ATS; (2) require differing levels of public disclosure by Government Securities ATSs depending on their trading volume; (3) extend the transparency requirements (*i.e.,* Form ATS–N) of Regulation ATS to all ATSs and Communication Protocol Systems; (4) apply Rule 301(b)(6) of Regulation ATS to Government Securities ATSs; (5) alter the volume thresholds for the Fair Access Rule; (6) alter the Government Securities ATS volume thresholds for Regulation SCI; (7) exclude Communication Protocol Systems from the definition of ''exchange'' but require them to register as broker-dealers; (8) require Forms ATS–N, ATS, and ATS–R to be submitted in Inline XBRL; and (9) require the content of Form ATS–N to be posted on individual ATS websites.

1. Require Government Securities ATSS To File a Non-Public Form ATS

One alternative could require Government Securities ATSs (inclusive of Communication Protocol Systems, as proposed) to file Form ATS and subsequent amendments with the Commission, instead of filing Form ATS–N. This alternative would allow Current Government Securities ATSs to continue to file current Form ATS. However, Form ATS would be deemed confidential for all Government Securities ATSs and would not have to be publicly disclosed. Under this alternative, compliance costs would be lower because the costs to prepare a Form ATS for Government Securities ATSs is less than preparing a Form ATS–N. Furthermore, Government Securities ATSs would not incur additional costs associated with amending Form ATS–N to address any deficiencies to avoid an ineffectiveness determination, because Rule 304 of Regulation ATS does not apply to Form ATS filings. However, this alternative would reduce regulators' insight into Government Securities ATSs compared to the proposal because Form ATS would require the disclosure of less information about the operations of Government Securities ATSs and the activities of their broker-dealer operators and their affiliates, as compared to Form ATS–N.

The lack of public disclosure of Form ATS under the alternative could result in market participants making less informed decisions regarding where to send their orders, and thus, could result in lower execution quality than they would obtain under the proposal. Additionally, this alternative could result in higher search costs for subscribers to identify potential trading venues for their orders. Because Government Securities ATSs would not have to publicly disclose their fees or details about their operations, there would be less competition among Government Securities ATSs and

[1205] *See supra* Sections VIII.B.2.a and VIII.B.2.b for discussions about the importance of real-time price information on Government Securities ATS and indicative quotes on Communication Protocol Systems that trade U.S. Treasury Securities in price discovery of various securities. *See supra* Section VIII.C.1.c, discussing the benefits of reducing system disruptions through Regulation SCI and Rule 301(b)(6).

[1206] *See supra* Section VIII.C.1.b

[1207] *See id.*

[1208] *See, e.g.,* Shleifer, A. and Vishny, R. (1997). The Limits of Arbitrage. *The Journal of Finance,* 52(1), 35–55 (discussing limits to arbitrage); Grossman, S. and Stiglitz, J. (1980). On the impossibility of informationally efficient markets. American Economic Review, 70, 393–408 (discussing informed traders and price efficiency).

[1209] Systems up-time is a measure of the time that a computer system is running and available.

[1210] *See supra* Section VIII.C.1.c.

[1211] Based on the Commission's understanding, Government Securities ATSs disseminate their Treasury trades via private feeds and third-party vendors. These prices also serve as benchmarks for pricing other financial products. *See* October 15 Staff Report, *supra* note 188.

[1212] *See supra* Section VIII.C.2.b.

between Government Securities ATSs and non-ATS trading venues compared to the proposal. If there is less competition for order flow in the market for government securities and repo trading services, there could also be less incentive for Government Securities ATSs to innovate.

2. Initiate Differing Levels of Public Disclosure Depending on Government Securities ATS Dollar Volume

The Commission could require different levels of disclosure (*i.e.,* under Rule 304) among Government Securities ATSs based on the dollar volume in government securities traded on the platform. In particular, this alternative would subject Government Securities ATSs with lower dollar volumes to lower levels of disclosure on the revised Form ATS–N. This alternative could provide smaller Government Securities ATSs with a competitive advantage over larger ones because smaller Government Securities ATSs would incur lower compliance costs relative to the proposal, which could translate into lower entry barriers relative to such barriers under the proposal. Because these small Government Securities ATSs would not have to disclose as much information pertaining to their operational facets to their competitors, they would have a competitive advantage over more established Government Securities ATSs and other trading venues. This approach therefore would promote competition in the market. To the extent the public disclosure of Form ATS–N would have discouraged innovation,[1213] this alternative also would promote innovation because these small Government Securities ATSs would not be deterred from innovating by the possibility of having to disclose certain operational facets, which could also benefit market participants who trade on these ATSs by improving the execution quality of their trades. However, because some Government Securities ATS would not have to publicly disclose as much information on their Form ATS–N, market participants may not be as able to compare Government Securities ATSs to select the most appropriate venue for the their trading objectives, which could increase market participant search costs and trading costs relative to the proposal.[1214] Additionally, this alternative could incentivize small Government Securities ATSs to limit the trading in government securities on their ATSs to stay small and not trigger additional disclosure requirements. If this were to happen, it could limit market participants' options for trading venues, which could result in higher trading costs relative to the proposal.

3. Extend the Transparency Requirements of Regulation ATS to All ATSs and Communication Protocol Systems

As another alternative, the Commission could extend the transparency requirements (*i.e.,* the public disclosure on Form ATS–N under Rule 304) of Regulation ATS to all ATSs and Communication Protocol Systems. Under this alternative, investors would receive information about the ATS operations and the activities of the broker-dealer operators and affiliates of all ATSs and Communication Protocol Systems. While the disclosure requirements of individual systems would be similar to what is required under the proposal, investors would be able to access detailed information on ATSs and Communication Protocol Systems that currently do not file Form ATS–N. This could help market participants make better-informed decisions about where to send their orders to achieve their trading objectives as compared to under the proposal. Compared to the proposal, the public disclosure of Form ATS–N by all ATSs and Communication Protocol Systems would further promote competition, which could result in lower venue fees, improve the efficiency in handling of customer trading interest procedures, and promote innovation.

Under this alternative, ATSs and Communication Protocol Systems that currently do not file Form ATS–N would incur the compliance costs discussed in Section VIII.C.2.a to comply with Regulation ATS. Additionally, the public disclosure of details regarding the operational facets of these ATSs and Communication Protocol Systems could adversely impact competition and raise barriers to entry in the market for trading services, and could also lower the incentives for these ATSs and Communication Protocol Systems to innovate. However, the Commission believes that the risk of this is likely to be low.[1215]

4. Apply Rule 301(b)(6) of Regulation ATS to Government Securities ATSs

Another alternative for the Commission is to apply the Capacity, Integrity, and Security Rule in Rule 301(b)(6) [1216] of Regulation ATS to Government Securities ATSs instead of extending Regulation SCI. The scope and requirements of the Capacity, Integrity, and Security Rule would be narrower than those of Regulation SCI. For example, Rule 301(b)(6) of Regulation ATS would apply to a narrower set of systems, as compared to Regulation SCI. Rule 301(b)(6) of Regulation ATS applies only to systems that support order entry, order routing, order execution, transaction reporting, and trade comparison, which is narrower than the definition of SCI system. This could result in the establishment of less robust systems in Government Securities ATSs compared to the proposal. This may increase the duration and severity of any system distributions, and result in more system issues occurring on Government Securities ATSs, which may, in turn, cause more interruptions in the price discovery process and liquidity flows and increase the occurrence of periods with pricing inefficiencies compared to the proposal.[1217] Furthermore, the Commission believes that compliance costs associated with the Capacity, Integrity, and Security Rule would be significantly less than those under the proposal because the scope and requirements of the Capacity, Integrity, and Security Rule would be narrower than those of Regulation SCI. For example, the Capacity, Integrity, and Security Rule would not require Government Securities ATSs to maintain a backup facility to comply with the requirements of Regulation SCI related to business continuity and disaster recovery plans. To the extent that Government Securities ATSs pass on these compliance costs to their subscribers, the significantly lower compliance costs of this alternative could result in lower trading costs for market participants compared to the proposal. Furthermore, the lower compliance costs of this alternative could lower barriers to entry in the market for government securities trading services and increase competition compared to the proposal, which would

[1213] As discussed above, the risk that the public disclosure of Form ATS–N would reduce the incentives for ATSs to is likely to be low. *See supra* Section VIII.C.3.a.i.f).

[1214] *See supra* Section VIII.C.1.b.

[1215] *See supra* Section VIII.C.3.a.i.f) for a discussion about the risk that the responsive information to the revised Form ATS–N would include information regarding operational facets such that the public disclosure of the information would adversely affect the competitive position of the disclosing ATS or Communication Protocol Systems and why the Commission believes that this risk is likely to be low. *See also supra* note 467 and accompanying text.

[1216] As also explained above, Rule 301(b)(6) addresses the capacity, integrity, and security requirements of automated systems for ATSs that meet certain volume thresholds. *See supra* note 157.

[1217] *See supra* Section VIII.C.1.c.

also result in lower trading costs for market participants.

As another alternative, the Commission could apply the Capacity, Integrity, and Security Rule in Rule 301(b)(6) to smaller Government Securities ATSs and extend Regulation SCI to larger Government Securities ATSs as proposed. For example, the Commission could require a Government Securities ATS that falls within a volume range for U.S. Treasury Securities of 5 percent and 10 percent to comply with Rule 301(b)(6) of Regulation ATS and a Government Securities ATS that exceeds a 10 percent volume threshold for U.S. Treasury Securities to comply with Regulation SCI. Under this alternative, the Commission believes that the smaller Government Securities ATSs subject to Rule 301(b)(6) would incur significantly lower compliance costs, as compared to the proposal, where these smaller Government Securities ATSs would be subject to Regulation SCI.[1218] To the extent that Government Securities ATSs pass on the additional compliance costs associated with Rule 301(b)(6) or Regulation ATS to their subscribers, the Commission believes that the trading costs for subscribers to these smaller Government Securities ATSs would be smaller, as compared to the proposal. Furthermore, the lower compliance costs of this alternative incurred by smaller Government Securities ATSs could lower barriers to entry in the market for government securities trading services and increase competition compared to the proposal, which could also result in lower trading costs for market participants.

5. Alter the Volume Thresholds for the Fair Access Rule

Another alternative for the Commission is to alter the volume thresholds for the Fair Access Rule.[1219] A higher aggregate volume threshold for the Fair Access Rule would result in a smaller number of ATSs and Communication Protocol Systems that are subject to the Fair Access Rule than under the proposal. With fewer ATSs and Communication Protocol Systems subject to the Fair Access Rule, some market participants may not be able to trade on as many ATSs and Communication Protocol Systems as they could have under the proposal, which could result in these market participants experiencing higher trading costs or worse execution quality than they would under the proposal. With a higher aggregate volume threshold for the Fair Access Rule, fewer ATSs and Communication Protocol Systems would incur compliance costs discussed in Section VIII.C.2.a to comply with the Fair Access Rule than under the proposal. This could lower the barriers to entry for new ATSs compared to the proposal.[1220] Additionally, a higher aggregate volume threshold could result in fewer broker-dealers shutting down some of their ATSs to avoid being subject to the Fair Access Rule compared to the proposal.[1221] Both lower barriers to entry and fewer ATSs exiting the market could increase competition compared to the proposal, resulting in lower trading costs for market participants. Since the aggregate volume threshold would be higher, broker-dealers operators would be less likely to restrict trading in certain securities in one or more of their systems in order to avoid the requirements of the Fair Access Rule. This would cause less order flow to be absorbed and redistributed amongst other trading venues, which could result in lower trading costs compared to the proposal, especially if the sole provider of a niche service is less likely to limit the trading in certain securities.

A lower aggregate volume threshold for the Fair Access Rule would cause a greater number of small ATSs and Communication Protocol Systems to be subject to the Fair Access Rule compared to the proposal. This would allow market participants that currently may be restricted in their access to access a greater number of ATSs and Communication Protocol Systems and provide them with more options in the selection of trading venues than under the proposal. Thus, compared to the proposal, these market participants could better access the trading venue that best meets their trading objectives, which result in the experiencing lower trading costs. With a lower aggregate volume threshold for the Fair Access Rule, ATSs and Communication Protocol Systems would incur greater compliance costs discussed in Section VIII.C.2.a to comply with the Fair Access Rule than under the proposal, which could increase the barriers to entry for new ATSs. Additionally, a lower aggregate volume threshold for the Fair Access Rule could cause a greater number of small ATSs and Communication Protocol Systems to exit the market for trading services compared to the proposal. Both higher barriers to entry and more ATSs shutting down could result in less competition compared to the proposal, which could result in market participants facing higher trading costs. Broker-dealers operators that are near the lower volume threshold would be more likely to restrict trading in one or more of their systems in order to avoid the requirements of the Fair Access Rule. This would result in more order flow being absorbed and redistributed amongst other trading venues compared to the proposal, which could result in higher trading costs, especially if the sole provider of a niche service is more likely to limit the trading in certain securities.

