April 18, 2022

Via E-Mail: rule-comments@sec.gov

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

RE: SEC File No. S7-02-22; Release No. 34-94062, Proposed Amendments to Exchange Act Rule 3b-16 Regarding the Definition of “Exchange;” Regulation ATS for ATSs that Trade U.S. Government Securities, NMS Stocks, and Other Securities; Regulation SCI for ATSs that Trade U.S. Treasury Securities and Agency Securities

Dear Ms. Countryman:

Broadridge Financial Solutions, Inc. (“Broadridge”) appreciates the opportunity to comment on the above-referenced proposal (the “Proposal”) to Rule 3b-16 under the Securities Exchange Act of 1934, as amended.¹

Broadridge supports the Proposal’s goals of providing fair and orderly markets, transparency when trading securities, and added protections for investors. However, as drafted, the Proposal could have the unintended consequence of encompassing many technology systems and solutions that do not function as “exchanges,” including systems and solutions that simply transmit messages. Additional guidance would help avoid this unintended consequence by indicating the types of communication systems and protocols that qualify as exchanges -- based on the functions they perform -- and by providing a range of examples of systems and solutions that do or don’t qualify as exchanges.

We note that the Commission provided clear guidance previously in its adopting release for Regulation ATS (1998). The adopting release included numerous examples of the kinds of systems that are in, or out, of scope.² Along these lines, we offer several examples below of

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¹ Broadridge Financial Solutions, Inc. (NYSE: BR), a $5 billion global Fintech firm, is a leading provider of investor communications and technology-driven solutions to banks, broker-dealers, asset and wealth managers, mutual funds, and corporate issuers. Our technology solutions assist market participants, including registered broker-dealers, investment advisers, hedge funds, and other institutional investors, in managing their orders, executions, and trading interest by facilitating communications with others. Broadridge is part of the S&P 500® Index and employs over 13,000 associates in 21 countries. For more information about Broadridge, please visit www.broadridge.com.

² Regulation ATS Adopting Release, Release No. 34-40760 (December 8, 1998), 63 FR 70844 at 70854-56
systems and technology solutions that do not function as exchanges and should not qualify as exchanges under amended rules.

The Proposal “estimates… the total number of communication protocol systems to be 22.”

The Proposal’s estimate suggests that it intends to expand the scope of Rule 3b-16 in a relatively narrow way, rather than have it encompass a wide range of technology solutions or protocols that assist market participants in trading. In this regard, we believe that further definitions of the Proposal’s “communication protocol system” and “protocol” would help market participants better understand the intended scope of Rule 3b-16.

Amendments should make clear that certain systems and functions are not communication protocol systems and do not come under Rule 3b-16(a).

Technology systems by their very nature operate through messaging and receive and provide communications. With a clearer framework, market participants and technology providers would be able to evaluate technology systems and solutions – both that currently exist or that may later be developed – to determine whether they function as exchanges.

Adding examples of covered technologies would help. In the adopting release for Regulation ATS, the Commission provided twenty examples of systems that would, or would not, be included within Rule 3b-16. In the adopting release, the Commission provided an analysis of the language of Rule 3b-16, so that market participants and technology providers could better determine what aspects of a system or technology solution rendered it within (or outside of) the definition of an exchange under Rule 3b-16. Market participants and technology providers were able to apply that analysis to determine whether (and why) a system or technology solution fell within Rule 3b-16 -- or to take comfort in knowing that a technology system’s functionality did not make it an exchange subject to Rule 3b-16.

Technology providers such as Broadridge make available a range of systems that do not function as exchanges but that could potentially be captured by the broad language of the Proposal. Moreover, other technological solutions could come within the Proposal’s purview depending on their use -- whether that be on a standalone basis or in combination with other technology solutions. Should the Commission determine that a user’s application of one or more technology solutions comes within Rule 3b-16, the amendments should make clear which party is deemed the “broker-dealer operator” of the system, subject to Regulation ATS.

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3 Proposal at pages 327-28.


5 Greater clarity is needed given the Proposal’s language that “[d]epending on the activities of the persons involved with the market place, a group of persons, who may each perform a part of the 3b-16 regulated system, can together provide, constitute, or maintain a market place or facilities for bringing together purchasers and sellers of securities and together meet the definition of exchange. In such case, the group of persons would have the regulatory responsibility for the exchange.” Proposal at page 41, n.109. As a practical matter, it is not feasible for “many persons” to be subject to the same regulatory responsibility, particularly if one primary party is actively involved in
We provide examples of standalone- and combined technology solutions that should not be subject to Rule 3b-16 or Regulation ATS.

To achieve their intended scope, and avoid unintentionally casting too broad a net, the Proposed amendments should confirm that certain types of systems and technology solutions do not constitute “exchanges.” We provide the following examples:

- **Routing Technologies:** Certain technology solutions route firm or non-firm trading interest to destinations or to other systems or functionalities identified by the users of those solutions. Those solutions employ “communication” to route such interest by sending and receiving messages (e.g., initial messages to send an order or to receive an acknowledgement of receipt of an order, or subsequent messages relating to executions or cancellations). Such messages are transmitted pursuant to a format and syntax that may or may not constitute a “protocol” under the Proposal. The Proposal does not provide sufficient clarity to evaluate this point.

