

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for Regulation of
NMS Stock Alternative Trading Systems – Rule 304
(OMB Control No. 3235-0763)

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.

Since the adoption of Regulation ATS, the equity markets have evolved substantially and ATs have become a significant source of liquidity in NMS stocks. ATs that trade NMS stocks (“NMS Stock ATs”) generally operate with complexity and sophistication similar to registered national securities exchanges, which, pursuant to applicable laws and regulations, are required to publish their rules.¹ Prior to the adoption of the amendments to Regulation ATS and adoption of Form ATS-N, the Commission was concerned that the regulatory requirements relating to operational transparency for NMS Stock ATs no longer fully met the goals of furthering the public interest and protecting investors. Accordingly, in 2018, the Commission adopted amendments to Regulation ATS (including new Rule 304) and adopted Form ATS-N to require NMS Stock ATs to provide information to the public about their manner of operations, the broker-dealer operator, and the ATS-related activities of the broker-dealer operator of the NMS Stock AT (“broker-dealer operator”) and its affiliates.²

Rule 304 of Regulation ATS provides conditions for NMS Stock ATs seeking to rely on the exemption from the definition of “exchange” provided by Rule 3a1-1(a) of the Exchange Act, including to file a Form ATS-N, and for that Form ATS-N to become effective.³ Form ATS-N requires NMS Stock ATs to provide information about their manner of operations, the broker-dealer operator, and the ATS-related activities of the broker-dealer operator and its affiliates to comply with the conditions provided under Rule 304. The amendments to Regulation ATS provide a process for the Commission to review Form ATS-N filings and, after notice and opportunity for hearing, declare an NMS Stock AT’s Form ATS-N ineffective.

¹ 15 U.S.C. 78s(b)(1).

² See Securities Exchange Act Release No. 83663 (July 18, 2018), 83 FR 38769 (August 7, 2018) (“NMS Stock ATs Adopting Release”).

³ The Commission also adopted conforming amendments to Rule 300 of Regulation ATS and Exchange Act Rule 3a1-1(a). See id.

Additionally, as amended, Regulation ATS requires public posting of certain Form ATS-N filings on the Commission's website, which is accomplished through the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"), and requires each NMS Stock ATS that has a website to post on its website a direct URL hyperlink to the Commission's website.

Form ATS-N promotes more efficient and effective market operations by providing more transparency to market participants about the operations of NMS Stock ATSs and the potential conflicts of interest of the controlling broker-dealer operator and its affiliates, and helps brokers meet their best execution obligations to their customers. Operational transparency rules, including Form ATS-N, are designed to increase competition among trading centers in regard to order routing and execution quality.

In 2020, the Commission proposed amendments to Regulation ATS Rule 301 and Rule 304 to enhance the regulatory oversight of ATSs that trade government securities as well as repurchase and reverse repurchase agreements on government securities.⁴ The Commission has not adopted these proposed amendments as of this submission.

2. Purpose and Use of the Information Collection

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 an initial Form ATS-N, in accordance with the instructions therein, and the initial Form ATS-N is effective. Form ATS-N requires NMS Stock ATSs to provide information to the public about the broker-dealer operator of the NMS Stock ATS and the ATS-related activities of the broker-dealer operator and its affiliates. Form ATS-N also requires NMS Stock ATSs to provide certain information about the manner of operations of the NMS Stock ATS and the ATS's contact information.

Form ATS-N is designed to provide the public 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. 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.

We believe that the information required on Form ATS-N about the operations of NMS Stock ATSs and the ATS-related activities of the broker-dealer operators and the broker-dealer operators' affiliates helps market participants evaluate whether to do business with an ATS and make more informed decisions about where to route their orders. We also believe that the transparency about the operations of NMS Stock ATSs that Form ATS-N provides may aid broker-dealers with meeting their best execution obligations to their customers, as they can better assess the trading venues to which they route orders. In addition, we believe that Form ATS-N

⁴ See Securities Exchange Act Release No. 90019 (September 28, 2020), 85 FR 87106, 87114 (December 31, 2020).

may 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-dealers fulfilled their duty of best execution.

The information provided pursuant to Rule 304 also helps the Commission monitor NMS Stock ATSs for the purpose of protecting investors.