6. Alter the Government Securities ATS Volume Thresholds for Regulation SCI

Another alternative for the Commission is to alter the Government Securities ATS volume thresholds for Regulation SCI.[1222] A higher volume threshold for Regulation SCI would result in a smaller number of Government Securities ATSs being subject to Regulation SCI than under the proposal. Compared to the proposal, this could result in the establishment of less robust systems in Government Securities ATSs that would be subject to Regulation SCI under the proposal but fall below the higher volume threshold. This may increase the duration and severity of any system distributions, and result in more system issues occurring on these Government Securities ATSs, which may, in turn, cause more interruptions in the price discovery process and liquidity flows and increase the occurrence of periods with pricing inefficiencies compared to the proposal.[1223] With a higher volume threshold for Regulation SCI, the Commission believes that a smaller number of Government Securities ATSs would incur compliance costs discussed in Section VIII.C.2.a to comply with Regulation SCI requirements than under the proposal. This could lower barriers to entry in the market for government securities execution services compared to the proposal, which could increase competition, resulting in lower trading costs or better execution quality for investors. Compared to the proposal, a higher volume threshold for Regulation

[1218] *See supra* Section VIII.C.2.a.

[1219] *See supra* Sections VII.D.1.b and VIII.C.2.a for estimates of the number of additional trading venues that would be subject to the Fair Access Rule under the proposal.

[1220] The Commission believes that this would lower the barriers to entry compared to the proposal for both new ATSs that are the sole ATS operated by a broker-dealer, as well as new ATSs that are operated by a broker-dealer or affiliated broker-dealers that already operate one or more ATSs.

[1221] *See supra* Sections VIII.C.2.a.iv and VIII.C.3.a.i.e.

[1222] *See supra* Sections VII.D.6 and VIII.C.2.a for estimates of the number of additional trading venues that would be subject to Regulation SCI under the proposal.

[1223] *See supra* Section VIII.C.1.c.

SCI could also lead to less Government Securities ATSs restricting trading in certain government securities on their platform in order to stay below the volume threshold. This would cause less order flow to be absorbed and redistributed amongst other trading venues, which could result in lower trading costs compared to the proposal, especially if the sole provider of a niche service is less likely to limit the trading in certain securities.

A lower volume threshold for Regulation SCI would result in a larger number of Government Securities ATSs being subject to Regulation SCI than under the proposal. Compared to the proposal, a lower volume threshold for Regulation SCI likely would promote the establishment of more robust systems, help reduce the duration and severity of any system distributions, and help prevent system issues from occurring on smaller Government Securities ATSs that met the lower volume thresholds. This, in turn, could help prevent interruptions in the price discovery process and liquidity flows and thus may reduce the chance of periods with pricing inefficiencies occurring compared to the proposal. With a lower volume threshold for Regulation SCI, more Government Securities ATSs would incur compliance costs discussed in Section VIII.C.2.a to comply with Regulation SCI requirements than under the proposal, which could increase the barriers to entry for new Government Securities ATSs. This could decrease competition, resulting in higher trading costs or worse execution quality for investors compared to the proposal. Compared to the proposal, a lower volume threshold for Regulation SCI could also lead to more Government Securities ATSs restricting trading in certain government securities on their platform in order to stay below the volume threshold. This would cause more order flow to be absorbed and redistributed amongst other trading venues, which could result in higher trading costs compared to the proposal, especially if the sole provider of a niche service is more likely to limit the trading in certain securities.

7. Exclude Communication Protocol Systems From the Definition of ''Exchange'' but Require Them To Register as Broker-Dealers

The proposed amendments to Exchange Act Rule 3b–16 would require Communication Protocol Systems to either register as an exchange or register as a broker-dealer and comply with Regulation ATS.[1224] As an alternative, the Commission could require Communication Protocol Systems to register as broker-dealers, but continue to exclude them from the definition of ''exchange'' under Rule 3b–16, and thus, the requirements of Regulation ATS and Regulation SCI.[1225] Under this alternative, operators of Communication Protocol Systems would still need to register as broker-dealers with the Commission and FINRA, so they would still be subject to Commission and FINRA inspections and examinations. However, the benefits of enhanced regulatory oversight and investor protection would be less than in the proposal because Communication Protocol Systems would not be subject to the additional reports and requirements of Regulation ATS, which include having to report additional information to the Commission on Form ATS and Form ATR, or, if applicable, Form ATS–N.[1226]

Additionally, compared to the proposal, the reduction in market participant trading costs and improvements in their execution quality would not be as large because Communication Protocol Systems that trade government securities or NMS stocks would not be required to file and publicly disclose Form ATS–N and because significant Communication Protocol Systems would not be subject to the Fair Access Rule.[1227] Furthermore, because significant Communication Protocol Systems would not be subject to Regulation SCI or Rule 301(b)(6) of Regulation ATS, the enhancements to the price discovery process and liquidity in securities markets would be reduced relative to the proposal.[1228]

Under this alternative, Communications Protocol Systems would still incur the costs of registering as a broker-dealer, but would not incur the additional costs associated with Regulation ATS, including the costs associated with the Fair Access Rule and Regulation SCI and Rule 301(b)(6).[1229] This could result in less Communication Protocol Systems exiting the market and create lower barriers to entry for new Communication Protocol Systems compared to the proposal, which, relative to the proposal, could increase competition. Increased competition, in turn, could lower market participant trading costs and increase innovation among Communication Protocol Systems relative to the proposal. Since significant Communication Protocol Systems would not be subject to the Fair Access Rule or Regulation SCI and Capacity, Integrity, and Security Rule, Communication Protocol Systems would not have an incentive to restrict trading volume in certain securities to avoid reaching the volume threshold associated with these rules. This could cause less order flow to be absorbed and redistributed amongst other trading venues, which could result in lower trading costs compared to the proposal, especially if a Communication Protocol System that is the sole provider of a niche service is less likely to limit the trading in certain securities.[1230]

8. Require Forms ATS–N, ATS, and ATS–R To Be Submitted in Inline XBRL

The proposal would require Government Securities ATSs to file Form ATS–N, which is submitted in ATS–N-specific XML. In addition, the proposal would require confidential Forms ATS and ATS–R, which are currently submitted as paper documents, to be submitted to the Commission electronically via EDGAR in unstructured HTML or ASCII.[1231] As an alternative, the Commission might require Form ATS–N, as well as Forms ATS and ATS–R, to be submitted in the Inline eXtensible Business Reporting Language (''Inline XBRL'') data language. Inline XBRL is a derivation of XML that is designed for business reporting information and is both machine-readable and human-readable.[1232] This alternative might

[1224] As discussed above, Communication Protocol Systems function similarly to exchanges as market places and that including them within the definition of ''exchange'', rather than only subjecting them to the requirements of broker-dealers, would appropriately regulate a market place that brings together buyers and sellers of securities. *See supra* Section II.

[1225] The Commission assumes that, under the proposed amendments, Communication Protocol Systems would choose to register as broker-dealers and comply with Regulation ATS, rather than register as national securities exchanges. *See supra* note 1056 and accompanying text.

[1226] *See supra* Section VIII.C.1.a.

[1227] *See supra* Section VIII.C.1.b. Under this alternative, significant Communication Protocol Systems in the NMS stock market would also not be required to display their best quotes in the SIP, because they would not be subject to the order display and execution access requirements of Rule 301(b)(3) of Regulation ATS.

[1228] *See supra* Section VIII.C.1.c.

[1229] *See supra* Section VIII.C.2.

[1230] *See supra* Section VIII.C.2.b.

[1231] *See supra* Section V.B. The EDGAR system generally requires filers to use ASCII or HTML for their document submissions, subject to certain exceptions. *See* Regulation S–T, 17 CFR 232.101(a)(1)(iv); 17 CFR 232.301; EDGAR Filer Manual (Volume II) version 60 (December 2021), at 5–1.

[1232] Such a requirement would be implemented by revising Regulation S–T (17 CFR part 232) and including an Instruction to Forms ATS–N, ATS, and ATS–R which cites to Regulation S–T. In conjunction with the EDGAR Filer Manual,

include numerical detail tagging of quantitative disclosures (*e.g.,* platform-wide statistics) and text block tagging for narrative disclosures (*e.g.,* trade reporting arrangements).[1233] Compared to the proposal, the Inline XBRL alternative for Forms ATS–N, ATS, and ATS–R would provide more sophisticated validation, presentation, and reference features for filers and data users. However, the Inline XBRL alternative would also impose initial implementation costs (*e.g.,* training staff to prepare filings in Inline XBRL, licensing Inline XBRL filing preparation software) upon filers that do not have prior experience structuring data in the Inline XBRL data language. By contrast, because Form ATS–N may be filed using a fillable web form, filers that lack experience structuring data in EDGAR Form-specific XML would not incur technical implementation costs related to filing Form ATS–N under the proposal.

9. Require the Content of Form ATS–N To Be Posted on Individual ATS Websites

Under the proposal, Form ATS–N would be filed on the EDGAR system. Alternatively, the Commission might require the content of Form ATS–N to be posted on the individual ATSs' websites. Requiring the content of Form ATS–N to be posted on the individual ATSs' websites rather than EDGAR would impose additional direct costs on data users, who would need to navigate to and manually retrieve data from different ATSs' websites to aggregate, compare, and analyze the data. In addition, individual websites would not provide the validation capabilities that an EDGAR requirement would enable, and would thus, impose on data users the indirect costs associated with lower reliability of the data. An individual website requirement would provide a small benefit to bank-operated Government Securities ATSs relative to the proposal's EDGAR requirement, as those entities would not be required to incur the $50 compliance cost of submitting a Form ID to begin making EDGAR filings.[1234]

E. Request for Comments

The Commission is sensitive to the potential economic effects, including costs and benefits, of the proposed Rule. The Commission has identified certain costs and benefits associated with the proposal and requests comment on all aspects of its preliminary economic analysis, including with respect to the specific questions below. The Commission encourages commenters to identify, discuss, analyze, and supply relevant data, information, or statistics regarding any such costs or benefits.

177. Do you agree with the Commission's characterization of the relevant baseline against which it considered the effects of the proposed amendments?

178. Do you agree with the Commission's characterization of Communication Protocol Systems? Please provide any relevant details that you believe are missing from the Commission's description.

179. Do you agree with the Commission's characterization of the current state of the government securities market?

180. Do you agree that PTFs provide liquidity to Government Securities ATSs?

181. Do you agree that trading in the Treasury securities market is concentrated in a few large ATSs? Please provide data to support your position.

182. The Commission invites comment on the role of PTFs in trading Agency Securities. The Commission also requests comment on the providers of liquidity in the market for Agency Securities.

183. Do you agree with the Commission's characterization of the regulatory environment for Government Securities ATSs? Please provide any details you feel are relevant to understanding the impact of the variation in regulation across different ATSs in this market. Also, do you agree that the differences in regulation across different entities providing trading services in this market has placed some of them at a competitive disadvantage?

184. Please provide any additional details you feel are relevant to the role of Communication Protocol Systems in the government securities market.

185. Do you agree with the Commission's characterization of the role played by the RFQ indicative quote streams? Please provide any details you feel are important to understanding their role in the market.

186. Do you agree with the Commission's characterization of the competition baseline for government securities trading services?

187. Do you agree with the Commission's characterization of the state of the corporate debt market? Please provide any additional details you believe are relevant to understanding this market.

188. Do you agree with the Commission's description of the implications of the difference in regulation for Communication Protocol Systems compared to ATSs in the corporate debt market?

189. Do you agree with the Commission's description of the competition baseline for providing trading services in the corporate debt market? Do you agree with the Commission's characterization of the role of the existing regulatory regime in creating the current competitive environment?

190. Do you agree with the Commission's description of the municipal debt market?

191. Do you agree with the Commission's description of broker's brokers and their role in the municipal bond market? Please provide any details you feel are necessary to fully understanding this point.

192. The Commission requests any information pertaining to the role of Communication Protocol Systems in the market for municipal debt generally.

193. Do you agree with the Commission's description of the equity market? In particular, please provide any additional details you feel are relevant to understanding the role of Communication Protocol Systems in this market.

194. The Commission requests comment on the extent to which Communication Protocol Systems are used in the non-ATS OTC market for NMS stocks.

195. The Commission lacks the data to estimate the number or trading volume of IDQS or other OTC equity trading systems that operate Communication Protocol Systems and are not registered as ATSs or with FINRA, and requests comment on this topic.

196. Do you agree with the Commission's description of the options market?

197. The Commission requests comment on the full role of Communication Protocol Systems in the market for listed options.

198. Do you agree with the Commission's description of the market for repurchase and reverse repurchase agreements?

199. The Commission requests comment on the full role of Communication Protocol Systems in the

Regulation S–T governs the electronic submission of documents filed with the Commission. Modifying a structured data language requirement for a Commission filing or series of filings can generally be accomplished through changes to Regulation S–T, and would not require dispersed changes to the various rules and forms that would be impacted by the data language modification.

[1233] *See supra* Sections IV.D.4.y and IV.D.4.t.

