

February 26, 2016

Brent J. Fields, Secretary  
Securities and Exchange Commission  
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Submitted via email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Re: File No. S7-23-15 - Proposed Amendment to Regulation of NMS Stock  
Alternative Trading Systems

Ladies and Gentlemen:

State Street Global Advisors (“SSGA”), a division of State Street Bank and Trust Company, appreciates the opportunity to provide comments on the Securities and Exchange Commission’s (the “SEC” or “Commission”) proposed amendments to Regulation ATS (“Proposed Amendment”) applicable to alternative trading systems (“ATs”) that transact in National Market System (“NMS”) stocks (hereinafter referred to as (“NMS Stock ATs”), including so called “dark pools.” In this letter, we provide commentary on the Proposed Amendment and its potential effects on the marketplace for users of ATs.

SSGA is a global leader in asset management for over 30 years, managing more than \$2 trillion in assets from corporations, endowments and foundations, third-party asset gatherers, pension funds and sovereign wealth funds as of December 31, 2015.

We appreciate the opportunity to comment on the proposed amendments to Regulation of NMS Stock Alternative Trading Systems (“Proposed Rule”). SSGA, like many buy-side asset managers, is a user ATs and find they provide much needed liquidity and allow trading on an anonymous basis (which minimizes market effect) to the benefit of our clients. We recognize that there have been much publicized incidents of ATs users engaging in trading activity that may be harmful to other ATs users. Notwithstanding the potential for such abuses and the sometimes negative characterizations that occur in the press, we continue to believe ATs are a necessary tool for investment managers. Therefore, we welcome the SEC’s effort to amend Regulation ATS and the opportunity to comment on the Proposed Rule.

We would note that SSGA currently engages in periodic due diligence of any broker-dealer, including any broker-dealer acting as operator of any ATs, we utilize.

Regarding the use of ATSs generally, we believe as a fiduciary we should only execute trades on a venue or exchange that furthers our goals of satisfying “best execution”, that protects client information and that generally supports principles of fairness in access and access to national best bid/offer. This due diligence takes the form of a bespoke questionnaire that probes into these topics and is supplemented by further investigations into broker-dealer or ATS operator responses that are unclear, that represent outlier positions, or that otherwise reflect practices that are inconsistent with the principles we describe.

We applaud the SEC for making new Form ATS-N publicly available. We believe, as Justice Louis Brandeis stated “sunlight is said to be the best of disinfectants”<sup>1</sup>. Full disclosure of material aspects of an ATS’s operations, including its tolerance of aggressive, short-term or other destabilizing trading strategies, allows users to appropriately weigh the costs and benefits of using a particular venue. This is especially important for asset managers who are acting in a fiduciary capacity.

However, we are concerned that the updated Form ATS-N includes many data points that, while relevant for a primary regulator, may be extraneous for an ATS user. In addition, we note that several of the fields (*e.g.* Part III of form ATS-N) allow for a narrative response. In our experience, narrative responses are not uniform and can in fact be *non-responsive*; to the extent questions are more specific and can be answered by selecting from a pre-established field (*e.g.* “yes” or “no”), there is greater opportunity for meaningful comparison between ATSs. Therefore, for these reasons, the ATS disclosure in its proposed form may actually make efforts at due diligence more cumbersome in some instances. Given the ever growing number of ATSs operating in the marketplace, conducting proper due diligence is already an arduous task. Replacing our existing, succinct questionnaire with reliance on the longer Form ATS-N to perform our due diligence makes the task even more cumbersome.

For these reasons, SSGA requests that the Commission consider an approach of limited public disclosure of Form ATS-N, where the full form ATS-N would be submitted to the Commission, but only a selected sub-set of fields would be required to be publicly disclosed. Further, we request that all public disclosures be submitted in a uniform format allowing users of ATSs to more easily compare responses from various ATSs. Further, we would suggest that Form ATS-N remain focused on providing data that addresses the following core attributes of the ATS, which are of particular importance to SSGA or any other buy side, fiduciary institution:

- The ATS execution methodology (including price improvement methodology), access methods, functionalities and order handling procedures;

- Any data feeds that an NMS Stock ATS uses for purposes such as pricing or re-pricing orders, for determining execution prices and whether orders are eligible to execute, for routing orders out of the ATS, or as a back-up to other feeds;
- Any functionalities, access methods, order-handling procedures (including order preferencing), execution methodologies, order types, subscriber incentives or obligations, or data feeds or other forms of messaging available to any entity or class of entities capable of entering orders or other forms of trading interest into the ATS (e.g. subscribers, classes of subscribers, the broker-dealer operator of the ATS, an affiliate of the broker-dealer operator of the ATS) that are not available to another such entity or class of entities;
- Description of any tiering of subscribers and related methodology;
- Description of affiliate ability to send any orders or other forms of trading interest into the NMS Stock ATS in a principal capacity;
- Any anti-gaming technology and other subscriber-related safeguards; and
- Confirmation as to whether any orders or other forms of trading interest sent to the NMS Stock ATS generate outbound orders or any kind of messages (e.g. data-feed messages, IOIs, conditional order invitations, or any other kind of message) that are sent to any entity or system outside the NMS Stock ATS.

In conclusion, SSGA appreciates this opportunity to provide comments to the Commission on this important initiative. Further, SSGA would be pleased to make representatives available to the Commission to further discuss any of the comments provided herein. We look forward to working closely with the Commission as needed to ensure robust disclosures of ATS operations occur in a manner that is beneficial to the ultimate ATS users.

Respectfully Submitted,



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Phillip Gillespie, General Counsel and Executive Vice President  
State Street Global Advisors, a division of State Street Bank and Trust  
Company