

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 302

(OMB Control No. 3235-0510)
Proposed Partial Revision

A. JUSTIFICATION

1. Necessity of Information Collection

Regulation ATS sets forth a regulatory regime for “alternative trading systems” (“ATSs”). An entity that meets the definition of an exchange must register, pursuant to Section 5 of the Securities Exchange Act of 1934 (“Exchange Act”), as a national securities exchange under Section 6 of the Exchange Act¹ or operate pursuant to an appropriate exemption.² One of the available exemptions is for ATSs.³ Exchange Act Rule 3a1-1(a)(2) exempts from the definition of “exchange” under Section 3(a)(1) an organization, association, or group of persons that complies with Regulation ATS.⁴ Regulation ATS requires an ATS to, among other things, register as a broker-dealer with the Securities and Exchange Commission (“SEC”), file a Form ATS with the Commission to notice its operations, and establish written safeguards and procedures to protect subscribers’ confidential trading information. An ATS that complies with Regulation ATS and operates pursuant to the Rule 3a1-1(a)(2) exemption would not be required by Section 5 to register as a national securities exchange.

Regulation ATS is composed of Rules 300, 301, 302, 303 and 304.⁵ Rule 300 defines terms for the purposes of Regulation ATS. Rule 301 sets forth various obligations of ATSs. Rule 302 establishes a set of records relating to trading activity that the ATS must make. Rule 303 establishes requirements for the preservation of certain records that ATSs must make. Rule 304 sets forth the conditions to the ATS exemption

¹ See 15 U.S.C. §§ 78e and 78f. A “national securities exchange” is an exchange registered as such under Section 6 of the Exchange Act.

² 15 U.S.C. 78a *et seq.*

³ Rule 300(a) of Regulation ATS provides that an ATS is “any organization, association, person, group of persons, or system: (1) [t]hat constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange Act Rule 3b-16]; and (2) [t]hat does not: (i) [s]et rules governing the conduct of subscribers other than the conduct of subscribers’ trading on such [ATS]; or (ii) [d]iscipline subscribers other than by exclusion from trading.”

⁴ See 17 CFR 240.3a1-1(a)(2).

⁵ 17 CFR 242.300 to 242.304.

for ATSS that trade NMS stock (“NMS Stock ATS”), including the requirement that an NMS Stock ATS file an initial Form ATS-N with the Commission and the initial Form ATS-N be effective.

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In January 2022, the Commission proposed amendments to Regulation ATS and Exchange Act Rule 3b-16, which defines certain terms used in the statutory definition of “exchange” under section 3(a)(1) of the Exchange Act.⁶ In April 2023, the Commission provided supplemental information and reopened the comment period for the 2022 Reg ATS Proposing Release.⁷ These proposed amendments would increase the number of respondents for the collections of information in several rules, including this one. This revision only increases the number of respondents, as described below, and does not otherwise revise the collections of information in this OMB Control Number.

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.⁸ Accordingly, this revision to the PRA analysis for Rule 302 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 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”

⁶ 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”).

⁷ 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.

⁸ See 2022 Reg ATS Proposing Release, *supra* note 6, at 15618 n.1056 and accompanying text.

and choose to register as broker-dealers and comply with the conditions of Regulation ATS rather than register as national securities exchanges.

2. **Purpose and Use of the Information Collection**

Under Rule 302, ATSs are required to make a record of subscribers to the ATS, daily summaries of trading in the ATS and time-sequenced records of order information in the ATS. Regulators (including the SEC and the self-regulatory organizations (“SROs”)) use the information contained in the records required to be preserved by Rule 302 to ensure that ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations. Without the data required by the Rule, regulators would be limited in their ability to comply with their statutory obligations, provide for the protection of investors, and promote the maintenance of fair and orderly markets.

3. **Consideration Given to Information Technology**

The SEC believes that improvements in telecommunications and data processing technology may reduce any burdens that result from Rule 302. The SEC is not aware of any technical or legal obstacles to reducing the burden through the use of improved information technology.

4. **Duplication**

Most of the records required to be made under the Rule reflect practices that prudent ATSs would establish. Because most ATSs would maintain much of the information required by the Rule, no duplication occurs with respect to such information. To the extent that the Rule establishes new collections of information, there is no similar information available that could replace the information required.

5. **Effect on Small Entities**

Rule 302 applies generally to all ATSs and does not depend on the size of the system. Therefore, the Rule could apply to small businesses. An entity that complies with Regulation ATS must, among other things, register as a broker dealer.⁹ 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.

⁹ See 17 CFR 242.301(b)(1).

Because the risks that the SEC monitors in the operation of an ATS occur in any size business, the SEC has determined that Rule 302 must apply in the same manner to small as well as large entities. Hence, the Rule does not contain an exemption for small entities.

The Commission notes that there are approximately 101 ATSs that are subject to Regulation ATS. The Commission staff estimates that currently 2 broker-dealers operating as ATSs registered with the Commission are small entities as currently defined by the Act.

