

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for**  
**Rule 301**

**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 and associations have primary responsibility for regulating their members and enforcing compliance by members and their associated persons with the Act, the rules thereunder, and their own rules. Under the Act, the Commission is charged with the responsibility for supervising and assuring that exchanges and associations 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 engage in activities similar to those of national securities exchanges.

Regulation ATS provides a regulatory structure that directly addresses issues related to these so-called alternative trading systems. Regulation ATS allows alternative trading systems to choose between two regulatory structures: registering as a broker-dealer and complying with Regulation ATS or registering as a national securities exchange. 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 of Regulation ATS 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 that the alternative trading system must make. Rule 303 establishes requirements for the preservation of certain records that alternative trading systems must make.

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

Rule 301 describes the conditions with which an alternative trading system must comply. The Rule requires all alternative trading 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, but not limited

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

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

to, 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. An alternative trading system, if it ceases to operate, is also required to file a cessation of operations report. 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 written standards for granting access to trading on their systems. In addition, such alternative trading systems are required to make and keep records of all grants of access including, for all subscribers, the reasons for granting such access, and all denials or limitations of access and reasons, for each applicant, for denying or limiting access. 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 Rule 301 to comprehensively monitor the growth and development of alternative trading systems to confirm that investors 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 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 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 Rule 301, 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 Rule 301, no duplication occurs with respect to such information. To the extent that Rule 301 establishes new collections of information, there is no similar information available that could replace the information required.

#### **5. Effect on Small Entities**

Rule 301 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 Rule 301 must apply in the same manner to small as well as large entities. Hence, Rule 301 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 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 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 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 Rule 301, 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)**

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 the proposed amendments are available only to the examination of the Commission staff, state securities authorities, and 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.

**11. Sensitive Questions**

Not applicable. No information of a sensitive nature is required under Rule 301. The form does not collect any Personally Identifiable Information (PII).

**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 7 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 140 hours (7 responses x 20 hours = 140 hours). The approximate cost per hour is \$379 for in-house professional work and \$63 for clerical work.<sup>3</sup> Thus the total cost of compliance for the annual burden is \$ 37,576

<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 \$379 per hour figure for an attorney is

$(\$379 \times 13 \text{ hours per response} + \$63 \times 7 \text{ hours per response} = \$ 5,368 \text{ per response; } \$ 5,368 \times 7 \text{ responses} = \$ 37,576).$

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 95 alternative trading systems will file 2 amendments per year for 190 responses, and that the average compliance burden for each response would be 6 hours, comprising 4.5 hours of in-house professional work and 1.5 hours of clerical work. Thus, the total compliance burden per year is 1,140 hours (190 responses x 6 hours = 1,140 hours). The approximate cost per hour is \$379 for in-house professional work and \$63 for clerical work. Thus the total cost of compliance for the annual burden is \$342,000 ( $\$379 \times 4.5 \text{ hours per response} + \$63 \times 1.5 \text{ hours per response} = \$1,800 \text{ per response; } \$1,800 \times 190 \text{ responses} = \$342,000$ ).

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 95 alternative trading systems will file 4 quarterly reports per year for 380 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 1,520 hours (380 responses x 4 hours = 1,520 hours). The approximate cost per hour is \$379 for in-house professional work and \$63 for clerical work. Thus the total cost of compliance for the annual burden is \$456,000 ( $\$379 \times 3 \text{ hours per response} + \$63 \times 1 \text{ hours per response} = \$1,200 \text{ per response; } \$1,200 \times 380 \text{ responses} = \$456,000$ ).

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 operations. The Commission estimates that 5 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 10 hours (5 responses x 2 hours = 10 hours). The approximate cost per hour is \$379 for in-house professional work and \$63 for clerical work. Thus the total cost of compliance for the

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from SIFMA's Management & Professional Earnings in the Securities Industry 2012, 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 \$63 per hour figure for a compliance clerk is from SIFMA's Office Salaries in the Securities Industry 2012, 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.

annual burden is \$3,000 ( $\$379 \times 1.5$  hours per response +  $\$63 \times 0.5$  hours per response =  $\$600$  per response;  $\$600 \times 5$  responses =  $\$3,000$ ).

e. Establishment of Written Fair Access Standards

Alternative trading systems that choose to register as broker-dealers, comply with Regulation ATS, and meet certain volume thresholds are required to establish written standards for granting access to their 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 of establishing written fair access standards for each entity would be 10 hours of in-house professional work at  $\$379$  per hour. Thus, the total compliance burden per year is 20 hours (2 responses  $\times$  10 hours = 20 hours). The total cost of compliance for the annual burden is  $\$7,580$  ( $\$379 \times 10$  hours per response  $\times$  2 responses =  $\$7,580$ ).

