

PAPERWORK REDUCTION ACT SUBMISSION

Rule 301

Supporting Statement

A. Justification

1. Necessity for Information Collection.

The Securities Exchange Act of 1934, as amended ("Exchange Act")¹, sets forth a scheme of self-regulation in which national securities exchanges have primary responsibility for regulating their members and enforcing compliance by members and their associated persons with the Exchange Act, the rules thereunder and exchange rules. Under the Exchange Act, the Commission is charged with the responsibility for supervising and assuring that exchanges comply with and advance the policies of the Exchange Act.

In the 1975 Amendments to the Exchange Act,² Congress specifically endorsed the development of a national market system ("NMS") and sought to clarify and strengthen the Commission's authority to promote the achievement of such a system. The growing use of technology has made it possible for commercial entities to centralize trading without the use of a floor, members, or a non-profit structure.

The growing significance of alternative trading systems ("ATs") had far outstripped the Commission's ability to effectively oversee such systems through existing broker-dealer regulation. Accordingly, the Commission adopted Regulation ATS, which provides a regulatory structure that directly addresses issues related to ATs' role in the marketplace. Regulation ATS allows ATs to choose between two regulatory structures. ATs have the choice between registering as broker-dealers and complying with Regulation ATS or registering as national securities exchanges. Regulation ATS provides the regulatory framework for those ATs that choose to be regulated as broker-dealers.

Regulation ATS is composed of Rules 300, 301, 302, and 303. Rule 300 defines terms that provide the basis for ATS regulation. Rule 301 sets forth the conditions that an ATS must meet in order to be regulated as a broker-dealer. Rule 301 contains certain notice and reporting requirements, as well as additional obligations that only apply to ATs with significant volume. Rule 302 establishes a set of records relating to trading activity that the ATS must make. Rule 303 establishes requirements for the preservation of certain records that ATs must make.

As part of its effort to address the growth of actionable indications of interest

¹ 15 U.S.C. 78a et seq.

² Pub. L. No. 29, 89 Stat. 97 (1975).

("IOI"), however, the Commission is now proposing to lower substantially the trading volume threshold in Rule 301(b)(3) from 5 percent to 0.25 percent.³ The Commission is taking this action to help assure that the public, through the consolidated quotation data, has access to valuable order (including actionable IOI) information about the best prices and sizes for NMS stocks that trade on an ATS. The Commission is also proposing to amend Rule 301(b)(3)(ii) of Regulation ATS⁴ to clarify that an ATS must publicly display and provide access to its best-priced orders in NMS stocks when such orders are displayed to more than one person (other than ATS employees), regardless of whether such persons are subscribers of the ATS. Finally, the Commission is proposing to amend Rule 301(b)(3) to exclude orders having a market value of at least \$200,000 and which are communicated only to market participants who are reasonably believed to represent current contra-side trading interest of at least \$200,000 from the public display requirement.

Currently, among other provisions, paragraph (b)(3) of Rule 301 requires that an ATS must display its best-priced orders in the consolidated quotation data for those NMS stocks where the average daily trading volume exceeds 5 percent during four of the preceding six months. An ATS is not required, however, to include its best-priced orders for an NMS stock in the consolidated quotation data (even if it widely disseminates such orders) when its trading volume in that NMS stock is less than 5 percent.⁵

As the Commission noted when Regulation ATS was adopted, this threshold is high. Accordingly, Rule 301(b)(3) has had almost no impact on ATSS. Because the Paperwork Reduction Act defines a collection of information to involve ten or more respondents, the Commission has not previously analyzed the burden hours and costs that may be associated with Rule 301(b)(3). There was no basis to believe that at least ten ATSS would trade in sufficient volume to trigger the order display requirement. Under the Commission's proposed rule change, however, the number of ATSS potentially subject to Rule 301(b)(3) could exceed ten, thus requiring a collection of information analysis.⁶

The practical result of the proposed amendment to Rule 301(b)(3) would be that ATSS could not privately display actionable IOIs only to select market participants and thereby create two-tiered access to information on the best available prices for NMS stocks. ATSS that display orders will be required to do so to the market as a whole by including rel-

³ See Securities Exchange Act Release No. 60997 (November 13, 2009), 74 FR 61208 (November 23, 2009).

⁴ 17 CFR 242.301(b)(3)(ii).

⁵ Those ATSS that operate as electronic communication networks ("ECNs") and qualify for the ECN display alternative under Rule 602(b)(5)(ii) voluntarily have chosen to include their best-priced orders in the consolidated quotation data even when their volume in an NMS stock is less than 5%. The proposed amendments to Regulation ATS would not affect the display practices of these ECNs.

⁶ As described in more detail in section 5, below, the Commission preliminarily believes that approximately 12 respondents could be impacted by the proposed amendment to Rule 301(b)(3).

evant information in the consolidated quotation data for the NMS. In addition, by lowering the trading volume threshold, more ATS quotes would be made available to the public by requiring their inclusion in the consolidated quotation data. As discussed below, the proposed amendment is designed to enhance price transparency and promote fairer and more efficient markets.