Of the 53 additional respondents being added by the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases, none is estimated to be a small entity.

6. Consequences of Not Conducting Collection

The information required to be collected under Rule 302 should increase the abilities of the SEC, state securities regulatory authorities, and the SROs to ensure that ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations. If the information is not collected or is collected less frequently, regulators would be limited in their ability to comply with their statutory obligations, provide for the protection of investors, and promote the maintenance of fair and orderly markets.

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

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

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.¹⁰ 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”),¹¹ which would, in turn, affect

¹⁰ See 2022 Reg ATS Proposing Release, *supra* note 6, at 15593.

¹¹ See Letter from Gregory Babyak and Gary Stone, Regulatory Affairs, Bloomberg L.P., dated Sept. 21, 2022, at 2; 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,

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 also solicited comment on the revised PRA analysis in the 2023 Reg ATS Reopening Release,¹² but has not yet received specific comments on that topic. The Commission will consider all comments received before adoption of a final rule.

9. **Payment or Gift**

The respondents receive no payments or gifts.

10. **Confidentiality**

The records required by Rule 302 are available only for the examination of the SEC staff, state securities authorities, and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 522 (“FOIA”), and the SEC’s rules thereunder (17 CFR 200.80(b)(4)(iii)), the SEC does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

11. **Sensitive Questions**

Under Rule 302, ATSS are required to maintain a record of subscribers to the ATS, daily summaries of trading in the ATS, and time-sequenced records of order information in the ATS. Some of this information may contain personally identifiable information (PII) to include home name, address, and telephone number. However, no information of a sensitive nature will be required under this collection of information. The SEC will not collect and maintain the records. Therefore a PIA is not required. Subsequent SEC requests for the records to carry out an SEC function will be assessed for a PIA separately under the specific SEC program making the request. To provide notice to the public of how their information collected under rule 302, may be maintained and disclosed by the SEC, the SEC has published SORN SEC03, SECs Division of Trading and Markets Records.

12. **Burden of Information Collection**

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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>.

¹² See 2023 Reg ATS Proposing Release, *supra* note 7, at 29469.

As discussed above, the changes proposed in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases would increase the number of respondents for the collections of information in several rules, including this one. This revision only increases the number of respondents, as described below, and does not otherwise revise the collections of information in this OMB Control Number.

As a condition to the exemption, ATSs are required to comply with recordkeeping requirements under Rule 302. The SEC estimates that the average time burden for each respondent to comply with the recordkeeping requirements under the rule is approximately 45 hours (Compliance Clerk) per year. The SEC estimates the related internal cost of compliance for this hour burden per respondent at approximately \$3,735 per year. This estimated cost is derived from 45 hours per year at \$83 per hour.¹³

The SEC estimates that currently there are approximately 101 ATSs that are registered as broker-dealers and have an active Form ATS initial operation report on file with the Commission. The SEC estimates 53 additional respondents in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases.¹⁴ The SEC estimates the average aggregate hour burden for all respondents to comply with Rule 302 is approximately 6,930 hours per year (154 ATSs at 45 hours per ATS per year). The SEC estimates that the aggregate internal cost of compliance for all respondents to comply with Rule 302 is approximately \$575,190 per year (154 ATSs at \$3,735 per ATS per year).

Rule	Burden Type	Number of Respondents	Time Per Response	Total Burden (Hours)
Rule 302 (Regulation ATS)	Recordkeeping	154	45 hours (per year)	6,930 hours (per year)

13. Costs to Respondents

The SEC believes that compliance with Rule 302 of Regulation ATS does not require any capital or start up costs, or any recurring annual external operating and maintenance costs in addition to the hour burdens and internal compliance costs discussed above.

14. Costs to Federal Government

¹³ \$83 per hour figure for a Compliance Clerk is from SIFMA's Office Salaries in the Securities Industry 2013, modified by SEC staff to account for an 1800-hour work-year and multiplied by 2.93% to account for bonuses, firm size, employee benefits and overhead, and adjusted for inflation to June 2022.

¹⁴ See 2022 Reg ATS Proposing Release, supra note 6, at 15590-91; 2023 Reg ATS Reopening Release, supra note 7, at 29467-68.

The federal government does not experience significant costs based on the recordkeeping required pursuant to Rule 302. The information collected by the respondents typically would be reviewed only as part of an investigation. As a matter of routine, however, the SEC does not review the records kept by the respondents.

15. Changes in Burden

The estimated hour burden associated with Rule 302 of Regulation ATS has increased from 4,545 to 6,930 hours per year as a result of the proposed amendments described in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases.

16. Information Collection Planned for Statistical Purposes

Not applicable. The information collection is not used for statistical purposes.

17. Approval to Omit OMB Expiration Date

The SEC is not seeking approval to omit the expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.