f. Making and Keeping Records in Connection with Fair Access

Alternative trading systems that choose to register as broker-dealers, comply with Regulation ATS, and meet certain volume thresholds are required to make and keep records of (1) all grants of access including, for all subscribers, the reasons for granting such access; and (2) all denials or limitations of access and reasons, for each applicant, for denying or limiting access.<sup>4</sup> In addition, the alternative trading systems that meet such volume thresholds must disclose on Exhibit C to Form ATS-R a list of all persons granted, denied, or limited access to the system during the relevant period.<sup>5</sup> The Commission estimates that 2 alternative trading systems that register as broker-dealers and comply with Regulation ATS be subject to these requirements, and that the average compliance burden for each entity would be 10 hours of in-house professional work at  $\$379$  per hour. Thus, the total compliance burden per year is 20 hours (2 responses  $\times$  10 hours = 20 hours). The total cost of compliance for the annual burden is  $\$7,580$  ( $\$379 \times 10$  hours per response  $\times$  2 respondents =  $\$7,580$ ).

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(b)(6).<sup>6</sup> The Commission estimates that 2 alternative trading systems that

<sup>4</sup> While fair access obligations are triggered when volume thresholds are crossed on a security-by-security basis with respect to specific equity securities, and on a percentage of market basis with respect to fixed income securities, it would be difficult, if not impossible, to estimate the exact number of securities with respect to which an ATS would cross a volume threshold. In practice, however, if an ATS crosses a volume threshold for any securities, it would typically offer fair access to its entire system.

<sup>5</sup> The burdens associated with filing Form ATS-R are discussed in subsection (c) above.

<sup>6</sup> As part of the proposed Regulation Systems Compliance and Integrity (“SCI”), the

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 \$379 per hour. Thus, the total compliance burden per year is 20 hours (2 responses x 10 hours = 20 hours). The total cost of compliance for the annual burden is \$7,580 (\$316 x 20 hours = \$7,580).

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 0.25 hours of in-house professional work at \$379 per hour. Thus, the total compliance burden per year is 2.5 hours (2 respondents x 5 responses each x 0.25 hours = 2.5 hours). The total cost of compliance for the annual burden is \$947.50 (\$379 x 0.25 hours per response x 10 responses = \$947.50).

i. Aggregate Respondent Reporting Burdens

The estimated average annual aggregate burden for alternative trading systems to comply with Rule 301 would be 2,872.50 hours. This estimate is broken down as follows:

Initial Operating Reports on Form ATS =	140 hours
Amendments to Form ATS =	1,140 hours
Quarterly reports on Form ATS-R =	1,520 hours
Cessation of operations report on Form ATS =	10 hours
Establishment of Written Fair Access Standards=	20 hours
Making and Keeping Records in Connection with Fair Access=	20 hours
Systems capacity, integrity and security records =	20 hours
Systems outage notices =	<u>2.5 hours</u>
	2,872.50 hours

The estimated number of annual responses for alternative trading systems under Rule 301 would be 598. This estimate is broken down as follows:

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Commission has recently proposed to eliminate Rule 301(b)(6) and replace it with proposed Rule 1000, which would make certain modifications to the applicable volume thresholds and processes related to system integrity. See Securities Exchange Act Release No. 34-69077 (March 8, 2013), 78 FR 18084 (March 25, 2013).

Initial operation report filing on Form ATS =	7 filings
Amendments to Form ATS =	190 filings
Quarterly reports on Form ATS-R =	380 filings
Cessation of operations report on Form ATS =	5 filings
Establishment of Written Fair Access Standards	2 responses
Making and Keeping Records in Connection with Fair Access =	2 responses
Systems capacity, integrity and security records =	2 responses
Systems outage notices =	<u>10 notices</u>
	598 annual responses

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

The Rule does not impose any costs aside from those associated with the burden hours discussed in item 12 above.

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

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

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

As compared to the costs and hourly burdens identified in the Commission's 2010 Submission, the estimated aggregate hourly burden has increased from 1,792.50 hours to 2,872.50 hours as a result of an increase in the number of ATSs and a change in the estimate of certain hourly burdens. The estimated aggregate costs associated with Rule 301 of Regulation ATS decreased from \$158,988.14 to zero because costs had been estimated improperly in earlier years.

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

Not applicable. The information collection is not used for statistical purposes.

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

The Commission 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.

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

This collection of information does not involve statistical methods.