

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for Regulation
of Alternative Trading Systems – Rule 301

(OMB Control No. 3235-0509)

Proposed Partial Revision

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 Securities Exchange Act of 1934 (“Exchange Act”) and Exchange Act Rule 3b-16(a) thereunder to choose between registering as a national securities exchange or registering as a broker-dealer and complying with Regulation ATS.¹ 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 304.⁶ 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.⁷ 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. 83663 (July 18, 2018), 83 FR 38768 (August 7, 2018) (“NMS Stock ATS Adopting Release”); Securities Exchange Act Release No. 76474 (November 18, 2015), 80 FR 80998, 81004 (December 28, 2015) (“NMS Stock ATS Proposing Release”).

² Rule 300 does not include a collection of information.

³ See OMB Control No. 3235-0509.

⁴ See OMB Control No. 3235-0510.

⁵ See OMB Control No. 3235-0505.

⁶ See OMB Control No. 3235-0763.

⁷ 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 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;

activity that the ATS must make. Rule 303 establishes requirements for the preservation of certain records that ATSs must make.⁸

The equity markets have evolved substantially since the adoption of Regulation ATS, and the Commission has adopted amendments to Regulation ATS to improve the operational transparency of ATSs that trade in NMS stocks (“NMS Stock ATSs”).⁹ The majority of substantive changes in the new amendments to Regulation ATS are in Rule 304 and 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.¹⁰ Form ATS-N requires 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.¹¹ 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.

In the NMS Stock ATS Adopting Release, we adopted related amendments to existing

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.

⁸ The Commission is submitting separate information collections for Rules 301, 303, and 304 of Regulation ATS because we consider this method to be the most practical and efficient manner in which to organize the collections. The collections associated with each rule serve different purposes: the collection in Rule 301 relates in large part to Form ATS; Rule 304 relates primarily to Form ATS-N; and Rule 303 is the associated record preservation requirements.

⁹ See NMS Stock ATS Adopting Release, supra note **Error! Bookmark not defined.**

¹⁰ We have adopted conforming amendments to Rule 300 of Regulation ATS and Exchange Act Rule 3a1-1(a).

¹¹ Form ATS-N expands on the information contained in Form ATS and is made public. The Commission continues to collect information for Form ATS for non-NMS Stock ATSs and Form ATS-R. Both Form ATS and Form ATS-R 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 (“SROs”).

Rule 301 of Regulation ATS. Specifically, we amended Rule 301(b)(10) of Regulation ATS¹² to require every ATS to memorialize in writing its safeguards and procedures to protect subscribers' confidential trading information. Such safeguards and procedures were already mandated under Rule 301(b)(10); however, the rule did not require that the safeguards and procedures be memorialized in writing. We believe that the requirement (which will apply to all ATSs and not just NMS Stock ATSs) to memorialize in writing the safeguards and procedures to protect subscribers' confidential trading information help assist ATSs in more effectively complying with their existing legal requirements under Regulation ATS; in particular, the requirements to protect the confidentiality of subscribers' trading information under Rule 301(b)(10) of Regulation ATS.

2022 Proposed Rulemaking Affecting this OMB Control Number

In January 2022, the Commission proposed amendments to Regulation ATS and Exchange Act Rule 3b-16, which defines certain terms in the definition of "exchange" under section 3(a)(1) of the Exchange Act.¹³ In April 2023, the Commission provided supplemental information and reopened the comment period for the 2022 Reg ATS Proposing Release.¹⁴ These proposed amendments would increase the number of respondents for the collections of information in several rules, including this one. This revision also increases certain hour burdens related to proposed changes to Forms ATS and ATS-R, as described below.

The Commission assumed in both the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases that, under the proposed amendments, systems that would be newly captured under the proposed definition of "exchange" will choose to register as broker-dealers and comply with the conditions of Regulation ATS rather than register as a national securities exchange, because of the lighter regulatory requirements imposed on ATSs, as compared to registered exchanges.¹⁵ Accordingly, this proposed revision to the PRA analysis for Rule 301 increases the estimated number of respondents, in light of the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases, to include both (1) Government Securities ATSs that were

¹² See 17 CFR 242.301(b)(10).

