

**SUPPORTING STATEMENT  
FOR THE PAPERWORK REDUCTION ACT  
INFORMATION COLLECTION SUBMISSION FOR  
RULE 303**

**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. 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.

**Purpose and Use of the Information Collection**

Rule 303 describes the record preservation requirements for ATSS. Rule 303 also describes how such records must be maintained, what entities may perform this function, and how long records must be preserved.

Under Rule 303, ATSS are required to preserve all records made pursuant to Rule 302, which includes information relating to subscribers, trading summaries and time-sequenced order information. Rule 303 also requires ATSS to preserve any notices provided to subscribers, including, but not limited to, notices regarding the ATSS operations and subscriber access. For an ATS subject to the fair access requirements described in Rule 301(b)(5)(ii) of Regulation ATS, Rule 303 further requires the ATS to preserve at least one copy of its standards for access to trading, all documents relevant to the ATS's decision to grant, deny, or limit access to any person, and all other documents made or received by the ATS in the course of complying with Rule 301(b)(5) of Regulation ATS. For an ATS subject to the capacity, integrity, and security requirements for automated systems under Rule 301(b)(6) of Regulation ATS, Rule 303 requires an ATS to preserve all documents made or received by the ATS related to its compliance, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results, and other similar records. As provided in Rule 303(a)(1), ATSS are

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

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

required to keep all of these records, as applicable, for a period of at least three years, the first two in an easily accessible place. In addition, Rule 303 requires ATSS to preserve records of partnership articles, articles of incorporation or charter, minute books, stock certificate books, copies of reports filed pursuant to Rule 301(b)(2), and records made pursuant to Rule 301(b)(5) for the life of the ATS.

The information contained in the records required to be preserved by Rule 303 will be 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.

### **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.

The records required by Rule 303 must be maintained in paper form,<sup>3</sup> micrographic media,<sup>4</sup> or electronic storage media.<sup>5</sup>

#### **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 would occur 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 303 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>6</sup> Thus, the SEC’s

<sup>3</sup> See 17 CFR 242.303(b); 17 CFR 240.17a-4(f)(1)(i).

<sup>4</sup> Micrographic media means microfilm or microfiche, or any similar medium. 17 CFR 240.17a-4(f)(1)(i).

<sup>5</sup> The term electronic storage media means any digital storage medium or system that meets the applicable conditions regarding accessibility set forth in Section 240.17a-4(f). 17 CFR 240.17a-4(f)(1)(ii).

<sup>6</sup> See 17 CFR 242.301(b)(1).

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 can 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 84 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 compliance with Regulation ATS as well as other applicable rules and regulations. If the information is not collected or 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)**

Rule 303 requires ATSS to preserve records of partnership articles, articles of incorporation or charter, minute books, stock certificate books, copies of reports filed pursuant to Rule 301(b)(2), and records made pursuant to Rule 301(b)(5) for the life of the ATS. These records are needed for the life of the ATS because they are important to understanding the corporate structure of the ATS and persons who owned, controlled or directed the ATS, and the operations of the ATSS for examination and investigation purposes in order to ensure compliance with Regulation ATS as well as other applicable rules and regulations. The Commission also believes that these recordkeeping requirements are necessary to help assure fair and orderly markets by enhancing the effectiveness of the Commission’s examination and investigation functions.

#### **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 303 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**

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information (PII).

**12. Burden of Information Collection**

ATSS that choose to register as broker-dealers and comply with Regulation ATS are required to comply with record preservation requirements under Rule 303. The SEC estimates that the average hour burden for each respondent to comply with the record preservation requirements under the Rule is approximately 15 hours per year.<sup>7</sup> The SEC derived this estimate from the following: (Compliance Manager at 3 hours per year) +

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<sup>7</sup> Regulation SCI superseded and replaced certain rules regarding systems capacity, integrity, and security in Rule 301(b)(6) of Regulation ATS that relate to ATSS that trade NMS and non-NMS stocks. Securities and Exchange Act Release No. 34-73639 (November 19, 2014), 79 FR 72251 (December 5, 2014). These alternative trading systems were required to preserve under Rule 303 any records made in the process of complying with the systems capacity, integrity, and security requirements. Nevertheless, despite the removal of these sections of Rule 301(b)(6) and its corresponding recordkeeping obligations, the Commission has not modified the burden hours estimated to comply with the record preservation requirements under Rule 303. The Commission estimated only two ATSS (of 84) would cross the relevant volume thresholds to be subject to Rule 301(b)(6). See PRA Supporting Statement for Rule 301. Also, the recordkeeping obligations of Rule 301(b)(6) did not require substantial procedures related to recordkeeping in addition to the other recordkeeping provisions of Rule 303. For these reasons, the Commission believes that maintaining the estimated burden hours for Rule 303 at 15 hours is appropriate.

(Compliance Clerk at 12 hours per year) = 15 hours per year. The SEC estimates the related internal compliance cost for this hour burden per respondent at approximately \$1,644 per year.<sup>8</sup> The SEC derived this cost estimate from the following: ((Compliance Manager at \$288/hour) x (3 hours) = \$864 + (Compliance Clerk at \$65/hour) x (12 hours) = \$780) = \$1,644.<sup>9</sup>

The SEC estimates that there are approximately 84 ATSs registered as broker-dealers that have filed initial operation reports in compliance with Regulation ATS. The SEC estimates the average aggregate hour burden to comply with Rule 303 is 1,260 hours per year (84 ATSs at 15 hours per ATS per year). The SEC estimates that the aggregate internal compliance cost for respondents for the hour burden to comply with Rule 303 is \$138,096 per year (84 ATSs at \$1,644 per ATS per year).

Name of Information Collection	Type of Burden	# Entities Impacted	Annual Responses per Entity	Ongoing Burden per Entity	Annual Burden Per Entity per Response	Total Annual Burden Per Entity	Total Burden	Total Ongoing Burden For All Respondents
Record preservation requirements for ATSs (Rule 303)	Recordkeeping	84	1	15.00	15.00	15.00	1,260.00	1,260.00

### 13. Costs to Respondents

The SEC believes that compliance with Rule 303 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.

### 14. Costs to Federal Government

The government does not experience significant costs based on the recordkeeping required pursuant to Rule 303. The information collected by the respondents would typically 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.

<sup>8</sup> The SEC estimates that the average cost per burden hour is \$109.60 ((\$1644 per ATS per year)/(15 hours per year) = \$109.60 per hour.)

<sup>9</sup> The hourly cost figure for a Compliance Manager is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by SEC 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 hourly cost 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, and adjusted for inflation.

**15. Changes in Burden**

The estimated hour burden associated with Rule 303 of Regulation ATS has decreased from 1,380 hours per year to 1,260 hours per year as a result of a decrease in the number of ATSSs from 92 to 84.

**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 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.

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

This collection does not employ statistical methods.