

## PAPERWORK REDUCTION ACT SUBMISSION

### Rule 301

#### Supporting Statement

##### A. Justification

###### 1. Necessity of Information Collection

The Securities Exchange Act of 1934, as amended (“Act”)<sup>1</sup>, 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 Act, the rules thereunder and exchange rules. Under the Act, the Commission is charged with the responsibility for supervising and assuring that exchanges comply with and advance the policies of the Act.

In the 1975 Amendments to the Act,<sup>2</sup> 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.

Regulation ATS provides a regulatory structure that directly addresses issues related to alternative trading systems’ role in the marketplace. Regulation ATS allows alternative trading systems to choose between two regulatory structures. Alternative trading systems 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 alternative trading systems 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 alternative trading system regulation. Rule 301 sets forth the conditions that an alternative trading system 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 alternative trading systems with significant volume. Rule 302 establishes a set of records relating to trading activity that the alternative trading system must make. Rule 303 establishes requirements for the preservation of certain records that alternative trading systems must make.

###### 2. Purposes and Use of the Information Collection

Rule 301 describes the conditions with which an alternative trading system must comply to be registered as a broker-dealer. The Rule requires all alternative trading

<sup>1</sup> 15 U.S.C. 78a et seq.

<sup>2</sup> Pub. L. No. 29, 89 Stat. 97 (1975).

systems 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 method of operation, access criteria and the types of securities traded. Alternative trading systems are also required to supply updates on Form ATS to the Commission, describing material changes to the system. In addition, Regulation ATS requires alternative trading systems to provide quarterly transaction reports on Form ATS-R. Alternative trading systems 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.

Alternative trading systems with significant volume are required to comply with requirements for fair access and systems capacity, integrity and security. Under Rule 301, such alternative trading systems 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 alternative trading system 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 alternative trading systems to preserve any records made in the process of complying with the systems capacity, integrity and security requirements. In addition, such alternative trading systems are required to notify Commission staff of material systems outages and significant systems changes.

The Commission uses the information provided pursuant to the Rule to comprehensively monitor the growth and development of alternative trading systems 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 alternative trading systems enables the Commission to evaluate the operation of alternative trading systems 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 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 severely 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.

### 3. Consideration Given to Information Technology

Ultimately, all SEC filings, including Forms ATS and ATS-R, will be considered for electronic submission. Such automation would increase the speed, accuracy and availability of information, generating benefits to investors and financial markets.

#### 4. Duplication

Because most alternative trading systems 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.

#### 5. Effect on Small Entities

The Rule is one of general applicability that mostly does not depend on the size of the system. Fair access reporting requirements and system capacity, integrity and security requirements apply only to alternative trading systems that have significant volume. The filing requirements on Forms ATS and ATS-R, however, apply to all alternative trading systems regardless of size. 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) 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. The Commission staff estimates that 5 alternative trading systems that would register as broker-dealers are small entities as currently defined by the Act.

Because the risks that the Commission monitors in the operation of an alternative trading system occur in 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 Regulation ATS imposes additional duties on alternative trading systems that have large volumes, which are not likely to be such small entities.

#### 6. Consequences of Not Conducting Collection

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 severely 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.

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

All Commission rule proposals are published in the Federal Register for a comment period lasting at least 30-60 days. This comment period allows the public an opportunity to respond to the proposal. For this Extension submission, the required 60 day and 30 day Federal Register notices were published. The Commission received no comments pertaining to this information collection.

9. Payment or Gifts

The respondents receive no payments or gifts.

10. Assurance of Confidentiality

The records required by the proposed amendments 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.

