

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission**  
**for Rule 303: Record Preservation Requirements for Alternative Trading Systems**

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq.

**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” or “Commission”) 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.

On November 18, 2015, the Commission proposed to amend the regulatory requirements in Regulation ATS under the Exchange Act applicable to NMS Stock ATSs, including so called “dark pools.”<sup>3</sup> The Securities and Exchange Commission is proposing to amend the regulatory requirements in Regulation ATS under the Exchange Act applicable to NMS Stock ATSs, including so called “dark pools.” The Commission is proposing to amend Regulation ATS to adopt Form ATS-N. Proposed Form ATS-N would require NMS Stock ATSs to provide information about the broker-dealer operator, and the activities of the broker-dealer operator and its affiliates in connection with the NMS Stock ATS, as well as detailed information regarding the operations of the NMS Stock ATS. Second, the Commission is proposing to make filings on Form ATS-N public by posting the Form ATS-N filings on the Commission’s internet website. Third, the Commission is proposing to amend Regulation ATS to adopt new Rule 304, which would provide a process for the Commission to determine whether an entity qualifies for the exemption from the definition of “exchange” pursuant to Exchange Act Rule 3a1-1(a) (2) with regard to NMS stocks and declare an NMS Stock ATS’s Form ATS-N either effective or, after notice and opportunity for hearing, ineffective. Fourth, under the

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

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

<sup>3</sup> See *Regulation of NMS Stock Alternative Trading Systems*, Exchange Act Release No. 76474 (Nov. 18, 2015), 80 FR 80997 (Dec. 28, 2015).

proposal, the Commission could suspend, limit, or revoke the exemption provided under Rule 3a1-1(a)(2) after providing notice and opportunity for hearing. Lastly, the Commission is proposing to amend Exchange Act Rule 301(b)(10) of Regulation ATS to require that an ATS's safeguards and procedures to ensure the confidential treatment of subscribers' trading information be written. The Commission is also proposing to make conforming changes to Regulation ATS and Exchange Act Rule 3a1-1, including to recordkeeping requirements related to the above changes.

## 2. **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. As provided in Rule 303(a)(1), ATSs are 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 Commission is proposing to amend the record preservation requirements of Rule 303 to incorporate the preservation of records that would be created pursuant to the new proposed requirements that NMS Stock ATSs file Forms ATS-N, Form ATS-N Amendments, and notices of cessation instead of Form ATS. Specifically, the Commission is proposing to amend Rule 303(a)(2)(ii) to require that an ATS shall preserve, for the life of the enterprise and of any successor enterprise, copies of reports filed pursuant to Rule 301(b)(2) or – in the case of an NMS Stock ATS – Rule 304, and records made pursuant to Rule 301(b)(5).<sup>4</sup> As a result, because an NMS Stock ATS would be required to file Forms ATS-N, Form ATS-N Amendments, and notices of cessation pursuant to proposed Rule 304, instead of on Form ATS, the NMS Stock ATS would be required to preserve those reports for the life of the enterprise and of any successor enterprise pursuant to the proposed amendments to Rule 303(a)(2).<sup>5</sup>

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<sup>4</sup> See proposed Rule 303(a)(2)(ii).

<sup>5</sup> The Commission notes that an NMS Stock ATS that had previously made filings on Form ATS would be required to preserve those filings for the life of the

The Commission is also proposing amendments to the record preservation requirements of Rule 303(a)(1) to incorporate the Commission’s proposed amendments to Rule 301(b)(10),<sup>6</sup> which would require an ATS to reduce to writing its safeguards and procedures to ensure confidential treatment of subscribers’ trading information and the oversight procedures to ensure that those safeguards and procedures are followed. Accordingly, the Commission is proposing to require an ATS, for a period of not less than three years, the first two years in an easily accessible place, to preserve at least one copy of the written safeguards and written procedures to protect subscribers’ confidential trading information and the written oversight procedures created in the course of complying with Rule 301(b)(10).<sup>7</sup> The Commission is not proposing to amend any other aspects of the records preservation requirements of Rule 303(a)(1). The Commission preliminarily believes that the proposed amendments to Rule 303 are necessary to create a meaningful audit trail of an ATS’s current and previous written safeguards and procedures pursuant to Rule 301(b)(2) and permit surveillance and examination to help ensure fair and orderly markets, without imposing any undue burden on ATSs.<sup>8</sup>

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.

