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February 26, 2016

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Regulation of NMS Stock Alternative Trading Systems (“Proposal”); File No. S7-23-15;

Dear Mr. Fields,

The Security Traders Association (“STA”)¹ appreciates the opportunity to comment on the Securities and Exchange Commission (“Commission”) proposed amendments to the regulatory requirements in Regulation ATS under the Securities Exchange Act of 1934 (“Exchange Act”) applicable to alternative trading systems (“ATSs”) that transact in National Market System (“NMS”) stocks (hereinafter referred to as “NMS Stock ATSs”), including so called “dark pools”). The Proposal, among other things, creates a new Form ATS-N, which operators of NMS Stock ATSs will be required to file with the Commission and receive an effective approval prior to operating. In addition, proposed Rule 304(a)(2) creates a new reporting regime for filing amendments to Form ATS-N. Both the proposed Form ATS-N and Rule 304(a)(2) would require significantly more detail about the operations of NMS Stock ATSs than is currently required on Form ATS and its amendment reporting regime.

The STA’s comments on issues related to market structure come from our roles as practitioners in the markets. STA membership does not represent any specific business model, but rather encompasses a broad range of industry participants. It is from this broad based membership, including from ATS operators and non-operators who are either subscribers or non-subscribers, which the STA seeks to provide perspectives on the Proposal.

¹ STA is a trade organization founded in 1934 for individual professionals in the securities industry. STA is comprised of 26 Affiliate organizations with 4,200 individual professionals, most of who are engaged in the buying, selling and trading of securities. The STA is committed to promoting goodwill and fostering high standards of integrity in accord with the Association’s founding principle, Dictum Meum Pactum – “My Word is My Bond”



General Statements on the Proposal

The STA agrees with the Commission that greater operational transparency into how NMS Stock ATSS operate “could promote more efficient and effective market operations by providing more transparency to market participants about the operations of ATSS...” and would benefit “a wide range of market participants.”

STA supports making the filings on effective Form ATS-Ns public in order to foster a regime where: industry based standards can develop more easily; market participants are provided access to information necessary “to find the optimal market or markets for their orders”; and competition encourages additional transparency.

The STA believes benefits can accrue to individual investors when regulators, with industry input, define industry standards in appropriate areas. Having defined regulatory industry standards ensures information is accurate and uniformly available. In addition, such standards foster private market solutions which transcend to lower costs.²

STA believes that the format and frequency of asking open-ended questions on the Form ATS-N leaves room for interpretation which will make it difficult to compare responses across different submissions and will lead to over reporting by operators of NMS Stock ATSS, thus resulting in amounts of data that will make it extremely difficult for market participants to obtain key data on NMS Stock ATS operational transparency.

STA believes the enhanced filing requirements on the Form ATS-N unevenly impact broker-dealers who operate NMS Stock ATSS, potentially causing harm to some.

STA is concerned that the new Rule 304(a)(2), which provides the requirements for filing amendments to effective Form ATS-N, creates a reporting regime that is overly voluminous and risks becoming less effective for market participants seeking operational transparency into NMS Stock ATSS.

General Recommendations

STA recommends that questions in the enhanced filing requirements are reframed into yes/no questions where possible.

STA recommends that the enhanced filing requirement pertaining to fee schedules be made voluntary in order to provide higher quality data to market participants and to do no harm to a subset of NMS Stock ATS operators.

STA believes the Commission should take into account the impact Form ATS-N has on firms described in the Proposal as “multi-service broker-dealers” to ensure that the enhanced filing

² [STA letter to Financial Stability Oversight Council, United States Department of the Treasury, March 23, 2015.](#)



requirements do not conflict with the Commission’s directives for assuring fair competition between and among market participants.

STA recommends that amendments to effective Form ATS-N not be made public until they are effective.