¹³ See Securities Exchange Act Release No. 94062 (Jan. 26, 2022), 87 FR 15496 (Mar. 18, 2022) ("2022 Reg ATS Proposing Release"). The Commission proposed to, among other things: (1) amend Rule 3b-16 under the Exchange Act to, among other things, include within the definition of "exchange" systems that offer the use of non-firm trading interest and provide non-discretionary protocols to bring together buyers and sellers of securities; (2) eliminate the exemption from compliance with Regulation ATS for ATSs that trade government securities as defined under Section 3(a)(42) of the Exchange Act ("government securities") or repurchase and reverse repurchase agreements on government securities ("Government Securities ATSs").

¹⁴ See Securities Exchange Act Release No. 97309 (Apr. 14, 2023), 88 FR 29448 (May 5, 2023) ("2023 Reg ATS Reopening Release"). The Commission reopened the comment period for the 2022 Reg ATS Proposing Release and provided supplemental information and economic analysis regarding trading systems that trade crypto asset securities that would be newly included in the definition of "exchange" under the proposal.

¹⁵ See 2022 Reg ATS Proposing Release, supra note 13, at 15618 n.1056 and accompanying text.

formerly not required to comply with Regulation ATS under the 17 CFR 240.3a1-1(a)(3) (Exchange Act Rule 3a1-1(a)(3)) exemption and (2) systems that would be newly captured under the proposed definition of “exchange” and choose to register as broker-dealers and comply with the conditions of Regulation ATS rather than register as national securities exchanges. Additionally, this proposed revision would also increase certain hour burdens related to proposed changes to Forms ATS and ATS-R, as described below, which would apply to new and existing respondents.

2. Purpose and Use of the Information Collection

Rule 301 of Regulation ATS sets forth the conditions that an ATS must comply with to be exempt pursuant to Exchange Act Rule 3a1-1(a)(2). Rule 301 requires an ATS to register as a broker-dealer. Rule 301 further requires all ATSs that wish to comply with Regulation ATS to file an initial operation report on Form ATS. The initial operation report requires information regarding operation of the system including the method of operation, access criteria, and the types of securities traded. ATSs are also required to amend Form ATS to the Commission, describing material changes to the system.

In addition, Regulation ATS requires ATSs to provide quarterly transaction reports on Form ATS-R. ATSs are also required to file cessation of operations reports on Form ATS. 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.

ATSs with significant volume in certain categories of securities are required to comply with requirements for fair access and systems capacity, integrity and security pursuant to Rule 301(b)(5) (“Fair Access Rule”) and Rule 301(b)(6) (“Systems Capacity, and Integrity Rule”) of Regulation ATS, respectively. An ATS subject to the Fair Access Rule is required to establish standards for granting access to trading on the system 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 the reasons for each applicant for denying or limiting access. In addition, upon a decision to deny or limit a subscriber’s access to the system, an ATS is required to provide notice to the subscriber of the denial or limitation and their right to an appeal to the Commission. An ATS subject to the System Capacity, and Integrity Rule is required to preserve any records made in the process of complying with the systems capacity, integrity, and security requirements. In addition, such ATSs are required to notify Commission staff of material systems outages and significant systems changes.

We use the information provided pursuant to Rule 301 to comprehensively monitor the growth and development of ATSs to confirm that investors effecting trades through the systems are adequately protected, and that the systems do not impede the maintenance of fair and orderly securities markets or otherwise operate in a manner that is inconsistent with the federal securities laws. In particular, the information collected and reported to us by ATSs enables 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 information provided on Forms ATS and ATS-R, the Commission would not have readily available information on a regular basis in a format that will allow it to determine whether such systems have adequate safeguards. Further, in the absence of the Rule, the

Commission would not regularly obtain uniform trading data to identify areas where surveillance by SROs 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 Rule 301, the Commission would be 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.

