

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for Regulation
of Alternative Trading Systems – Rule 301
(OMB Control No. 3235-0509)

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq.

A. JUSTIFICATION

1. Necessity of Information Collection

In 1998, the Commission adopted Regulation ATS, which established a new regulatory framework for alternative trading systems (“ATS”), which allows entities that meet the definition of “exchange” under Section 3(a)(1) of the Exchange Act to choose between two regulatory structures: registering as a national securities exchange or registering as a broker-dealer and complying with Regulation ATS.

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

Regulation ATS is composed of Rules 300,² 301,³ 302,⁴ 303,⁵ and 304.⁶ 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

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

Rule 304 establishes 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.⁹ 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.¹⁰ The collection of information in Rule 304 and Form ATS-N are discussed in the Supporting Statement for OMB No. 3235-0763.

The Commission has proposed amendments to 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 and also to Rule 3b-16 under the Exchange Act”), which defines certain terms used in the statutory definition of “exchange” under Section 3(a)(1) of the Exchange Act to include systems that offer the use of non-firm trading interest and communication protocols to bring together buyers and sellers of securities, which would likely

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

¹⁰ 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”).

operate as ATSS pursuant to the Exchange Act Rule 3a1-1(a)(2) exemption.¹¹ The Commission has not adopted these proposed amendments as of this submission.

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 supply updates on 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 are required to comply with requirements for fair access and systems capacity, integrity and security pursuant to Rule 301(b)(5) and Rule 301(b)(6) of Regulation ATS, respectively. Such ATSS are 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. Regulation ATS requires ATSS to preserve any records made in the process of complying with the system's 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,

¹¹ See Securities Exchange Act Release Nos. 94062 (Jan. 26, 2022), 87 FR 15496 (Mar. 18, 2022); 94868 (May 9, 2022), 87 FR 29059 (May 12, 2022) (“Government Securities ATS Proposal”).

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.

3. Consideration Given to Information Technology

Currently, ATSS are required to submit paper submissions of Forms ATS and ATS-R to the Commission.¹² In the Government Securities ATS Proposal, the Commission has 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”).¹³ 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.

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 2 ATSS are small entities that would be subject to the filing requirements of Form ATS-R.

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

¹² See 17 CFR 242.301(b)(2)(vii).

¹³ See Government Securities ATS Proposal, *supra* note 11, Section V.B.

likely to be such small entities.

6. Consequences of Not Conducting Collection

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 would allow it to determine whether such systems have adequate safeguards. Further, in the absence of Rule 301, the Commission would not regularly obtain uniform trading data to identify areas where surveillance by self-regulatory organizations 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 severely 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.

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

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

9. Payment or Gift

The respondents receive no payments or gifts.

10. Confidentiality

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 collection does not constitute a system of records for purposes of the Privacy Act. Information is not retrieved by a personal identifier. A PIA is also not required with the collection of information; the PAW is sufficient.

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 estimate that

approximately 17 respondents will file an Initial Operations Report on Form ATS each year, and that the average compliance burden for each respondent would be approximately 20 hours, comprised of 13 hours of in-house attorney work and 7 hours for a compliance clerk. Thus, the total time burden per year is approximately 340 hours (17 responses x 20 hours = 340 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 estimate that each of the approximately 74 ATSs that file Form ATS will file 2 amendments per year for 148 responses, and that the average compliance burden for each response would be approximately 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 296 hours (148 responses x 2 hours = 296 hours).

c. Form ATS-R – Quarterly Reports

An ATS operating pursuant to the Exchange Act Rule 3a1-1(a)(2) exemption must file quarterly reports on Form ATS-R. Each of the approximately 106 ATSs¹⁴ will file 4 quarterly reports per year for 424 responses. We estimate that the average time burden for each response would be approximately 4 hours, comprised of 3 hours for an in-house attorney and 1 hour for a compliance clerk. This would result in a total time burden per year of approximately 1,696 hours (4 hours x 424 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 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).¹⁵ Thus, the total time burden per year for Form ATS-R is approximately 1,700 hours (1,696 hours + 4 hours).¹⁶

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

¹⁴ This is based on the number of ATSs as of July 31, 2024.