Specific Remarks

Form ATS-N

The STA believes that many, albeit not all, of the enhanced filing requirements in the Proposal’s newly created Form ATS-N are universally reasonable for all NMS Stock ATS operators and will be effective in achieving the intent of the Proposal. However, given the wide range of customer types and product offerings of the approximate forty (40) NMS Stock ATS operators the amounts and kinds of information as measured by complexity, proprietary nature and volume will vary from one operator to another. NMS Stock ATS operators with a narrow base of customer types and whose product offering is limited to their NMS Stock ATS will by the nature of their business file less information and amendments to their effective Form ATS-N than an operator with a diverse customer base and a large suite of product offerings (described in the Proposal as “multi-service broker-dealers”). STA believes the Commission should take into account the depths of encroachment Form ATS-N has into firms which fall in the latter group to ensure that the enhanced filing requirements do not conflict with the Commission’s directives for assuring fair competition between and among market participants.

Fees

Part IV, Item 12, of the proposed Form ATS-N would require the NMS Stock ATS to disclose and describe its fee and rebate structure, along with differences among types of subscribers and other persons. The Commission “preliminary believes these disclosures would allow market participants to analyze the fee structure across NMS Stock ATSs in an expedited manner and decide which ATS offers them the best pricing according to the characteristics of their flow....” Additionally, the Commission “preliminary believes that this information would further illuminate the types of subscribers and/or trading interest that the NMS Stock ATS may be trying to attract.”

While the STA recognizes that the Commission is proposing that the NMS Stock ATS disclose “only the range of fees” we do not support requiring all operators, in particular multi-service broker-dealers, to file this information. Instead, we recommend that the filing be voluntary for those operators who wish to do so.

Multi-service broker-dealer operators of NMS Stock ATSs may offer different pricing among the same type of customers based on the consumption of products offered by the broker-dealer operator. This additional variable may lead market participants seeking fee schedule data specific to the “characteristics of their order flow” and “further illumination on the types of subscribers



that the NMS Stock ATS is trying to attract” to draw inaccurate conclusions on fee schedules from multi-service broker-dealers because their fees may be related to variables other than characteristics of order flow and client type.

Should NMS Stock ATSs be allowed to voluntarily report their fee structure we believe a majority of multi-service broker-dealers will elect not to file, as doing so may cause them harm. However, STA also believes that a majority of operators, who are not multi-service broker-dealers, will elect to file a fee schedule for competitive reasons. Thus, should the Commission allow fee schedules to be filed on a voluntary basis, STA believes that market participants will be better served by having visibility into the fee structures of a subset of NMS Stock ATSs that is void of ambiguity, as opposed to reports of all NMS Stock ATSs that will have an element of ambiguity.

Part III of Proposed Form ATS-N - Conflicts of Interest

In Part III of Proposed Form ATS-N, the Commission proposes to require NMS Stock ATSs “to disclose information about certain aspects of the activities of the NMS Stock ATS’s broker-dealer operator, and its affiliates, in connection with the NMS Stock ATS, to help market participants assess potential conflicts of interest that may adversely impact their trading on the NMS Stock ATS”.

STA supports the items identified in Part III of Proposed Form ATS-N and believe they will be effective in achieving the intent of the Proposal. However, we have concerns with the way in which many of the questions are structured and the requests for information where no conflicts exist between the activities of the NMS Stock ATS broker-dealer operator in connection with the NMS Stock ATS. Questions which are not specific and ask for descriptions of circumstances leave room for interpretation and may result in over-reporting by NMS Stock ATS operators. STA believes that market participants seeking operational transparency will have difficulty finding key data points in the amounts of information generated under this format. We therefore recommend that the Commission: (1) reframe questions into those with yes/no answers where possible; and (2) refine those questions that could result in disclosure of information on activities by the broker-dealer operator that have nothing to with the NMS Stock ATS.

