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March 1, 2021

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D. C. 20549-1090

Re: Regulation ATS for ATSs that Trade U.S. Government Securities [File No. S7-12-20]

Dear Ms. Countryman:

FlexTrade Systems appreciates the opportunity to comment on the SEC's Proposed Rule: [Release No. 34-90019; File No. S7-12-20] pertaining to Regulation ATS for ATSs That Trade U.S. Government Securities, NMS Stock, and Other Securities; Regulation SCI for ATSs that Trade U.S. Treasury Securities and Agency Securities; and Electronic Corporate Bond and Municipal Securities Markets. We are focusing our remarks on the Concept Release about the Regulatory Framework for Electronic Platforms that Trade Corporate Debt and Municipal Securities. (Section VIII).

FlexTrade is an independent software provider that develops front-end trading platforms for buy-side and sell-side firms. Our flagship product FlexTRADER EMS is an execution management system (EMS) used by the buy side to trade in stocks, options, futures, foreign exchange, and corporate bonds. Our EMS provides the buy side with the technology to aggregate data from broker-dealers and interact with multiple fixed-income trading venues. We are significantly enabling best execution and market transparency and solving workflow complexities.

It is important for the Commission to establish definitions that differentiate between the fixed-income platforms that function as technology providers and the entities that are execution venues.

One of the problems and sources of confusion is that the industry uses the terms "fixed-income trading platform" and "fixed-income trading venue" interchangeably. In establishing a framework for regulating fixed-income trading platforms, it would be beneficial to define these terms and the capabilities associated with each type of entity.

As technology has advanced over the past 20 years, third-party software vendors have evolved to play a significant role in the electronic trading of fixed income securities, most recently in corporate bonds. It is our belief that a software-only provider is not acting in the capacity of an exchange, or ATS.

To further shed light on this issue and the various categories of market participants involved in electronic fixed-income trading, we would like to comment on Exchange Act Rule 3b-16(a) which sets forth the definition of an exchange.

Specifically, Rule 3b-16 (a) provides that an organization, association, or group of persons meets the Exchange Act definition of "exchange" if it: (1) Brings together the orders for securities of multiple buyers and sellers; and (2) uses established non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.

We believe that software vendors that provide functionality for displaying prices and routing orders to fixed-income trading platforms do not meet the definition of an exchange and should not be required to register as an ATS. It would be like saying that institutional investors that use Microsoft Excel to gather prices on bonds, ought to register as an ATS.

In our case, (1) The EMS offered by FlexTrade does not bring together the orders for securities of multiple buyers and sellers. (2) The EMS provides a front-end for the user to enter orders. However, such orders do not interact with any other FlexTrade client's orders and are only visible to the venue or broker to whom these orders are sent.

We propose a litmus test that will assist the Commission in determining whether a fixed-income trading platform for corporate bonds and municipal securities meets the criteria that warrants registration as an exchange or ATS. In our view, the following criteria are most relevant:

- Does the system provide Multilateral Trading (more than one buy-side interacting with available liquidity?
- Does the technology provider have any influence on picking the counterparties?
- Does the system enable any sharing of real-time information across multiple counterparties?
- Does the system provider have any access to real-time information (other than point of time for technical support)?
- Do the transactions happen on the technology platform?

Does the system enable Multilateral Trading (more than one buy-side interacting with available liquidity)?

In FlexTRADER's case, we provide a buy-side client with the capability to send a request-for-quote (RFQ) to a broker-dealer. However, if a buyside user sends an RFQ to five brokers, then buy-side firm A does not know what buy-side firm B has sent. Those RFQ responses are only for the individual buy-side firm that asked for a price.

In addition, no two buy-side firms look at each other's data's in real time. The fundamental architecture of the system does not allow it, as every instance of the software is dedicated to the client, and no information is shared in real time. No two buyside firms look at, or can interact with each other, in any way.

As a technology platform, we are enabling the buy-side user to access bilateral liquidity, but there is no anonymity. Every dealer knows the identity of each buy-side firm, so that when a

user sends an RFQ via the EMS, this occurs on a fully disclosed basis. By contrast, when a buy-side firm uses a fixed-income venue/ATS such as MarketAxess or Tradeweb to send an RFQ to five dealers, the ATS knows who the buy-side firm is, and it will hide the firm's identity. Again, in our case everything is fully disclosed. Additionally, we do not have access to the quotes being sent from the brokers to the buy-side (other than point in time for technical support.)