[1234] *See supra* Section VIII.C.2.a.i. The Commission estimates that one Currently Exempted Government Securities ATS is operated by a bank. *See supra* Section VII.C.1.

market for repurchase and reverse repurchase agreements.

200. Do you agree with the Commission's description of the market for asset-backed securities?

201. The Commission requests comment on the full role of Communication Protocol Systems in the asset-backed securities market.

202. The Commission requests comment on whether Communication Protocol Systems play a role in the trading of to-be-announced mortgage-backed securities.

203. The Commission requests comment on whether Communication Protocol Systems play a role in asset classes besides those discussed in Section VIII.B, and on what role they play in those asset classes.

204. Do you agree that the proposed amendments would enhance regulatory oversight and investor protection? Do you agree that requiring Communication Protocol Systems to register as broker-dealers would help lead to these benefits? Do you believe that the proposed amendments would lead to improvements in the safeguarding of confidential information?

205. Do you agree that the proposed amendments would reduce trading costs and improve execution quality for market participants? Do you agree that Regulation SCI would improve the resiliency of the systems that provide trading services in the government securities markets? Do you agree that Rule 301(b)(6) would improve the resiliency of systems in the applicable securities markets?

206. Do you agree with the Commission's assessment of the costs of the proposed amendments? If not, please provide as many quantitative estimates to support your position on costs as possible.

207. The Commission requests that commenters provide any insights or data they may have on the costs associated with the proposed broker-dealer requirements for Communication Protocol Systems that are operated by non-broker-dealers?

208. Are the initial implementation cost estimates for new and existing SCI entities and the ongoing implementation cost estimates for all SCI entities under Regulation SCI largely applicable to Government Securities ATSs? How would these costs vary between Current Government Securities ATSs and Communication Protocol Systems that trade government securities? Please explain.

209. Would Government Securities ATSs also incur direct compliance costs (non-PRA based) as SCI entities? The Regulation SCI Adopting Release in 2014 estimated that an SCI entity would incur an initial cost of between approximately $320,000 and $2.4 million. Additionally, an SCI entity would incur an ongoing annual cost of between approximately $213,600 and $1.6 million. Are these estimated costs applicable to Government Securities ATSs? How might the actual level of costs Government Securities ATSs would incur differ from the estimates in the Regulation SCI Adopting Release because they differ from existing SCI entities? How might other factors, such as the complexity of SCI entities' systems and the degree to which SCI entities employ third-party systems, affect the estimated costs? How would these costs vary between Current Government Securities ATSs and Communication Protocol Systems that trade government securities? Please explain and provide cost estimates or a range for cost estimates, if possible.

210. Do you agree with the Commission's assessment of the indirect costs of applying the Fair Access rule?

211. Do you agree that ATSs could break themselves up to stay below the volume threshold for Regulation SCI? Please explain.

212. Do you agree with the Commission's assessment of the impact of the proposed amendments on efficiency, competition and capital formation? Do you agree that the proposed amendments would allow for competition among trading systems on a more equal basis? Do you agree with the Commission's assessment as to the risks of increasing barriers to entry and causing current trading systems to exit the market?

213. To what extent would the proposed amendments to Exchange Act Rule 3b–16 and Regulation ATS increase the barriers to entry for new trading venues or cause some existing trading venues to exit the market? How would these effects vary based on the size and/or type of trading venue and the securities market in which it operates? Please explain in detail.

214. How would the proposed amendments affect innovation? Please explain. If so, which provisions of the proposed amendments would affect innovation the most and how? Please explain.

215. Do you agree with the Commission's assessment of the effects of an alternative to require Currently Exempted Government Securities ATSs and certain Communication Protocol Systems to file a non-public Form ATS?

216. Do you agree with the Commission's assessment of the effects of an alternative to initiate differing levels of public disclosure depending on Government Securities ATS (inclusive of a Communication Protocol System, as proposed) or other Communication Protocol System dollar volume?

217. Do you agree with the Commission's assessment of the effects of an alternative to extend the transparency requirements of Regulation ATS to all ATSs and Communication Protocol Systems?

218. Do you agree with the Commission's assessment of the effects of an alternative to apply Rule 301(b)(6) of Regulation ATS to Government Securities ATSs?

219. Do you agree with the Commission's assessment of the effects of an alternative to alter the volume thresholds for the Fair Access Rule?

220. Do you agree with the Commission's assessment of the effects of an alternative to alter the Government Securities ATS volume thresholds for Regulation SCI?

221. Do you agree with the Commission's assessment of the effects of an alternative to require Communication Protocol Systems to register as broker-dealers but exempt them from the requirements of Rule 3b–16, Regulation ATS, and Regulation SCI?

222. Do you agree with the Commission's assessment of the effects of an alternative to require Forms ATS–N, ATS, and ATS–R to be submitted in Inline XBRL?

223. Do you agree with the Commission's assessment of the effects of an alternative to require the content of Form ATS–N to be posted on individual ATS websites?

224. How would the economic effects of the proposal differ if Forms ATS–N, ATS, and ATS–R were proposed to be submitted using the Commission's Electronic Form Filing System/SRO Rule Tracking System (''EFFS/SRTS'')?

IX. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[1235] the Commission requests comment on the potential effect of the proposed amendments on the United States economy on an annual basis. The Commission also requests comment on any potential increases in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

[1235] 5 U.S.C. 603.

X. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980 [1236] (''RFA'') requires the Commission to undertake an initial regulatory flexibility analysis of the impact of the proposed rule amendments on small entities unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[1237] For purposes of Commission rulemaking in connection with the RFA,[1238] 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,[1239] 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.[1240]

All Government Securities ATSs would be required to register as broker-dealers, including those that are currently exempt from such requirement.[1241] In addition, all Communications Protocol Systems that choose to comply with Regulation ATS in lieu of exchange registration will be required to register as broker-dealers.[1242] The Commission examined recent FOCUS data for the 17 broker-dealers that currently operate Legacy Government Securities ATSs and concluded that 1 of the broker-dealer operators of these ATSs 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). The Commission notes that this broker-dealer operator has never reported any transaction volume in any government security or repo to the Commission on Form ATS–R. Given that this ATS has never reported any transaction volume in government securities to the Commission, the Commission believes that this ATSs is unlikely to submit a Form ATS–N if the proposed amendments to Regulation ATS are adopted.[1243] The Commission has recently examined recent FOCUS data for 4 broker-dealers that the Commission estimates are Currently Exempted Government Securities ATSs and concluded that none of the broker-dealer operators of ATSs that currently trade government securities 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). The Commission has also recently examined recent FOCUS data for 7 systems that the Commission estimates are Communication Protocol Systems operated by broker-dealers or affiliates of broker-dealers and trade various securities asset classes including, among others, government securities. The Commission concluded that none of these broker-dealer operators of ATSs 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). Consequently, the Commission certifies that the proposed amendments to Regulation ATS would not, if adopted, have a significant economic impact on a substantial number of small entities.

The Commission encourages written comments regarding this certification. The Commission solicits comment as to whether the proposed amendments could have impacts on small entities that have not been considered. The Commission requests that commenters describe the nature of any impacts on small entities and provide empirical data to support the extent of such effect. Such comments will be placed in the same public file as comments on the proposed amendments to Regulation ATS. Persons wishing to submit written comments should refer to the instructions for submitting comments in the front of this release.

XI. Statutory Authority and Text of Proposed Amendments

Pursuant to Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly Sections 3(b), 5, 6, 11A, 15, 15C, 17(a), 17(b), 19, 23(a), and 36 thereof (15 U.S.C. 78c(b), 78e, 78f, 78*o,* 78*o*–5, 78q(a), 78q(b), 78s, 78w(a), and 78mm), the Commission proposes amendments to Form ATS–N under the Exchange Act, Regulation ATS under the Exchange Act, and 17 CFR parts 232, 240, 242, and 249.

List of Subjects in 17 CFR Parts 232, 240, 242, and 249

Administrative practices and procedure, 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 proposed to be 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:

■ a. Removing the periods at the end of paragraphs (a)(1)(xiii) and (xiv) and adding semicolons in their places;

■ b. Removing the word ''and'' at the end of paragraphs (a)(1)(xviii) and (xix);

■ c. Removing the periods at the end of paragraphs (a)(1)(xx) and (xxi) and adding semicolons in their places; and

■ d. Adding paragraphs (a)(1)(xxii) and (xxiii).

The additions read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xxii) Form ATS (§ 249.637 of this chapter); and

(xxiii) Form ATS–R (§ 249.638 of this chapter).

* * * * *

[1236] 5 U.S.C. 603(a).

[1237] 5 U.S.C. 605(b).

[1238] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10 under the Exchange Act, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[1239] 17 CFR 240.17a–5(d).

[1240] *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).

[1241] *See supra* Section III.B.2. *See also* 17 CFR 242.301(b)(1).

[1242] *See supra* Section II.D.2.

[1243] In order to be as inclusive as is reasonable, the Commission is nevertheless counting this ATS for purposes of projecting expected costs under the PRA.

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, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 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; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 4. Amend § 240.3b–16 by:
■ a. Revising paragraphs (a)(1) and (2) and (b)(1) and (2);
■ b. Adding paragraph (b)(3);
■ c. Redesignating paragraph (e) as paragraph (f); and
■ d. Adding new paragraph (e).

The revisions and additions read as follows:

§ 240.3b–16 Definitions of terms used in Section 3(a)(1) of the Act.

(a) * * *

(1) Brings together buyers and sellers of securities using trading interest; and

(2) Makes available established, non-discretionary methods (whether by providing a trading facility or communication protocols, or by setting rules) under which buyers and sellers can interact and agree to the terms of a trade.

(b) * * *

(1) Routes trading interest to a national securities exchange, a market operated by a national securities association, or a broker-dealer for execution;

(2) Allows persons to enter trading interest for execution against the bids and offers of a single dealer; and

(i) As an incidental part of these activities, matches trading interest that is not displayed to any person other than the dealer and its employees; or

(ii) In the course of acting as a market maker registered with a self-regulatory organization, displays the limit orders of such market maker's, or other broker-dealer's, customers; and

(A) Matches customer orders with such displayed limit orders; and

(B) As an incidental part of its market making activities, crosses or matches orders that are not displayed to any person other than the market maker and its employees; or

(3) Allows an issuer to sell its securities to investors.

* * * * *

(e) For purposes of this section, the term *trading interest* means an order as the term is defined under paragraph (c) of this section or any non-firm indication of a willingness to buy or sell a security that identifies at least the security and either quantity, direction (buy or sell), or price.

* * * * *

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 (b), removing ''orders'' and adding in its place ''trading interest'';
■ b. Revising paragraph (c);
■ c. Adding a sentence at the end of paragraph (k); and
■ d. Adding paragraphs (l) through (s).

The revision and additions read as follows:

§ 242.300 Definitions.

* * * * *

(c) *Affiliate* means, 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.

* * * * *

(k) * * * An NMS Stock ATS shall not trade securities other than NMS stocks.

(l) *Government Securities ATS* means an alternative trading system, as defined in paragraph (a) of this section, that trades government securities, as defined in section 3(a)(42) of the Act (15 U.S.C. 78c(a)(42)) or repurchase and reverse repurchase agreements on government securities. A Government Securities ATS shall not trade securities other than government securities or repurchase and reverse repurchase agreements on government securities.

(m) *Covered ATS* means an NMS Stock ATS or Government Securities ATS, as applicable.

(n) *Legacy Government Securities ATS* means a Government Securities ATS operating as of [effective date of the final rule] that was either:

(1) Formerly not required to comply with this section and §§ 242.301 through 242.304 (Regulation ATS) pursuant to the exemption under § 240.3a1–1(a)(3) of this chapter prior to [effective date of the final rule]; or

(2) Operating pursuant to an initial operation report on Form ATS on file with the Commission as of [effective date of the final rule].

(o) *U.S. Treasury Security* means a security issued by the U.S. Department of the Treasury.

(p) *Agency Security* means a debt security issued or guaranteed by a U.S. executive agency, as defined in 5 U.S.C. 105, or government-sponsored enterprise, as defined in 2 U.S.C. 622(8).

(q) *Trading Interest* means an order, as defined in paragraph (e) of this section, or any non-firm indication of a willingness to buy or sell a security that identifies at least the security and either quantity, direction (buy or sell), or price.

(r) *Newly Designated ATS* means an alternative trading system operating as of [effective date of the final rule] that meets the criteria under § 240.3b–16(a) of this chapter as of [effective date of the final rule] but did not meet the criteria under § 240.3b–16(a) of this chapter in effect prior to [effective date of the final rule].

(s) *Covered Newly Designated ATS* means a Newly Designated ATS that is a Government Securities ATS or NMS Stock ATS.