### 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

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enterprise, as well as filings made going forward on Form ATS-N.

<sup>6</sup> See proposed Rule 301(b)(10).

<sup>7</sup> See proposed Rule 303(a)(1)(v).

<sup>8</sup> The Commission is also proposing to make a minor technical amendment to Rule 303(a). Currently, Rule 303(a) references “paragraph (b)(9) of § 242.301” when setting forth the record preservation requirements for ATSs. The Commission is proposing to change the above reference to “paragraph (b)(8) of § 242.301” because Rule 301(b)(8) sets forth the recordkeeping requirements for ATSs.

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 ATs 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>9</sup> Thus, the SEC's definition of small entity as it relates to broker-dealers also applies to ATs. 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 ATs that are subject to Regulation ATS. The Commission staff estimates that currently five broker-dealers operating as ATs 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 ATs 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)**

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 Commission has issued a release soliciting comment on the new "collection

<sup>9</sup> See 17 CFR 242.301(b)(1).

of information” requirements and associated paperwork burdens. A copy of the release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission’s public website, and made available through <http://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

#### **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**

Not applicable. The collections of information do not expressly include Personally Identifiable Information (“PII”).<sup>10</sup> At the same time, however, Commission staff understands that there may be instances when certain information (including, but not limited to, a person’s name, email, or phone number) could be provided by a respondent in response to one of the collections of information. However, Commission staff does not envision any circumstance in which a social security number would be provided pursuant to any of the collections of information. As such, we believe that the treatment of any PII with the collection of information associated with the Regulation SCI is not likely to implicate the Federal Information Security Management Act of 2002 or the Privacy Act of 1974.

#### **12. Burden of Information Collection**

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<sup>10</sup> The term “Personally Identifiable Information” refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.

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 existing record preservation requirements under the Rule is approximately 15 hours per year.<sup>11</sup> The SEC derived this estimate from the following: (Compliance Manager at 3 hours per year) + (Compliance Clerk at 12 hours per year) = 15 hours per year.

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 existing Rule 303 is 1,260 hours per year (84 ATSs at 15 hours per ATS per year).

The Commission proposes to amend Rule 303(a)(2)(ii)<sup>12</sup> of Regulation ATS to provide that all ATSs must preserve copies of all reports filed pursuant to proposed Rule 304 for the life of the enterprise and any successor enterprise. Rule 303(a)(ii) currently requires an ATS to preserve copies of reports filed pursuant to Rule 301(b)(2), which include all Form ATS filings, for the life of the enterprise and any successor enterprise. Because NMS Stock ATSs that solely trade NMS stocks would be filing Form ATS-N in lieu of Form ATS under this proposal, the Commission believes that the proposed amendment to Rule 303(a)(ii) would not result in any burden for those ATSs that is not already accounted for under the current baseline burden estimate for Rule 303. For the 11 ATSs that trade, or have indicated in Exhibit B to their Form ATS that they expect to trade both NMS stocks and non-NMS stocks on the ATS, the Commission preliminarily estimates that the burden above the current baseline estimate for preserving records relating to compliance with the proposed amendment to Rule 303(a)(ii) would be approximately 3 hours annually per ATS for a total annual burden above the current baseline burden estimate of 33 hours for all respondents.<sup>13</sup> Accordingly, the Commission

<sup>11</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 further 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 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.

<sup>12</sup> 17 CFR 242.303(a)(2)(ii).

<sup>13</sup> 3 additional burden hours x 11 ATSs = 33 aggregate burden hours.

proposes to modify the current PRA burden for Rule 303 to account for the increased burden on ATSs that trade both NMS stocks and non-NMS stocks.

