

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for Regulation of
NMS Stock Alternative Trading Systems – Rule 303

(OMB Control No. 3235-0505)

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

In 1998, the Commission adopted Regulation ATS, which established a new 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.

Regulation ATS allows an organization, association, or group of persons that meets the definition of an exchange, as defined under Section 3(a)(1) of the Exchange Act and Rule 3b-16 thereunder,¹ to choose between two regulatory structures: registering as a national securities exchange or operating as an ATS pursuant to an exemption provided by Regulation ATS. An organization, association, or group of persons that chooses to operate as an ATS pursuant to the exemption provided by Exchange Act Rule 3a1-1(a)(2) must comply with Regulation ATS, including registering as a broker-dealer.

Regulation ATS is composed of Rules 300,² 301,³ 302,⁴ 303,⁵ and 304. Rule 300 defines terms. Rule 301 sets forth the conditions that an ATS must meet to be exempt under Rule 3a1-1(a)(2), including the requirement that an ATS be registered as a broker-dealer. Rule 301 contains certain notice and reporting requirements, as well as additional obligations that only apply to ATSs with significant volume.⁶ Rule 302 establishes a set of records relating to trading

¹ See 17 CFR 240.3b-16. See generally Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70863 (December 22, 1998) (Regulation of Exchanges and Alternative Trading Systems); see also Securities Exchange Act Release No. 76474 (November 18, 2015), 80 FR 80998, 81004 (December 28, 2015) (“NMS Stock ATS Proposal”) discussing the current exemption from the definition of exchange available to ATSs).

² Rule 300 does not include a collection of information.

³ OMB No. 3235-0509.

⁴ OMB No. 3235-0510.

⁵ OMB No. 3235-0505.

⁶ In November 2014, the Commission adopted Regulation Systems Compliance and Integrity (“Regulation SCI”) to require certain key market participants to, among other things: (1) have comprehensive policies and procedures in place to help ensure the

activity that the ATS must make. Rule 303 establishes requirements for the preservation of certain records that ATSs must make.

On July 18, 2018, the Commission adopted amendments to Regulation ATS to improve the operational transparency of ATSs that trade in National Market System (“NMS”) stocks (“NMS Stock ATSs”).⁷ The majority of substantive changes in the new amendments are in Rule 304, which includes the requirement that NMS Stock ATSs file public disclosures on Form ATS-N. Rule 304 establishes new conditions for NMS Stock ATSs seeking to rely on the exemption from the definition of “exchange” provided by Rule 3a1-1(a) of the Exchange Act.⁸ Form ATS-N will require NMS Stock ATSs to publicly disclose, among other things, information about the broker-dealer operator, the NMS Stock ATS’s manner of operations, and the ATS-related activities of the broker-dealer operator and its affiliates.⁹ The collection of information in Rule 304 and Form ATS-N are discussed in the Supporting Statement for OMB No. 3235-0763. Thus, NMS Stock ATSs would no longer comply with the filing requirements of Rule 301(b)(2). Instead, NMS Stock ATSs must file Form ATS-N pursuant to Rule 304 of Regulation ATS.

ATSs that choose to register as broker-dealers and comply with Regulation ATS are required to comply with record preservation requirements under Rule 303.¹⁰ In connection with

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 stocks and equity securities that are not NMS stocks. See Securities and Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014). Given the inclusion of ATSs that trade NMS stocks and equity securities that are not 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 ATSs that trade NMS stocks and equities securities that are not NMS stocks.

⁷ See Securities Exchange Act Release No. 83663 (July 18, 2018), 83 FR 38768 (August 7, 2018).

⁸ We have adopted conforming amendments to Rule 300 of Regulation ATS and Exchange Act Rule 3a1-1(a).

⁹ Form ATS-N expands on the information contained in Form ATS and is made public. The Commission will continue to collect information for Form ATS for non-NMS Stock ATSs and Form ATS-R. Both the Form ATS and Form ATS-R will remain confidential. Although an ATS may voluntarily publish its Form ATS and Form ATS-R, these forms are otherwise available only to the examination of the Commission staff, state securities authorities, and self-regulatory organizations.