Furthermore, in connection with the NMS Stock ATS Adopting Release, the requirement for an ATS to reduce to writing those safeguards and procedures under Rule 301(b)(10) helps 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 enables 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

Currently, ATSs are required to submit paper submissions of Forms ATS and ATS-R to the Commission.¹⁶ In the 2022 Reg ATS Proposing Release, the Commission proposed to revise the instructions to Form ATS and Form ATS-R to require that they be submitted electronically via the Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR").¹⁷ The Commission believes that, among other benefits, the electronic filing of Forms ATS and ATS-R would increase efficiencies and decrease filing costs for ATSs (i.e., ATSs would no longer be required to print and mail paper filings) and for the Commission staff when undertaking a review of these forms.

4. Duplication

Because most ATSs would maintain much of the information required by Rule 301, no duplication occurs with respect to such information. To the extent that Rule 301 establishes new collections of information, there is no similar information available that could replace the information required.

The Commission has adopted Rule 301(b)(2)(viii) of Regulation ATS to provide that an NMS Stock ATS shall file the reports and amendments required by Rule 304 of Regulation ATS 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."¹⁸ Because the Commission has adopted rules to govern the content and manner in which an NMS Stock ATS would be required to disclose information to the public on Form ATS-N, existing Rule 301(b)(2) would be duplicative of the amendments and is no longer required for NMS Stock ATSs.

¹⁶ See 17 CFR 242.301(b)(2)(vii).

¹⁷ See 2022 Reg ATS Proposing Release, supra note **Error! Bookmark not defined.**, Section V.B.

¹⁸ See 17 CFR 242.301(b)(2).

Because Regulation SCI would duplicate the requirements under Rule 301(b)(6) of Regulation ATS as applied to ATSS that trade NMS stocks and equity securities that are not NMS stocks, the Commission amended Rule 301(b)(6) so that it will no longer apply to ATSS that trade NMS stocks and equity securities that are not NMS stocks.

5. Effect on Small Entities

Rule 301 is one 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 ATSS that have significant volume. The filing requirements on Forms ATS and ATS-R, however, apply to all ATSS 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. We estimate that 16 ATSS that would register as broker-dealers are small entities as currently defined by the Exchange Act that would be subject to the filing requirements of Form ATS. We further estimate that 17 ATSS are small entities that would be subject to the filing requirements of Form ATS-R.¹⁹

The amendment to Rule 301(b)(10) would apply to 17 small entities that are ATSS (including NMS Stock ATSS and non-NMS Stock ATSS), but we believe that there would be no significant economic impact on these entities because, to the extent they do not have these safeguards and procedures in writing, any resulting burden is minimal because the ATS would only be memorializing its existing safeguards and procedures.

Because the risks that the Commission monitors in the operation of an ATS occur in any size business, we have determined that the Rule must apply in the same manner to small as well as large entities. Hence, the Rule does not contain an exemption for small entities. However, we note that Regulation ATS imposes additional duties on ATSS that have large volumes, which are not likely to be such small entities.

6. Consequences of Not Conducting Collection

Without the information provided on Forms ATS and ATS-R, we would not have readily available information on a regular basis in a format that will allow us to determine whether such systems have adequate safeguards. Further, in the absence of the amendments to Regulation ATS adopted in the NMS Stock ATS Adopting Release, we would not regularly obtain uniform trading data to identify areas where surveillance by SROs 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 Rule 301, we would be limited in our ability to comply with our statutory obligations to provide for the protection of

¹⁹ We estimate that 1 of the estimated 17 small entities is an NMS Stock ATS that would not be subject to the filing requirements of Form ATS (and instead comply with Rule 304).

investors and promote the maintenance of fair and orderly markets.

Additionally, requiring ATSs to reduce to writing the safeguards and procedures required by Rule 301(b)(10) of Regulation ATS, as well as its oversight procedures to ensure that such safeguards and procedures are followed, strengthens the effectiveness of the ATS's safeguards and procedures and will 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.