11. Sensitive Questions

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

12. Burden of Information Collection

a. Form ATS - Initial Operation Report

Alternative trading systems 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 approximately 5 respondents will file an Initial Operation Report on Form ATS each year, and that the average compliance burden for each respondent would be 20 hours, comprising 13 hours of in-house professional work and 7 hours of clerical work. Thus, the total compliance burden per year is 100 hours (5 responses x 20 hours = 100 hours). The approximate cost per hour is \$316 for in-house professional work and \$59

for clerical work.<sup>3</sup> Thus the total cost of compliance for the annual burden is \$22,605 ( $\$316 \times 13 \text{ hours per response} + \$59 \times 7 \text{ hours per response} = \$4,521 \text{ per response}; \$4,521 \times 5 \text{ responses} = \$22,605$ ).

b. Form ATS - Periodic Amendments to Update Information

Alternative trading systems that choose to register as broker-dealers and comply with Regulation ATS are required to file periodic amendments to the initial operations report on Form ATS to provide notice of material systems changes and reflect other changes. The Commission estimates that each of the approximately 80 alternative trading systems will file 2 amendments per year for 160 responses, and that the average compliance burden for each response would be 2 hours, comprising 1.5 hours of in-house professional work and 0.5 hours of clerical work. Thus, the total compliance burden per year is 320 hours ( $160 \text{ responses} \times 2 \text{ hours} = 320 \text{ hours}$ ). The approximate cost per hour is \$316 for in-house professional work and \$59 for clerical work. Thus the total cost of compliance for the annual burden is \$1007 ( $\$316 \times 1.5 \text{ hours per response} + \$59 \times 0.5 \text{ hours per response} = \$503.50 \text{ per response}; \$503.50 \times 160 \text{ responses} = \$80,560$ ).

c. Form ATS-R - Quarterly Reports

Alternative trading systems that choose to register as broker-dealers and comply with Regulation ATS are required to file quarterly reports on Form ATS-R. Each of the approximately 80 alternative trading systems will file 4 quarterly reports per year for 320 responses. The Commission estimates that that the average compliance burden for each response would be 4 hours, comprising 3 hours of in-house professional work and 1 hour of clerical work. Thus, the total compliance burden per year is 1,280 hours ( $320 \text{ responses} \times 4 \text{ hours} = 1,280 \text{ hours}$ ). The approximate cost per hour is \$316 for in-house professional work and \$59 for clerical work. Thus the total cost of compliance for the annual burden is \$322,240 ( $\$316 \times 3 \text{ hours per response} + \$59 \times 1 \text{ hours per response} = \$1007 \text{ per response}; \$1007 \times 320 \text{ responses} = \$322,240$ ).

d. Form ATS - Cessation of Operations Report

Alternative trading systems 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

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<sup>3</sup> The Commission's estimate concerning the wage rate for attorney and clerk time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The \$316 per hour figure for an attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2009, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. The \$59 per hour figure for a compliance clerk is from SIFMA's Office Salaries in the Securities Industry 2009, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

operations. The Commission estimates that 3 alternative trading systems will be required to file a cessation of operations report each year, and that the average compliance burden for each response would be 2 hours, comprising 1.5 hours of in-house professional work and 0.5 hours of clerical work. Thus, the total compliance burden per year is 6 hours (3 responses x 2 hours = 6 hours). The approximate cost per hour is \$316 for in-house professional work and \$59 for clerical work. Thus the total cost of compliance for the annual burden is \$1,510.50 ( $\$316 \times 1.5 \text{ hours per response} + \$59 \times 0.5 \text{ hours per response} = \$503.50 \text{ per response; } \$503.50 \times 3 \text{ responses} = \$1,510.50$ ).

e. Fair Access Standards Recordkeeping

Alternative trading systems 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. Such alternative trading systems are required to make and keep such criteria, so such a requirement creates a recordkeeping burden for alternative trading systems. The Commission estimates that 2 alternative trading systems that register as broker-dealers and comply with Regulation ATS would meet the volume thresholds that trigger fair access obligations, and that the average compliance burden for each response would be 5 hours of in-house professional work at \$316 per hour. Thus, the total compliance burden per year is 10 hours (2 responses x 5 hours = 10 hours). The total cost of compliance for the annual burden is \$3,160 ( $\$316 \times 5 \text{ hours per response} \times 2 \text{ responses} = \$3,160$ ).