A collection of information has already been approved for Rule 301 of Regulation ATS. While the Commission does not believe that the burdens associated with current Rule 301 have changed, the total number of ATSS have increased since the Commission last examined the rule. Specifically, the number of registered ATSS has increased from approximately 65 to 73. This submission updates the relevant burden estimates accordingly.

With respect to the proposed amendment to Rule 301(b)(3), the Commission does not believe adoption of the proposal would impact any of the costs or burdens associated with the previously approved collection of information. Rather, the proposed amendment may involve additional obligations on certain ATSS with sufficient trading activity, which are further described herein.

2. Purposes of, and Consequences of Not Requiring, the Information Collection

As the Commission stated in the 2007 request to extend the current collection of information for Rule 301 ("2007 PRA Submission"), the rule describes the conditions with which an ATS must comply to be registered as a broker-dealer. These conditions include submitting and keeping current Form ATS and submitting quarterly transaction reports on Form ATS-R.

The Commission uses the information provided pursuant to the Rule to 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 NMS 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 will allow it to determine whether such systems have adequate safeguards. Further, in the absence of the Rule, the Commission would not regularly obtain uniform trading data to identify areas where surveillance by self-regulatory organizations may be more appropriately tailored to the detection of fraudulent, deceptive and manipulative practices that may be peculiar to an automated trading environment. In sum, without the data required by the proposed Rule, the Commission would be limited in its ability to comply

with its statutory obligations, provide for the protection of investors, and promote the maintenance of fair and orderly markets.

The proposed amendment to Rule 301 would not impact the current collection of information, which would continue.⁷ Rather, the proposed amendment to Rule 301(b)(3) would broaden the existing collection of information under Rule 301 as it would potentially require a greater number of respondents to disclose order information to the public.

Rule 301(b)(3) requires that an ATS meeting a specified threshold of activity in NMS stocks must display its best-priced orders to the public quote stream. The Commission is proposing amendments to the order display and execution access obligations in Regulation ATS, including a substantial lowering of the trading volume threshold in Regulation ATS that triggers public display obligations for ATSs from 5 percent to 0.25 percent. As described above, this lowering of the threshold could increase the number of respondents beyond ten. The proposals are intended to promote the Exchange Act goals of transparency, fairness, and efficiency.

The Commission believes that broker-dealers operating ATSs should be subject to quoting requirements that broadly parallel those applicable to other market participants. Currently, the order display and execution access requirements in Regulation ATS do not apply unless an ATS has an average daily trading volume threshold in an NMS stock of 5% or more. Few if any ATSs exceed the 5% threshold for any NMS stocks although ATSs collectively account for a significant share of trading volume. Many "dark pool" ATSs communicate order information via actionable IOIs that could, if appropriately integrated, contribute to the overall efficiency and quality of the NMS.⁸

Without any amendment of Rule 301(b)(3) to lower the current 5 percent threshold, most ATSs that transmit actionable IOIs would not be required to include this actionable order information in the consolidated quotation data. They could continue to communicate actionable IOIs – functionally equivalent to orders – only to selected market

⁷ Rule 301 includes various requirements applicable to ATSs. In addition to completing and keeping current Form ATS and Form ATS-R, for example, ATSs with significant volume are required to comply with requirements for fair access and systems capacity, integrity and security. Under Rule 301(b)(5), such ATSs are required to establish standards for granting access to trading on the system. In addition, upon a decision to deny or limit an investor's access to the system, an ATS is required to provide notice to the investor of the denial or limitation and their right to an appeal to the Commission. Regulation ATS 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.

⁸ The term "dark pool" is not used in the Exchange Act or Commission rules. For purposes of this release, the term refers to ATSs that do not publicly display quotations in the consolidated quotation data.

participants. The Commission preliminarily believes that the proposed amendment would be consistent with the mandate set forth in Section 11A of the Exchange Act⁹ to promote a NMS.

The Commission also preliminarily believes that, by expanding the pool of orders that would be required to be incorporated into the consolidated public quote stream, the proposed amendments to Rule 301(b)(3) would have the potential in many cases to narrow the national best bid or offer ("NBBO") or to increase the quoted size at the existing NBBO. Requiring that actionable IOIs be incorporated into the public quote stream is particularly important now given their increasing prevalence. Thus, although 0.25% is only a small portion of average daily trading volume, actionable IOIs sent by even small ATSS, when aggregated, may represent a significant percentage of the orders that would set the price of, or increase the size available at, the NBBO.¹⁰ The Commission preliminarily believes that making most of such orders visible and available to the market as a whole could represent a substantial benefit to investors. Furthermore, incorporating the best-priced orders from all but the smallest ATSS into the public quote stream would increase the value of the public quote stream.