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

In the 2022 Reg ATS Proposing Release, the Commission solicited comment on the accuracy of the burden of the proposed revisions to the seven collections of information contained in the proposal.²⁰ The Commission did not receive comments specifically relating to the collection of information for this OMB Control Number, but it did receive general comments questioning whether the Commission had underestimated the number of newly-designated ATSs, particularly systems that trade crypto asset securities and systems commenters characterize as decentralized finance or “DeFi,”²¹ which would, in turn, affect the number of estimated respondents for this collection of information. In the 2023 Reg ATS Reopening Release, the Commission increased the estimated number of respondents for this collection of information specifically to account for the types of systems raised by commenters, as detailed below. The Commission has not yet received specific comments related to the PRA analysis contained in the 2023 Reg ATS Reopening Release. The Commission will consider all comments received before adoption of a final rule.

9. Payment or Gift

The respondents receive no payments or gifts.

²⁰ See 2022 Reg ATS Proposing Release, *supra* note 13, at 15593.

²¹ See Letter from Robert Toomey, Managing Director, Associate General Counsel, SIFMA, dated Jun. 13 2022, at 5-6; Letter from Gus Coldebella and Gregory Xethalis, dated Apr. 19, 2022, at 4-5; Letter from Sheila Warren, Chief Executive Officer, Crypto Council for Innovation, dated Apr. 18, 2022, at 4; Letter from Kristin Smith, Executive Director, and Jake Chervinsk, Head of Policy, Blockchain Association, dated Apr. 18, 2022, at 7-8; Letter from Renata K. Szkoda, Chair, Global Digital Asset & Cryptocurrency Association, dated Apr. 18, 2022, at 6; Letter from LeXpunK, dated Apr. 18, 2022, at 11; Letter from Miller Whitehouse-Levine, Policy Director, DeFi Education Fund, dated Apr. 18, 2022, at 16-17; Letter from Paul Grewal, Chief Legal Officer, Coinbase, dated Apr. 18, 2022, at 6; Letter from Teana Baker-Taylor, Chief Policy Officer, Chamber of Digital Commerce, et al., dated Mar. 24, 2022, at 5; all available at <https://www.sec.gov/comments/s7-02-22/s70222.htm>.

10. Confidentiality

Form ATS and Form ATS-R are available only for the examination of the Commission staff, state securities authorities, and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 522 (“FOIA”), and the SEC’s rules thereunder (17 CFR 200.80(b)(4)(iii)), the 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.

12. Burden of Information Collection

a. Form ATS – Initial Operations Report

An ATS operating pursuant to the Exchange Act Rule 3a1-1(a)(2) exemption must file an Initial Operations Report on Form ATS prior to commencing operations. We continue to estimate that approximately 49 respondents²² will file an Initial Operations Report on Form ATS each year, and that the average compliance burden for each respondent would be approximately 20.5 hours, comprised of 13 hours of in-house attorney work and 7.5 hours for a compliance clerk.²³ Thus, the total time burden per year is approximately 1,004.5 hours (49 responses x 20.5 hours = 1,004.5 hours).

b. Form ATS – Periodic Amendments to Update Information

An ATS operating pursuant to the Exchange Act Rule 3a1-1(a)(2) exemption must file amendments to the Initial Operations Report on Form ATS to provide notice of material systems changes and reflect other changes. We continue to estimate that each ATS that files Form ATS

²² The Commission’s tally of such reports filed in 2019 and 2020 was 17. The Commission estimates 96 additional respondents in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases. See 2022 Reg ATS Proposing Release, *supra* note 13, at 15588-89 (estimating 59 existing respondents that would continue to file on Form ATS); 2023 Reg ATS Reopening Release, *supra* note 14, at 29466-67 estimating 37 newly-designated ATSs required to file on Form ATS). Annualized over 3 years, this number would be 32 (96 respondents / 3 years). Accordingly, the total number of respondents per year would be 49 (17 + 32).