■ 7. Amend § 242.301 by:
■ a. Removing and reserving paragraphs (a)(4)(ii)(A) through (C);
■ b. Revising paragraphs (b)(1) and (b)(2)(i);
■ c. In paragraph (b)(2)(vi), adding the words ''and information filed pursuant to paragraph (b)(9) of this section'' after the words ''pursuant to this paragraph (b)(2)'';
■ d. Revising paragraphs (b)(2)(vii) and (viii) and (b)(5)(i) introducotry text;
■ e. In paragraph (b)(5)(i)(A), adding the word ''share'' after the phrase ''average daily'';
■ f. In paragraph (b)(5)(i)(B), adding the word ''share'' after the phrase ''average daily trading'';
■ g. In paragraphs (b)(5)(i)(C):
■ i. Adding the word ''dollar'' after the phrase ''average daily'';
■ ii. Adding the phrase ''as provided by the self-regulatory organization to which such transactions are reported'' after the phrase ''in the United States''; and
■ iii. Removing the word ''or'' at the end of the paragraph;
■ h. In paragraph (b)(5)(i)(D):
■ i. Adding the word ''dollar'' after the phrase ''average daily'';
■ ii. Adding the phrase ''as provided by self-regulatory organizations to which such transactions are reported'' after the phrase ''in the United States''; and
■ iii. Removing the period and adding a semicolon in its place;
■ i. Adding paragraphs (b)(5)(i)(E), (F), and (G);

■ j. Removing paragraph (b)(5)(iii);
■ k. Redesignating paragraph (b)(5)(ii) as paragraph (b)(5)(iii) and revising the newly redesiganted paragraph;
■ l. Adding new paragraph (b)(5)(ii);
■ m. In paragraphs (b)(6)(i)(A) and (B), adding the word ''dollar'' after the phrase ''average daily'';
■ n. Removing paragraph (b)(6)(iii);
■ o. In paragraph (b)(9)(i):
■ i. Removing the words ''Separately file'' and adding ''File'' in their place; and
■ ii. Removing the phrase ''for transactions in NMS stocks, as defined in paragraph (g) of this section, and transactions in securities other than NMS stocks''; and
■ p. In paragraph (b)(9)(ii):
■ i. Removing the words ''Separately file'' and adding ''File'' in their palce; and
■ ii. Removing the phrase ''for transactions in NMS stocks and transactions in securities other than NMS stocks''.

The revisions and additions read as follows:

§ 242.301 Requirements for alternative trading systems.

* * * * *

(b) * * *

(1) *Broker-dealer registration.* The alternative trading system shall register as a broker-dealer under section 15 of the Act (15 U.S.C. 78o) or section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)). Notwithstanding the preceding sentence, provided that it complies with the applicable conditions in § 240.3a1–1(a)(2) of ths chapater, an alternative trading system that is not registered as a broker-dealer and is either:

(i) A Legacy Government Securities ATS that was formerly not required to comply with §§ 242.300 through 242.304 (Regulation ATS) pursuant to the exemption under § 240.3a1–1(a)(3) of this chapter prior to [effective date of the final rule]; or

(ii) A Newly Designated ATS, may provisionally operate pursuant to the exemption under § 240.3a1–1(a)(2) of this chapter, until the earlier of:

(A) The date the alternative trading system registers as a broker-dealer under section 15 of the Act or section 15C(a)(1)(A) of the Act and becomes a member of a national securities association; or

(B) [date 210 calendar days after the effective date of the final rule].

(2) * * *

(i) The alternative trading system (other than a Covered ATS) shall file an initial operation report on Form ATS, § 249.637 of this chapter, in accordance with the instructions therein, at least 20 days prior to commencing operation as an alternative trading system. Notwithstanding the preceding sentence, a Newly Designated ATS (other than a Covered Newly Designated ATS) shall file an initial operation report on Form ATS, in accordance with the instructions therein, no later than [date 30 calendar days after the effective date of the final rule].

* * * * *

(vii) An ATS must file a Form ATS or Form ATS–R in accordance with the instructions therein. The reports provided for in paragraphs (b)(2) and (9) of this section shall be filed on Form ATS or Form ATS–R, as applicable, and include all information as prescribed in Form ATS or Form ATS–R, as applicable, and the instructions thereto. Any such document shall be executed at, or prior to, the time Form ATS or Form ATS–R is filed and shall be retained by the ATS in accordance with § 242.303 and § 232.302 of this chapter, and the instructions in Form ATS or Form ATS–R, as applicable. Duplicates of the reports provided for in paragraphs (b)(2)(i) through (v) of this section must be filed with surveillance personnel designated as such by any self-regulatory organization that is the designated examining authority for the alternative trading system pursuant to § 240.17d–1 of this chapter simultaneously with filing with the Commission. Duplicates of the reports required by paragraph (b)(9) of this section shall be provided to surveillance personnel of such self-regulatory authority upon request. All reports filed pursuant to this paragraph (b)(2) and paragraph (b)(9) of this section (except for types of securities traded provided on Form ATS and Form ATS–R) will be accorded confidential treatment subject to applicable law.

(viii) A Legacy Government Securities ATS operating pursuant to an initial operation report on Form ATS on file with the Commission as of [effective date of the final rule] 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 Government Securities ATS shall file reports pursuant to § 242.304 and shall not be subject to the requirements of paragraphs (b)(2)(i) through (vii) of this section. A Legacy Government Securities ATS that was formerly not required to comply with Regulation ATS pursuant to the exemption under § 240.3a1–1(a)(3) of this chapter prior to [effective date of the final rule], or a Covered Newly Designated ATS, shall file reports pursuant to § 242.304 and shall not be subject to the requirements of paragraphs (b)(2)(i) through (vii) of this section. As of [effective date of the final rule], an entity seeking to operate as a Government Securities 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. An NMS Stock ATS or 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. An ATS that is not a Covered ATS shall be subject to paragraph (b)(2) of this section. Each Covered ATS that is operated by a broker-dealer that is the registered broker-dealer for more than one ATS must comply with Regulation ATS, including the filing requirements of § 242.304.

* * * * *

(5) *Fair access.* (i) An alternative trading system shall comply with the requirements in paragraph (b)(5)(iii) of this section, if during at least 4 of the preceding 6 calendar months, such alternative trading system had:

* * * * *

(E) With respect to U.S. Treasury Securities, 3 percent or more of the average weekly dollar volume traded in the United States as provided by the self-regulatory organization to which such transactions are reported; or

(F) With respect to Agency Securities, 5 percent or more of the average daily dollar volume traded in the United States as provided by the self-regulatory organization to which such transactions are reported.

(G) Provided, however, that a Newly Designated ATS or Legacy Government Securities ATS shall not be required to comply with the requirements in paragraph (b)(5)(iii) of this section until one month after initially satisfying any of the paragraphs (b)(5)(i)(A) through (F) of this section.

(ii) For purposes of calculating the volume thresholds of paragraph (b)(5)(i) of this section, the average transaction volume for a security or security category of alternative trading systems that are operated by a common broker-dealer, or alternative trading systems operated by affiliated broker-dealers, will be aggregated.

(iii) An alternative trading system shall:

(A) Establish and apply reasonable written standards for granting, limiting, and denying access to the services of the

alternative trading system that, at a minimum:

(*1*) Provide the date that each standard is adopted, effective, and modified;

(*2*) Set forth any objective and quantitative criteria upon which each standard is based;

(*3*) Identify any differences in access to the services of the alternative trading system by an applicant and current participants;

(*4*) Justify why each standard, including any differences in access to the services of the alternative trading system, is fair and not unreasonably discriminatory; and

(*5*) Provide the information required by paragraphs (b)(5)(iii)(A)(*1*) through (*4*) of this section about any standards for granting, limiting, or denying access to the alternative trading system services that are performed by a person other than the broker-dealer operator.

(B) Make and keep records of:

(*1*) All grants of access including, for all participants, the reasons for granting such access under the standards provided in paragraph (b)(5)(iii)(A) of this section; and

(*2*) All denials or limitations of access and reasons, for each applicant and participant, for denying or limiting access to the services of the alternative trading system under the standards provided in paragraph (b)(5)(iii)(A) of this section; and

(C) Report the information required on Form ATS–R (§ 249.638 of this chapter) regarding grants, denials, and limitations of access.

* * * * *

§ 242.302 Recordkeeping requirements for alternative trading systems.

■ 8. Amend § 242.302 by:

■ a. In the introductory text to paragraph (c), removing ''order'' and adding in its place ''trading interest'';

■ b. In paragraphs (c)(1), (3), (5), and (8) through (15), removing ''order'' wherever it appears and adding in its place ''trading interest''; and

■ c. In paragraph (c)(5), removing ''a'' before the phrase ''buy or sell''.

§ 242.303 Record preservation requirements for alternative trading systems.

■ 9. Amend § 242.303 by:

■ a. In paragraph (a)(1)(iii), adding '', including each version,'' after the phrase ''at least one copy'' and adding ''written'' before the word ''standards'';

■ b. In paragraph (a)(1)(iv), adding '', including each version,'' after the phrase ''At least one copy''; and

■ c. In paragraph (a)(1)(v), adding '', including each version,'' after the phrase ''At least one copy''.

■ 10. Amend § 242.304 by:

■ a. Revising the section heading;

■ b. In the introductory text to paragraph (a), removing ''an NMS Stock ATS'' and adding in its place ''a Covered ATS'';

■ c. In paragraphs (a)(1)(i) through (iii):

■ i. Removing ''an NMS Stock ATS'' wherever it appears and adding in its place ''a Covered ATS''; and

■ ii. Removing ''NMS Stock ATS'' wherever it appears and adding in its place ''Covered ATS'';

■ d. In paragraph (a)(1)(i), adding a sentence at the end of the paragraph;

■ e. In paragraph (a)(1)(ii)(A)(*1*), removing the phrase ''the Form ATS–N is unusually lengthy or raises novel or complex issues that require additional time for review'' and adding in its place ''the Commission determines that a longer period is appropriate'';

■ f. In paragraph (a)(1)(ii)(B), removing the phrase ''paragraphs (a)(2)(i)(B) and (C)'' and adding in its place ''paragraphs (a)(2)(i)(B), (C), and (E)'';

■ g. In paragraph (a)(1)(iv):

■ i. Revising the paragraph heading; and

■ ii. Removing ''Legacy NMS Stock ATS'' wherever it appears and adding in its place ''Legacy Government Securities ATS or Covered Newly Designated ATS'';

■ h. Revising paragraph (a)(1)(iv)(A) introductory text;

■ i. In the introductory text to paragraph (a)(1)(iv)(B), removing ''120'' and adding in its place ''180'';

■ j. In paragraph (a)(1)(iv)(B)(*1*), removing ''the initial Form ATS–N is unusually lengthy or raises novel or complex issues that require additional time for review'' and ''initial 120-calendar day'' and adding in their places ''the Commission determines that a longer period is appropriate'' and ''initial 180-calendar day'', respectively;

■ k. In the introductory text to paragraph (a)(2)(i), removing ''An NMS Stock ATS'' and adding ''A Covered ATS'' in its place;

■ l. In paragraph (a)(2)(i)(A), removing ''except as provided by paragraph (a)(2)(i)(D) of this section,'' and ''NMS Stock ATS'' and adding in their places ''or the length of any extended review period pursuant to paragraph (a)(2)(ii)(A) of this section,'' and ''Covered ATS'', respectively;

■ m. In paragraph (a)(2)(i)(B), removing ''or (D)'' and adding ''(D), or (E)'' in its place;

■ n. In paragraph (a)(2)(i)(C), removing ''or'' at the end of the paragraph;

■ o. In paragraph (a)(2)(i)(D):

■ i. Removing ''Items 24 and 25'' and ''Order Display and Fair Access Amendment'' and adding in their places ''Items 23 and 24'' and ''Contingent Amendment'', respectively; and

■ ii. Removing the period at the end of the paragraph and adding ''; or'' in its place;

■ p. Adding paragraph (a)(2)(i)(E);

■ q. Revising paragraph (a)(2)(ii);

■ r. In paragraphs (a)(3) and (4), (b), and (c):

■ i. Removing ''An NMS Stock ATS'' and ''an NMS Stock ATS'' and adding in their places ''A Covered ATS'' and ''a Covered ATS'', respectively; and

■ ii. Removing ''NMS Stock ATS'' wherever it appears and adding in its place ''Covered ATS'';

■ s. In paragraph (b)(2)(iii)(A):

■ i. Removing the colon at the end of the paragrpah heading and adding a period in its place; and

■ ii. Adding '', or any extended review period,'' after ''the expiration of the review period''; and

■ t. In paragraph (b)(2)(iii)(B):

■ i. Revising the heading; and

■ ii. In the first sentence, removing ''Updating, Correcting, and Order Display and Fair Access Amendments'' and adding ''Updating, Correcting, Fee, and Contingent Amendments'' in it place.

The revisions and addition read as follows:

§ 242.304 Covered ATSs.

(a) * * *

(1) * * *

(i) * * * Notwithstanding the preceding sentence, a Legacy Government Securities ATS that was formerly not required to comply with §§ 242.300 through 242.304 (Regulation ATS) pursuant to the exemption under § 240.3a1–1(a)(3) of this chapter prior to [effective date of the final rule] or Covered Newly Designated ATS, may continue to operate pursuant to the exemption under § 240.3a1–1(a)(2) of this chapter until its initial Form ATS–N becomes effective.