3. Consideration Given to Information Technology

Form ATS-N is filed electronically in a structured format through EDGAR. By filing in EDGAR, NMS Stock ATSs are given the option of filing using a web-fillable Form ATS-N which will render into XML in EDGAR, or to file directly in XML using the XML schema for NMS Stock ATSs as published on the Commission's website. With both options, we receive the Form ATS-N information in XML format. For those NMS Stock ATSs that would prefer to manually key in all of their Form ATS-N responses, those NMS Stock ATSs can do so using the Commission's web-fillable Form ATS-N, which will render into XML in EDGAR. The Commission's XML schema and the Commission's web-fillable Form ATS-N both reflect the same set of custom XML tags and XML restrictions designed by the Commission to submit the disclosures in Form ATS-N. Based on the widespread use and availability of the Internet, we believe that filing Form ATS-N in an electronic format is an efficient filing process.

Form ATS-N requires NMS Stock ATSs to file the form electronically via EDGAR with a typed signature. This requirement is intended to provide a uniform manner in which we receive—and the broker-dealer operator files—the Form ATS-N made pursuant to Rule 304 of Regulation ATS. We believe that the XML format allows the Commission and the public to better gather, analyze, aggregate, compare, and use the Form ATS-N data. Requiring XML should result in the Form ATS-N data being provided in a consistent, structured format. This consistent structure can be automatically recognized and processed by a variety of software applications such as databases, financial reporting systems, and spreadsheets, and then made immediately available to the end user to search, aggregate, compare, and analyze.

4. Duplication

If the broker-dealer operator operates ATSs that trade both NMS stocks and non-NMS stocks, certain information the NMS Stock ATS provides on its Form ATS-N may be found on Form ATS. We do not consider this information duplicative because the Form ATS is not required to be made public. In addition, Form ATS discloses only limited aspects of an ATS's operations, and we believe that even where an ATS has voluntarily made public its Form ATS,⁵ market participants might not be able to obtain as complete an understanding of how the ATS operates.

5. Effect on Small Entities

⁵ We note that some ATSs have chosen to make Form ATS filings publicly available.

Under the Regulatory Flexibility Act (“RFA”)⁶ a small entity includes a broker or dealer that: (1) 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 Rule 17a-5(d) under the Exchange Act,⁷ or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.⁸

We examined recent Financial and Operational Combined Uniform Single data for the 35 broker-dealer operators for NMS Stock ATSs that have an effective Form ATS-N on file and concluded that no more than 2 of the broker-dealer operators of NMS Stock ATSs had total capital of less than \$500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter) and were not affiliated with any person that is not a small business or small organization. We do not believe that Rule 304, including the requirement for NMS Stock ATSs to file Form ATS-N amendments, will represent a significant economic impact on these entities. One of these entities is a new broker-dealer operator for an NMS Stock ATS; its initial Form ATS-N was filed on May 25, 2021 and became effective on June 1, 2021.

6. Consequences of Not Conducting Collection

Without the information required by Rule 304, we would not have readily available information on a regular basis in a format that would allow us to evaluate the operation of ATSs 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 Form ATS-N, the public would have less information concerning NMS Stock ATSs available to them when selecting a trading venue.

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).

⁶ Although Section 601(b) of the RFA defines the term “small entity,” the statute permits agencies to formulate their own definitions. We have adopted definitions for the term “small entity” for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this rulemaking, are set forth in Rule 0-10 under the Exchange Act, 17 CFR 240.0-10. See Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS-305).

⁷ 17 CFR 240.17a-5(d).

⁸ See 17 CFR 240.0-10(c).

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

Not applicable.

10. Confidentiality

The following will be publicly posted on the Commission's website: (i) order of ineffective Form ATS-N; (ii) effective initial Form ATS-N, as amended; (iii) Form ATS-N amendment to an effective Form ATS-N; (iv) order of ineffective Form ATS-N amendment; (v) notice of cessation; and (vi) order suspending, limiting, or revoking the exemption from the definition of an "exchange" pursuant to Exchange Act Rule 3a1-1(a)(2).

11. Sensitive Questions

The information collection collects basic personally identifiable information that may include name, and work contact information. However, the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. The information collection is covered by the EDGAR PIA.