f. Fair Access Notices

Alternative trading systems that choose to register as broker-dealers, comply with Regulation ATS and meet certain volume thresholds are required to provide a notice to any user upon any decision to deny or limit the user's access to the system. The Commission estimates that 2 alternative trading systems that register as broker-dealers and comply with Regulation ATS would meet the volume thresholds that trigger fair access obligations approximately 27 times a year, and that the average compliance burden for each response would be 1 hour of in-house professional work at \$316 per hour. Thus, the total compliance burden per year is 54 hours (2 respondents x 27 responses each x 1 hour = 54 hours). The total cost of compliance for the annual burden is \$17,064 ( $\$316 \times 1 \text{ hour per response} \times 54 \text{ responses} = \$17,064$ ).

g. Systems Capacity, Integrity and Security Recordkeeping

Alternative trading systems 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 2 alternative trading systems that register as broker-dealers and comply with Regulation ATS would trigger this requirement, and that the average compliance burden for each response would be 10 hours of in-house professional work at \$316 per hour. Thus, the total compliance burden per year is 20 hours (2 respondents x 10 hours = 20 hours). The total cost of compliance for the annual burden is

\$6,320 (\$316 x 20 hours = \$6,320).

h. Systems Outage Notices

Alternative trading systems 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 2 alternative trading systems that register as broker-dealers and comply with Regulation ATS would meet the volume thresholds that trigger systems' outage notice obligations approximately 5 times a year, and that the average compliance burden for each response would be .25 hours of in-house professional work at \$316 per hour. Thus, the total compliance burden per year is 2.5 hours (2 respondents x 5 responses each x .25 hours = 2.5 hours). The total cost of compliance for the annual burden is \$790 (\$316 x .25 hours per response x 10 responses = \$790).

i. Aggregate Respondent Reporting Burdens

The estimated average annual aggregate burden for alternative trading systems to comply with Rule 301 would be 1,792.50 hours. This estimate is broken down as follows:

Initial Operating Reports on Form ATS =	100 hours
Amendments to Form ATS =	320 hours
Quarterly reports on Form ATS-R =	1280 hours
Cessation of operations report on Form ATS =	6 hours
Fair access standards =	10 hours
Fair access notices =	54 hours
Systems capacity, integrity and security records =	20 hours
Systems outage notices =	<u>2.5 hours</u>
	1,792.50 hours

The estimated number of annual responses for alternative trading systems under Rule 301 would be 552. This estimate is broken down as follows:

Initial operation report filing on Form ATS =	5 filings
Amendments to Form ATS =	160 filings
Quarterly reports on Form ATS-R =	320 filings
Cessation of operations report on Form ATS =	3 filings
Fair access notices =	54 notices
Systems outage notices =	<u>10 notices</u>
	552 annual responses

13. Costs to Respondents

a. Form ATS - Initial Operation Report

The Commission estimates that the aggregate respondent reporting cost burden for a

new alternative trading systems to file an initial operation report on Form ATS would include overhead costs for printing, copying, and postage equal to 35% of the value of labor costs (as calculated in Section 12 above).<sup>4</sup> This amounts to \$1,582.35 per respondent (\$4,521 times 35%). Thus, the Commission estimates the total annualized cost burden would be \$7,911.75 (\$1,582.35 x 5 respondents).

b. Form ATS - Periodic Amendments to Update Information

The Commission estimates that the aggregate respondent reporting cost burden for an alternative trading system to file periodic amendments to its initial operation report on Form ATS would include overhead costs for printing, copying, and postage equal to 35% of the value of labor costs (as calculated in Section 12 above). This amounts to \$176.23 per response (\$503.50 times 35%). Thus, the Commission estimates the annualized cost burden for each respondent would be \$352.46 (\$176.23 x 2 responses per respondent) and the total annualized cost burden for all respondents would be \$28,196.80 (\$176.23 x 80 respondents x 2 responses per respondent).