* * * * *

(iv) *Transition for Legacy Government Securities ATSs and Covered Newly Designated ATSs*—(A) *Initial Form ATS–N filing requirements.* A Legacy Government Securities ATS or a Covered Newly Designated ATS shall file with the Commission an initial Form ATS–N, in accordance with the conditions of this section, no later than [date 90 calendar days after the effective date of the final rule]. An initial Form ATS–N filed by a Legacy Government Securities ATS operating pursuant to an initial operation report on Form ATS on file with the Commission as of [effective date of the final rule] shall supersede and replace for purposes of the exemption the previously filed Form ATS of the Legacy Government Securities ATS. A Legacy Government

Securities ATS or Covered Newly Designated 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 Government Securities ATS or Covered Newly Designated ATS, as amended, will become effective, unless declared ineffective, upon the earlier of:

* * * * *

(2) * * *

(i) * * *

(E) No later than the date that the information required to be disclosed in Part III, Item 18 on Form ATS–N has become inaccurate or incomplete (''Fee Amendment'').

(ii) *Commission review period; ineffectiveness determination.* (A) The Commission will, by order, declare ineffective any Form ATS–N amendment filed pursuant to paragraphs (a)(2)(i)(A) through (E) of this section, no later than 30 calendar days from filing with the Commission, or, if applicable, the end of the extended review period, 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 may extend the amendment review period for:

(*1*) An additional 30 calendar days, if the Commission determines that a longer period is appropriate; or

(*2*) Any extended review period to which a duly authorized representative of the Covered ATS agrees in writing.

(B) A Form ATS–N amendment declared ineffective shall prohibit the Covered ATS from operating pursuant to the ineffective Form ATS–N amendment. A Form ATS–N amendment declared ineffective does not prevent the Covered ATS from subsequently filing a new Form ATS–N amendment.

(C) During review by the Commission of a Material Amendment, the Covered 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 ATS shall withdraw its filed Material Amendment and must file the new Material Amendment pursuant to (a)(2)(i)(A) of this section.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(B) *Updating, Correcting, Fee, and Contingent Amendments.* * * *

* * * * *

■ 11. Amend § 242.1000 by:

■ a. Adding, in alphabetical order, a definition for ''Agency Securities'';

■ b. In the definition of ''SCI alternative trading system or SCI ATS'':

■ i. Removing the word ''or'' at the end of paragraph (1)(ii);

■ ii. Redesignating paragraph (3) as paragraph (5);

■ iii. Adding a new paragraph (3) and paragraph (4); and

■ iv. In newly redesignated paragraph (5), removing ''paragraphs (1) or (2)'' and adding in its place ''paragraph (1), (2), (3), or (4)''; and

■ c. Adding, in alphabetical order, a definition for ''U.S. Treasury Securities''.

The additions read as follows:

§ 242.1000 Definitions.

* * * * *

Agency Security has the meaning set forth in § 242.300(p).

* * * * *

SCI alternative trading system or *SCI ATS* * * *

(3) Had with respect to U.S. Treasury Securities, five percent (5%) or more of the average weekly dollar volume traded in the United States as provided by the self-regulatory organization to which such transactions are reported; or

(4) Had with respect to Agency Securities, five percent (5%) or more of the average daily dollar volume traded in the United States as provided by the self-regulatory organization to which such transactions are reported.

* * * * *

U.S. Treasury Security has the meaning set forth in § 242.300(o).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 12. 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), Sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116–222, 134 Stat. 1063 (2020), unless otherwise noted.

* * * * *

■ 13. Amend Form ATS (referenced in § 249.637) by:

■ a. In the General Instructions, Item A.2, after ''commencing operation'' adding ''and a Newly Designated ATS (other than a Covered Newly Designated ATS, as defined in Rule 300(s) of the Exchange Act (17 CFR 242.300(s))) must file an initial operation report on Form ATS no later than [date 30 calendar days after the date of effective date of the final rule].''.

■ b. In the General Instructions, revising Items A.3 through A.6.

■ c. In the General Instructions, revising the fifth and seventh paragraphs of Item A.7.

■ d. In the General Instructions, adding new paragraph A.8.

■ e. In the Explanation of Terms, in the definition of ''Subscriber'', removing the word ''order'' and adding ''trading interest'' in its place.

■ f. In the Explanation of Terms, adding the definition of ''Trading Interest'' and ''Newly Designated ATS'' in alphabetical order.

■ g. At the top of page 1 of the form, removing ''INITIAL OPERATION REPORT'', ''AMENDMENT TO INITIAL OPERATION REPORT'', ''CESSATION OF OPERATIONS REPORT'' and accompanying check boxes and adding text under a new heading ''Type of Filing (select one)''.

■ h. At the top and side of page 1 to the Form removing:

■ i. ''Form ATS Page 1 Execution Page'';

■ ii. ''Date filed (MM/DD/YY)''; and

■ ii. ''[OFFICIAL USE ONLY]''.

■ i. Revising Items 2 through 5.

■ j. Removing Items 6 through 11.

■ k. Removing the text on page 1 of the form beginning ''EXECUTION'', the signature block below, the instruction that states ''This page must always be completed in full with original, manual signature and notarization. Affix notary stamp or seal where applicable.'' and ''DO NOT WRITE BELOW THIS LINE—FOR OFFICIAL USE ONLY''.

■ l. On page 2 of the form, removing the following text:

Alternative trading system name: _____

Filing date: _____

CRD Number: _____

SEC File Number: 8– _____

■ m. At the top and side of page 2 to the Form removing:

■ i. ''Form ATS Page 2 Execution Page'';

■ ii. ''Date filed (MM/DD/YY)''; and

■ iii. ''[OFFICIAL USE ONLY]''.

The revisions and additions read as follows:

Note: The text of Form ATS does not and this amendment will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

FORM ATS

* * * * *

A. **GENERAL INSTRUCTIONS**

* * * * *

3. **CONTACT EMPLOYEE** - The individual listed as the contact employee must be authorized to receive all contact information, communications and mailings and be responsible for disseminating that information within the alternative trading system's organization.

4. **EDGAR FILING** - Any report required to be submitted pursuant to Rule 301 of Regulation ATS shall be prepared, formatted, and submitted in accordance with Regulation S-T and the EDGAR Filer Manual.

5. **EDGAR ACCEPTANCE** - 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).

6. **RECORDKEEPING** - A copy of this Form ATS must be retained by the 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.

7. **PAPERWORK REDUCTION ACT DISCLOSURE**

- * * *
- * * *
- * * *
- * * *
- It is estimated that an alternative trading system will spend approximately 20.5 hours completing the initial operation report on Form ATS, approximately 5 hours preparing each amendment to Form ATS, and approximately 2 hours preparing a cessation of operations report on Form ATS.
- * * *
- All reports provided to the Commission on Form ATS (except for types of securities traded provided on Form ATS and Form ATS-R) will be afforded confidential treatment and will be available only to the examination of Commission staff, state securities authorities, and the self-regulatory organizations. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 ("FOIA") and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with, an examination or inspection of the books and records of any person or any other investigation.

8. For filings made pursuant to Rule 301(b)(2)(ii) through (iv) (i.e., Amendments to the Initial Operation Report), attach to the filing an Exhibit C marked to indicate additions to or deletions from Items 1 through 6, as applicable. Do not include in Exhibit C Items that are not changing.

B. EXPLANATION OF TERMS

* * * * *

NEWLY DESIGNATED ATS – Shall mean an alternative trading system operating as of [effective date of the final rule] that meets the criteria under 17 CFR 240.3b-16(a) as of [effective date of the final rule] but did not meet the criteria under 17 CFR 240.3b-16(a) in effect prior to [effective date of the final rule]. 17 CFR 242.300(r).

* * * * *

TRADING INTEREST – Shall mean order, as defined in 17 CFR 242.300(e), or any non-firm indication of a willingness to buy or sell a security that identifies at least the security and either quantity, direction (buy or sell), or price. 17 CFR 242.300(q).

* * * * *

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of alternative trading systems would violate the federal securities laws and may result in disciplinary, administrative or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

Type of Filing (select one):

☐ Initial operation report	Rule 301(b)(2)(i)
☐ Material amendment	Rule 301(b)(2)(ii)
☐ Periodic amendment	Rule 301(b)(2)(iii)
☐ Correcting amendment	Rule 301(b)(2)(iv)
☐ Cessation of operations report	Rule 301(b)(2)(v)

- Date the ATS will cease to operate: mm/dd/yyyy

---

1. Provide the following identifying information:
   A. Indicate the following:
      i. Is the organization, association, Person, group of Persons, or system filing the Form ATS a broker-dealer registered with the Commission?

         Yes☐ No☐

      ii. Is the registered broker-dealer authorized by a national securities association to operate an ATS?

         Yes☐ No☐

B. Full name of registered broker-dealer of the ATS ("Broker-Dealer Operator") as stated on Form BD:_____

C. Full name(s) of the ATS under which business is conducted, if different:_____

D. Provide the SEC file number, CRD number, Legal Entity Identifier (if any), and Market Participant Identifier ("MPID") of the Broker-Dealer Operator:

i. SEC File No.:_____

ii. CRD No.:_____

iii. Legal Entity Identifier:_____

E. 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 MPID of the ATS:

i. National Securities Association: _____

ii. Effective Date of Membership: _____

iii. MPID of the ATS: _____

F. Provide, if any, the website URL of the ATS:_____

G. Provide the primary, and if any, secondary, physical street address(es) of the ATS matching system: _____

2.

a. Is the ATS a Newly Designated ATS?

Yes☐ No☐

b. If this is an initial operation report for an ATS other than a Newly Designated ATS, the date the alternative trading system expects to commence operation:

_____

3. In a single document, provide the following:

a. A description of classes of subscribers (for example, broker -dealer, institution, or retail). Also describe any differences in access to the services offered by the alternative trading system to different groups or classes of subscribers.

b. A list of the types of securities the alternative trading system trades (for example, debt, equity, listed), or if this is an initial operation report, the types of securities it expects to trade. Note whether any types of securities are not registered under Section 12(a) of the Exchange Act of 1934 ("Exchange Act").

c. A list of the securities the alternative trading system trades, or if this is an initial operation report, the securities it expects to trade. Note whether any securities are not registered under Section 12(a) of the Exchange Act.

d. The name, address, and telephone number of counsel for the alternative trading system.

e. A list providing the full legal name of those direct owners reported on Schedule A of Form BD.

f. The name of any entity, other than the alternative trading system, that will be involved in operation of the alternative trading system, including the execution, trading, clearing, and settling of transactions on behalf of the alternative trading system. Provide a description of the role and responsibilities of each entity.

g. A description of the manner of operation of the alternative trading system.

h. A description of the procedures governing entry of trading interest into the alternative trading system.

i. A description of the means of access to the alternative trading system.

j. A description of the procedures governing execution, reporting, clearance, and settlement of transactions effected through the alternative trading system.

k. Procedures for ensuring subscriber compliance with system guidelines.

l. A brief description of the alternative trading system's procedures for reviewing system capacity, security, and contingency planning procedures.

m. If any other entity, other than the alternative trading system, will hold or safeguard subscriber funds or securities on a regular basis, provide the name of such entity and a brief description of the controls that will be implemented to ensure the safety of such funds and securities.

4. Attach as Exhibit A, a copy of the alternative trading system's subscriber manual and any other materials provided to subscribers.

5. Attach as Exhibit B, a copy of the constitution, articles of incorporation or association, with all amendments, and of the existing by-laws or corresponding rules or instruments, whatever the name, of the alternative trading system.

☐ Select if, in lieu of filing, the ATS certifies that the information requested under this Exhibit is available at the website above and is maintained on a continuous basis and is accurate as of the date of this filing.

CONTACT INFORMATION, SIGNATURE BLOCK, AND CONSENT TO SERVICE

Provide the following information of the Person at {ATS} prepared to respond to questions for this submission:

First Name: Last Name:

Title:

Email: Telephone:

Primary Street Address of the ATS:

Mailing Address of the ATS (if different):

The {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 ATS, or via email, at the addresses provided on this Form ATS. The undersigned 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 {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} {ATS}

By: _____ Title_____

BILLING CODE 8011–01–C

* * * * *

■ 14. Amend Form ATS–R (referenced in § 249.638) by:

■ a. In the General Instructions, revising Items A.3 through A.6.

■ b. In the General Instructions, revising the fifth and seventh paragraphs of Item A.7.

■ c. In the Explanation of Terms, removing the definitions of ''Nasdaq National Market Securities'' and ''Nasdaq SmallCap Market Securities''.

■ d. In the Explanation of Terms, adding the definitions of ''Agency Securities,'' ''Foreign Sovereign Debt Securities,'' ''U.S. Treasury Securities,'' and ''Trading Interest''.

■ e. In the Explanation of Terms, in the definition of ''Subscriber,'' removing the word ''order'' and adding in its place the word ''trading interest''.

■ f. On page 1 of the form, immediately before Section 1, adding text under a new heading ''Type of Filing''.