12. Burden of Information Collection

The total annual burden associated with Rule 304 is approximately 2,042 hours, as calculated and described below.

a. Initial Form ATS-N

An NMS Stock ATS must file an initial Form ATS-N on EDGAR,⁹ and the initial Form ATS-N must be effective in order to operate pursuant to the Exchange Act Rule 3a1-1(a)(2) exemption. We estimate that filing Form ATS-N, on average, requires an estimated 128.4 burden hours.¹⁰ This would result in a total one-time burden of approximately 1,155.6 hours for all new

⁹ For a Form ATS-N filer to gain access to make filings on EDGAR, the filer must submit a Form ID as required by Regulation S-T Rule 10(b) and submit the Form ID following the processes detailed in Volume I of the EDGAR Filer Manual. We estimate that the burden associated with receiving access to EDGAR by submitting a Form ID is 0.15 burden hours per response, which is consistent with the currently approved burden estimate for Form ID (OMB No. 3235-0328).

¹⁰ (Current Baseline to complete an initial Form ATS at 20 hours) + (Part I at 0.5 hour) + (Part II at an average of 29 hours) + (Part III at an average of 78.75 hours) + (Access to EDGAR at 0.15 hours) = 128.4 burden hours. The aggregate totals by professional, including the baseline, are estimated to be approximately 54.6 hours for an Attorney, 0.5

NMS Stock ATSs or approximately 385 hours per year (385.2 hours rounded down to 385) when annualized over three years.¹¹

b. Form ATS-N Amendments

Rule 304 also includes a process for NMS Stock ATSs to file amendments to Form ATS-N to provide the public notice of changes to their operations and the ATS-related activities of the broker-dealer operator of the NMS Stock ATS and its affiliates. Rule 304(a)(2) of Regulation ATS contain four general categories of required amendments for Form ATS-N. In the NMS Stock ATS Adopting Release, we estimated that NMS Stock ATSs would submit 3 amendments, on average, each year.¹² Based on our experience with NMS Stock ATSs filing Form ATS-N amendments, we now estimate that the 35 respondents¹³ would file 5 Form ATS-N amendments each year,¹⁴ for an estimated total of 175 Form ATS-N amendments.¹⁵

hours for a Chief Compliance Manager, 34.55 hours for a Compliance Manager, 30.25 hours for a Senior Systems Analyst, 1 hour for a Senior Marketing Manager, and 7.5 hours for a Compliance Clerk. This estimated burden for a Form ATS-N includes the hour burden associated with completing Part III, Items 24 and 25 of Form ATS-N. We believe that the majority of NMS Stock ATSs would not be required to complete those items of the form. We note that the NMS Stock ATS Adopting Release (and the 2018 PRA Submission for Rule 304) stated that the Commission estimated that Form ATS-N would add an additional 107.4 hours to the baseline for each ATS. See NMS Stock ATS Adopting Release, supra note 2, at 38881, n.1228 and accompanying text. However, the actual total of the estimated burden hours of the items in Form ATS-N in the NMS Stock ATS Adopting Release is 108.4 (not 107.4). See id. at 38868–81.

¹¹ Currently, there are 35 NMS Stock ATSs that have Form ATS-N on file with the Commission. Based on the number of NMS Stock ATSs that filed initial Form ATS-N with the Commission on 2020 and 2021, we estimate that there will be 3 new NMS Stock ATSs each year. We therefore estimate that 9 entities would be required to complete initial Form ATS-N over the next three year. The annual one-time burden is annualized over a three-year period for an annual per-ATS burden of 42.8 hours and an industry-wide aggregate burden of 385.2 burden hours.

¹² See NMS Stock ATS Adopting Release, supra note 2, at Section IX.D.2.b.ii.B.

¹³ As discussed above, there are currently 35 NMS Stock ATSs that have Form ATS-N on file with the Commission. We estimate that there will be 3 new NMS Stock ATSs each year, and that 3 respondents will file a cessation of operation report on Form ATS-N each year. See infra Section A.12.c. Accordingly, we estimate that 35 entities would be required to Form ATS-N amendments.

¹⁴ In the fiscal year of 2020, NMS Stock ATSs filed 185 Form ATS-N amendments, or an average of 5 amendments per ATS.

¹⁵ 35 respondents x 5 Form ATS-N amendments per year = 175 Form ATS-N amendments

We estimate that the current hour burden related to an amendment to Form ATS-N is approximately 9.4 hours per amendment.¹⁶ This would result in an aggregate annual burden for all NMS Stock ATSS of approximately 1,645 hours.¹⁷

c. Notice of Cessation on Form ATS-N

From April 2019 through June 2021, there have been an average of 3 NMS Stock ATSS that ceased operations each year. Although it is unclear how many NMS Stock ATSS might cease operations each year going forward, for purposes of providing a PRA burden estimate, we are estimating that this average would generally remain the same for NMS Stock ATSS as economic conditions, business reasons, and other factors may cause some NMS Stock ATSS to cease operations. Accordingly, we estimate that 3 respondents may file a cessation of operation report on Form ATS-N each year.

