

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)
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.

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 300,¹ 301,² 302,³ 303,⁴ 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.⁵ Rule 302 establishes a set of records relating to trading

¹ Rule 300 does not include a collection of information.

² OMB No. 3235-0509.

³ OMB No. 3235-0510.

⁴ OMB No. 3235-0505.

⁵ 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; 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

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”).⁶ The majority of substantive changes in the new amendments were 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.⁷ Form ATS-N will require NMS Stock ATSS to publicly disclose, among other things, information about the broker-dealer operator, the NMS Stock ATSS’s manner of operations, and the ATSS-related activities of the broker-dealer operator and its affiliates.⁸ 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.

We believe that that information contained in the record required to be preserved by Rule 303(a)(1)(v) is used by examiners and other representatives of the Commission, state securities regulatory authorities, and self-regulatory organizations (“SROs”) to evaluate whether the ATSS 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.

2022 Proposed Rulemaking Affecting this OMB Control Number

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.

⁶ See Securities Exchange Act Release No. 83663 (July 18, 2018), 83 FR 38768 (August 7, 2018).

⁷ We adopted conforming amendments to Rule 300 of Regulation ATS and Exchange Act Rule 3a1-1(a).

⁸ 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 ATSS 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.

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.⁹ In April 2023, the Commission provided supplemental information and reopened the comment period for the 2022 Reg ATS Proposing Release.¹⁰ 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.¹¹ Accordingly, this revision to the PRA analysis for Rule 303 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” 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

⁹ 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”).

¹⁰ 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.

¹¹ See 2022 Reg ATS Proposing Release, supra note 9, at 15618 n.1056 and accompanying text.

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 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. For an ATS subject to the capacity, integrity, and security requirements for automated systems under Rule 301(b)(6) of Regulation ATS, Rule 303 requires an ATS to preserve all documents made or received by the ATS related to its compliance, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results, and other similar records. 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.

The information contained in the records required to be preserved by Rule 303 will be used by regulators (including the SEC and the self-regulatory organizations (“SROs”)) 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. We further believe that the requirements of 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.

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

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, the Rule could apply to small businesses. An entity that complies with Regulation ATS must, among other things, register as a broker dealer.¹² 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.

Because the risks that the SEC monitors in the operation of an ATS can occur in any size business, the SEC has 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.

The Commission notes that there are approximately 101 ATSS that are subject to Regulation ATS. The Commission staff estimates that currently two 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

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)

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. These records are needed for the life of the ATS because they are important to understanding the corporate structure of the ATS and persons who owned, controlled or directed the ATS, and the operations of the ATSS for examination and investigation purposes in order to ensure compliance with Regulation ATS as well as other applicable rules and regulations. The Commission also

¹² See 17 CFR 242.301(b)(1).

believes that these recordkeeping requirements are necessary to help assure fair and orderly markets by enhancing the effectiveness of the Commission’s examination and investigation functions. We further believe that 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

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.¹³ 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”),¹⁴ 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 also solicited comment on the revised PRA analysis in the 2023 Reg ATS Reopening Release,¹⁵ 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.

¹³ See 2022 Reg ATS Proposing Release, supra note 9, at 15593.

¹⁴ 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, 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>.

¹⁵ See 2023 Reg ATS Proposing Release, supra note 10, at 29469.

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.¹⁶ 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.¹⁷ The Commission believes that a burden estimate of 15 hours per ATS is appropriate to identify and preserve the applicable records. We estimate that there are approximately 101 ATSs registered as broker-dealers that have filed initial operation reports in

¹⁶ 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.

¹⁷ (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 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.

compliance with Regulation ATS. The SEC estimates 53 additional respondents in the 2022 Reg ATS Proposing and 2023 Reg ATS Reopening Releases.¹⁸ Therefore, we estimate the average aggregate ongoing burden to comply with the baseline Rule 303 record preservation requirements is approximately 2,310 hours per year.¹⁹ 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.²⁰

The estimated average annual aggregate burden for alternative trading systems to comply with Rule 303 would thus be approximately 2,312 hours. This estimate is broken down as follows:

¹⁸ See Reg ATS Proposing Release, *supra* note 13, at 15590-91; Reg ATS Reopening Release, *supra* note 14, at 29467-68.

¹⁹ 154 ATSs x 15 hours = 2,310 hours.

²⁰ 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	154	1	0.00	0.00	15.00	15.00	15.00	2,205.00	0.00	2,310.00	2	
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	0	
TOTAL HOURLY BURDEN FOR ALL RESPONDENTS									16.00	2,207.00	0.00	2,312.00	

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 900 hours from approximately 1,412 hours per year to approximately 2,312 hours per year as a result of an increase in the number of estimated respondents from 94 to 154 due to both an increase in the number of ATSS (from 94 to 101), as well 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 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.