■ g. At the top and side of page 1 to the Form removing:

■ i. ''Form ATS Page 1 Execution Page'';

■ ii. ''Date filed (MM/DD/YY)''; and

■ iii. ''[OFFICIAL USE ONLY]''.

■ h. Revising Item 1.

■ i. Removing the text on page 1 of the form beginning ''EXECUTION'', the signature block below, the instruction that states ''This page must always be completed in full with original, manual signature and notarization. Affix notary stamp or seal where applicable.'' and ''DO NOT WRITE BELOW THIS LINE—FOR OFFICIAL USE ONLY''.

■ j. On pages 2 and 3 of the form, removing the following text:

DO NOT WRITE BELOW THIS LINE—FOR OFFICIAL USE ONLY

Alternative trading system name: _____

Filing date: _____

CRD Number: _____

SEC File Number: 8– _____

■ k. At the top and side of page 2 to the Form removing:

■ i. ''Form ATS Page 2 Execution Page'';

■ ii. ''Date filed (MM/DD/YY)''; and

■ iii. ''[OFFICIAL USE ONLY]''.

■ l. At the top and side of page 3 to the Form removing:

■ i. ''Form ATS Page 3 Execution Page'';

■ ii. ''Date filed (MM/DD/YY)''; and

■ iii. ''[OFFICIAL USE ONLY]''.

■ m. Revising Item 4.

■ n. Adding Item 5.C.

■ o. Revising Item 6.

■ p. Adding Item 8.

■ q. Adding a signature block at the end of the form.

The additions and revisions read as follows:

Note: The text of Form ATS–R does not and this amendment will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

FORM ATS-R

* * * * *

A. GENERAL INSTRUCTIONS

* * * * *

3. **CONTACT EMPLOYEE** - The individual listed as the contact employee must be authorized to receive all contact information, communications and mailings and be responsible for disseminating that information within the alternative trading system's organization.

4. **EDGAR FILING** - Any report required to be submitted pursuant to Rule 301 of Regulation ATS shall be prepared, formatted, and submitted in accordance with Regulation S-T and the EDGAR Filer Manual.

5. **EDGAR ACCEPTANCE** - 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).

6. **RECORDKEEPING** - A copy of this Form ATS-R must be retained by the 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.

7. **PAPERWORK REDUCTION ACT DISCLOSURE**

- * * *
- * * *
- * * *
- * * *
- It is estimated that an alternative trading system will spend approximately 4.75 hours completing Form ATS-R.
- * * *
- All reports provided to the Commission on Form ATS-R (except for types of securities traded provided on Form ATS and Form ATS-R) will be afforded confidential treatment and will be available only to the examination of Commission staff, state securities authorities and the self-regulatory organizations. Subject to the provisions of the Freedom of Information Act, 5

U.S.C. 522 ("FOIA") and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

* * * * *

B. EXPLANATION OF TERMS

AGENCY SECURITIES – Shall mean a debt security issued or guaranteed by a U.S. executive agency, as defined in 5 U.S.C. 105, or government-sponsored enterprise, as defined in 2 U.S.C. 622(8).

* * * * *

FOREIGN SOVEREIGN DEBT SECURITIES - Shall mean any security other than an equity security, as defined in §240.3a11-1, issued or guaranteed by a foreign government, as defined in §240.3b-4.

* * * * *

SUBSCRIBER - Shall mean any person that has entered into a contractual agreement with an alternative trading system to access such alternative trading system for the purpose of effecting transactions in securities or to submit, disseminate, or display trading interest 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 national securities association.

TRADING INTEREST - Shall mean an order, as defined in 17 CFR 242.300(e), or any non-firm indication of a willingness to buy or sell a security that identifies at least the security and either quantity, direction (buy or sell), or price. 17 CFR 242.300(q).

* * * * *

U.S. TREASURY SECURITIES – Shall mean a security issued by the U.S. Department of the Treasury.

* * * * *

Alternative Trading System Name:_____

Period covered by this report:_____ to _____

Type of Filing (select one):

☐ Quarterly report Rule 301(b)(9)(i)

☐ Report for an ATS that has ceased to operate Rule 301(b)(9)(ii)

- Date the ATS ceased to operate: mm/dd/yyyy

---

1. Provide the following identifying information:
   A. Full name of registered broker-dealer of the ATS ("Broker-Dealer Operator") as stated on Form BD:_____
   B. Full name(s) of the ATS under which business is conducted, if different:_____
   C. Provide the SEC file number, CRD number, and Legal Entity Identifier (if any) of the Broker-Dealer Operator:
      i. SEC File No.:_____
      ii. CRD No.:_____
      iii. Legal Entity Identifier:_____
   D. 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 ATS:
      i. National Securities Association: _____
      ii. Effective Date of Membership: _____
      iii. MPID of the ATS: _____
   E. Provide, if any, the website URL of the ATS:_____
   F. Provide the primary, and if any, secondary, physical street address(es) of the ATS matching system: _____

2. Attach as Exhibit A, a list of all subscribers that were participants of the alternative trading system at any time during the period covered by this report.

3. Attach as Exhibit B, a list of all securities that were traded on the alternative trading system at any time during the period covered by this report.

4. Provide the total unit and dollar volume of transactions (other than those for after-hours trading) in the following securities. For securities reported in 4H-4N, report total settlement value in U.S. Dollars. Enter "None," "N/A" or "0" where appropriate.

Category of Securities	Total Unit Volume of Transactions	Total Dollar Volume of Transactions
A. Listed Equity Securities		
B. Equity securities issued pursuant to Rule 144A of the Securities Act of 1933		
C. Penny Stock, other than any securities included in Items 4A-4D above		
D. Other equity securities not included in Items 4A-4C above		
E. Rights and warrants		
F. Listed options		
G. Unlisted options		
H. Government securities		
i. U.S. Treasury Securities		
ii. Agency Securities		
I. Municipal securities		
J. Corporate debt securities		
i. U.S. corporate debt securities		
ii. Non-U.S. corporate debt securities		
K. Mortgage related securities		
L. Foreign sovereign debt securities		
M. Debt securities other than any securities included in Items 4H-4L above and 4N-4O below		

N. Repurchase agreements

Type of collateral	Overnight triparty		Term triparty		Overnight bilateral		Term bilateral	
	Total Unit Volume of Transactions	Total Dollar Volume of Transactions	Total Unit Volume of Transactions	Total Dollar Volume of Transactions	Total Unit Volume of Transactions	Total Dollar Volume of Transactions	Total Unit Volume of Transactions	Total Dollar Volume of Transactions
NMS stocks								
U.S. Treasury Securities								
Federal Agency Securities								
Agency Mortgage-Backed Securities								
Municipal Securities								
U.S. Corporate Debt Securities								
Non-U.S. Corporate Debt Securities								
Asset-backed securities								
Foreign sovereign debt securities								
Other securities								

i. If other securities, please describe: _____

O. Reverse repurchase agreements

Type of collateral	Overnight triparty		Term triparty		Overnight bilateral		Term bilateral	
	Total Unit Volume of Transactions	Total Dollar Volume of Transactions	Total Unit Volume of Transactions	Total Dollar Volume of Transactions	Total Unit Volume of Transactions	Total Dollar Volume of Transactions	Total Unit Volume of Transactions	Total Dollar Volume of Transactions
NMS stocks								
U.S. Treasury Securities								
Federal Agency Securities								

Agency Mortgage-Backed Securities								
Municipal Securities								
U.S. Corporate Debt Securities								
Non-U.S. Corporate Debt Securities								
Asset-backed securities								
Foreign sovereign debt securities								
Other securities								

i. If other securities, please describe: _____

5. * * *

C. List the types of listed options reported in Item 4F above: _____

6. Provide the total unit and dollar volume of transactions for after-hours trading in the following securities. Enter "None," "N/A" or "0" where appropriate.

Category of Securities	Total Unit Volume of Transactions	Total Dollar Volume of Transactions
A. Listed Equity Securities		
B. Listed options		

* * * * *

8. Was the ATS subject to the fair access obligations under Rule 301(b)(5) during any portion of the period covered by the report?

☐ Yes ☐ No

CONTACT INFORMATION, SIGNATURE BLOCK, AND CONSENT TO SERVICE

Provide the following information of the Person at {ATS} prepared to respond to questions for this submission:

First Name: Last Name:

Title:

Email: Telephone:

Primary Street Address of the ATS:

Mailing Address of the ATS (if different):

The {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 ATS, or via email, at the addresses provided on this Form ATS-R. The undersigned 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 {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} {ATS}

By: _____ Title_____

* * * * *

■ 15. Revise Form ATS–N (referenced in § 249.640).

Note: Form ATS–N is attached as Appendix A to this document. Form ATS–N will not appear in the Code of Federal Regulations.

Dated: January 26, 2022.

Vanessa A. Countryman,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX A—MARKED FORM ATS–N

Deleted text is [bracketed]. New text is italicized.

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:

{Covered[NMS Stock] ATS} is making this filing pursuant to the Rule 304 under the Securities Exchange Act of 1934

Type of Covered ATS

☐ NMS Stock ATS

☐ Government Securities ATS

☐ [Does the NMS Stock ATS currently operate pursuant to a Form ATS?] Is the ATS a Legacy Government Securities ATS or Newly Designated 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]Contingent Amendment	Rule 304(a)(2)(i)(D)
☐ Fee Amendment	Rule 304(a)(2)(i)(E)

☐ Statement about the Form ATS-N Amendment pursuant to Instruction A.7([g]h) 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]Covered 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. Indicate the following:

   a. Is the organization, association, Person, group of Persons, or system filing the Form ATS-N a broker-dealer registered with the Commission?

      Yes☐ No☐

   b. Is the registered broker-dealer authorized by a national securities association to operate an ATS?

      Yes☐ No☐

2. Full name of registered broker-dealer, government securities broker, or government securities 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, the Legal Entity Identifier (if any), and Market Participant Identifier ("MPID") of the Broker-Dealer Operator:

   a. SEC File No.:
   b. CRD No.:
   c. Legal Entity Identifier:
   d. MPID of the Broker-Dealer Operator:

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:

   a. Primary address:

   b. Does the ATS have a secondary matching system?

      Yes☐ No☐

      If yes, provide the secondary address:

8. Types of Securities Traded

a. For an NMS Stock ATS, does the ATS make available for trading all NMS stocks? If the ATS suspends trading in securities under certain circumstances, please indicate so under Part III, Item 20.

☐ Yes
☐ No

If no, identify the securities or types of securities that the ATS does not make available for trading:

b. For a Government Securities ATS, please indicate the types of government securities the ATS makes available for trading:

☐ U.S. Treasury Securities

☐ Bills:	☐ On-the-run	☐ Off-the-run	☐ When-issued
☐ Notes:	☐ On-the-run	☐ Off-the-run	☐ When-issued
☐ Bonds:	☐ On-the-run	☐ Off-the-run	☐ When-issued
☐ TIPS:	☐ On-the-run	☐ Off-the-run	☐ When-issued
☐ STRIPS:	☐ On-the-run	☐ Off-the-run	☐ When-issued
☐ Floating rate notes:	☐ On-the-run	☐ Off-the-run	☐ When-issued

☐ Agency Securities
☐ Agency Mortgage-Backed Securities
☐ Federal Agency Securities

☐ Repurchase or Reverse Repurchase Agreements on Government Securities ("repos")

☐ Triparty:	☐ Repurchase Agreement
	☐ Reverse Repurchase Agreement
	☐ Centrally Cleared
	☐ Non-Centrally Cleared
☐ Bilateral:	☐ Repurchase Agreement
	☐ Reverse Repurchase Agreement
	☐ Centrally Cleared
	☐ Non-Centrally Cleared

☐ Other:
If other, identify the types of government securities that the ATS makes available for trading:

[8]9. 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, and that the ATS will maintain its website in accordance with the rules for amending Form ATS-N pursuant to Rule 304(a)(2)(i) to reflect any changes to Schedule A of Form BD for the Broker-Dealer Operator.

[9]10. 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, and that the ATS will maintain its website in accordance with the rules for amending Form ATS-N pursuant to Rule 304(a)(2)(i) to reflect any changes to Schedule B of Form BD for the Broker-Dealer Operator.

[10]11. For filings made pursuant to Rule 304(a)(2)(i)(A) through ([D]E) *(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, Part II, and Part III, as applicable, including Exhibits 1, 2, and 5. Indicate both the Part and Item number for all Items that are changing. 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]in 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]. For each business unit, provide the applicable MPID and list the capacity of its [orders and] trading interest (*e.g.*, principal, agency, riskless principal). Explain any circumstance when the Broker-Dealer Operator would be a counterparty to an ATS trade.

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 and Persons whose trading interest is entered into the ATS by a Subscriber or the Broker-Dealer Operator?

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]in 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]. For each Affiliate, provide the applicable MPID and list the capacity of its [orders and] trading interest (*e.g.*, principal, agency, riskless principal). Explain any circumstances when an Affiliate of the Broker-Dealer Operator would be a counterparty to an ATS trade.