Part III, Item 1 of the Proposed Form ATS-N; Non-ATS Trading Centers

Part III, Item 1 of proposed Form ATS-N would require an NMS Stock ATS to disclose whether the broker-dealer operator or any of its affiliates operate or control any non-ATS trading center(s) that is an OTC market maker or executes orders in NMS stocks internally, and if so, to: (1) identify the non-ATS trading center(s); and (2) describe any interaction or coordination between the identified non-ATS trading center(s) and the NMS Stock ATS.

STA does not believe that the broker-dealer operator should be required to report information on the activities of their non-ATS trading center(s) which do not interact with the NMS Stock ATS. We believe this requirement could result in amounts of quantitative data that will make it



extremely difficult for market participants to obtain relevant data on NMS Stock ATS operational transparency. STA therefore recommends the Commission refine those questions that could result in the disclosure of information on activities by the broker-dealer operator that have nothing to do with the NMS Stock ATS.

Part III, Item 6 of the Proposed Form ATS-N; Broker-Dealer Operator Smart Order Routers (or Similar Functionalities) and Algorithms

In Part III, Item 6 of Proposed Form ATS-N the Commission requests disclosure of: whether the broker-dealer operator or any of its affiliates uses a SOR and/or algorithm in connection with the NMS Stock ATS; who operates the SOR or algorithm; and a description of how the SOR/algorithm interacts with the NMS Stock ATS, including any information the SOR/algorithm may have about orders that the SOR/algorithm sends to or receives from the NMS Stock ATS.

STA believes that the information sought in Item 6 will assist subscribers in determining whether the broker-dealer operator is bestowing advantages to themselves or their affiliates via their SOR/algorithm. However, the questions, specifically those found in Items 6(a) and 6(b), are structured in such a way that NMS Stock ATS operators could interpret that their responses need to include proprietary information about their SOR/algorithm(s) in levels of detail already provided in their non-public Form BD. STA believes that NMS Stock ATS broker-dealer operators will be harmed if required to make this proprietary information public, to the benefit of broker-dealers with SOR/algorithm(s) who do not operate an NMS Stock ATS. STA recommends that the questions be reframed to yes/no questions or attestations of “no advantage”. In situations where the broker-dealer operator or its affiliates do have an advantage, then they should disclose that advantage publicly and in detail similar to what Items 6(a) and 6(b) seek.

Proposed Rule 304(a)(2): Form ATS-Amendments

STA is concerned that the new Rule 304(a)(2), which provides the requirements for filing amendments to effective Form ATS-N, creates a reporting regime that is overly voluminous and risks becoming less effective for market participants seeking operational transparency into NMS Stock ATSs. Our concern is acute to material amendments being publicly disclosed upon filing as defined in Proposed Rule 304 (a)(2)(i)(A). STA agrees with the Commission that market participants should be afforded an advanced notice to evaluate material changes in an NMS Stock ATS. However, we believe market participants would be better served if the advanced notice period were instituted after the amendment has been deemed effective. We believe this approach of limiting notices regarding material amendments to those which are effective will better ensure market participants are aware. We therefore recommend that amendments to effective Form ATS-Ns not be made public until they are effective, after which a public notice would be issued to provide disclosure to market participants prior to implementation of the amendment.



Conclusion

The STA appreciates the opportunity to comment on the Proposal. We also wish to acknowledge and thank the Commission and all the staff responsible for designing the requirements for the worthy policy goal which the Proposal seeks to address. STA believes that promoting NMS Stock ATS operational transparency will yield benefits to investors and a wide range of market participants. We look forward to working with the Commission on the final design and implementation of the Proposal.

A handwritten signature in black ink, appearing to read "John Russell", written in a cursive style.

John Russell, Chairman of the Board

A handwritten signature in black ink, appearing to read "James Toes", written in a cursive style.

James Toes, President & CEO

Cc:

Mary Jo White, Chair, Securities and Exchange Commission

Kara M. Stein, Commissioner, Securities and Exchange Commission

Michael S. Piwowar, Commissioner, Securities and Exchange Commission

Stephen Luparello, Director, Division of Trading & Markets, Securities and Exchange Commission