

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for Rule 301:
Requirements for Alternative Trading Systems That are Not National Securities
Exchanges, - Form ATS, and ATS-R. Rule 304 and Form ATS-N (a proposed new
collection of information) (OMB Control No. 3235-0509)

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

A. Regulation ATS

The Securities Exchange Act of 1934, as amended (“Act” or “Exchange Act”),¹ 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 national securities exchanges and national securities associations comply with and advance the policies of the Act.

In the 1975 Amendments to the Act,² 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 established a regulatory framework for alternative trading systems (“ATS”), which allows entities that meet the definition of “exchange” under Section 3(a)(1) of the Exchange Act to choose between two regulatory structures: registering as a national securities exchange or registering as a broker-dealer and complying with Regulation ATS.

Specifically, Regulation ATS exempts an organization, association, or group of persons from the statutory definition of “exchange” on the condition that it complies with Regulation ATS.³ Regulation ATS sets forth these conditions in Rules 300 through 303.⁴ Rule 300 includes relevant definitions. Rule 301(a) identifies certain entities that are not required to comply with Regulation ATS, and Rule 301(b) sets forth the obligations of ATSs. Specifically, Rule 301(b) obligations include, among other things, Form ATS notice reporting, Form ATS-R quarterly transaction reporting, order display and execution access obligations, fair access requirements,

¹ 15 U.S.C. 78a et seq.

² Pub. L. No. 29, 89 Stat. 97 (1975).

³ See Exchange Act Rule 3a1-1(a)(2).

⁴ See 17 CFR 242.300-303.

and procedures regarding the confidential treatment of trading information. Rules 302 and 303 address ATS recordkeeping and record preservation requirements.

In the seventeen years since the Commission adopted Regulation ATS, the equity markets have evolved significantly, resulting in an increased number of trading centers and a reduced concentration of trading activity in NMS stocks.⁵ The growth in trading centers and trading activity has been fueled primarily by advances in technology for generating, routing, and executing orders. These technologies have markedly improved the speed, capacity, and sophistication of the trading mechanisms and processes that are available to market participants. Today, ATSs that trade NMS stocks have become an integral part of the national market system, as the number of these ATSs, and the volume of NMS stocks transacted on them, has increased significantly since the adoption of Regulation ATS. Despite the emergence of ATSs as a significant source of liquidity in NMS stocks among today's markets, and the fact that ATSs compete with, and operate with almost the same complexity and sophistication as, registered national securities exchanges, the regulatory requirements applicable to ATSs have remained, for the most part, the same since Regulation ATS was adopted.

The Commission is concerned that the current regulatory requirements relating to operational transparency for ATSs, particularly those that execute trades in NMS stocks, may no longer fully meet the goals of furthering the public interest and protecting investors. Today, ATSs account for approximately 14.9% of the total dollar volume in NMS stocks and as noted, compete with, and operate with respect to trading in a manner similar to, registered national securities exchanges. Unlike registered national securities exchanges, however, there is limited public information available to market participants about the operations of ATSs, including how orders and other trading interest may interact, match, and execute on ATSs. The Commission is concerned that the differences between ATSs that trade NMS stocks and registered national securities exchanges with regard to operational transparency may be creating a competitive imbalance between two functionally similar trading centers that may trade the same security but are subject to different regulatory requirements. The Commission is also concerned that this difference in operational transparency disadvantages market participants by limiting their ability to adequately assess the relative merits of many trading centers.⁶ Specifically, the Commission is concerned that the lack of operational transparency around ATSs limits market participants' ability to adequately discern how their orders interact, match, and execute on ATSs and to find the optimal market or markets for their orders.

The Commission is also concerned about the current lack of transparency around potential conflicts of interest that arise from the activities of the broker-dealer operator that operate ATSs that transact in NMS stocks (hereinafter referred to as the "broker-dealer operator")

⁵ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251, 72262 (December 5, 2014) (adopting final rules for systems compliance and integrity) ("SCI Adopting Release") at 72262 n.105 and n.106 and accompanying text (discussing the increased significance of NMS Stock ATSs).

⁶ Market participants may include many different types of persons seeking to transact in NMS stocks, including broker-dealers and institutional or retail investors.

of “NMS Stock ATSs”) and its affiliates in connection with the ATS. An ATS must register as a broker-dealer pursuant to Rule 301(b)(1) of Regulation ATS. This broker-dealer operator, its affiliates, or both, however, may also conduct brokerage or dealing activities in NMS stocks in addition to operating the ATS.⁷ Broker-dealer operators may also have affiliates that support the operations of the ATS or trade on it. The Commission notes that these multi-service broker-dealers that engage in brokerage and dealing activities, in addition to the operation of their ATSs, have become more prevalent since the adoption of Regulation ATS and the other services multi-service broker-dealers provide have become increasingly intertwined with the operation of their ATSs. Given the unique position that the broker-dealer operator and its affiliates occupy with regard to the operation of an ATS, potential conflicts of interest arise when the various business interests of the broker-dealer operator or its affiliates compete with the interests of market participants that access and trade on the ATS. Although the operations of most ATSs and their broker-dealer operators have become more closely connected, market participants receive limited information about the activities of the broker-dealer operator and its affiliates and the potential conflicts of interest that arise from these activities.

The Commission preliminarily believes that new Form ATS-N could promote more efficient and effective market operations by providing more transparency to market participants about the operations of ATSs and the potential conflicts of interest of the controlling broker-dealer operator and its affiliates. The Commission preliminarily believes that the proposed operational transparency rules, including new Form ATS-N, could increase competition among trading centers in regard to order routing and execution quality. For example, the proposed rules could reveal order interaction procedures that may result in the differential treatment of some order types handled by an NMS Stock ATS. This improved visibility, in turn, could cause market participants to shift order flow to NMS Stock ATSs that provide better opportunities for executions. The Commission preliminarily believes that the proposal could facilitate comparisons among trading centers in NMS stocks and increase competition by informing market participants about the operations of NMS Stock ATSs.

Current Rule 301(b)(10) of Regulation ATS⁸ requires every ATS to have in place safeguards and procedures to protect subscribers’ confidential trading information and to separate ATS functions from other broker-dealer functions, including proprietary and customer trading. In the Regulation ATS Adopting Release, the Commission recognized that some broker-dealer operators provide traditional brokerage services as well as access to their ATS(s).⁹ The Commission further stated that Rule 301(b)(10) was not intended to preclude an ATS from providing its traditional brokerage services; rather, Rule 301(b)(10) was designed to prevent the

⁷ Broker-dealer operators of NMS Stock ATSs that also provide brokerage or dealing services in addition to operating an NMS Stock ATS are referred to as “multi-service broker-dealers”.

⁸ See 17 CFR 242.301(b)(10).

⁹ See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (Regulation of Exchanges and Alternative Trading Systems, hereinafter “Regulation ATS Adopting Release”).

misuse of private customer information in the system for the benefit of other customers, the ATS's operator, or its employees.