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 and Persons whose trading interest is entered into the ATS by a Subscriber or the Broker-Dealer Operator?

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 of Trading Interest 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] requirements 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] Venues

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] trading venue 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] trading venue and the ATS services and provide a summary of the terms and conditions of the arrangement.

b. [If yes to Item 4(a),] A[a]re there any formal or informal arrangements between an Affiliate of the Broker-Dealer Operator and a [Trading Center] trading venue to access the [NMS Stock] ATS services?

Yes☐ No☐

If yes, identify the [Trading Center] trading venue 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, order hedging or aggregation functionality, post-trade processing)?

Yes☐ No☐

If yes, identify the products or services offered, provide a summary of the [terms and conditions] requirements 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] requirements for use of the services or products required to be identified in Item 5(a) the same for all Subscribers, Persons

whose trading interest is entered into the ATS by a Subscriber or the Broker-Dealer Operator, 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] requirements 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] requirements for use of the services or products required to be identified in Item 5(c) the same for all Subscribers, Persons whose trading interest is entered into the ATS by a Subscriber or the Broker-Dealer Operator, 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]a. 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]b. If yes to Item 6([b]a), 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]c. If yes to Item 6([c]b), are the services that the [NMS Stock] ATS offers and provides to the entity required to be identified in Item 6([c]b) the same for all Subscribers and Persons whose trading interest is entered into the ATS by a Subscriber or the Broker-Dealer Operator?

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. 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. If any employee of the Broker-Dealer Operator or employee of its Affiliate that services both the operations of the ATS and any other business unit or any Affiliate of the Broker-Dealer Operator ("shared employee") has access to confidential trading information in the ATS, 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;
   ii. written standards controlling employees of the ATS that trade for employees' accounts; and
   iii. 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

For each narrative response in Part III, identify and explain any differences among and between any Subscribers, Persons whose trading interest is entered into the ATS by a Subscriber or the Broker-Dealer Operator, the Broker-Dealer Operator, and any affiliates of the Broker-Dealer Operator.

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

☐ Insurance Companies ☐ Pension Funds ☐ Corporations

☐ Other

If other, identify the type(s) of [s]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]c. 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 and Trading Outside of Regular Trading Hours

a. Provide the days and hours of operations of the [NMS Stock] ATS, including the times when [orders or] trading interest can be entered [on] in the ATS[, and any hours of operation outside of regular trading hours].

b. Are the ATS services available outside of its regular trading hours (e.g., after-hours trading)?

Yes☐ No☐

c. If yes to Item 4(b), with respect to services available outside of the ATS's regular trading hours, are there any differences between the services during the ATS's regular trading hours and outside of the ATS's regular trading hours?

Yes☐ No☐

If yes, identify and explain the differences.

[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]b. Are there any [other] means of [for] entering [orders and] trading interest into the [NMS Stock] ATS not otherwise disclosed in Part III, Item 5(a) (*e.g.*, smart order router, algorithm, order management system, sales desk, direct market access, web-enabled system, or aggregation functionality)?

Yes☐ No☐

If yes, identify and explain the [other] means for entering [orders and] trading interest, including [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]requirements 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] requirements for use 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]b. 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] requirements 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]c. 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] requirements 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.

Yes☐ No☐]

Item 7: Order Types [and Attributes] and Sizes; Trading Facilities

Does the ATS provide trading facilities or set rules for bringing together orders of buyers and sellers (*e.g.*, crossing system, auction market, limit order matching book, click-to-trade functionality)?

Yes☐ No☐

If yes, explain the trading facilities and rules for bringing together the orders of buyers and sellers in the ATS, including:

a. [Identify and explain] a description of each order type offered by the [NMS Stock] ATS[. In your explanation, include the following], including:

- [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]in relation to 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]the order type 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, store 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] trading venues;

- [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. any order size requirements (*e.g.*, minimum or maximum size, odd-lot, mixed-lot, trading increments) and related handling procedures (*e.g.*, handling of residual trading interest);

c. rules governing order interaction, priority, pricing methodologies, allocation, matching, and execution of orders;

d. how orders may interact with non-firm trading interest or separate trading functionalities within the ATS or offered by the Broker-Dealer Operator;

e. procedures governing trading in the ATS, such as functionality or protocols that permit the selection of displayed orders to trade against, price improvement functionality, price protection mechanisms, short sales, functionality to adjust or hedge orders, locked-crossed markets, trading controls (*e.g.*, fat finger checks, whether the ATS can employ a global kill switch), the handling of execution errors and trade breaks, and the time-stamping of messages and executions, and any conditions or processes for terminating a counterparty match.

[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 (*e.g.*, 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]8: Use of Non-Firm Trading Interest; Communication Protocols and Negotiation Functionality [Conditional Orders and Indications of Interest]

[a.] Does the [NMS Stock]ATS make available communication protocols for buyers and sellers to communicate non-firm trading interest or negotiate a trade [send or receive any messages indicating trading interest] (*e.g.,* request-for-quote (RFQ) protocols, bids-wanted or offers-wanted protocols, indications of interest mechanisms, conditional order functionalities[, 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)] the protocols and functionalities, including:

a. the use of messages, including:

- types of messages that the ATS permits to be sent and received and the type of Persons that can send or receive messages (*e.g.*, the ATS, types of Subscribers, specific Subscribers, customers of Subscribers, trading venues);
- information contained in messages (*e.g.*, symbol, price, direction, or size minimums) and whether the terms in the messages can vary based on potential recipients (*e.g.*, different Subscribers may receive different prices for the same security);
- how and when messages are transmitted (*e.g.*, order management system, router, or FIX);

- whether messages are attributed to their sender or anonymous, and whether a participant may elect to disclose its identity to other Subscribers, and if so, how, when, and what is disclosed;
- processes to respond to messages (*e.g.*, submission to firm-up conditional orders, response parameters for an RFQ, response to a request to negotiate, last look procedures);
- time parameters applicable to messages (*e.g.*, the time-in-force instructions that can be used with a message, or wire time or response time applied to a conditional order or RFQ);
- information regarding the contra-party trading interest made known on the system (if trading interest is made known on the system, describe it in Part III, Item 15), including whether a Subscriber may elect whether to display only part of its trading interest (*e.g.*, hidden size);
- the circumstances under which messages may be modified, replaced, canceled, rejected, or removed from the ATS;
- any restrictions or conditions under which the message might result in the match of two counterparties, require a response, or result in an execution in the ATS (*e.g.*, interaction, matching, selection, automatic execution) and any price conditions (*e.g.*, how price conditions affect the rank and price at which the message can result in an execution);
- limits or requirements for multiple messages sent at the same time (*e.g.*, whether the ATS prohibits a Subscriber from entering multiple buy or sell orders in the same security);
- whether a message containing trading interest is eligible to be sent to destinations outside the ATS (if a message can be sent to a destination outside the ATS, describe it in Part III, Item 16);
- the availability of message types across all forms of connectivity to the ATS and differences, if any, in the availability of an order type across those forms of connectivity.

b. any requirements relating to the size of trading interest (*e.g.*, minimum or maximum size, message controls or throttling, odd-lot, mixed-lot, trading increments) and related handling procedures (*e.g.*, handling of residual trading interest).

c. procedures governing communication protocols, including:

- priority, including the priority applied to a message upon entry and any subsequent change to priority (if applicable, whether and when the message can receive a new time stamp, the message's priority in relation to other messages in the ATS due to a change to any reference price, and any instance in which a message could lose execution priority to a later arriving message at the same price); whether the ATS permits or provides for Subscribers to vary pricing based on the identity of other Subscribers (*e.g.*, preferred pricing feeds or tiered pricing) and whether Subscribers can select counter-parties to interact with based on their identity;
- rules for interaction, pricing methodologies, allocation, matching, and execution;
- functionality or protocols for the auto-execution of non-firm trading interest, and how the ATS or a Subscriber can designate trading interest as automatically executable;
- how non-firm trading interest may interact with orders or separate trading functionalities in the ATS or functionality offered by the Broker-Dealer Operator;

- procedures governing trading in the ATS, such as functionality or protocols that permit a Subscriber to select displayed non-firm trading interest to trade against, price improvement functionality, price protection mechanisms, short sales, functionality to adjust or hedge trading interest, locked-crossed markets, the handling of execution errors, platform and trade controls (*e.g.*, fat finger checks, whether the ATS can employ a global kill switch), the time-stamping of trading interest messages and executions, any conditions or processes for terminating a counterparty match;
- what information is made available to Subscribers from the ATS about interaction history, counterparty matching, or executions (*e.g.*, pre- and post-trade data, best execution analysis, transaction cost analysis), when such information is made available, the source(s) of such information, and the process for Subscribers to access this information.

[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 9: Monitoring and Surveillance

a. Does the ATS supervise the trading activity that occurs on or through the ATS (*e.g.*, supervisory systems and procedures to detect, deter, or limit potentially disruptive, manipulative, or non-bona fide quoting and trading activities that occur on or through its system and to ensure that they are reasonably designed to achieve compliance with applicable SRO rules and the federal securities laws)?

Yes☐ No☐

If yes, provide a summary of the supervision activities, the sources of data the ATS uses to supervise trading activity (*e.g.*, internal or external sources), and the activities that the ATS intends to detect, deter, or limit.

b. Does the ATS monitor for certain trading behaviors or activities that may be detrimental to the ATS marketplace or trading (*e.g.*, anti-gaming technology)?

Yes☐ No☐

If yes, provide a summary the monitoring activities and the trading behaviors and activities that the ATS intends to detect, deter, or limit.

Item 10: Opening and Reopening

a. Explain the processes and procedures related to how the [NMS Stock] ATS opens or re-opens for trading, including when and how [orders and] trading interest [are] is priced, prioritized, matched, and executed; when and how trading interest may be sent, received, and viewed at opening; how unexecuted trading interest is handled at the time the ATS begins its regular trading hours or following a stoppage of trading in a security during its regular trading hours; whether there are any protocols at the open for buyers and sellers to send messages and negotiate a trade; [,] and identify any order types allowed prior to the start of its regular trading hours or following a stoppage of trading in a security during its 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]b. Are there any differences between pre-opening executions, executions following a stoppage of trading in a security during the ATS's regular trading hours, and/or executions during its regular trading hours?

Yes☐ No☐

If yes, identify and explain the differences.

Item 11: [Trading Services, Facilities and Rules] Interaction with Related Markets

[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.]

Does the Broker-Dealer Operator or any of its Affiliates offer functionality, procedures, or protocols to facilitate trading or communication on, or source pricing for, the ATS

using markets for financial instruments related to the securities that the ATS trades (*e.g.*, futures, options, currencies, swap, fixed income markets), including offering order types to facilitate transactions on both markets, or procedures to allow Subscribers to perform multi-leg transactions involving the identified market(s)?

Yes☐ No☐

If yes, (i) identify the functionality, procedures, protocols, and source of pricing and the related market; (ii) state whether the functionality, procedures, protocols, and source of pricing is provided or operated by the Broker-Dealer Operator or an affiliate of the Broker-Dealer Operator and whether the related market is provided or operated by the Broker-Dealer Operator or its affiliate; and (iii) explain the use of the functionality, procedures, protocols, and source of pricing with regard to the related market and the ATS, including how and when the functionality, procedures, protocols, and source of pricing can be used, by whom, and with what markets.

Item 12: Liquidity Providers

Are there any formal or informal arrangements with any [Subscriber]Person or the Broker-Dealer Operator to display, enter, or trade against [provide orders or] trading interest in [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 liquidity provider and describe the arrangement, including the terms and conditions.

Item 13: Segmentation; Notice

a. Is[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] trading interest size, duration, source, or nature of trading activity)?

Yes☐ No☐

If yes, explain the segmentation procedures, including (i) [a description for] how and what [orders and] trading interest is [are] segmented, including where the identification of segmented trading interest is applied (*e.g.*, when ATS trading interest is received by the Broker-Dealer Operator or entered into the ATS); (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, including when such category is determined, reviewed, and can be changed; (iv) any procedures for overriding a determination of segmented category; and (v) how segmentation can affect [order]trading interest interaction.

b. Can the ATS, in the absence of Subscriber direction, prevent a Subscriber or its potential counter-parties from viewing or interacting with certain trading interest (*e.g.*, permissioning, filtering, or blocking)?

Yes☐ No☐

If yes, explain such processes, including (i) what a Subscriber or counterparty is prevented from viewing or interacting with and where this determination is made (*i.e.*, when trading interest is received at the Broker-Dealer Operator or the ATS); (ii) how and when the ATS prevents a Subscriber or its potential counter-party from viewing or

interacting with certain trading interest; (iii) identify and describe any categories, classification, tiers, or levels and the types of trading interest that the ATS uses to determine how Subscribers can view or interact with other trading interest; (iv) a summary of the parameters for such processes and length of time any such parameter is in effect; (v) any procedures for overriding a determination of any category, classification, tier, or level that the ATS uses to designate how Subscriber trading interest can interact; (vi) how such processes can affect trading interest interaction; (vii) how a Subscriber can view filtered messages and any permissioning process and criteria for a Subscriber to send, receive, or interact with a message.