Does the technology provider have any influence on picking the counterparties?

Clients using our technology platform create their own list of liquidity sources and trade with them. We have no influence on who they trade with, who they connect with, or how they choose a counterparty. They are simply outsourcing their technology needs to us, and we are providing them with a platform. It is no different than the buy side building their own technology inhouse, and in that sense, FlexTrade operates as an outsourced technology provider.

Does the system enable any sharing of real-time information across multiple counterparties?

There is no sharing of information across multiple counterparties. If a buy-side user receives competing bids and offers across five different dealers, while another buy side firm is sending RFQs to dealers, the system does not enable any exchange of information between the institutions. Each client has a completely isolated instance of their own system. There is zero interaction between buy-side firms on our EMS. This is a key distinction between a technology provider versus a venue where the execution occurs. While venues promote all-to-all trading because they want to cross buy-side No. 1 with buy-side No. 2, we do not provide that capability. We have no desire to become a venue, nor do our clients want us to become a venue – we are technology providers.

Does the system provider have any access to real-time information (other than point of time for technical support)?

FlexTrade is not involved with the trade and does not know what happens other than there is a technical issue, and it needs to support the client. Otherwise, we do not know what orders are being placed or securities that clients are trading. In some cases, clients run the software on their own servers, where FlexTrade has no visibility at all.

Do the transactions happen on the technology platform?

An EMS provides access to liquidity on electronic fixed-income venues. Executions do not occur on the EMS platform.

System Security

In the concept release, the Commission asks if ATSs meeting a certain volume threshold in U.S. government securities should be subject to Regulation SCI on systems, compliance, and integrity. FlexTrade's EMS does not operate as a fixed-income execution venue, so Regulation SCI is not relevant. Even though our EMS is not a venue, FlexTrade has taken security and IT corporate security very seriously to ensure there is no disruption in service. We have invested in proper contingency planning, disaster recovery, robustness, and resiliency, which we believe are differentiators for us in the fixed-income trading

marketplace. We have also taken steps to protect our systems and networks from cybersecurity threats, intrusions, or any event that could cause a disruption.

FlexTrade has implemented numerous controls to strengthen information security and this is verified by an external company each year that provides us with an audit report known as SOC 1 and SOC 2, which is widely recognized by our clients. We have registered with the ICO, an independent UK authority, to show that data protection and data privacy matters to us.

As part of a continuous effort in this area, FlexTrade has established a stringent information security program and compliance measures. In addition, we have implemented a strong cybersecurity program that includes a global Privileged Access Management system to ensure all access to data-centre environments is monitored and recorded with continuous vulnerability monitoring. On the corporate side, FlexTrade ensures the security of its users and has invested in an AI-based email protection system and next generation hybrid-cloud web proxy and DLP systems.

In Conclusion

As a leading developer of execution management systems or EMSs, FlexTRADER is bringing more transparency and efficiency to the bond market and we are enabling best execution for hundreds of buy-side firms including asset managers, pension funds, and sovereign wealth funds. The functionality we bring to the market is no different than a buy-side firm building technology inhouse. In this regard, should an asset manager that aggregates bond prices from multiple dealers have to register as an ATS?

While there is some functionality that we have in common, (such as price aggregation and providing the RFQ protocol), the key difference is that we are bringing transparency to the market for the buy side and enabling best execution. But the execution does not happen on our platform; it happens on a fixed-income venue. Hence, FlexTrade is only providing the software mechanism to access external bond trading entities, but by itself, it is not functioning as an execution venue. If the Commission were to require third-party vendors to register as an ATS, this would impose a burden and could result in firms leaving the fixed-income markets, which would hurt institutional clients relying on our tools for transparency and price discovery.

We hope the SEC will take these factors into consideration as it moves forward with gathering information and developing a regulatory framework for electronic fixed-income trading that recognizes the unique role of technology providers in facilitating liquidity aggregation and price transparency.

Sincerely,

Vijay Kedia

President & CEO