²³ The Commission is proposing amendments to Part I of Form ATS, which would add an additional burden of 0.5 hours per filing using the modernized form (Compliance Clerk at 0.5 hours), an increase of 0.5 hours from the currently approved baseline burden of 20 hours for average initial compliance. See 2022 Reg ATS Proposing Release, *supra* note 13, at 15588 n.759 and accompanying text.

will file 2 amendments yearly. We estimate that the average compliance burden for each response would be approximately 2.5 hours, comprised of 1.5 hours for an in-house attorney and 1 hour for a compliance clerk, for a yearly burden of 5 hours per respondent (2 responses x 2.5 hours).²⁴ The Commission estimates in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases that in addition to the approximately 60 current Form ATS filers that would be required to continue filing on Form ATS,²⁵ there would be 37 new Form ATS respondents,²⁶ for a total of 97 respondents. Thus, the total time burden per year is approximately 485 hours (97 responses x 5 hours = 485 hours).

c. Form ATS-R – Quarterly Reports

An ATS operating pursuant to the Exchange Act Rule 3a1-1(a)(2) exemption (both NMS Stock ATS and non-NMS Stock ATS) must file quarterly reports on Form ATS-R. Each of the estimated 147 respondents -- approximately 94 existing ATSS²⁷ and 53 additional respondents estimated in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases²⁸ -- will file 4 quarterly reports per year for 588 responses (147 x 4). We estimate that the average time burden for each response would be approximately 4.75 hours, comprised of 3 hours for an in-house attorney, .25 hours for a compliance manager, and 1.5 hours for a compliance clerk.²⁹ This would result in a total time burden per year of approximately 2,793 hours (4.75 hours x 588 responses).

Under Rule 304 of Regulation ATS, 2 ATSS that trade in NMS stocks and non-NMS stocks are required to file four additional quarterly reports for their NMS stock trading activity. Although we do not believe that those ATSS will incur any additional burden to collect the required information because they currently assemble that information when preparing their current Form ATS-R filings, we believe that they will incur an additional 0.5 hour burden to

²⁴ The Commission is proposing amendments to Part I of Form ATS, which would add an additional burden of 1 hour per filing using the modernized form (Compliance Clerk at 0.5 hours x 2 responses a year), an increase of 1 hour from the currently approved baseline burden of 4 hours for average ongoing compliance. See 2022 Reg ATS Proposing Release, supra note 13, at 15588 n.760 and accompanying text.

²⁵ See 2022 Reg ATS Proposing Release, supra note 13, at 15588-89.

²⁶ See 2023 Reg ATS Reopening Release, supra note 14, at 29466-67 (estimating 37 newly-designated ATSS).

²⁷ This is based on the number of ATSS as of September 30, 2021.

²⁸ See 2022 Reg ATS Proposing Release, supra note 13, at 15589-90 (estimating 7 Government Securities ATSS currently exempted from the requirements of Regulation ATS); 2023 Reg ATS Reopening Release, supra note 14, at 29467 (estimating 46 newly-designated ATSS).

²⁹ The Commission is proposing amendments to Form ATS-R, which would add an additional burden of 0.75 hours per filing (Compliance Manager at 0.25 hours + Compliance Clerk at 0.5 hours), and therefore the average compliance burden for each Form ATS-R filing would be 4.75 hours., an increase of 0.75 hours from the currently approved baseline burden of 4 hours for average initial compliance. See 2022 Reg ATS Proposing Release, supra note 13, at 15590 n.768 and accompanying text.

divide their trading statistics between two forms and file each form separately. Consequently, we estimate that the aggregate annual burden of filing Forms ATS-R should be increased by 4 hours to account for the increased filings by those ATSs that effect transactions in both NMS stocks and non-NMS stocks (2 NMS Stock ATSs x 4 filings annually x 0.5 hours = 4 hours).³⁰ Thus, the total time burden per year for Form ATS-R is approximately 2,816 hours (2,812 hours + 4 hours).³¹

d. Form ATS - Cessation of Operations Report

An ATS operating pursuant to the Exchange Act Rule 3a1-1(a)(2) exemption must file a Cessation of Operations report on Form ATS to notice that it has ceased operations. We estimate that 6 ATSs will be required to file a cessation of operations report each year, and that the average time burden for each response would be 2 hours, comprised of 1.5 hours for an in-house attorney and 0.5 hours for a compliance clerk. Thus, the total time burden per year is approximately 12 hours (6 responses x 2 hours = 12 hours).