The Commission is also proposing to amend Rule 301(b)(3) to include an exception from the order display and execution access requirements for certain large orders. This exception would apply to orders with a market value of \$200,000 or more that are communicated only to those who are reasonably believed to represent current contra-side trading interest of at least \$200,000. Pursuant to the proposed exception, an ATS could display these large orders to potential counterparties reasonably believed to represent contra-side trading interest of at least \$200,000 without triggering the order display and execution access requirements of Rule 301(b)(3).

The Commission recognizes that some trading venues, such as block crossing networks, may use actionable IOIs as part of a trading mechanism that offers significant size discovery benefits. These benefits may be particularly valuable for institutional investors that need to trade efficiently in sizes much larger than those that are typically available in the public quoting markets. These size discovery mechanisms could be rendered unworkable, however, if their narrowly targeted IOIs for large size were required to be included in the public quote stream. The Commission preliminarily believes that the proposed exception would facilitate greater opportunity for ATS subscribers to discover size without generating adverse market impact.

3. Role of Improved Information Technology and Obstacles to Reducing Burden

As stated in the 2007 PRA Submission, the Commission's electronic filing project, called EDGAR for Electronic Data Gathering, Analysis & Retrieval, is designed to

⁹ 15 U.S.C. 78k-1.

¹⁰ As of the second quarter 2009, for example, dark pools, many of which operate as ATSS, in the aggregate account for 7.2% of aggregate trading volume in the NMS.

automate the filing, processing and dissemination of full disclosure filings. Ultimately, all Commission filings, including Forms ATS and ATS-R, will be considered for electronic submission. Such automation will increase the speed, accuracy and availability of information, generating benefits to investors and financial markets.

With respect to the proposed amendment to Rule 301(b)(3), ATSs subject to the order display and execution access requirement will be able to make use of the highly automated NMS network that is already in place.

4. Efforts to Identify Duplication

As stated in the 2007 PRA Submission, most of the records required to be made under the Rule reflect practices that prudent ATSs would establish. Because most ATSs would maintain much of the information required by the proposed Rule, no duplication occurs with respect to such information. To the extent that the Rule establishes new collections of information, there is no similar information available that could replace the information required.

With respect to the proposed amendment to Rule 301(b)(3), the information required to be made part of the public quote stream is not duplicative of any information otherwise provided by an ATS. Any displayed orders would represent unique trading interest in the ATS.

5. Effect on Small Entities

As stated in the 2007 PRA Submission, the rule is one of general applicability that mostly does not depend on the size of the system. The filing requirements on Forms ATS and ATS-R, for example, apply to all ATSs regardless of size under Regulation ATS. Therefore, the Rule could apply to small businesses. Pursuant to 17 CFR 240.0-10(c), the term "small business" or "small organization" when used in reference to a broker-dealer means a broker-dealer that has 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 17 CFR 240.17a-5(d) of the Exchange Act¹¹ or, if not required to file such statements, a broker-dealer that had total capital of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business); and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in 17 CFR 240.0-10.¹² An entity that complies with Regulation ATS must, among other things, register as a broker-dealer.¹³ Thus, the Commission's definition of small entity as it relates to broker-dealers also applies to ATSs.

Because the risks that the Commission monitors in the operation of an ATS occur in

¹¹ See 17 CFR 240.17a-5(d).

¹² See 17 CFR 240.0-10(c).

¹³ See 17 CFR 242.301(b)(1).

any size business, the Commission has determined that the Rule must apply in the same manner to small as well as large entities. Hence, the Rule does not contain an exemption for small entities. However, the Commission notes that ATSs that transact significant volume, and thus, are subject to the requirements of fair access, market transparency and coordination and systems capacity, integrity and security, are not likely to be small entities as defined by the Exchange Act.

With respect to the proposed amendment to Rule 301(b)(3), the Commission also certifies that the proposed amendments to Rule 301(b)(3) of Regulation ATS would not, if adopted, have a significant economic impact on a substantial number of small entities. The proposed amendments to Rule 301(b)(3) would lower the average daily trading volume threshold that triggers the order display and execution access requirements applicable to ATSs. Accordingly, the proposed amendments to Rule 301(b)(3) could result in more ATSs being subject to these requirements.