Rule 301(b)(10), however, does not currently require that the safeguards and procedures mandated under Rule 301(b)(10) be memorialized in writing. The Commission is now proposing to amend Rule 301(b)(10) to require that such safeguards and procedures be reduced to writing. The Commission continues to believe that safeguards and procedures to ensure the confidential treatment of ATS subscribers' trading information are important, and that the potential for misuse of such information continues to exist. The Commission preliminarily believes that requiring an ATS to reduce to writing those safeguards and procedures, as well as its oversight procedures to ensure that such safeguards and procedures are followed, would strengthen the effectiveness of the ATS's safeguards and procedures and would better enable the ATS to protect confidential subscriber trading information and implement and monitor the adequacy of, and the ATS's compliance with, its safeguards and procedures.

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."¹⁰ 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 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.

B. Regulation SCI and Rule 301(b)(6) of Regulation ATS

Section 11A(a)(2) of the Act,¹¹ enacted as part of the 1975 Amendments to the Act,¹² directs the Commission, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under the Exchange Act to

¹⁰ See Securities Exchange Act Release No. 76474 (November 18, 2015), 80 FR 80997 (December 28, 2015) (Regulation of NMS Stock Alternative Trading Systems).

¹¹ 15 U.S.C. 78k-1(a)(2).

¹² Pub. L. 94-29, 89 Stat. 97 (1975).

facilitate the establishment of a national market system for securities in accordance with the Congressional findings and objectives set forth in Section 11A(a)(1) of the Exchange Act.¹³ Among the findings and objectives in Section 11A(a)(1) is that “[n]ew data processing and communications techniques create the opportunity for more efficient and effective market operations”¹⁴ and “[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure...the economically efficient execution of securities transactions.”¹⁵ In addition, Sections 6(b), 15A, and 17A(b)(3) of the Exchange Act impose obligations on national securities exchanges, national securities associations, and clearing agencies, respectively, to be “so organized” and “[have] the capacity to...carry out the purposes of [the Exchange Act].”¹⁶

The U.S. securities markets have been transformed by regulatory and related technological developments in recent years. They have, among other things, substantially enhanced the speed, capacity, efficiency, and sophistication of the trading functions that are available to market participants. At the same time, these technological advances have generated an increasing risk of operational problems with automated systems, including failures, disruptions, delays, and intrusions. Given the speed and interconnected nature of the U.S. securities markets, a seemingly minor systems problem at a single entity can quickly create losses and liability for market participants, and spread rapidly across the national market system, potentially creating widespread damage and harm to market participants, including investors.

This transformation of the U.S. securities markets has occurred in the absence of a formal regulatory structure governing the automated systems of key market participants. Instead, for over two decades, Commission oversight of the technology of the U.S. securities markets has been conducted primarily pursuant to a voluntary set of principles articulated in the Commission’s ARP Policy Statements,¹⁷ applied through the Commission’s Automation Review Policy inspection program (“ARP Inspection Program”).¹⁸ Commission staff subsequently provided additional guidance regarding various aspects of the ARP Inspection Program through letters to ARP entities, including recommendations regarding reporting planned systems changes and systems issues to the Commission. National securities exchanges, national securities associations, registered clearing agencies, plan processors, one alternative trading system, and one exempt clearing agency currently participate in the ARP Inspection Program.

¹³ 15 U.S.C. 78k-1(a)(1).

¹⁴ 15 U.S.C. 78k-1(a)(1)(B).

¹⁵ 15 U.S.C. 78k-1(a)(1)(C)(i).

¹⁶ See 15 U.S.C. 78f(b)(1), 78o-3(b)(2), 78q-1(b)(3), respectively. See also 15 U.S.C. 78b, and 15 U.S.C. 78s.

¹⁷ See Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989) (“ARP I”) and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) (“ARP II” and, together with ARP I, the “ARP Policy Statements”).

¹⁸ In February 2014, the ARP Inspection Program was renamed the Technology Controls Program.

In 1998, the Commission adopted Regulation ATS which, among other things, imposed by rule certain aspects of the ARP Policy Statements on significant-volume alternative trading systems.¹⁹

In November 2014, the Commission adopted Regulation Systems Compliance and Integrity (“Regulation SCI”)²⁰ to require certain key market participants to, among other things: (1) have comprehensive policies and procedures in place to help ensure the robustness and resiliency of their technological systems, and also that their technological systems operate in compliance with the federal securities laws and with their own rules; and (2) provide certain notices and reports to the Commission to improve Commission oversight of securities market infrastructure. Regulation SCI was adopted to update, formalize, and expand the Commission’s ARP Inspection Program, and, with respect to SCI entities, to supersede and replace the Commission’s ARP Policy Statements, as well as 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.²¹

A confluence of factors contributed to the Commission’s adoption of Regulation SCI and to the Commission’s determination that it is necessary and appropriate at this time to address the technological vulnerabilities, and improve Commission oversight, of the core technology of key U.S. securities markets entities, including national securities exchanges and associations, significant alternative trading systems, clearing agencies, and plan processors. These considerations include: the evolution of the markets to become significantly more dependent upon sophisticated, complex and interconnected technology; the current successes and limitations of the ARP Inspection Program; a significant number of, and lessons learned from, recent systems issues at exchanges and other trading venues; increased concerns over “single points of failure” in the securities markets; and the views of a wide variety of commenters received in response to the proposing release for Regulation SCI.²²

The Commission acknowledges that the nature of technology and the level of sophistication and automation of current market systems prevent any measure, regulatory or otherwise, from completely eliminating all systems disruptions, intrusions, or other systems issues. However, the Commission believes that the adoption of, and compliance by SCI entities with Regulation SCI will advance the goals of the national market system by enhancing the capacity, integrity, resiliency, availability, and security of the automated systems of entities important to the functioning of the U.S. securities markets, as well as reinforce the requirement that such systems operate in compliance with the Exchange Act and rules and regulations

¹⁹ See 17 CFR 242.301(b)(6).

²⁰ Securities and Exchange Act Release No. 34-73639 (November 19, 2014), 79 FR 72251 (December 5, 2014).

²¹ See 17 CFR 242.301(b)(6)(i)(A) and 17 CFR 242.301(b)(6)(i)(B).

²² Securities Exchange Act Release No. 69077 (March 8, 2013), 78 FR 18083 (March 25, 2013) (“SCI Proposal”).

thereunder, thus strengthening the infrastructure of the U.S. securities markets and improving its resilience when technological issues arise. In this respect, Regulation SCI establishes an updated and formalized regulatory framework, thereby helping to ensure more effective Commission oversight of such systems.