[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] trading interest?

Yes☐ No☐

d. If yes to Item 13(a) or 13(b), does the [NMS Stock]ATS disclose to any Person the designated segmented or otherwise designated 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 interact with or execute against a specific Subscriber's [orders or] trading interest or prevent the trading interest of a Subscriber['s order] from interacting with or executing against the trading interest of that Subscriber [itself])?

Yes☐ No☐

If yes, explain the counter-party selection procedures, including how counter-parties can be selected, and whether the designations affect the trading rules (*e.g.*, order interaction or priority) or communication protocols of [interaction and priority of trading interest in] the ATS.

b. Can a Subscriber designate trading interest that the Subscriber or potential counter-parties can view (*e.g.*, filtering, blocking, permissioning)?

Yes☐ No☐

If yes, explain such processes, including (i) how and when a Subscriber can designate which trading interest it or a potential counter-party can view; (ii) any categories, classifications, or levels and the types of trading interest that Subscribers are able to designate; (iii) a summary of the parameters for such processes and length of time any such parameter is in effect; and (iv) how such processes can affect how trading interest interacts 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 and Visibility of Trading Interest

a. Does the ATS display trading interest to Subscribers or the public (*e.g.*, ATS disseminates orders through market data feeds or a website or sends invitations or requests to Subscribers about potential counterparties)?

Yes☐ No☐

If yes, explain what information the ATS displays (*e.g.*, security, price, size, direction, the identity of the sender, rating information based on the sender's past performance in the ATS), how and when such information is displayed, to whom such information is displayed (*e.g.*, Subscribers, public, types of market participant), and how long the displayed information is available. Indicate whether a Subscriber can opt-out of the display of its trading interest, and if so the process for that Subscribers to do so.

b. Can a Subscriber use the ATS to display or make known trading interest to any Person (*e.g.*, stream quotes to the Subscribers or the public or send a request for quote, indication of interest, conditional order, or invitation to negotiate to a Subscriber or the Broker-Dealer Operator)?

Yes☐ No☐

If yes, explain what information the Subscriber can display through the ATS (*e.g.*, security, price, size, direction, the identity of the sender), procedures for Subscribers to display such information, how and when such information is displayed, to whom such information is displayed (*e.g.*, Subscribers, public, types of market participant), and how long the displayed information is available.

c. Is any trading interest bound for the ATS made known to any Person (not including employees of the ATS who are operating the system) (*e.g.*, trading interest directed to the ATS by customers of the Broker-Dealer Operator that passes through a SOR or functionality of the Broker-Dealer Operator before entering the ATS), or is any ATS trading interest made known to any Person that is not otherwise disclosed in Part III, 15(a) or (b) (*e.g.*, displays orders to the Broker-Dealer Operator's SOR or trading desk), or both?

Yes☐ No☐

If yes, explain what information is displayed (*e.g.*, security, price, size, direction, the identity of the sender), how and when such information is displayed, to whom such information is displayed (*e.g.*, algorithm, SOR, trading desk, third party), and how long the displayed information is available.

d[a]. Does the ATS operate as an Electronic Communication Network as defined in Rule 600(a)([23]31) 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 or sent 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 or sent 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] trading interest in the [NMS Stock] ATS can be routed or sent from the ATS (*e.g.*, at the discretion of the Broker-Dealer Operator).

c. Can trading interest in the ATS be routed or sent to a destination operated or controlled by the Broker-Dealer Operator or an Affiliate of the Broker-Dealer Operator?

Yes☐ No☐

If yes, identify the destination and when and how trading interest is routed or sent from the ATS to the destination.

Item 17: Closing

[a.] Are there any differences between how [orders and] trading interest [are]is treated on the [NMS Stock]ATS during its closing session(s) [the close] and how [orders and] trading interest [are] is treated during its 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]18: 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, market data), 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), whether the fee is incorporated into the price displayed for a security (*e.g.*, markups, markdowns), 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]18(a) and [19]18(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]19: 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, U.S. Treasury Securities, or in an Agency Security.

[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]20: 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]21: Post-Trade Processing, Clearance and Settlement

[a.] Describe any procedures and material arrangements undertaken as a result of the contractual agreements between the Broker-Dealer Operator and the ATS participants to [facilitate]manage the post-trade processing (such as routing, enrichment, allocations, matching, confirmation, affirmation, notification), clearance, and/or settlement of transactions on the [NMS Stock] ATS (*e.g.*, whether the ATS, Broker-Dealer Operator, or Affiliate of either: becomes a counterparty[,]; [whether it] submits trades to a registered clearing agency[,]; [or whether it] requires Subscribers to have arrangements with a clearing firm; or terminates trades). Please include a description of any user requirements for such procedures and material arrangements, including the type and extent of connectivity (*e.g.*, FIX), and whether connectivity is to an OMS, EMS, EOMS, clearinghouse/custodian, or other system.

[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]22: 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"), or feeds from trading venues), 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 or BBO, and display, price, prioritize, execute, and remove [orders and] trading interest [on]in 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]23: Order Display and Execution Access

a. If an NMS Stock ATS, [H]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]23(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]24: Fair Access

a. If an NMS Stock ATS, h[H]as the [NMS Stock]ATS executed 5% or more of the average daily trading volume in an NMS stock, whether by itself or aggregated pursuant to Rule 301(b)(5)(ii), 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 a Government Securities ATS, has the ATS executed 3% or more of the average weekly trading volume in U.S. Treasury Securities, whether by itself or aggregated pursuant to Rule 301(b)(5)(ii), as reported to and disseminated by a self-regulatory organization during four of the preceding six calendar months?

Yes☐ No☐

c. If a Government Securities ATS, has the ATS executed 5% or more of the average daily trading volume in Agency Securities, whether by itself or aggregated pursuant to Rule 301(b)(5)(ii), as reported to and disseminated by a self-regulatory organization during four of the preceding six calendar months?

Yes☐ No☐

d.[b.]If yes to Item [25]24 (a), (b), or (c), is the [NMS Stock] ATS required to comply with Rule 301(b)(5)(iii) of Regulation ATS?

Yes☐ No☐

If yes,

i. If an NMS Stock ATS, [P]provide the ticker symbol for each such NMS stock during each of the last 6 calendar months; and

ii. Describe the reasonable written standards for granting, limiting, and denying access to the services of[trading on] the ATS pursuant to Rule 301(b)(5)(iii)(A) of Regulation ATS.

Item [26]25: 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, and that the ATS will maintain its website in accordance with the rules for amending Form ATS-N pursuant to Rule 304(a)(2)(i) to reflect any changes to such information.

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, and that the ATS will maintain its website in accordance with the rules for amending Form ATS-N pursuant to Rule 304(a)(2)(i) to reflect any changes to such information.

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] a Covered ATS and the ATS-related activities of its Broker-Dealer Operator and its Affiliates. Among other things, [an NMS Stock] a Covered 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] Covered ATS operated by the same Broker-Dealer Operator.

3. [An NMS Stock] A Covered 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] A Covered 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]a Covered ATS shall file an initial Form ATS-N and the initial Form ATS-N must become effective. If [an NMS Stock]a Government Securities 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.] A Legacy Government Securities ATS or Newly Designated ATS shall file with the Commission a Form ATS-N no later than [the date 90 calendar days after the effective date of the final rule].

7. Form ATS-N Amendment

   a. [An NMS Stock]A Covered 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] a Contingent Amendment or Rule 304(a)(2)(i)(E) for a Fee Amendment, must be filed at least 30 calendar days, or the length of any extended Commission review period, prior to the date of implementation of a material change to the operations of the [NMS Stock]Covered

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), or Rule 304(a)(2)(i)(E).

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. A[n Order Display and Fair Access] Contingent Amendment must be filed no later than seven calendar days after information required to be disclosed in Part III, Items [24]23 and [25]24 on Form ATS-N has become inaccurate or incomplete.

f. A Fee Amendment must be filed no later than the date the information required to be disclosed in Part III, Item 18 on Form ATS-N has become inaccurate or incomplete.

[f.]g. [An NMS Stock ATS]A Covered ATS must select only one "Type of Amendment" for each Form ATS-N Amendment filed with the Commission.

[g]h. For each Amendment, indicate the Part and Item number of the Form ATS-N that is the subject of the change(s), provide a brief summary of the substance of the change(s), and state whether or not the change(s) apply to: (1) all Subscribers and the Broker-Dealer Operator; (2) only the Broker-Dealer Operator; (3) only Subscribers; (4) only certain Subscribers or subsets of Subscribers or customers of Subscribers and the Broker-Dealer Operator; or (5) only certain Subscribers or subsets of Subscribers or customers of Subscribers. If the change(s) apply only to certain Subscribers, describe which Subscribers the change(s) apply to. Do not describe any changes made to Part IV.

[h]i. For each Amendment, provide the EDGAR accession number for the filing that is being amended.

8. Notice of Cessation: [An NMS Stock]A Covered ATS shall notice its cessation of operations on Form ATS-N at least 10 business days prior to the date the [NMS Stock] Covered ATS will cease to operate as [an NMS Stock] a Covered ATS.

9. Withdrawal: If [an NMS Stock] a Covered 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] A Covered ATS may withdraw an initial Form ATS-N or an Amendment before the end of the applicable Commission review period. [An NMS Stock] A Covered ATS may withdraw a notice of cessation of operations at any time before the date that the [NMS Stock] Covered ATS had indicated it intended to cease operating. A Legacy [NMS Stock ATS] Government Securities ATS or Currently Designated 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] Covered 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] a Covered 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] Covered 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] a Covered ATS is in compliance with the federal securities laws and the rules or regulations thereunder, including Regulation ATS. [An NMS Stock] A Covered ATS must:

  - File an initial Form ATS-N prior to commencing operations.

  - File a Form ATS-N Amendment: (1) at least 30 calendar days prior to the date of implementation of a material change to the operations of the [NMS Stock]Covered 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), or Rule 304(a)(2)(i)(E) (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]23 and [25]24 on Form ATS-N has become inaccurate or incomplete ([Order Display and Fair Access]Contingent Amendment); or (5) no later than the date the information required to be disclosed in Part III, Item 18 on Form ATS-N has become inaccurate or incomplete (Fee Amendment). During the Commission review period of an initial Form ATS-N filing, [an NMS Stock] a

Legacy Government Securities ATS or Newly Designated ATS [that is operating as of January 7, 2019] shall amend its filed Form ATS-N pursuant to these requirements, and [an NMS Stock] a Covered ATS that [was not operating as of January 7, 2019] is not a Legacy Government Securities ATS or Newly Designated ATS 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, a[n] [NMS Stock] Covered ATS shall amend a filed Material Amendment pursuant to the requirements for Updating and Correcting Amendments.

- o Notice its cessation of operations at least 10 business days before the date the [NMS Stock] Covered ATS ceases to operate as [an NMS Stock] a Covered 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]136.4 hours completing the Form ATS-N, approximately 9.4 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.

- **AGENCY SECURITY:** Shall mean a debt security issued or guaranteed by a U.S. executive agency, as defined in 5 U.S.C. 105, or government-sponsored enterprise, as defined in 2 U.S.C. 622(8).

- **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 or government securities broker or government securities 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).

- **GOVERNMENT SECURITY**: Shall mean securities defined in section 3(a)(42) of the Exchange Act. 15 U.S.C. 78c(a)(42).

- **GOVERNMENT SECURITIES ATS**: Shall mean an alternative trading system that trades government securities or repurchase and reverse repurchase agreements on government securities. A Government Securities ATS shall not trade securities other than government securities or repurchase and reverse repurchase agreements on government securities.

- **LEGACY GOVERNMENT SECURITIES ATS**: Shall mean a Government Securities ATS operating as of [effective date of the final rule] that was either: (1) formerly not required to comply with Regulation ATS (§ 242.300 through 242.304) pursuant to the exemption under § 240.3a1-1(a)(3) prior to [effective date of the final rule]; or (2) operating pursuant to an initial operation report on Form ATS on file with the Commission as of [effective date of the final rule].

- **NEWLY DESIGNATED ATS** – Shall mean an alternative trading system operating as of [effective date of the final rule] that meets the criteria under 17 CFR 240.3b-16(a) as of [effective date of the final rule] but did not meet the criteria under 17 CFR 240.3b-16(a) in effect prior to [effective date of the final rule]. 17 CFR 242.300(r).

- **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. An NMS Stock ATS shall not trade securities other than NMS stocks. 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).]Shall mean a natural person, company, government, or political subdivision, agency, or instrumentality of a government. 15 U.S.C. 78c(a)(9).

- **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]trading interest 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 INTEREST**: Shall mean an order or any non-firm indication of a willingness to buy or sell a security that identifies at least the security and either quantity, direction (buy or sell), or price. 17 CFR 240.300(q).

- **TRADING [CENTER]VENUE**: 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, a future or options market, or any other broker- or dealer-operated platform for executing trading interest [that executes orders] internally by trading as principal or crossing orders as agent. [17 CFR 242.600(b)(78).]

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