¹⁰ See 17 CFR 242.301(b)(8). ATS shall: (i) make and keep records specified in 17 CFR 242.302 and (ii) preserve the records specified in 17 CFR 242.303.

the adoption of the Rule 304 and Form ATS-N, we adopted related amendments to existing Rule 303 of Regulation ATS. As discussed below, we amended Rule 303(a)(1)(v) of Regulation ATS¹¹ to require every ATS to preserve the written safeguards and written procedures mandated under Rule 301(b)(10). Additionally, as discussed further below, we amended 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 304.¹²

We believe that that information contained in the record required to be preserved by Rule 303(a)(1)(v), as adopted, will be used by examiners and other representatives of the Commission, state securities regulatory authorities, and self-regulatory organizations (“SROs”) to evaluate whether the ATS are in compliance with Regulation ATS as well as other applicable rules and regulations. Without the data required by the amendments to Regulation ATS, regulators would be limited in their ability to comply with their statutory obligations to provide for the protection of investors and promote the maintenance of fair and orderly markets.

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 records of 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.

We have amended the record preservation requirements of Rule 303 to incorporate the preservation of records that have been created pursuant to the new requirements that NMS Stock ATSs file an initial Form ATS-N, Form ATS-N amendments, and notices of cessation on Form ATS-N instead of Form ATS. Specifically, the Commission amended Rule 303(a)(2)(ii) to require that an ATS shall preserve, for the life of the enterprise and of any successor enterprise,

¹¹ See 17 CFR 242.303(a)(1)(v).

¹² See 17 CFR 242.303(a)(2)(ii).

copies of reports filed pursuant to Rule 301(b)(2) or Rule 304 in the case of an NMS Stock ATS, and records made pursuant to Rule 301(b)(5).¹³ ATSS that trade both NMS stocks and securities other than NMS stocks are required to file, and also preserve under Rule 303, both Form ATS and related amendments and Form ATS-N and related amendments.

We have also amended the record preservation requirements of Rule 303(a)(1)¹⁴ to incorporate the amendments to Rule 301(b)(10),¹⁵ which requires 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, pursuant to Rule 303(a)(1)(v), an ATS is required, 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).¹⁶ We have not amended any other aspects of the records preservation requirements of Rule 303(a)(1). We believe that the 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 staff to help ensure fair and orderly markets, without imposing any undue burden on ATSS.¹⁷

3. Consideration Given to Information Technology

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

4. Duplication

Most of the records required to be made under the Rule reflect practices that prudent ATSS would establish. Because most ATSS would maintain much of the information required by the Rule, no duplication would occur with respect to such information. To the extent that the Rule

¹³ See 17 CFR 242.303(a)(2)(ii). 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 enterprise, as well as filings made going forward on Form ATS-N.

¹⁴ 17 CFR 242.303(a)(1).

¹⁵ See 17 CFR 242.301(b)(10).

¹⁶ See 17 CFR 242.303(a)(1)(v).

¹⁷ We also made a minor technical amendment to Rule 303(a). Previously, Rule 303(a) referenced "paragraph (b)(9) of § 242.301" when setting forth the record preservation requirements for ATSS. We changed the above reference to "paragraph (b)(8) of § 242.301" because Rule 301(b)(8) sets forth the recordkeeping requirements for ATSS.

establishes new collections of information, there is no similar information available that could replace the information required.

5. Effect on Small Entities

Rule 303 applies generally to all ATSS and does not depend on the size of the system. Therefore, Rule 303 could apply to small businesses. An entity that complies with Regulation ATS must, among other things, register as a broker dealer.¹⁸ Thus, the SEC's definition of small entity as it relates to broker-dealers also applies to ATSS. Pursuant to 17 CFR 240.0-10(c), the term "small business" or "small organization" when used in reference to a broker-dealer means a broker-dealer that has total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a-5(d) or, if not required to file such statements, a broker-dealer that had total capital of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business); and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in 17 CFR 240.0-10.

The Commission notes that there are approximately 94 ATSS that are subject to Regulation ATS.¹⁹ The Commission staff estimates that currently 17 broker-dealers operating as ATSS (including NMS Stock and non-NMS Stock ATSS) registered with the Commission are small entities as currently defined by the Act. Therefore, the amendments to Rule 303 would apply to 17 small entities that are ATSS, but we believe that there would be no significant economic impact on these entities because the universal use of electronic storage mediums by ATSS makes any resulting burden minimal.

Because the risks that the Commission monitors in the operation of an ATS occur in any size business, we have determined that Rule 303 must apply in the same manner to small as well as large entities. Hence, Rule 303 does not contain an exemption for small entities.

6. Consequences of Not Conducting Collection

We believe that Rule 303 is necessary to create a meaningful audit trail of an ATS's current and previous records to evaluate its compliance with Regulation ATS and permit surveillance and examination staff to help ensure fair and orderly markets, without imposing any undue burden on ATSS.