For these reasons, the Commission adopted Regulation SCI, which consolidates and supersedes the ARP policy statements and related staff guidance.²³ Given the inclusion of alternative trading systems that trade NMS stocks and non-NMS stocks within the scope of Regulation SCI, the Commission amended Rule 301(b)(6) of Regulation ATS so that it will no longer apply to alternative trading systems that trade NMS stocks and non-NMS stocks.²⁴

2. Purpose and Use of the Information Collection

Rule 301 of Regulation ATS describes the conditions with which an alternative trading system must comply. Among other things, the Rule requires all alternative trading systems to file an initial operation report on Form ATS. The Form ATS initial operation report requires an ATS to disclose to the Commission, among other things, information related to the classes of subscribers, types of securities traded, the manner of operations, procedures governing the entry of orders, means of access, and procedures governing the execution, reporting, clearance, and settlement of transactions effected through the ATS. Alternative trading systems are also required to file Form ATS Amendments with the Commission to notice changes to its Form ATS. Specifically, ATSS must file a Form ATS Amendment with the Commission 20 days prior to implementing a material change. In addition, ATSS are required to file quarterly transaction reports on Form ATS-R and file a cessation of operations report when the ATS ceases operation. 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 that reach a certain volume threshold²⁵ are required to comply

²³ The Commission is separately submitting a PRA package for Regulation SCI. The OMB Control No. for Regulation SCI is 3235-0703.

²⁴ In particular, the Commission amended Rule 301(b)(6) to remove paragraphs (i)(A) and (i)(B) so that Rule 301(b)(6) will no longer apply to alternative trading systems that trade NMS stocks or non-NMS stocks. The Commission also redesignated paragraph (i)(C) as (i)(A), and redesignated paragraph (i)(D) as (i)(B).

²⁵ An alternative trading system must comply with the requirements for fair access in paragraph (b)(5)(ii) of Rule 301, if during at least 4 of the preceding 6 calendar months, such alternative trading system had:

- (A) With respect to any NMS stock, 5 percent or more of the average daily volume in that security reported by an effective transaction reporting plan;
- (B) With respect to an equity security that is not an NMS stock and for which transactions are reported to a self-regulatory organization, 5 percent or more of the average daily trading volume in that security as calculated by the self-regulatory organization to which such transactions are reported;

with requirements for fair access. Under Rule 301(b)(5) of Regulation ATS, an ATS that reaches these volume thresholds is required to establish written standards for granting access to trading on their systems and 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.

Rule 301(b)(6) of Regulation ATS imposes certain requirements related to systems capacity, integrity, and security on alternative trading systems that reach certain volume thresholds.²⁶ These alternative trading systems must preserve any records made in the process of complying with the systems capacity, integrity, and security requirements, and must notify Commission staff of material systems outages and significant systems changes.

Proposed Rule 304 of Regulation ATS states that no exemption from the definition of “exchange” is available to an NMS Stock ATS pursuant to § 240.3a1-1(a)(2) unless the NMS Stock ATS files with the Commission a Form ATS-N, in accordance with the instructions therein, and the Form ATS-N is declared effective by the Commission. Proposed Form ATS-N would require NMS Stock ATSs to provide information about the broker-dealer that operates the NMS Stock ATS and the activities of the broker-dealer operator and its affiliates in connection with the NMS Stock ATS, including: their operation of non-ATS trading centers and other NMS Stock ATSs; products and services offered to subscribers; arrangements with unaffiliated trading centers; trading activities on the NMS Stock ATS; smart order router (or similar functionality)

(C) With respect to municipal securities, 5 percent or more of the average daily volume traded in the United States; or

(D) With respect to corporate debt securities, 5 percent or more of the average daily volume traded in the United States.

²⁶ The alternative trading system shall comply with the systems requirements in paragraph (b)(6)(ii) of Rule 301, if during at least 4 of the preceding 6 calendar months, such alternative trading system had:

(A) With respect to any NMS stock, 20 percent or more of the average daily volume reported by an effective transaction reporting plan;

(B) With respect to equity securities that are not NMS stocks and for which transactions are reported to a self-regulatory organization, 20 percent or more of the average daily volume as calculated by the self-regulatory organization to which such transactions are reported;

(C) With respect to municipal securities, 20 percent or more of the average daily volume traded in the United States; or

(D) With respect to corporate debt securities, 20 percent or more of the average daily volume traded in the United States.

As discussed above, Regulation SCI amended Rule 301(b)(6) so that it will no longer apply to alternative trading systems that trade NMS stocks and non-NMS stocks once Regulation SCI becomes effective.

and algorithms used to send or receive orders or other trading interest to or from the ATS; personnel and third parties used to operate the NMS Stock ATS; differences in the availability of services, functionalities, or procedures; and safeguards and procedures to ensure the confidential treatment of trading information. Proposed Form ATS-N would also require NMS Stock ATSs to provide detailed information about the manner of operations of the ATS, including: subscribers; hours of operation; types of orders; connectivity, order entry, and colocation procedures; segmentation of order flow and notice; display of order and other trading interest; trading services, including matching methodologies, order interaction rules, and order handling and execution procedures; procedures governing suspension of trading or trading during system disruption or malfunction; opening, closing, and after hours procedures; outbound routing services; fees; market data; trade reporting; clearance and settlement; order display and execution access; fair access; and certain market quality statistics published or provided by the NMS Stock ATS to subscribers.

Form ATS-N is primarily designed to provide market participants with greater transparency around the operations of NMS Stock ATSs and potential conflicts of interest that may arise involving the broker-dealer operator and its affiliates.

The Commission preliminarily believes that greater transparency in this regard would provide important information to market participants so they can evaluate whether submitting order flow to a particular NMS Stock ATS aligns with their trading or investment objectives. Among other things, these enhanced, public disclosures also are designed to limit the potential that a broker-dealer operator of an NMS Stock ATS could provide certain subscribers with greater disclosure about the operations and system functionalities of the ATS than it provides to other market participants.

The Commission preliminarily believes that if market participants have more information about the operations of NMS Stock ATSs and the activities of the broker-dealer operators and the broker-dealer operators' affiliates, they could better evaluate whether to do business with an ATS and make more informed decisions about where to route their orders. The Commission preliminarily believes that improved transparency about the operations of NMS Stock ATSs could aid brokers with meeting their best execution obligations to their customers, as they can better assess the trading venues to which they route orders. In addition, the Commission preliminarily believes that the proposal could also help customers of broker-dealers, whose orders are routed to an NMS Stock ATS for possible execution in the ATS, evaluate whether their broker-dealer fulfilled its duty of best-execution.

The Commission uses the information provided pursuant to Rule 301 and 304 to monitor the growth and development of alternative trading systems and oversee alternative trading systems for the purpose of protecting investors. 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 data required by Rule 301 and Rule 304, 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.

As noted above, Rule 301(b)(6) of Regulation ATS imposed by rule certain aspects of the ARP policy statements on significant-volume alternative trading systems. Given the inclusion of alternative trading systems that trade NMS stocks and non-NMS stocks within the scope of Regulation SCI, the Commission amended Rule 301(b)(6) so that it will no longer apply to alternative trading systems that trade NMS stocks and non-NMS stocks. The Commission did not amend other provisions of Regulation ATS.