The Commission notes that there are approximately 73 ATSs that are subject to Regulation ATS. Of these, approximately 11 communicate actionable IOIs in NMS stocks to more than one person and approximately one other ATS displays subscriber orders in NMS stocks on a limited basis in some other fashion. Therefore, the Commission preliminarily believes that approximately 12 respondents could be impacted by the proposed amendments to Rule 301(b)(3).¹⁴ The Commission preliminarily does not believe that any of these 12 ATSs would be a "small entity" as defined above.¹⁵ Therefore, the Commission certifies that the proposed amendments to Rule 301(b)(3), if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

6. Consequences of Less Frequent Collection

As stated in the 2007 PRA Submission, without the information provided on

¹⁴ The Commission preliminarily believes that the remaining 61 ATSs would not be affected by the proposed amendments because they: (a) do not display subscriber orders in NMS stocks to more than one person (whether by communicating actionable IOIs or otherwise), (b) are ECNs and already publicly display subscriber orders, or (c) do not effect transactions in NMS stocks. The Commission also notes that ATSs that are completely dark (*i.e.*, that do not display any subscriber order information, whether by communicating actionable IOIs or otherwise) would not be impacted by the proposed amendments to Rule 301(b)(3). Thus, any of these 12 potential respondents could choose to avoid Regulation ATS's order display and execution access requirements by choosing not to display subscriber orders to more than one person (or by displaying to more than one person only size discovery orders).

¹⁵ This preliminary estimate is based on discussions with industry participants, including ATSs that could be impacted by the proposed changes to Rule 301(b)(3) and information provided in Forms ATS and ATS-R, as filed with the Commission. The Commission notes that most of the 12 potential ATS respondents are affiliated with large broker-dealer firms, none of which is a "small entity" under the RFA.

Forms ATS and ATS-R, the Commission would not have readily available information on a regular basis in a format that will allow it to determine whether such systems have adequate safeguards. Further, in the absence of the Rule, the Commission would not regularly obtain uniform trading data to identify areas where surveillance by self-regulatory organizations may be more appropriately tailored to the detection of fraudulent, deceptive and manipulative practices that may be peculiar to an automated trading environment. In sum, less frequent collection of the data required by the proposed Rule would limit the ability of the Commission to comply with its statutory obligations, provide for the protection of investors, and promote the maintenance of fair and orderly markets.

With respect to the proposed amendment to Rule 301(b)(3), as stated above, the Commission preliminarily believes that without any change to the rule, ATSS would share order information selectively, potentially resulting in two-tiered markets contrary to the goals of the NMS and Congressional mandate set out in Section 11A of the Exchange Act.¹⁶ Without the proposed rule amendment, many, if not all, dark pools that transmit actionable IOIs would not be required to include this actionable order information in the consolidated quotation data.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

The collection is not inconsistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

With respect to the proposed amendment to Rule 301(b)(3), the Commission staff has consulted with market participants, including ATSS. All of the estimates of burdens and costs are based, in significant part, on discussions of Commission staff with certain potential ATS respondents and other market participants. The Commission has also published for public review and comment the proposed rule change. In addition, the Commission has also obtained information about ATSS and the securities that they trade from the Forms ATS filed with the Commission.

The Commission notes that market participants have generally supported the Commission staff's belief that certain aspects of Rule 301(b)(3) should be revised. The Commission also notes that, as described above, the proposed amendment to Rule 301(b)(3) is designed to take account of concerns that a meaningful size discovery process be preserved by excluding orders with a value of at least \$200,000 from the order display and execution access requirement.

9. Payment or Gift to Respondents

The respondents receive no payments or gifts.

10. Assurance of Confidentiality

¹⁶ 15 U.S.C. 78k-1.

As stated in the 2007 PRA Submission, the records required by Rule 301 are available only to the examination of the Commission staff, state securities authorities and the SROs. 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.

The collection of information resulting from the proposed amendments to Rule 301(b)(3) – i.e., incorporation of order information into the public quote stream – would not be confidential and would be publicly available.

11. Sensitive Questions

Not applicable. No information of a sensitive nature is required under the rule.

12. Estimate of Respondent Reporting Burden

The Commission's estimated aggregate average reporting burden to comply with each section of Rule 301 of Regulation ATS, including paragraph (b)(3) of Rule 301 as proposed to be amended, is provided below. Specifically, section i, below, estimates the reporting burden associated with the proposed amendment to Rule 301(b)(3). Sections a – h reflect the burdens associated with other parts of Rule 301, which are covered in the current approved collection of information.

Since the Commission's 2007 PRA Submission, the number of registered ATSs has increased by 8 from 65 to approximately 73. Accordingly, the Commission staff has undertaken to update the burden estimates to reflect the increased number of ATSs. The Commission notes that the total estimated burden hours for each ATS with respect to the specific requirements in Rule 301 has not changed. Accordingly, the increase in the aggregate burden hours estimated below are due only to the increase in the number of responding ATSs from 65 to 73. The Commission has used labor designations from SIFMA's Management & Professional Earnings in the Securities Industry 2008 and SIFMA's Office Salaries in the Securities Industry 2008.

a. Form ATS - Initial Operation Report

ATSs that choose to register as broker-dealers and comply with Regulation ATS are required to file a Form ATS prior to commencing operations. The Commission estimates that the average burden for each respondent to file an initial operation report on Form ATS would be approximately 25 hours. The Commission derived this estimate from the following: [(Compliance Attorney at 18 hours) + (Compliance Clerk at 7 hours) = 25 hours / initial operations report]. The Commission further estimates that approximately 8 new ATSs would file initial operation reports on Form ATS on an annual basis. Thus, the

