

## SUPPORTING STATEMENT

### for the Paperwork Reduction Act Information Collection Submission for

#### Rule 302

##### A. JUSTIFICATION

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

Regulation ATS sets forth a regulatory regime for “alternative trading systems” (“ATSs”), which are entities that carry out exchange functions but which are not required to register as national securities exchanges under the Securities Exchange Act of 1934 (“Act”).<sup>1</sup> In lieu of exchange registration, an ATS can instead opt to register with the Securities and Exchange Commission (“SEC”) as a broker-dealer and, as a condition to not having to register as an exchange, must instead comply with Regulation ATS.

Regulation ATS is composed of Rules 300, 301, 302 and 303.<sup>2</sup> Rule 300 defines terms that provide the basis for ATS regulation. Rule 301 sets forth various obligations of ATSs.<sup>3</sup> 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 ATSs must make.

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

Under Rule 302, ATSs are required to make a record of subscribers to the ATS, daily summaries of trading in the ATS and time-sequenced records of order information in the ATS. The information contained in the records required to be preserved by Rule 302 is used by regulators (including the SEC and the self-regulatory organizations (“SROs”)) to ensure that ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations. Without the data required by the Rule, 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.

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

<sup>2</sup> 17 CFR 242.300 to 242.303.

<sup>3</sup> As part of the proposed Regulation Systems Compliance and Integrity, the SEC has recently proposed to eliminate Rule 301(b)(6), which pertains to volume threshold requirements regarding capacity, integrity and security of automated systems. See Securities Exchange Act Release No. 34-69077 (March 8, 2013), 78 FR 18084 (March 25, 2013).

### 3. **Consideration Given to Information Technology**

The SEC believes that improvements in telecommunications and data processing technology may reduce any burdens that result from the Rule. The SEC is not aware of any technical or legal obstacles to reducing the burden through the use of improved information technology.

### 4. **Duplication**

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 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**

Rule 302 applies generally to all ATSS and does not depend on the size of the system. Therefore, the Rule could apply to small businesses. An entity that complies with Regulation ATS must, among other things, register as a broker dealer.<sup>4</sup> Thus, the SEC's definition of small entity as it relates to broker-dealers also applies to ATSS. 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.

Because the risks that the SEC monitors in the operation of an ATS occur in any size business, the SEC 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.

The Commission notes that there are approximately 92 ATSS that are subject to Regulation ATS. The Commission staff estimates that currently five broker-dealers operating as ATSS registered with the Commission are small entities as currently defined by the Act.

### 6. **Consequences of Not Conducting Collection**

The information required to be collected under the Rule should increase the abilities of the SEC, state securities regulatory authorities, and the SROs to ensure that ATSS are in

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<sup>4</sup> See 17 CFR 242.301(b)(1).

compliance with Regulation ATS as well as other applicable rules and regulations. If the information is not collected or is collected less frequently, 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.

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

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

**8. Consultations Outside the Agency**

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

**9. Payment or Gift**

The respondents receive no payments or gifts.

**10. Confidentiality**

The records required by Rule 302 are available only for the examination of the SEC 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 SEC’s rules thereunder (17 CFR 200.80(b)(4)(iii)), the SEC 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. The Rule does not require any questions of a sensitive nature, as described in the instructions to this Item 11.

**12. Burden of Information Collection**

ATs that choose to register as broker-dealers and comply with Regulation ATS are required to comply with recordkeeping requirements under Rule 302. The SEC estimates that the average time burden for each respondent to comply with the recordkeeping requirements under the rule is approximately 130 hours (Compliance Clerk) per year. The SEC derived this estimate from the following: (Compliance Clerk at 0.5 hours/day) x (260 business days/year) = 130 hours/year. The SEC estimates the related internal cost of compliance for this hour burden per respondent at approximately \$ 8,190 per year. This

estimated cost is derived from 130 hours per year at \$63 per hour.<sup>5</sup>

The SEC estimates that currently there are approximately 92 ATSs registered as broker-dealers that have filed initial operation reports in compliance with Regulation ATS. The SEC estimates the average aggregate hour burden for all respondents to comply with Rule 302 is 11,960 hours per year (92 ATSs at 130 hours per ATS per year). The SEC estimates that the aggregate internal cost of compliance for all respondents to comply with Rule 302 is \$753,480 per year (92 ATSs at \$8,190 per ATS per year).

### 13. **Costs to Respondents**

The SEC believes that compliance with Rule 302 of Regulation ATS does not require any capital or start up costs, or any recurring annual external operating and maintenance costs in addition to the hour burdens and internal compliance costs discussed above.

### 14. **Costs to Federal Government**

The government does not experience significant costs based on the recordkeeping required pursuant to Rule 302. The information collected by the respondents typically would be reviewed only as part of an investigation. As a matter of routine, however, the SEC does not review the records kept by the respondents.

### 15. **Changes in Burden**

The estimated hour burden associated with Rule 302 of Regulation ATS has increased from 10,530 to 11,960 hours per year as a result of an increase in the SEC's estimate of the number of ATSs from 81 to 92.

### 16. **Information Collection Planned for Statistical Purposes**

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

### 17. **Approval to Omit OMB Expiration Date**

The SEC is not seeking approval to omit the expiration date.

### 18. **Exceptions to Certification for Paperwork Reduction Act Submissions**

This collection complies with the requirements in 5 CFR 1320.9.

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<sup>5</sup> \$63 per hour figure for a Compliance Clerk is from SIFMA's Office Salaries in the Securities Industry 2012, modified by SEC staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.