Under Rule 301(b)(10) of Regulation ATS, all ATSs are currently required to: (1) establish adequate safeguards and procedures to protect subscribers' confidential trading information; and (2) adopt and implement adequate oversight procedures to ensure that the safeguards and procedures established to protect subscribers' confidential trading information are followed. Rule 301(b)(10) of Regulation ATS further requires that the safeguards and procedures to protect subscribers' confidential trading information shall include: (1) limiting access to the confidential trading information of subscribers to those employees of the ATS who are operating the system or responsible for its compliance with Regulation ATS or any other applicable rules; and (2) implementing standards controlling employees of the ATS trading for their own accounts. The proposed amendments to Regulation ATS would require written safeguards and written procedures to protect subscribers' confidential trading information and written oversight procedures to ensure that the safeguards and procedures are followed.

The Commission preliminarily believes that requiring an ATS to reduce to writing those safeguards and procedures, as well as its oversight procedures to ensure that such safeguards and procedures are followed, would strengthen the effectiveness of the ATS's safeguards and procedures and would better enable the ATS to protect confidential subscriber trading information and implement and monitor the adequacy of, and the ATS's compliance with, its safeguards and procedures. For example, if an ATS were required to reduce its safeguards and procedures to writing, it could self-audit – or if it chose to do so, undergo a third-party audit – for compliance with those safeguards and procedures, and also assess their adequacy. In addition, the Commission preliminarily believes that reducing ATSs' safeguards and procedures under Rule 301(b)(10) to writing will help Commission staff, and the staff of the SRO of which an ATS's broker-dealer operator is a member, evaluate whether an ATS has established such procedures and safeguards, whether the ATS has implemented and is abiding by them, and whether they comply with the requirements of Rule 301(b)(10). This should enable the Commission, and the applicable SRO(s), to exercise more effective oversight of ATSs regarding the ATSs' compliance with Rule 301(b)(10) and other federal securities laws, rules, and regulations.

3. Consideration Given to Information Technology

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

In connection with Regulation SCI, the Commission only amended Rule 301(b)(6) so that it will no longer apply to alternative trading systems that trade NMS stocks and non-NMS stocks. Therefore, consideration given to information technology remains unchanged.

Proposed Rule 304(c)(2) would provide that any report required to be filed with the Commission under proposed Rule 304 of Regulation ATS must be filed electronically on Form ATS-N, and include all information as prescribed in proposed Form ATS-N and the instructions thereto. The Commission's proposal contemplates the use of the electronic form filing system ("EFFS") to file a completed Form ATS-N. Based on the widespread use and availability of the Internet, the Commission preliminarily believes that filing Form ATS-N in an electronic format would be less burdensome and a more efficient filing process for NMS Stock ATSs and the Commission, as it is likely to be less expensive and cumbersome than mailing paper forms to the Commission. The proposed Form ATS-N would require an electronic signature to help ensure the authenticity of the Form ATS-N filing. The Commission preliminarily believes these proposed requirements would expedite communications between Commission staff and the broker-dealer operator concerning the NMS Stock ATS and help to ensure that only personnel authorized by the NMS Stock ATS are filing required materials. This proposed requirement is intended to provide a uniform manner in which the Commission would receive—and the broker-dealer operator would file—the Form ATS-N made pursuant to proposed Rule 304 of Regulation ATS. The Commission preliminarily believes that such consistent framework would make it easier for NMS Stock ATSs to file submissions and for the Commission to review, keep and organize such filings. Also, the electronic submission would make it easier and more efficient for the Commission and market participants reviewing the disclosures to promptly review, analyze, and respond, as necessary, to the information proposed to be provided.

4. Duplication

Because Regulation SCI would duplicate the requirements under Rule 301(b)(6) of Regulation ATS as applied to alternative trading systems that trade NMS stocks and non-NMS stocks, the Commission amended Rule 301(b)(6) so that it will no longer apply to alternative trading systems that trade NMS stocks and non-NMS stocks.

The Commission is proposing Rule 301(b)(2)(viii) to provide that an NMS Stock ATS shall file the reports and amendments required by proposed Rule 304 and would not be subject to the requirements of Rule 301(b)(2). Existing Rule 301(b)(2) requires an ATS to file with the Commission a Form ATS initial operation report, amendments to the Form ATS initial operation report, and cessation of operations reports on Form ATS, all of which are "deemed confidential when filed."²⁷ Because the Commission is proposing rules to govern the content and manner in which an NMS Stock ATS would be required to disclose information to the public and the Commission on proposed Form ATS-N, existing Rule 301(b)(2) would be duplicative of the proposed amendments.

²⁷ See 17 CFR 242.301(b)(2).

The Commission did not believe that current Form ATS was sufficient to reach the Commission's objective of promoting more transparency on NMS Stock ATS, and for this reason, chose to require a new Form ATS-N that requires additional information. Form ATS discloses only limited aspects of an ATS's operations, and the Commission preliminarily believes that even where an ATS has voluntarily made public its Form ATS,²⁸ market participants currently might not be able to obtain a complete understanding of how ATSs operate. In addition, Form ATS does not solicit information about possible circumstances that give rise to potential conflicts of interest resulting from the activities of the broker-dealer operator and its affiliates. Despite the confidentiality afforded Form ATS, based on Commission experience, including the Commission's experience reviewing disclosures made by ATSs on Form ATS over the past 16 years, ATSs have often provided minimal, summary disclosures about their operations on Form ATS. Furthermore, the Commission preliminarily believes that the complexity of the operations of NMS Stock ATSs has increased substantially and in a manner that causes the current disclosure requirements of Form ATS to result in a potentially insufficient, and inconsistent, level of detail about the operations of NMS Stock ATSs.

5. Effect on Small Entities

Rules 301 and 304 are ones 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 reach certain significant volume thresholds. 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.

²⁸ The Commission notes that some ATSs have chosen to make Form ATS filings publicly available. See, e.g., IEX ATS Form ATS Amendment, dated July 29, 2015, [available at http://www.iextrading.com/policy/ats/](http://www.iextrading.com/policy/ats/); PDQ ATS Inc's Form ATS Amendment, dated January 30, 2015, [available at http://www.pdqats.com/wp-content/uploads/2013/10/PDQ-FORM-ATS-FILING_01_30_15-website.pdf](http://www.pdqats.com/wp-content/uploads/2013/10/PDQ-FORM-ATS-FILING_01_30_15-website.pdf); Liquidnet H2O ATS Form ATS Amendment, dated February 4, 2015, [available at http://www.liquidnet.com/uploads/ATS_\(H2O\)_Form-Exhibits_CLEAN_4feb2015.pdf](http://www.liquidnet.com/uploads/ATS_(H2O)_Form-Exhibits_CLEAN_4feb2015.pdf); SIGMA X Form ATS Amendment, dated May 21, 2014, [available at http://www.goldmansachs.com/media-relations/in-the-news/current/pdf-media/gs-form-ats-amendment.pdf](http://www.goldmansachs.com/media-relations/in-the-news/current/pdf-media/gs-form-ats-amendment.pdf); POSIT Form ATS Amendment, dated January 26, 2015, [available at http://www.itg.com/marketing/ITG_Form_ATS_for_POSIT_02112015.pdf](http://www.itg.com/marketing/ITG_Form_ATS_for_POSIT_02112015.pdf).