For Form ATS-N, the requirement is to check the appropriate box indicating that the ATS is ceasing operations and to provide the date the ATS expects to cease operating. We estimate that the average compliance burden for each respondent will be approximately 2 hours.¹⁸ This will result in a total annual burden of approximately 6 hours for all NMS Stock ATSS that choose to cease operations and submit a cessation of operation report on Form ATS-N.¹⁹

d. Public Posting on NMS Stock ATS's Website

Rule 304(b)(3) will 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 Rule 304(b)(2). We estimate that each new NMS Stock ATS will incur an initial, one-time burden to program and configure its website to post the required direct URL hyperlink pursuant to Rule 304(b)(3). We estimate that this initial, one-time burden would be approximately 2 hours for each new NMS Stock ATS or approximately 0.67 hours per new NMS Stock ATS when annualized over three years, in part because many broker-dealer operators currently maintain a website for their NMS Stock ATSS.²⁰ We estimate that nine new NMS Stock ATSS over three years would incur this initial, one-time burden each year for a total initial one-time burden of approximately 18 hours or 6 hours per year when annualized over three

per year.

¹⁶ Attorney at 5.5 hours + Compliance Manager at 2 hours + Compliance Clerk at 1.9 hours = 9.4 burden hours. These burden hours include a burden of 0.4 hours to provide a brief summary of the changes on the cover page of Form ATS-N and prepare as Exhibit 3 one redline that indicates changes to "yes" or "no" answers or additions to or deletions to Parts I, II, and III. See NMS Stock ATS Adopting Release, supra note 2, at 38881-82.

¹⁷ 175 amendments per year x 9.4 hours = 1,645 aggregate burden hours.

¹⁸ Attorney at 1.5 hours + Compliance Clerk at 0.5 hours = 2 burden hours.

¹⁹ 2 burden hours x 3 NMS Stock ATSS = 6 aggregate annual burden hours.

²⁰ Senior Systems Analyst at 2 burden hours.

years.²¹

e. Aggregate Respondent Reporting Burdens

The estimated average annual aggregate burden for alternative trading systems to comply with Rule 304 would be approximately 2,042 hours. This estimate is broken down as follows:

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 Annual Industry Burden
Form ATS-N Initial Operation Report (Rule 304)	Reporting	9	1	128.40	42.80	0.00	42.80	42.80	385
Form ATS-N Amendments (Rule 304)	Reporting	35	5	0.00	0.00	47.00	9.40	47.00	1,645
Form ATS-N Cessation of Operations Report (Rule 304)	Reporting	3	1	0.00	0.00	2.00	2.00	2.00	6
Public Posting on NMS Stock ATS's Website (Rule 304)	Reporting	9	1	2.00	0.67	0.00	0.67	0.67	6
TOTAL HOURLY BURDEN FOR ALL RESPONDENTS								92.47	2,042

13. Costs to Respondents

Not applicable. We do not anticipate that respondents will have to incur any capital or start-up costs, nor any additional operational or maintenance costs (other than as provided in Item 12), to comply with the collection of information requirements associated with Rule 304 and Form ATS-N.

14. Cost to Federal Government

Not applicable. The amendments to Regulation ATS as well as Rule 304 and Form ATS-N will not result in any costs to the federal government beyond normal full-time employee labor

²¹ Senior Systems Analyst at 2 hours x 3 new NMS Stock ATSS x 3 years = 18 burden hours. This burden is annualized over a three-year period for an annual burden of 2 burden hours per ATS, and an aggregate industry-wide burden of 6 burden hours.

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

The estimated hour burden associated with the filing of amendments to Form ATS-N increased because the estimated number of amendments per respondent increased but the total estimated annual time burden associated with Rule 304 decreased from approximately 2,942 hours to approximately 2,042 hours primarily because the 2018 estimate included a one-time filing burden for 41 existing NMS Stock ATSS to file a Form ATS-N. These one-time burdens have been satisfied.

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 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. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.