Under current Rule 301(b)(10) of Regulation ATS,<sup>14</sup> all ATSs must establish adequate safeguards and procedures to protect subscribers' confidential trading information, as well as oversight procedures to ensure such safeguards and procedures are followed. As discussed below, the Commission preliminarily believes that ATSs – in particular, ATSs whose broker-dealer operators are large, multi-service broker-dealers – generally have and maintain in writing their safeguards and procedures to protect subscribers' confidential trading information, as well as the oversight procedures to ensure such safeguards and procedures are followed. However, neither Rule 301(b)(10) nor Rule 303(a)(1) of Regulation ATS currently requires that an ATS have and preserve those safeguards and procedures in writing. For ATSs that currently have and preserve in written format the safeguards and procedures to protect subscribers' confidential trading information under Rule 301(b)(10) of Regulation ATS, the Commission preliminarily estimates that the proposed requirement to preserve those written procedures would not add any burden to those ATSs. The Commission preliminarily believes that the current practices of those ATSs would already be in compliance with the proposed rules. Therefore, the proposed amendments should not require those ATSs to take any measures or actions in addition to those currently undertaken.

For ATSs that have not recorded in writing their safeguards and procedures to protect subscribers' confidential trading information and oversight procedures to ensure such safeguards and procedures are followed, there will be an initial, one-time burden to memorialize them in a written document(s) and set up procedures to preserve such documents. In its Proposing release the Commission estimated that the initial one-time burden to put in writing its safeguards and procedures to protect subscribers' confidential trading information and the oversight procedures to ensure such safeguards and procedures are followed would be approximately 8 hours,<sup>15</sup> but the Commission preliminarily estimates that the burden could range between 5 and 10 hours.<sup>16</sup> Included in this range, the Commission estimates that one hour would encompass the tasks specifically related to recordkeeping for the written procedures, including the development of procedures for recordkeeping.<sup>17</sup>

The Commission preliminarily estimates that, of the 84 current ATSs, 15 ATSs might not have their safeguards and procedures to protect subscribers' confidential trading information or oversight procedures to ensure such safeguards and procedures are followed in writing, and would therefore be subject to this one-time initial burden. Accordingly, the Commission preliminarily estimates that the aggregate initial, one-time burden on all ATSs to preserve such written procedures would be 15 hours based on the Commission's

<sup>14</sup> 17 CFR 242.301(b)(10).

<sup>15</sup> Attorney at 7 hours + Compliance Clerk at 1 hour = 8 burden hours.

<sup>16</sup> Attorney at 4-9 hours + Compliance Clerk at 1 hour = 5-10 burden hours.

<sup>17</sup> Compliance Clerk at 1 hour.

approximation of the additional burden per ATS.<sup>18</sup>

The Commission preliminarily estimates that the average annual, ongoing burden per ATS to update the procedures related to preserving such documents would be 0.5 hours.<sup>19</sup> As a result, the Commission preliminarily estimates that the total aggregate, ongoing burden per year for all ATSs to preserve the written procedures would be 7.5 hours.<sup>20</sup>

The total recordkeeping burden hours required under Rule 303 including both the existing requirements and the new proposed requirements would be as follows:

Existing Rule 303:

Initial Burden (annualized)	0 hours x 84 ATSs = 0 hours
Ongoing Burden	15 hours x 84 ATSs = 1,260 hours
Total:	15 hours/respondent

Proposed Rule 303(a)(2)(ii):

Initial Burden (annualized)	0 hours x 11 ATSs = 0 hours
Ongoing Burden	3 hours x 11 ATSs = 33 hours
Total:	3 hours/respondent

Proposed initial recordkeeping burden related to Rule 301(b)(10):

Initial Burden (annualized)	(1 hour/ 3 years) = .33 hours x 15 ATSs = 4.95 hours
Ongoing Burden	0.5 hour x 15 ATSs = 7.5 hours
Total:	.83 hours/respondent

**Total: 1,305.45 hours**

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<sup>18</sup> (Compliance Clerk at 1 hour) x (15 ATSs) = 15 burden hours.

<sup>19</sup> The estimated 0.5 hour is part of the estimated 4 hours that the Commission estimated in the Proposing Release for updating the written safeguards and written procedures to protect subscribers' confidential trading information, as well as to update and preserve the written standards controlling employees of the ATS trading for their own account and the written oversight procedures.

<sup>20</sup> (Compliance Clerk at 0.5 hours) x (15 ATSs) = 7.5 burden hours.



**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.

**15. Changes in Burden**

The estimated hour burden associated with Rule 303 of Regulation ATS has decreased despite the additional burden hours from the new proposed requirements from 1,380 hours per year to 1305.45 hours per year. This decrease results primarily from a decrease in the number of ATSs from 92 to 84.

**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.

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

This collection does not employ statistical methods.