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 Rules 301 and 304 must apply in the same manner to small as well as large entities. Hence, Rules 301 and 304 do 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.

In connection with Regulation SCI, the Commission only amended Rule 301(b)(6) so that it will no longer apply to significant-volume alternative trading systems that trade NMS stocks and non-NMS stocks. Because significant-volume alternative trading systems subject to Rule 301(b)(6) are not likely to be small entities, the amendments to Rule 301(b)(6) would likely have no effect on small entities.

6. Consequences of Not Conducting Collection

Without the information provided on Forms ATS, ATS-R, and ATS-N, the Commission would not have readily available information on a regular basis in a format that would allow it 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. 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 Rules 301 and 304, 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. Further, without the information provided on Form ATS-N, the public would have less information concerning NMS Stock ATSS available to them when selecting a trading venue. In addition, requiring an ATS to reduce to writing the safeguards and procedures required by Rule 301(b)(10), as well as its oversight procedures to ensure that such safeguards and procedures are followed, would strengthen the effectiveness of the ATS's safeguards and procedures and would better enable the ATS to protect confidential subscriber trading information and implement and monitor the adequacy of, and the ATS's compliance with, its safeguards and procedures.

In connection with Regulation SCI, the failure to remove significant-volume alternative trading systems that trade NMS stocks and non-NMS stocks from the requirements of Rule 301(b)(6) would result in duplicative requirements for certain alternative trading systems.

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 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

Not applicable.

10. Confidentiality

Form ATS and Form ATS-R 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. The removal of significant-volume alternative trading systems that trade NMS stocks and non-NMS stocks from the requirements of Rule 301(b)(6) does not affect these confidentiality provisions.

The Commission is proposing to make public Form ATS-N reports filed by NMS Stock ATSs. The following will also be publicly posted on the Commission’s website: (i) Order of effectiveness of a Form ATS-N; (ii) Order of ineffectiveness of a Form ATS-N; (iii) Effective Form ATS-N; (iv) Filed Form ATS-N Amendment; (v) Order of ineffectiveness of a Form ATS-N Amendment; (vi) Notice of cessation; and (vii) Order suspending, limiting, or revoking the exemption from the definition of an “exchange” pursuant to § 240.3a1-1(a)(2) of this chapter.

As discussed above, there currently is limited information available to the public about the operations of ATSs that trade NMS stocks and the activities of their broker-dealer operators and the broker-dealer operators’ affiliates. Furthermore, as discussed further below, market participants may not be informed about potential conflicts of interest that arise as a result of the other business activities of the broker-dealer operator of the NMS Stock ATS, or its affiliates, such as trading NMS stocks on the NMS Stock ATS or operating multiple trading centers, including multiple ATSs. The only information the Commission currently makes publicly available regarding ATSs is a list, which is updated monthly, of ATSs with a Form ATS on file with the Commission.²⁹ Therefore, the Commission is proposing Rule 304(b) to mandate greater

²⁹ See Alternative Trading System (“ATS”) List, [available at](#)

public disclosure of NMS Stock ATS operations through the publication of Form ATS-N and provide for the posting of Commission orders on the Commission's website related to the effectiveness of Form ATS-N.

11. Sensitive Questions

Not applicable. No information of a sensitive nature is required under Rules 301 and 304. The form does not collect any Personally Identifiable Information (PII).³⁰

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 reporting burden per year is 140 hours (7 responses x 20 hours = 140 hours).

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 reporting burden per year is 1,140 hours (190 responses x 6 hours = 1,140 hours).

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

<http://www.sec.gov/foia/docs/atlist.htm>.

³⁰ 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.

compliance reporting burden per year is 1,520 hours (380 responses x 4 hours = 1,520 hours).

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 file a notice on Form ATS cessation of operations report when they have ceased 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 reporting burden per year is 10 hours (5 responses x 2 hours = 10 hours).

e. Form ATS-N

The Commission recognizes that proposed Rules 301(b)(2)(viii) and 304 of Regulation ATS, including proposed Form ATS-N, would impose certain burdens on respondents. Although the Commission preliminarily believes that many of the disclosures required by proposed Form ATS-N are currently required by Form ATS, proposed Form ATS-N would require an NMS Stock ATS to provide significantly more detail in those disclosures than currently is required by Form ATS. Proposed Form ATS-N would also require additional disclosures not currently mandated by current Form ATS such as those contained in Part III of proposed Form ATS-N. Under the proposed amendments to Regulation ATS, NMS Stock ATSs would be required to complete and file the enhanced and additional disclosures on proposed Form ATS-N.³¹ The discussion below provides the estimated burden above the current Form ATS baseline of each item of proposed Form ATS-N. The Commission notes that many of the proposed disclosure items on proposed Form ATS-N are already required disclosures by respondents in whole or in part on current Form ATS, while other disclosure items on proposed Form ATS-N are novel (*i.e.*, current Form ATS does not require some form of the proposed disclosure). The discussion below aggregates both these new burdens and the additional burdens above the current Form ATS baseline that will be imposed by proposed Form ATS-N with the current Form ATS baseline.

1. Initial Form ATS-N

The Commission preliminarily estimates that a proposed Form ATS-N will, on average, require an estimated 121.3 burden hours above the current baseline for an initial operation report on current Form ATS. This would result in an estimated 141.3 hours in total, including the current baseline.³² This would result in an aggregate annual burden on all NMS Stock ATSs of 4,945.5 (35

³¹ These disclosures would be provided on proposed Form ATS-N and may have to be amended periodically as provided in proposed Rule 304.

³² (Current Baseline for Form ATS at 20 hours) + (Parts I and II at 0.5 hours) + (Part III at an average of 47 hours) + (Part IV at an average of 73.5 hours) + (Access to EFFS at 0.3 hours) = 141.3 burden hours. The aggregate totals by professional, including the baseline, are estimated to be approximately 54.8 hours for an Attorney, 43.5 hours for a

filings x 141.3 hours).³³

2. Form ATS-N Amendments

As previously noted, the Commission currently estimates that ATSs that trade NMS stocks submit 2 amendments, on average, each year. The Commission preliminarily estimates that the 46 respondents will file 3 Form ATS-N Amendments each year, for an estimated total of 138 Form ATS-N Amendments. The Commission notes that proposed Rule 304(a)(2) of Regulation ATS will contain the same three general categories of required amendments for proposed Form ATS-N as Rule 301(b)(2) of Regulation ATS currently requires for current Form ATS.³⁴ However, due to the greater detail and number of disclosures required by proposed Form ATS-N, the Commission preliminarily believes that respondents may find it necessary to file a greater number of amendments to proposed Form ATS-N than ATSs that trade NMS stocks currently do on Form ATS.