Commission estimates that the average aggregate annual burden for new ATSs to file initial operation reports would be 200 hours (8 ATSs at 25 hours per initial operation report on Form ATS).

b. Form ATS - Periodic Amendments to Update Information

ATSs that choose to register as broker-dealers and comply with Regulation ATS are required to file amendments to the initial operations report on Form ATS to provide notice of material systems changes and reflect other changes. The Commission estimates that the average burden for each respondent to file an amendment would be approximately 5 hours. The Commission derived this estimate from the following: [(Compliance Attorney at 4.5 hours) + (Compliance Clerk at 0.5 hours) = 5 hours / Form ATS amendment]. The Commission further estimates that each registered ATS would file two amendments on Form ATS annually to report systems changes. Thus, the Commission estimates that the average aggregate annual burden for ATSs to file amendments would be 730 hours (2 amendments at 5 hours each x 73 ATSs).

c. Form ATS-R - Quarterly Reports

ATSs that choose to register as broker-dealers and comply with Regulation ATS are required to file quarterly reports on Form ATS-R. The Commission estimates that the average burden for each respondent to file an amendment to Form ATS would be approximately 4 hours. The Commission derived this estimate from the following: [(Compliance Attorney at 3 hours) + (Compliance Clerk at 1 hours) = 4 hours / quarterly report]. Each registered ATS must file 4 reports on Form ATS-R annually. Thus, the Commission estimates that the average aggregate annual burden for ATSs to file quarterly reports on Form ATS-R would be 1168 hours (4 reports at 4 hours each x 73 ATSs).

d. Form ATS - Cessation of Operations Report

ATSs that choose to register as broker-dealers and comply with Regulation ATS are required to submit a notice on Form ATS when they are ceasing operations. The Commission estimates that the average burden for each respondent to file such a notice on Form ATS would be approximately 2 hours. The Commission derived this estimate from the following: [(Compliance Attorney at 1.5 hours) + (Compliance Clerk at 0.5 hours) = 2 hours / cessation report]. The Commission further estimates that 3 ATSs that register as broker-dealers and choose to comply with Regulation ATS would be required to file cessation of operations reports on Form ATS each year. Thus, the Commission estimates that the average aggregate annual burden for ATSs to submit cessation of operations reports would be 6 hours (3 ATSs at 2 hours per cessation of operations operation report on Form ATS).

e. Fair Access Standards Recordkeeping

ATSs that choose to register as broker-dealers, comply with Regulation ATS, and meet certain volume thresholds are required to establish standards for granting access on its

trading system. Because ATSs are required to make and keep such standards, the requirement creates a recordkeeping burden for ATSs. The Commission estimates that the average burden for each respondent to establish records relating to access standards would be approximately 5 hours (Compliance Attorney). The Commission further estimates that 2 ATSs that register as broker-dealers and choose to comply with Regulation ATS would meet the volume thresholds that trigger the fair access obligations. Thus, the Commission estimates that the average aggregate annual burden for ATSs to establish and maintain fair access standards would be 10 hours (2 ATSs at 5 hours each to establish and keep standards for granting access to trading on their systems).

f. Fair Access Notices

ATSs that choose to register as broker-dealers, comply with Regulation ATS and meet certain volume thresholds are required to provide a notice to investors upon any decision to deny or limit their access to the system. The Commission estimates that the average burden for each respondent to provide such notices to such investors would be approximately 1 hour (Compliance Clerk), and that each respondent would provide approximately 27 notices per year. Based on its estimate that 2 ATSs that register as broker-dealers and choose to comply with Regulation ATS would meet the volume thresholds that trigger the fair access obligations, the Commission estimates that the average aggregate annual burden for ATSs to provide required fair access notices would be 54 hours (27 notices at 1 hour each x 2 ATSs).

g. Systems Capacity, Integrity and Security Recordkeeping

ATSs that choose to register as broker-dealers, comply with Regulation ATS, and meet certain volume thresholds are required to make records relating to any steps taken to comply with systems capacity, integrity and security requirements under Rule 301. The Commission estimates that the average burden for each respondent to make such records would be approximately 10 hours (Compliance Attorney). The Commission further estimates that 2 ATSs that register as broker-dealers and choose to comply with Regulation ATS would meet the volume thresholds that trigger recordkeeping obligations in connection with systems capacity, integrity and security requirements. Thus, the Commission estimates that the average aggregate annual burden for ATSs to establish and maintain records in compliance with systems capacity, integrity and security requirements under Rule 301 would be 20 hours (2 ATSs at 10 hours each to establish and keep required records).