c. Form ATS-R - Quarterly Reports

The Commission estimates that the aggregate respondent reporting cost burden for an alternative trading system to file quarterly reports on Form ATS-R would include overhead costs for printing, copying, and postage equal to 35% of the value of labor costs (as calculated in Section 12 above). This amounts to \$352.45 per response (\$1007 times 35%). Thus, the Commission estimates the annualized cost burden for each respondent would be \$1409.80 (\$352.45 x 4 responses per respondent) and the total annualized cost burden for all respondents would be \$112,784 (\$352.45 x 80 respondents x 4 responses per respondent).

d. Form ATS - Cessation of Operations Report

The Commission estimates that the aggregate respondent reporting cost burden for an alternative trading system to file a cessation of operations report on Form ATS would include overhead costs for printing, copying, and postage equal to 35% of the value of labor costs (as calculated in Section 12 above). This amounts to \$176.23 per respondent (\$503.5 times 35%). Thus, the Commission estimates the total annualized cost burden would be \$528.69 (\$176.23 x 3 respondents).

e. Fair Access Standards Recordkeeping

The Commission estimates that the aggregate respondent reporting cost burden for an alternative trading system to establish and keep records relating to fair access standards would include overhead costs for printing, copying, and postage equal to 35% of the value of labor costs (as calculated in Section 12 above). This amounts to \$553 per response (\$1,580 times 35%). Thus, the Commission estimates the total annualized cost burden

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<sup>4</sup> These estimates have been computed based on the GSA Guide to Estimating Reporting Costs (1973).



would be \$1,106 (\$553 x 2 respondents).

f. Fair Access Notices

The Commission estimates that the aggregate respondent reporting burden for an alternative trading system to provide a notice to any user upon any decision to deny or limit the user's access to the system would include overhead costs for printing, copying, and postage equal to 35% of the value of labor costs (as calculated in Section 12 above). This amounts to \$110.60 per response (\$316 times 35%). Thus, the Commission estimates the annualized cost burden for each respondent would be \$2986.20 (\$110.60 x 27 responses per respondent) and the total annualized cost burden for all respondents would be \$5972.40 (\$110.60 x 2 respondents x 27 responses per respondent).

g. Systems Capacity, Integrity and Security Recordkeeping

The Commission estimates that the aggregate respondent reporting cost burden for an alternative trading system to comply with systems capacity, integrity and security recordkeeping requirements would include overhead costs for printing, copying, and postage equal to 35% of the value of labor costs (as calculated in Section 12 above). This amounts to \$1,106 per response (\$3,160 times 35%). Thus, the Commission estimates the total annualized cost burden would be \$2,212 (\$1,106 x 2 respondents).

h. Systems Outage Notices

The Commission estimates that the aggregate respondent reporting burden for an alternative trading system to comply with systems' outage notice obligations would include overhead costs for printing, copying, and postage equal to 35% of the value of labor costs (as calculated in Section 12 above). This amounts to \$27.65 per response (\$79 times 35%). Thus, the Commission estimates the annualized cost burden for each respondent would be \$138.25 (\$27.65 x 5 responses per respondent) and the total annualized cost burden for all respondents would be \$276.50 (\$27.65 x 2 respondents x 5 responses per respondent).

i. Aggregate Burdens

The estimated average annual aggregate cost burden for alternative trading systems to comply with Rule 301 would be \$158,988.14. This estimate is broken down as follows:

Initial operation report filing on Form ATS =	\$ 7,911.75
Amendments to Form ATS =	\$ 28,196.80
Quarterly reports on Form ATS-R =	\$ 112,784.00
Cessation of operations report on Form ATS =	\$ 528.69
Fair access standards =	\$ 1,106.00
Fair access notices =	\$ 5,972.40
Systems capacity, integrity and security records =	\$ 2,212.00
Systems outage notices =	\$ 276.50
	<u>\$ 158,988.14</u>

14. Federal Government Costs

There are no federal costs related to material costs for this information collection.

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.

16. Information Collection Planned for Statistical Purposes

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

17. Display of OMB Approval Date

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

18. Exceptions to Certification for Paperwork Reduction Act Submissions

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

B. Collection of Information Employing Statistical Methods

This collection of information does not involve statistical methods.