As noted above, the Commission currently estimates that the hourly burden related to an amendment to Form ATS is 6 hours. The Commission preliminarily estimates that the average hourly burden above this current baseline of 6 hours for each Form ATS-N Amendment would be 3 hours to accommodate the more voluminous and detailed disclosures required by Form ATS-N as compared to Form ATS.³⁵ An NMS Stock ATS would also be required to provide a brief narrative description of the amendment at the top of Form ATS-N and a redline(s) showing changes to Part III and/or Part IV of proposed Form ATS-N. The Commission preliminarily estimates that this requirement would add an additional burden of 0.5 hours to draft the summary and prepare the redline version(s) showing the amendments the NMS Stock ATS is making.³⁶ This would result in

Compliance Manager, 34.5 hours for a Sr. Systems Analyst, 1 hour for a Sr. Marketing Manager, and 7.5 hours for a Compliance Clerk.

This preliminary estimated burden for a Form ATS-N includes the hour burden associated with completing Part III, Item 2 and Part IV, Items 14 and 15 of proposed Form ATS-N. The Commission preliminarily believes, however, that the majority of NMS Stock ATSs would not be required to complete those items of the proposed form because the majority of NMS Stock ATSs do not current cross the trading volume thresholds that would require a disclosure under Item 14 or 15.

³³ Currently, there are 84 ATSs that have filed Form ATS with the Commission. Of these 84 ATSs, 46 would meet the definition of an NMS Stock ATS. Accordingly, the Commission estimates that 46 entities would be required to complete Form ATS-N. 11 ATSs would trade both NMS Stocks and non-NMS Stocks and are accounted for below. (46 NMS Stock ATSs – 11 NMS and non-NMS Stock ATSs = 35 Form ATS-N filings).

³⁴ See 17 CFR 242.301(b)(2).

³⁵ Attorney at 1 hour + Compliance Manager at 2 hours = 3 burden hours above the baseline.

³⁶ *Compliance Clerk at 0.5 hours.* The Commission notes that most word processing

a total estimated hourly burden, including the baseline, of 9.5 hours for a Form ATS-N Amendment,³⁷ and an aggregate annual burden on all NMS Stock ATSs of 1,311 hours.³⁸

3. Notice of Cessation on Proposed Form ATS-N

From 2012 through the first half of 2015, there have been an average of 6 ATSs that trade NMS stocks that cease operations each year. Although it is unclear how many NMS Stock ATSs might cease operations each year going forward, for purposes of making a PRA burden estimate, the Commission is estimating that this average would generally remain the same for NMS Stock ATSs using Form ATS-N as economic conditions, business reasons, and other factors may cause some NMS Stock ATSs to cease operations. Accordingly, the Commission preliminarily estimates that 6 respondents may file a cessation of operation report on proposed Form ATS-N each year. The Commission preliminarily believes that the burden for filing a cessation of operation report on proposed Form ATS-N will not be significantly greater than that for filing a cessation of operation report on current Form ATS because proposed Form ATS-N does not contain any additional requirements for a cessation of operation report. For both Form ATS and proposed Form ATS-N, the primary requirement is to check the appropriate box indicating that the ATS is ceasing operations. Accordingly, the Commission preliminarily estimates that the average compliance burden for each response would be 2 hours.³⁹ This would result in an aggregate annual burden of 12 hours for NMS Stock ATSs that choose to cease operations and submit a cessation of operation report on Form ATS-N.⁴⁰

4. ATSs that Transact in Both NMS Stocks and non-NMS Stocks

Under proposed Rule 301(b)(2)(viii) of Regulation ATS, an ATS that effects trades in both NMS stocks and non-NMS stocks would have to submit a Form ATS-N with respect to its trading of NMS stocks and a revised Form ATS that removes discussion of those aspects of the ATS related to the trading of NMS stocks. Under the proposed amendments to Rule 301(b)(9), an ATS that effects trades in both NMS stocks and non-NMS stocks would also be required to file separate Forms ATS-R – one disclosing trading volume in NMS stocks and one disclosing trading volume in non-NMS stocks. Therefore, ATSs that are subject to these proposed requirements would incur: (1) the above baseline burdens related to filing a Form ATS-N and

software provides for this functionality.

³⁷ Attorney at 5.5 hours + Compliance Manager at 2 hours + Compliance Clerk at 2 hours = 9.5 burden hours.

³⁸ 138 amendments per year x 9.5 hours = 1,311 aggregate burden hours. The Commission further estimates that gaining access to EFFS for one additional person on an annual basis would require 0.15 burden hours for each NMS Stock ATS, or 7 hours annually for all NMS Stock ATSs (46 x 0.15 hours = 6.9 hours). Therefore, the aggregate burden hours equals 1,317.9 hours (1,311 hours + 6.9 hours).

³⁹ Attorney at 1.5 hours + Compliance Clerk at 0.5 hours = 2 burden hours.

⁴⁰ 2 burden hours x 6 NMS Stock ATSs = 12 aggregate annual burden hours.

Form ATS-N Amendments; (2) the additional burden of filing a new Form ATS to only disclose information related to non-NMS stock trading activity on the ATS; and (3) the burden of completing and filing two Forms ATS-R.

Accordingly, the Commission estimates that the total hourly burden for an ATS to separately file a Form ATS for its non-NMS stock trading activity and Form ATS-N for its NMS stock trading activity would be 20 burden hours for the initial operation report on Form ATS for its non-NMS stock trading activity and 141.3 burden hours for its Form ATS-N. The Commission notes that the estimated hour burden related to the initial operation report submission on Form ATS for non-NMS stock trading activity might be less than the estimated 20 burden hours, as, to the extent the NMS Stock ATS in question is currently operating, the description of its non-NMS stock trading activity should already be contained in its existing Form ATS.⁴¹ There are currently 11 ATSS that trade, or have indicated that they expect to trade in Exhibit B to their Form ATS, both NMS stocks and non-NMS stocks on the ATS. Consequently, the Commission preliminarily estimates that the aggregate initial burden on ATSS to file these separate forms would be 1,774.3 hours, and the aggregate annual burden for filing amendments to both forms would be 445.5 hours.⁴²

The Commission estimates that the total burden for completing and filing two Form ATS-R would be 4.5 hours, which is 0.5 hours⁴³ above the current baseline burden of 4 hours for filing a Form ATS-R. The Commission preliminarily believes that ATSS required to file two Forms ATS-R would incur an additional burden above the baseline because they would be required to divide their trading statistics between two forms and file each form separately. The Commission does not believe that those ATSS would incur any additional burden to collect the required information because they currently assemble that information when preparing their current Form ATS-R filings. There are currently 11 ATSS that trade, or have indicated that they expect to trade in Exhibit B to their Form ATS, both NMS stocks and non-NMS stocks on the ATS; those ATSS would be required to file a pair of Forms ATS-R four times annually. Consequently, the Commission estimates that the aggregate annual burden of filing two Forms ATS-R for those ATSS that effect transactions in both NMS stocks and non-NMS stocks would be 198 hours.⁴⁴

⁴¹ The hourly burden related to amendments to its Form ATS and Form ATS-N would remain unchanged: 6 estimated burden hours for amendments to Form ATS, and 9.5 estimated burden hours for Form ATS-N Amendments.