  Routing solutions do not perform the same functions as regulated exchanges or ATSs: they simply provide connectivity and routing services between users and intended destinations. The amendments should clarify that technology solutions that route interest at the direction of (or based upon instructions of) its users are not exchanges *per se* within Rule 3b-16(a). While there is an existing exemption for routing systems under Rule 3b-16(b), that exemption covers only routing to exchanges or to broker-dealers for execution. The amendments should make clear that any routing at a user’s direction to any destination, including to another system, is not considered operating as a market place and does not come within Rule 3b-16(a).

- **Communication “Conduit” Technologies:** Certain technology solutions provide communications between users and markets, by acting merely as conduits. While the content of those communications may be used by end parties to “interact, negotiate, and come to an agreement,” it is the end parties themselves that are interacting, negotiating, and coming to an agreement, not the technology solution itself.

  For example, a user may utilize a third-party technology solution, such as an order management system, to communicate an RFQ to an RFQ platform, and to receive subsequent communications (including protocols) from the RFQ platform, such as RFQ responses. Although the technology platform “makes available” communications and

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6 The Proposal already indicates that “systems that provide general connectivity for persons to communicate *without protocols* ” falls outside the proposed rule. [Proposal at 46 (emphasis added).] But this analysis is difficult to apply without clear guidance on what constitutes a protocol. Separately, the Commission expressly excluded order routing systems in the 1998 Regulation ATS adopting release. See, e.g., Release No. 34-40760, 63 FR 70844, at 70853, n.73 (excluding the BRASS order routing system). None of the rationale for expanding the application of Rule 3b-16 set forth in the Proposal should affect the Commission’s prior analysis or conclusions.

7 Proposal at page 40.
protocols, the platform itself is not functioning as a “market place” or exchange. The amendments should confirm that such conduit activity does not constitute an exchange.

- **User-Configured Technologies:** Market participants may contract for the use of certain technology solutions (whether hosted by a technology provider or by the market participant itself) and configure the solutions to operate (either on a standalone basis or in combination with other technologies) as communication protocol systems. The proposed amendments would be clearer if they were to specify that the users who configure technologies to operate as exchanges are the entities operating the ATS and, therefore, are subject to Regulation ATS. These users are the only parties with the knowledge necessary to describe how the system they have configured operates, as required under Regulation ATS and pursuant to Form ATS or ATS-N, as applicable.

- **Systems Using Electronic Communication Protocols:** Certain technology solutions communicate with users and other systems via the Financial Information eXchange (“FIX”) protocol. FIX has become the language of global financial markets and it is used extensively by buy-side and sell-side firms, trading platforms, and regulators to communicate trade information.” In this light, amendments to the rules should clarify that “protocols” functioning as languages, such as FIX or other electronic communication protocols, are not the “protocols” contemplated by the Proposal.

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8 The Commission appears to agree that systems that are communication utilities or communication providers do not fall within the Proposal. Specifically, the Proposal indicates that “systems that provide general connectivity for persons to communicate without protocols, such as utilities or electronic chat providers, would not fall within the definition of exchange.” (Proposal at page 26, n.72.) The application of this statement, however, rests largely on the phrase “without protocols,” which cannot be definitively applied absent clearer guidance on what constitutes a protocol and which entity is deemed to provide the protocol.

9 The Proposal describes how multiple functionalities, mechanisms, or entities can come together to “operate collectively” as a system subject to Rule 3b-16. (Proposal at pages 40-41.) While these many functions may “operate collectively” as an exchange or Alternative Trading System, there can be only one party responsible for operating the ATS, making required filings, and complying with regulatory requirements. Certain other entities, by virtue of the information they receive, might be subject to the confidentiality provisions of Rule 301(b)(10) of Regulation ATS, but that can be accomplished easily through the existing requirement that broker-dealer operators adopt policies to maintain the confidentiality of confidential trading information of the ATS.

10 See [https://www.fixtrading.org/what-is-fix/](https://www.fixtrading.org/what-is-fix/) (visited April 2022).

11 Protocols that function as languages facilitate communication, but do not “bring together” trading interest as do exchanges or exchange-like systems.
Broadridge supports the underlying goals of the Proposal. Additional clarification and examples as described above would help ensure that the Proposal’s goals are accomplished without the unintended consequence of capturing systems that do not function as exchanges.

Thank you for the opportunity to comment on the Proposal. We welcome any questions you may have.

Sincerely,

/s/ Charles V. Callan

cc: Haoxiang Zhu, Director, Division of Trading and Markets
    David Saltiel, Deputy Director, Division of Trading and Markets
    Keir Gumbs, Chief Legal Officer, Broadridge Financial Solutions, Inc.