h. Systems Outage Notices

ATSs that choose to register as broker-dealers, comply with Regulation ATS, and meet certain volume thresholds are required to provide a notice to the Commission to report any systems' outages. The Commission estimates that the average burden for each respondent to provide such notices to the Commission would be approximately 0.25 hours (Compliance Attorney). The Commission estimates that the average burden for each respondent to provide an outage notice to investors would be 0.25 hours, and that each respondent would provide approximately 5 notices per year. The Commission further

estimates that 2 ATSs that register as broker-dealers and choose to comply with Regulation ATS would meet the volume thresholds that trigger systems' outage notice obligations. Thus, the Commission estimates that the average aggregate annual burden for ATSs to provide prompt notice of a systems' outages would be 2.5 hours (5 notices at 0.25 hours each x 2 ATSs).

i. Order Display and Execution Access

ATSs that choose to register as broker-dealers, comply with Regulation ATS, use actionable IOIs or otherwise display order information on a limited basis, and meet certain volume thresholds are required to provide their best-priced orders to an SRO for inclusion in the public quote stream and provide access to such orders through the NMS. Under the proposed amendments to Rule 301(b)(3) of Regulation ATS, the relevant trading volume threshold would decrease from 5 percent to 0.25 percent of the aggregate average daily share volume. A covered ATS with sufficient volume to meet the revised lower threshold would be subject to increased collection of information burdens. These obligations could entail the initial burdens of re-programming their current systems to monitor the ATS's percentage of trading in NMS stocks, establishing linkages to an SRO for the purpose of submitting orders to the SRO for public display and of providing access to market participants wishing to trade against such orders, and expanding systems capacity and internal controls, including establishing or modifying applicable compliance policies and procedures, to carry out these functions in a manner consistent with the SRO's rules.¹⁷ The Commission preliminarily believes that such obligations could also include ATS staff time to build new systems or re-program current systems, as well as ongoing ATS staff time to maintain such systems and carry out their associated functions.

The Commission preliminarily estimates that the one-time, initial annualized burdens for each potential ATS respondent to comply with the proposed amendments to Rule 301(b)(3) would be approximately 1,490 burden hours. The Commission derived this figure from the following: $(((\text{Sr. Programmer at 320 hours}) + (\text{Compliance Manager at 20 hours}) + (\text{Compliance Attorney at 20 hours}) + (\text{Programmer Analyst at 20 hours}) + (\text{Sr. Systems Analyst at 30 hours})) \times (2 \text{ months}) + ((\text{Sr. Programmer at 2 hours}) + (\text{Compliance Manager at 6 hours}) + (\text{Compliance Attorney at 4 hours}) + (\text{Compliance Clerk at 40 hours}) + (\text{Sr. Systems Analyst at 2 hours}) + (\text{Director of Compliance at 5 hours}) + (\text{Sr. Computer Operator at 8 hours})) \times (10 \text{ months}) = 1,490 \text{ hours}]$. Thus, the one-time, initial annualized burdens for all potential ATS respondents to comply with the proposed amendments to Rule 301(b)(3) is estimated to be approximately 17,880 burden hours $[1,490 \text{ hours per ATS} \times 12 \text{ potential ATS respondents} = 17,880 \text{ burden hours}]$. This figure is based on the estimated number of hours for initial internal development and implementation by an ATS to re-program its system, expand system capacity, and adjust internal controls, including costs to establish or modify applicable compliance policies and procedures.

¹⁷ Under Rule 301(b)(3), ATSs are already required to monitor trading levels in NMS stocks and have policies and procedures in place to do so. As a result of the proposed amendments to the rule, an ATS subject to Rule 301(b)(3) could be required to re-program their respective systems that monitor trading levels in NMS stocks to reflect this change in the average daily trading volume threshold.

In addition, the Commission preliminarily estimates that the ongoing annualized burdens for each potential ATS respondent to comply with the proposed amendments to Rule 301(b)(3) would be approximately 804 burden hours. The Commission derived this figure from the following: [(Sr. Programmer at 2 hours) + (Compliance Manager at 6 hours) + (Compliance Attorney at 4 hours) + (Compliance Clerk at 40 hours) + (Sr. Systems Analyst at 2 hours) + (Director of Compliance at 5 hours) + (Sr. Computer Operator at 8 hours)) x (12 months) = 804 hours]. Thus, the ongoing annualized burdens for all potential ATS respondents to comply with the proposed amendments to Rule 301(b)(3) is estimated to be approximately 9,648 burden hours [804 hours per ATS x 12 potential ATS respondents = 9,648 burden hours]. This figure includes the estimated number of internal professional staff hours for running compliance policies and procedures (including monitoring daily trading activity), ongoing system maintenance and development, and personnel costs associated with maintaining connectivity to an SRO.

The Commission is also proposing a change to Rule 301(b)(3)(ii) that would add an exception to the display and execution access requirements for orders that have a market value of at least \$200,000 and are communicated only to those who are reasonably believed to represent current contra-side trading interest of at least \$200,000. The Commission preliminarily believes that no ATS would incur any increased burdens because of the proposed exception.