⁴² (Form ATS initial operation report at 20 hours + Form ATS-N at 141.3 hours) x 11 ATSS = 1,774.3 aggregate burden hours. Using the estimates of 2 amendments each year to Form ATS, and 3 amendments each year to Form ATS-N above, the ongoing aggregate burden for these bifurcated ATSS would be ((2 Form ATS Amendments per year x 6 hours) + (3 Form ATS-N Amendments per year x 9.5 hours)) x 11 respondents = 445.5 aggregate ongoing burden hours per year relating to amendments.

⁴³ Attorney at .5 hours = .5 burden hours.

⁴⁴ ((Attorney at 3.5 hours + Compliance Clerk at 1 hour) x (4 filings annually)) x 11 ATSS = 198 aggregate burden hours.

5. Access to EFFS

The Commission proposes that Form ATS-N would be submitted electronically in a structured format and require an electronic signature. Currently, ATSS that transact in NMS stock do not have the ability to access and submit an electronic form. The proposed amendments to Regulation ATS would require that every NMS Stock ATS have the ability to submit forms electronically with an electronic signature. The Commission's proposal contemplates the use of an online filing system, the EFFS. Based on the widespread use and availability of the Internet, the Commission preliminarily believes that filing Form ATS-N in an electronic format would be less burdensome and a more efficient filing process for NMS Stock ATSS and the Commission, as it is likely to be less expensive and cumbersome than mailing and filing paper forms to the Commission.

To access EFFS, an NMS Stock ATS would have to submit to the Commission an External Account User Application ("EAUA") to register each individual at the NMS Stock ATS who would access the EFFS system on behalf of the NMS Stock ATS. The Commission is including in its burden estimates the burden for completing the EAUA for each individual at an NMS Stock ATS who would request access to EFFS. The Commission estimates that initially, on average, two individuals at each NMS Stock ATS would request access to EFFS through the EAUA, and each EAUA would take 0.15 hours to complete and submit. Therefore, each NMS Stock ATS would require a total of 0.3 hours to complete the requisite EAUAs,⁴⁵ or approximately 13.8 hours for all NMS Stock ATSS.⁴⁶ The Commission also preliminarily estimates that annually, on average, one individual at each NMS Stock ATS will request access to EFFS through the EAUA.⁴⁷ Therefore, the ongoing burden to complete the EAUA would be 0.15 hours annually for each NMS Stock ATS,⁴⁸ or approximately 6.9 hours annually for all NMS Stock ATSS.⁴⁹

6. Public Posting on NMS Stock ATS's website

⁴⁵ 0.15 hours per EAUA x 2 individuals = 0.3 burden hours per NMS Stock ATS. These estimates are based on the Commission and its staff's experience with EFFS and EAUAs pursuant to Rule 19b-4 under the Exchange Act. The 0.3 hours represents the time spent by two attorneys. The Commission believes it is appropriate to estimate that, on average, each NMS Stock ATS will submit two EAUAs initially.

⁴⁶ 0.30 hours x 46 NMS Stock ATSS = 13.8 burden hours.

⁴⁷ The Commission estimates that annually, on average, one individual at each NMS Stock ATS will request access to EFFS through EAUA to account for the possibility that an individual who previously had access to EFFS may no longer be designated as needing such access.

⁴⁸ 0.15 hours per EAUA x 1 individual = 0.15 burden hours.

⁴⁹ 0.15 hours x 46 NMS Stock ATSS = 6.9 burden hours.

Proposed Rule 304(b)(3) would require each NMS Stock ATS to make public via posting on the NMS Stock ATS's website a direct URL hyperlink to the Commission's website that contains the documents enumerated in proposed Rule 304(b)(2). The Commission preliminarily estimates that each NMS Stock ATS would incur an initial, one-time burden to program and configure its website in order to post the required direct URL hyperlink pursuant to proposed Rule 304(b)(3). The Commission preliminarily estimates that this initial, one-time burden would be approximately 2 hours.⁵⁰ Because the Commission preliminarily believes that many broker-dealer operators currently maintain a website for their NMS Stock ATSs, the Commission preliminarily estimates that the aggregate initial, one-time burden would be approximately 92 hours.⁵¹

f. Proposed Rule 301(b)(10)

The Commission recognizes that proposed Rule 301(b)(10) of Regulation ATS would impose certain burdens on respondents. For ATSs that currently have and preserve in written format the safeguards and procedures to protect subscribers' confidential trading information and written oversight procedures to ensure such safeguards and procedures are followed, the Commission preliminarily believes that there will be no increased burden under the proposed amendments to Rule 301(b)(10) of Regulation ATS. 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). The Commission preliminarily estimates that an ATS's 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 9 hours,⁵² but the Commission preliminarily estimates that the burden could range between 4 and 9 hours.⁵³ Because ATSs are already required to have safeguards and procedures to protect subscribers' confidential trading information and to have oversight procedures to ensure such safeguards and procedures are followed, the Commission preliminarily believes that recording these items in a written format would not impose a substantial burden on ATSs. Consequently, the Commission preliminarily believes that ATSs would rely on internal staff to record the ATS's Rule 301(b)(10) procedures in writing. The Commission preliminarily estimates that, of the 84 current ATSs, 15 ATSs might not have their safeguards and procedures to

⁵⁰ Senior Systems Analyst at 2 burden hours.

⁵¹ Senior Systems Analyst at 2 hours x 46 NMS Stock ATSs = 92 burden hours.

⁵² Attorney at 7 hours. ATSs will also be required to preserve the written Rule 301(b)(10) procedures pursuant to proposed Rule 303 of Regulation ATS. The burden associated with such recordkeeping is discussed in the PRA Supporting Statement for Rule 303.

⁵³ Attorney at 4-9 hours.

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 recordkeeping burden on all ATSs would be 135 hours based on the Commission's highest approximation of the additional burden per ATS.⁵⁴

The Commission preliminarily estimates that for ATSs that currently maintain written safeguards and written procedures to protect subscribers' confidential trading information, the average annual, ongoing recordkeeping burden per ATS to update those standards would be 1.5 hours.⁵⁵ As a result, the Commission preliminarily estimates that the aggregate, ongoing burden per year for all ATSs to update their written standards would be 126 hours.⁵⁶

g. 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. Thus, the total compliance recordkeeping burden per year is 20 hours (2 responses x 10 hours = 20 hours).

h. 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.⁵⁷ 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.⁵⁸ The Commission estimates that 2 alternative trading systems that register as broker-dealers and comply with Regulation ATS would be subject to these requirements, and that the average compliance reporting burden for each entity would be 10 hours. Thus, the total

⁵⁴ (Attorney at 9 hours) x (15 ATSs) = 135 burden hours.

⁵⁵ Attorney at 2 hours.

⁵⁶ Attorney at 1.5 hours x 84 ATSs = 126 burden hours.

⁵⁷ 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.