e. Fair Access Standards Recordkeeping

An ATS operating pursuant to the Exchange Act Rule 3a1-1(a)(2) exemption that exceeds a certain volume threshold in a certain category of security and is subject to Rule 301(b)(5) (fair access requirements) must establish standards for granting access on its trading system. Such ATSs are required to make and keep such criteria, so such a requirement creates a recordkeeping burden for ATSs. We continue to estimate that 2 existing ATSs that register as broker-dealers and comply with Regulation ATS would meet the volume thresholds that trigger fair access obligations annually. We estimate in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases that an additional 6 ATSs annually would be subject to Fair Access standards,³² for a total of 8 respondents (2 + 6). We continue to estimate that the average time burden for each response would be approximately 5 hours of in-house professional work. Thus, the total time burden per year is approximately 95 hours (8 responses x 5 hours = 40 hours).

f. Fair Access Notices

An ATS operating pursuant to the Exchange Act Rule 3a1-1(a)(2) exemption that are subject to the requirements of Rule 301(b)(5) (fair access requirements) must report on Form ATS-R³³ any decision to grant, deny or limit the user's access to the system. We continue to estimate that 2 existing ATSs that register as broker-dealers and comply with Regulation ATS would meet the volume thresholds that trigger fair access obligations annually. We estimate a one-time addition of 6

³⁰ ((Attorney at .25 hour + Compliance Clerk at .25 hour) x (4 filings annually)) x 2 NMS Stock ATSs = 4 aggregate burden hours.

³¹ The total responses on Form ATS-R are 384 (376 + 8 = 384 responses).

³² The Regulation ATS proposals estimate an additional 17 respondents. See 2022 Reg ATS Proposing Release, supra note 13, at 15589 (estimating 7 Government Securities ATSs); 2023 Reg ATS Reopening Release, supra note 14, at 29467 (estimating 10 newly-designated ATSs). Annualized over 3 years, the estimate is 6 new respondents (17 / 3 = 5.67, rounded up to 6).

³³ Forms ATS-R are filed with the Commission on a confidential basis.

respondents annually in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases, for a total number of 8 new respondents annually for the three-year period following adoption of the amendments in those releases.³⁴ We continue to estimate that these ATSs would have to grant/deny/limit a user's access to the system approximately 27 times per year, and the average time burden for each response would be 1 hour of in-house professional work. Thus, the total time burden per year is approximately 216 hours (8 respondents x 27 responses each x 1 hour = 216 hours).

g. Systems Capacity, Integrity and Security Recordkeeping

An ATS operating pursuant to the Exchange Act Rule 3a1-1(a)(2) exemption that exceeds a certain volume threshold in a certain category of security is subject to Rule 301(b)(6) must make records relating to any steps taken to comply with systems capacity, integrity and security requirements under Rule 301.³⁵ We continue to estimate that 1 ATS that is operating pursuant to the Exchange Act Rule 3a1-1(a)(2) exemption would trigger this requirement annually. We estimate a one-time addition of 1 respondent annually in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases, for a total number of 2 new respondents annually for the three-year period following adoption of the amendments in those releases.³⁶ We continue to estimate that the average time burden for each response would be approximately 10 hours of in-house professional work. Thus, the total time burden per year is approximately 20 hours (2 respondents x 10 hours = 20 hours).

h. Systems Outage Notices

An ATS operating pursuant to the Exchange Act Rule 3a1-1(a)(2) exemption that exceeds certain volume thresholds and is subject to Rule 301(b)(6) must provide a notice to the Commission to report any systems' outages. We continue to estimate that 1 ATS that operates pursuant to the Exchange Act Rule 3a1-1(a)(2) exemption would meet the volume thresholds that trigger systems' outage notice obligations annually. We estimate a one-time addition of 1 respondent annually in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases, for a total number of 2 new respondents annually for the three-year period following adoption of the

³⁴ The Regulation ATS proposals estimate an additional 17 respondents. See 2022 Reg ATS Proposing Release, supra note 13, at 15589 (estimating 7 Government Securities ATSs); 2023 Reg ATS Reopening Release, supra note 14, at 29467 (estimating 10 newly-designated ATSs). Annualized over 3 years, this number would be 6 ($17 / 3 = 5.67$, rounded up to 6). Accordingly, the total number of respondents per year would be 8 (2 + 6).