¹⁵ ((Attorney at .25 hour + Compliance Clerk at .25 hour) x (4 filings annually)) x 2 NMS Stock ATSs = 4 aggregate burden hours.

¹⁶ The total responses on Form ATS-R are 432 (424 + 8 = 432 responses).

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 certain volume thresholds 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 estimate that 2 ATSs that register as broker-dealers and comply with Regulation ATS would meet the volume thresholds that trigger fair access obligations, and 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 10 hours (2 responses x 5 hours = 10 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-R¹⁷ any decision to grant, deny or limit the user's access to the system. We estimate that 2 ATSs that register as broker-dealers and comply with Regulation ATS and would meet the volume thresholds that trigger fair access obligations would have to grant/deny/limit a user's access to the system approximately 27 times per year, and that 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 54 hours (2 respondents x 27 responses each x 1 hour = 54 hours).

g. Systems Capacity, Integrity and Security Recordkeeping

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 make records relating to any steps taken to comply with systems capacity, integrity and security requirements under Rule 301.¹⁸ We estimate that 1 ATS that is operating pursuant to the Exchange Act Rule 3a1-1(a)(2) exemption would trigger this requirement, and 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 10 hours (1 respondents x 10 hours = 10 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 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 approximately 5 times a year, and that the average compliance burden for each response would be .25 hours of in-house professional work. Thus, the total time burden per year is approximately 1 hour (1 respondents x 5 responses each x .25 hours = 1.25

¹⁷ Forms ATS-R are filed with the Commission on a confidential basis.

¹⁸ 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).

hours rounded down to 1).¹⁹

i. Written Safeguards and Procedures – Ongoing Burden

We 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. As a result, we estimate that the total aggregate, ongoing time burden per year for all ATSs would be approximately 376 hours.²⁰

j. Written Safeguards and Procedures – Initial Burden

We 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 discussed in Section A.12.a, we estimate that there would be approximately 17 new respondents each year and that the total aggregate initial, one-time burden on these ATSs would be 136 hours.²¹

k. Aggregate Respondent Reporting Burdens

The estimated average annual aggregate burden for ATSs to comply with Rule 301 of Regulation ATS would be approximately 2,983 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	17	1	20	340 hours
Rule 301(b)(2) – Form ATS amendment	Reporting	74	2	2	296 hours
Rule	Reporting	106	4	4	1,696 hours

¹⁹ ATSs, other than ATSs that trade NMS stocks and equities securities that are not NMS stocks, remain subject to 301(b)(6).

²⁰ (Attorney at 2 hours + Compliance Clerk at 2 hours) x 106 ATSs = 424 burden hours.

²¹ (Attorney at 7 hours + Compliance Clerk at 1 hour) x 17 ATSs = 136 burden hours.

301(b)(9) – Quarterly Reports					
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 Operations Report	Reporting	6	1	2	12 hours
Rule 301(b)(5) – Fair Access standards recordkeeping	Record Keeping	2	1	5	10 hours
Rule 301(b)(5) – Fair Access Notices	Reporting	2	27	1	54 hours
Rule 301(b)(6) – Systems Capacity, Integrity and Security recordkeeping	Record Keeping	1	1	10	10 hours
Rule 301(b)(6) – System Outages Notice	Record Keeping	1	5	0.25	1 hour
Rule 301(b)(10) – Updating Written Safeguards	Record Keeping	106	1	4	424 hours

and Procedures (Ongoing)					
Rule 301(b)(10) – Updating Written Safeguards and Procedures (Initial)	Record Keeping	17	1	8	136 hours
Total Aggregate Burden					2,983 hours

13. Costs to Respondents

We do not estimate any costs to respondents in addition to the burden hours discussed in Section A.12.

14. Cost to Federal Government

There are no federal costs related to this information collection.

15. Changes in Burden

As compared to the estimated annual time burden identified in the Commission’s 2021 PRA renewal, the estimated annual time burden associated with Rule 301 of Regulation ATS has increased from approximately 2,687 hours per year to approximately 2,983 hours per year because of an increase in the estimated number of ATSS and an increase in estimated number of entities expected to file quarterly reports and periodic amendments.

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 not display the OMB approval 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.