⁵⁸ The burdens associated with filing Form ATS-R are discussed in subsection (c) above.

compliance burden per year is 20 hours (2 responses x 10 hours = 20 hours).

i. Systems Capacity, Integrity, and Security Recordkeeping

Prior to Regulation SCI, alternative trading systems that choose to register as broker-dealers, comply with Regulation ATS, and meet certain volume thresholds were required to make records relating to any steps taken to comply with systems capacity, integrity, and security requirements under Rule 301(b)(6). The Commission had estimated 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. Thus, the total compliance burden per year was estimated to be 20 hours (2 responses x 10 hours = 20 hours). In connection with Regulation SCI, the Commission removed significant-volume alternative trading systems that trade NMS stocks and non-NMS stocks from the requirements of Rule 301(b)(6). The Commission now estimates that no alternative trading systems will trigger this recordkeeping requirement. Thus, these burdens are eliminated.

j. Systems Outage Notices

Prior to Regulation SCI, 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 had estimated 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. Thus, the total compliance burden per year was estimated to be 2.5 hours (2 respondents x 5 responses each x 0.25 hours = 2.5 hours). In connection with Regulation SCI, the Commission removed significant-volume alternative trading systems that trade NMS stocks and non-NMS stocks from the requirements of Rule 301(b)(6). The Commission now estimates that no alternative trading systems will trigger the system outage notification requirements. Thus, these burdens are eliminated.

i. Aggregate Respondent Reporting Burdens

The estimated average annual aggregate burden for alternative trading systems to comply with Rule 301 and Rule 304 would be 11,749.47 hours. This estimate is broken down as follows:

Summary of Hourly Burdens

Name of Information Collection	Type of Burden	# Entities Impacted	Annual Responses per Entity	Initial Burden per Entity	Initial Burden Annualized per Entity	Ongoing Burden per Entity	Annual Burden Per Entity per Response	Total Annual Burden Per Entity	Total Burden	Total Initial Burden For All Respondents	Total Ongoing Burden For All Respondents
Form ATS Initial Operating Report (Rule 301)	Reporting	7	1	0.00	0.00	20.00	20.00	20.00	140.00	0.00	140.00
Form ATS Amendments (Rule 301)	Reporting	95	2	0.00	0.00	12.00	6.00	12.00	1,140.00	0.00	1,140.00
Form ATS-R - Quarterly Reports (Rule 301)	Reporting	95	4	0.00	0.00	16.00	4.00	16.00	1,520.00	0.00	1,520.00
Form ATS Cessation of Operations Report (Rule 301)	Reporting	5	1	0.00	0.00	2.00	2.00	2.00	10.00	0.00	10.00
Form ATS-N Initial Operation Report (Rule 304)	Reporting	35	1	0.00	0.00	141.30	141.30	141.30	4,945.50	0.00	4,945.50

Form ATS-N Amendments (Rule 304)	Reporting	46	3	0.00	0.00	28.50	9.50	28.50	1,311.00	0.00	1,311.00	
Form ATS-N Cessation of Operations Report (Rule 304)	Reporting	6	1	0.00	0.00	2.00	2.00	2.00	12.00	0.00	12.00	
ATSs that Transact in NMS Stocks and Non-NMS Stocks - Initial Form ATS and Form ATS-N (Rules 301 and 304)	Reporting	11	1	0.00	0.00	161.30	161.30	161.30	1,774.30	0.00	1,774.30	
ATSs that Transact in NMS Stocks and Non-NMS Stocks - Form ATS Amendments (Rules 301 and 304)	Reporting	11	2	0.00	0.00	12.00	6.00	12.00	132.00	0.00	132.00	
ATSs that Transact in NMS Stocks and Non-NMS Stocks - Form ATS-N Amendments (Rules 301 and 304)	Reporting	11	3	0.00	0.00	28.50	9.50	28.50	313.50	0.00	313.50	
ATSs that Transact in NMS Stocks and Non-NMS Stocks (Filing Two Forms) - Form ATS-R (Rules 301 and 304)	Reporting	11	4	0.00	0.00	18.00	4.50	18.00	198.00	0.00	198.00	
Access to EFPS (Rules 301 and 304)	Reporting	46	2	0.30	0.10	0.15	0.13	0.25	11.50	13.80	6.90	
Public Posting on NMS Stock ATS's website (Rule 304)	Reporting	46	1	2.00	0.67	0.00	0.67	0.67	30.67	92.00	0.00	
Written Confidentiality Procedures - ATSs w/o Procedures (Proposed Rule 301(b)(10))	Recordkeeping	15	1	9.00	3.00	0.00	3.00	3.00	45.00	135.00	0.00	
Written Confidentiality Procedures - ATSs to Update Procedures (Proposed Rule 301(b)(10))	Recordkeeping	84	1	0.00	0.00	1.50	1.50	1.50	126.00	0.00	126.00	
Establishment of Written Fair Access Standards (Rule 301)	Recordkeeping	2	1	0.00	0.00	10.00	10.00	10.00	20.00	0.00	20.00	
Making and Keeping Records in Connection with Fair Access (Rule 301)	Recordkeeping	2	1	0.00	0.00	10.00	10.00	10.00	20.00	0.00	20.00	
TOTAL HOURLY BURDEN FOR ALL RESPONDENTS									467.02	11,749.47	240.80	11,669.20

13. Costs to Respondents

The Commission estimates that each NMS Stock ATS will designate 2 individuals to sign Form ATS-N each year. An individual signing a Form ATS-N must obtain a digital ID, at the cost of approximately \$25 each year. Therefore, each NMS Stock ATS would pay approximately \$50 annually to obtain digital IDs for the individuals with access to EFFS for purposes of signing Form ATS-N,⁵⁹ or approximately \$2,300 for all NMS Stock ATSs.⁶⁰

Summary of Dollar Costs

Rule	Type of Burden	# Entities Impacted	Annual Responses per Entity	Initial Cost per Entity	Initial Cost Annualized per Entity	Annual Ongoing Cost per Entity	Annual Cost Per Entity per Response	Total Annual Cost Per Entity	Total Cost	Total Initial Cost For All Respondents	Total Ongoing Cost For All Respondents	
Access to EFFS (Rules 301 and 304)	Reporting	46	2	0.00	0.00	50.00	25.00	50.00	2,300.00	0.00	2,300.00	
TOTAL COST FOR ALL RESPONDENTS									50.00	2,300.00	0.00	2,300.00

14. Cost to Federal Government

Not applicable. Rules 301 and 304 (both before and after the amendments made pursuant to Regulation SCI) would not result in any costs to the federal government beyond normal full-time employee labor costs, nor does the rule require the Commission to hire any new employees or reallocate existing employees to ensure compliance with the rule.

15. Changes in Burden

As noted in Section 12 above, the addition of the new requirements under Rule 304 and Rule 301(b)(10), increases the burden by roughly 8,900 hours and \$2,300 for respondents.

16. Information Collection Planned for Statistical Purposes

Not applicable. The information collections above are not planned for statistical purposes.

17. OMB Expiration Date Display Approval

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

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

⁵⁹ \$25 per digital ID x 2 individuals = \$50 per NMS Stock ATS.

⁶⁰ \$50 per NMS Stock ATS x 46 NMS Stock ATSs = \$2,300.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.