Accordingly, the estimated annual burden hours required to comply with Rule 301(b)(3) are 12,392 hours. The Commission derived the estimated total hours figure from the following: [(17,880 hours (aggregate initial annual burden) + (9,648 hours (aggregate ongoing annual burden) x 2 years)) / 3 years].

j. Estimated Total

For the first year, the estimated annual burden hours required to comply with Rule 301 are 20,070.5 hours. The Commission derived the estimated total hours figure from the following: [200 hours (estimated total burden for initial operation report filing on Form ATS) + 730 hours (estimated total burden for amendments to Form ATS) + 1168 hours (estimated total burden for quarterly reports on Form ATS-R) + 6 hours (estimated total burden for cessation of operations report on Form ATS) + 10 hours (estimated total burden for fair access standards recordkeeping) + 54 hours (estimated total burden for fair access notices) + 20 hours (estimated total burden for systems capacity, integrity and security recordkeeping) + 2.5 hours (estimated total burden for systems outage notices) + 17,880 hours (estimated total burden for compliance with order display and execution access requirements)].

For subsequent years, the estimated annual burden hours required to comply with Rule 301 are 11,838.5 hours. The Commission derived the estimated total hours figure from the following: [200 hours (estimated total burden for initial operation report filing on Form ATS) + 730 hours (estimated total burden for amendments to Form ATS) + 1168 hours (estimated total burden for quarterly reports on Form ATS-R) + 6 hours (estimated

total burden for cessation of operations report on Form ATS) + 10 hours (estimated total burden for fair access standards recordkeeping) + 54 hours (estimated total burden for fair access notices) + 20 hours (estimated total burden for systems capacity, integrity and security recordkeeping) + 2.5 hours (estimated total burden for systems outage notices) + 9,648 hours (estimated total burden for compliance with order display and execution access requirements)].

Accordingly, based on the Commission's estimates for the initial annual and ongoing annual burden hours of complying with Rule 301, the total average annualized burden hours are estimated to be 14,582.5 hours over a three year period. This figure is derived from the following: [(20,070.5 hours (aggregate initial annual burden) + (11,838.5 hours (aggregate ongoing annual burden) x 2 years)) / 3 years].

13. Estimates of Total Annualized Cost Burden

The Commission believes that compliance with most sections of Rule 301 of Regulation ATS does not require any capital or start up costs, or any recurring annual external operating and maintenance costs separate from the wages, salaries or fees represented in the estimated hourly burdens discussed above. The proposed amendment to Rule 301(b)(3), however, would require ATSs subject to the rule to incur initial adjustment capital costs to establish connectivity to the NMS and associated ongoing maintenance costs. These costs are described more fully below. The Commission has used labor designations and hourly cost figures reported in SIFMA's Management & Professional Earnings in the Securities Industry 2008 and SIFMA's Office Salaries in the Securities Industry 2008, which are modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 or 2.93, as appropriate, to account for bonuses, firm size, employee benefits, and overhead.

Order Display and Execution Access

The Commission estimates that 12 ATSs that register as broker-dealers and comply with Regulation ATS would meet the proposed lower volume thresholds in Rule 301(b)(3) that trigger the order display and execution access requirements. For an ATS that is impacted by the proposed amendment to Rule 301(b)(3), initial adjustment costs could include system re-programming to monitor the ATS's percentage of trading in NMS stocks,¹⁸ establishing linkages to an SRO for the purpose of submitting orders to the SRO

¹⁸ Currently, under Rule 301(b)(3) of Regulation ATS, an ATS that displays subscriber orders to any person (other than ATS employees) and has 5% or more of the aggregate daily share volume for an NMS stock is required to provide to an SRO its best-priced orders for such NMS stock for inclusion into the public quote stream. Thus, ATSs are already required to monitor trading levels in NMS stocks. As a result of the proposed amendments to Rule 301(b)(3), which would lower the average daily trading volume threshold from 5% to 0.25%, ATSs could be required to re-program their respective systems that monitor trading levels in NMS stocks to reflect the lower threshold. Based on discussions of Commission staff with certain potential ATS respondents and other market participants, the Commission preliminarily believes that costs of such re-

for public display and of providing access to market participants wishing to trade against such orders, and expanding systems capacity and internal controls, including establishing or modifying applicable compliance policies and procedures, to carry out these functions in a manner consistent with the SRO's rules. The Commission preliminarily believes that such adjustment costs could include ATS staff time to build new systems or re-program current systems, as well as ongoing ATS staff time to maintain such systems and carry out their associated functions.

The Commission preliminarily estimates that the one-time, initial annualized expense for each potential ATS respondent to establish connectivity to an SRO would be approximately \$325,000. The Commission derived the total estimated expense from the following: [(\$25,000 relating to hardware- and software-related expenses) + (\$25,000 monthly ongoing costs to maintain the connection x 12 months) = \$325,000]. Thus, the total initial, one-time annualized expense to establish electronic connections with an SRO for all potential ATS respondents is estimated to be approximately \$3,900,000 [\$325,000 per ATS x 12 potential ATS respondents = \$3,900,000].