³⁵ See supra note 7 (explaining that ATSs that trade NMS stock and equity securities that are not NMS stock are not required to comply with Rule 301(b)(6) pursuant to Regulation SCI).

³⁶ The 2022 Reg ATS Proposing Release estimates an additional 2 respondents. See 2022 Reg ATS Proposing Release, supra note 13, at 15589. Annualized over 3 years, this number would be 1 ($2 / 3 = 0.67$, rounded up to 1). Accordingly, the total number of respondents per year would be 2 (1 + 1).

amendments in those releases.³⁷ We continue to estimate that such respondents would meet the necessary volume thresholds approximately 5 times a year, and that the average compliance burden for each response would be .25 hours of in-house professional work, for an individual burden of 1.25 hours a year. Thus, the total time burden per year is approximately 2.5 hour (2 respondents x 1.25 hours = 2.5).³⁸

i. Written Safeguards and Procedures – Ongoing Burden

All existing ATSS, NMS Stock ATSS and non-NMS Stock ATSS, are required to update and preserve written safeguards and written procedures to protect subscribers' confidential trading information. We continue to estimate that the average annual, ongoing time burden per ATS to update and preserve written safeguards and written procedures to protect subscribers' confidential trading information, as well as to update and preserve the written standards controlling employees of the ATS trading for their own account and the written oversight procedures, would be approximately 4 hours. We estimate approximately 94 existing ATSS annually³⁹ and 18 additional respondents annually in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases,⁴⁰ for a total of 112 respondents. As a result, we estimate that the total ongoing time burden per year for all ATSS would be approximately 448 hours.⁴¹

j. Written Safeguards and Procedures – Initial Burden

In addition to filing an initial operations report prior to commencing operations, every new ATS must memorialize in writing its safeguards and procedures to protect subscribers' confidential trading information. We continue to estimate 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 8 hours. As indicated in 12(a) above, we estimate that there would be approximately 17 new respondents per year in each of the next 3 years that would file an initial operations report and thus become subject to this written safeguards and procedures requirement. We estimate a one-time addition of 18 respondents annually in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases, for a total number of 35 new respondents annually for the three-year period following adoption of the amendments in those releases.⁴² The total annual time

³⁷ See id.

³⁸ Only ATSS that trade corporate bonds or municipal securities can be subject to 301(b)(6).

³⁹ This is based on the number of ATSS as of September 30, 2021.

⁴⁰ See 2022 Reg ATS Proposing Release, supra note 13, at 15590 (estimating 7 Government Securities ATSS currently exempted from the requirements of Regulation ATS); 2023 Reg ATS Reopening Release, supra note 14, at 29467 (estimating 46 newly-designated ATSS). Annualized over 3 years, this number would be 18 (53 respondents / 3 years = 17.67, rounded up to 18). Accordingly, the total number of respondents per year would be 112 (94 + 18).

⁴¹ (Attorney at 2 hours + Compliance Clerk at 2 hours) x 112 ATSS = 448 burden hours.

⁴² See 2022 Reg ATS Proposing Release, supra note 13, at 15590 (estimating 7 Government Securities ATSS currently exempted from the requirements of Regulation ATS); 2023

burden associated with this requirement would thus be approximately 280 hours per year.⁴³

k. Aggregate Respondent Reporting Burdens

The estimated average annual aggregate burden for ATSS to comply with Rule 301 of Regulation ATS would be approximately 5,305 hours per year. This estimate is broken down as follows:

Rule	Burden Type	Number of respondents	Number of annual responses per respondent	Time per response (hours)	Total burden per burden type
Rule 301(b)(2) – Initial Operations Report	Reporting	49	1	20.5	1,004.5 hours
Rule 301(b)(2) – Form ATS amendment	Reporting	97	2	2.5	485 hours
Rule 301(b)(9) – Quarterly Reports	Reporting	147	4	4.75	2,793 hours
Rule 301(b)(9) – Quarterly Reports for both ATSS with NMS and non-NMS volume	Reporting	2	4	0.5	4 hours
Rule 301(b)(2) – Cessation of	Reporting	6	1	2	12 hours

Reg ATS Reopening Release, supra note 14, at 29467 (estimating 46 newly-designated ATSS). Annualized over 3 years, this number would be 18 (53 respondents / 3 years = 17.67, rounded up to 18). Accordingly, the total number of respondents per year would be 35 (17 + 18).