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

Certain provisions of Rule 303 require respondents to retain records for more than three years.²⁰ As discussed above, we amended Rule 303(a)(2)(ii) to require that an NMS Stock ATS preserve, for the life of the enterprise and of any successor enterprise, copies of reports filed

¹⁸ See 17 CFR 242.301(b)(1).

¹⁹ This is based on the number of ATSS as of May 12, 2021.

²⁰ See 17 CFR 242.303(a)(2)(ii).

pursuant to Rule 304 of Regulation ATS. We believe that the amendment to Rule 303 is necessary to create a meaningful audit trail of an ATS's current and previous manner of operation and permit surveillance and examination staff to help ensure fair and orderly markets.

8. Consultations Outside the Agency

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

9. Payment or Gift

The respondents receive no payments or gifts.

10. Confidentiality

Generally, the records required by Rule 303 are available only for the examination of the Commission staff, state securities authorities, and the SROs.²¹ Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 522 ("FOIA"), and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

11. Sensitive Questions

The information collection collects basic personally identifiable information that includes name, job title, telephone number, and fax number. However, the agency has determined that the information does not constitute a system of records for purposes of the Privacy Act. Information is not retrieved by a personal identifier. Neither a PIA nor a SORN are required in connection with the collection of information; the PAW is sufficient.

12. Burden of Information Collection

The Commission continues to believe that the average ongoing hourly burden for a respondent to comply with the baseline record preservation requirements under Rule 303 is approximately 15 hours per year.²² The Commission believes that a burden estimate of 15 hours

²¹ Form ATS and Form ATS-R are filed on a confidential basis pursuant to 301(b)(2)(vii). Form ATS-N is a public report filed with the Commission.

²² (Compliance Manager at 3 hours per year) + (Compliance Clerk at 12 hours per year) = 15 hours per year. 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 stocks and non-NMS stocks. See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014). These ATSs further

per ATS is appropriate to identify and preserve the applicable records. We estimate that there are approximately 94 ATSs registered as broker-dealers that have filed initial operation reports in compliance with Regulation ATS. Therefore, we estimate the average aggregate ongoing burden to comply with the baseline Rule 303 record preservation requirements is approximately 1,410.00 hours per year.²³ In addition, there are currently two ATSs that transact in *both* NMS stock and non-NMS stock on their ATSs. These two ATSs have a slightly greater burden because they have to keep both Form ATS and Form ATS-N and related documents (e.g., amendments) as opposed to the other ATSs that trade either NMS stock or non-NMS stock and thus only keep *either* Form ATS or Form ATS-N documents. For these two ATSs, we estimate that the ongoing burden above the current baseline estimate for preserving records will be approximately 1 hour annually per ATS for a total annual burden above the current baseline burden estimate of 2 hours for all respondents.²⁴

The estimated average annual aggregate burden for alternative trading systems to comply with Rule 303 would thus be approximately 1,412.00 hours. This estimate is broken down as follows:

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 would cross the relevant volume thresholds to be subject to Rule 301(b)(6). See FR Doc. 2014-02143, 79 FR 6236, 6237-38 (February 3, 2014) (Request to OMB for Extension of Rule 301 and Forms ATS and ATS-R; SEC File No. 270-451; OMB Control No. 3235-0509). 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 per ATS is appropriate.

²³ 94 ATSs x 15 hours = 1,410 hours.

²⁴ 1 additional burden hours x 2 ATSs = 2 aggregate burden hours.

Summary of Hourly Burdens													
Name of Information Collection	Type of Burden	# of 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 Industry Burden	Total Initial Burden For All Respondents	Total Ongoing Burden For All Respondents	Small Business Entities Affected	
Record Preservation for all ATSS	Recordkeeping	94	1	0.00	0.00	15.00	15.00	15.00	1,410.00	0.00	1,410.00	16	
Additional Record Preservation for ATSS that trade both NMS stock and non-NMS stock	Recordkeeping	2	1	0.00	0.00	1.00	1.00	1.00	2.00	0.00	2.00	1	
TOTAL HOURLY BURDEN FOR ALL RESPONDENTS									16.00	1,412.00	0.00	1412.00	

13. Costs to Respondents

Compliance with Rule 303 of Regulation ATS does not require any capital or startup costs, or any recurring annual external operating and maintenance costs.

14. Cost 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, we do not review the records kept by the respondents.

15. Changes in Burden

The estimated hour burden associated with Rule 303 of Regulation ATS has increased from approximately 1,335 hours per year to approximately 1,412.00 hours per year. This increase results primarily from an increase in the number of ATSS from 87 to 94.

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 Commission is not seeking approval to omit the expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.