The Commission also has estimated the ongoing expenses of complying with the proposed amendments to Rule 301(b)(3), which could include, among other things, maintaining connectivity with an SRO, monitoring daily trade activity, and ensuring compliance. The Commission preliminarily estimates that the ongoing annualized expense for each potential ATS respondent to maintain connectivity to an SRO would be approximately \$300,000. The Commission derived the total estimated expense from the following: [(\$25,000 monthly ongoing costs to maintain the connection x 12 months) = \$300,000]. Thus, the total ongoing annualized expense to maintain electronic connections with an SRO for all potential ATS respondents is estimated to be approximately \$3,600,000 [\$300,000 per ATS x 12 potential ATS respondents = \$3,600,000].

In addition, the Commission preliminarily believes that the proposed amendments to Rule 301(b)(3) of Regulation ATS would not, if adopted, impose any substantive or material costs on SROs under the requirements of Rule 602 of Regulation NMS. The Commission preliminarily believes that any costs associated with including an ATS's orders provided to an SRO in compliance with Rule 301(b)(3) with the large volume of quotations that SROs already include in the public quote stream under Rule 602 would not be material.

Total Costs

Based on the Commission's estimates for the initial and ongoing costs of complying with Rule 301(b)(3), the total average annualized cost is estimated to be \$3,700,000 over a three year period. This figure is derived from the following: [(\$3,900,000 (aggregate initial annual cost) + (\$3,600,000 (aggregate ongoing annual cost) x 2 years)) / 3 years].

14. Estimate of Cost to the Federal Government

As stated in the 2007 PRA Submission, the federal government (Commission)
programming would not be significant, although it requests comment on that point.

incurs an operational cost for the review of each initial operation report filing on Form ATS, as well as each amendment, quarterly report and cessation of operations report. In each case, the estimated costs, described below, are derived from internal hourly figures calculated by staff in the Commission's Office of Economic Analysis.

The cost to the Commission associated with each initial operation report on Form ATS is approximately \$2,410 [(Professional Staff (10 hours) at \$235 per hour) + (Support Staff (1 hour) at \$60 per hour) = \$2,410]. The cost to the Commission associated with each amendment to an initial operations report on Form ATS is approximately \$705 [(Professional Staff (3 hours) at \$235 per hour) = \$705]. The cost to the Commission associated with quarterly report on Form ATS-R is approximately \$470 [(Professional Staff (2 hours) at \$235 per hour) = \$470]. The cost to the Commission associated with cessation of operations report on Form ATS is approximately \$235 [(Professional Staff (1 hours) at \$235 per hour) = \$235]. The cost to the Commission associated with each system outage report is approximately \$58.75 [(Professional Staff (0.25 hours) at \$235 per hour) = \$58.75].

Accordingly, the aggregate annual cost to the Commission associated with Rule 301 is estimated to be approximately \$260,742.50. This figure was derived in the following manner:

\$2,410 per initial operations report x 8 reports annually	=	\$19,280.00
\$705 per amendment to initial operations report x 2 reports annually per ATS x 73 ATSs	=	\$102,930.00
\$470 per quarterly report x 4 reports annually per ATS x 73 ATSs	=	\$137,240.00
\$235 per cessation of operations report x 3 reports annually	=	\$705.00
\$58.75 per system outage notice x 5 notices per ATS x 2 ATSs	=	\$587.50

Total	=	\$260,742.50

With respect to the proposed amendment to Rule 301(b)(3), the Commission does not believe any additional operational costs to the Commission would result.

15. Explanation of Changes in Burden

As compared to the burdens and costs identified in the Commission's 2007 PRA Submission, the estimated burdens associated with Rule 301 of Regulation ATS have increased as a result of increases in the number of ATSs.

The estimated cost to the government has increased principally because the Commission staff has required more time to review the increased number of operation reports and other documents submitted in compliance with Rule 301, and staff labor costs have increased.

As already discussed, the burden and cost estimates resulting from the proposed amendment to Rule 301(b)(3) were not previously analyzed because the Commission did not believe that at least 10 ATs would be subject to the order display and execution access requirements given the 5 percent trading volume threshold. Because reducing the threshold to 0.25 percent potentially may impact more than 10 ATs, the Commission staff has now estimated the relevant costs and burdens resulting in an overall increase to the previous figures.

16. Information Collection Planned for Statistical Purposes

Not applicable. The information is not published for statistical use.

17. Explanation as to Why Expiration Date Will Not be Displayed

The Commission is not seeking approval to not display the expiration date for OMB approval.

18. Exceptions to Certification

The Commission is not seeking an exception to the certification statement.

B. Collection of Information Employing Statistical Methods

Not applicable because the collection of information will not employ statistical methods.