⁴³ (Attorney at 7 hours + Compliance Clerk at 1 hour) x 35 ATSS = 280 burden hours.

Operations Report					
Rule 301(b)(5) – Fair Access standards recordkeeping	Record Keeping	8	1	5	40 hours
Rule 301(b)(5) – Fair Access Notices	Reporting	8	27	1	216 hours
Rule 301(b)(6) – Systems Capacity, Integrity and Security recordkeeping	Record Keeping	2	1	10	20 hours
Rule 301(b)(6) – System Outages Notice	Record Keeping	2	5	0.25	2.5 hours
Rule 301(b)(10) – Updating Written Safeguards and Procedures (Ongoing)	Record Keeping	112	1	4	448 hours
Rule 301(b)(10) – Written Safeguards and Procedures (Initial)	Record Keeping	35	1	8	280 hours
Total Aggregate Burden					5,305 hours

13. Costs to Respondents

None. There are no capital and start-up costs or operation and maintenance costs.

14. Cost to Federal Government

None.

15. Changes in Burden

As compared to the time burdens identified in the Commission’s 2021 PRA Submission, the estimated time burdens associated with Rule 301 of Regulation ATS have increased 2,618 hours from 2,687 to 5,305 hours. This is primarily as a result of an increase in the number of respondents estimated in the 2022 Reg ATS Proposing and 2023 Reopening Releases, as detailed above, but also a result of an increase in the hourly burden associated with filing on modernized Forms ATS and ATS-R due to proposed changes to those forms. This increase is broken down as follows:

Information Collection Requirement	Proposed Annual Industry Burden	Annual Industry Burden Previously Approved	Change in Burden	Reason for Change
Rule 301(b)(2) – Initial Operations Report	1,004.5 hours	340 hours	664.50 hours	Increase in number of respondents from 17 to 49 and individual burden from 20 hours to 20.5 hours due to proposed rulemaking.
Rule 301(b)(2) – Form ATS amendment	485 hours	240 hours	245 hours	Increase in number of respondents from 60 to 97 and individual burden from 2 hours to 2.5 hours due to proposed rulemaking.
Rule 301(b)(9) – Quarterly Reports	2,793 hours	1,504 hours	1,289 hours	Increase in number of respondents from 94 to 147 and individual burden from 4 hours to 4.75 hours due to proposed rulemaking.
Rule 301(b)(5) – Fair Access standards recordkeeping	40 hours	10 hours	30 hours	Increase in number of respondents from 2 to 8 due to proposed rulemaking.

Rule 301(b)(5) – Fair Access Notices	216 hours	54 hours	162 hours	Increase in number of respondents from 2 to 8 due to proposed rulemaking.
Rule 301(b)(6) – Systems Capacity, Integrity and Security recordkeeping	20 hours	10 hours	10 hours	Increase in number of respondents from 1 to 2 due to proposed rulemaking.
Rule 301(b)(6) – System Outages Notice	2.5 hours	1 hours	1.5 hours	Increase in number of respondents from 1 to 2 due to proposed rulemaking.
Rule 301(b)(10) – Updating Written Safeguards and Procedures (Ongoing)	448 hours	376 hours	72 hours	Increase in number of respondents from 94 to 112 due to proposed rulemaking.
Rule 301(b)(10) – Written Safeguards and Procedures (Initial)	280 hours	136 hours	144 hours	Increase in number of respondents from 17 to 35 due to proposed rulemaking.
TOTAL CHANGE IN BURDEN			2,618 hours	

16. Information Collection Planned for Statistical Purposes

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

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. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.