SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 242, 249

[Release No. 34-90019; File No. S7-12-20]

RIN 3235-AM45

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

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; request for comment; concept release.

SUMMARY: The Securities and Exchange Commission is proposing amendments to Regulation ATS under the Securities Exchange Act of 1934 ("Exchange Act") for alternative trading systems ("ATSs"). The Commission is proposing to amend Regulation ATS for ATSs that trade government securities as defined under Section 3(a)(42) of the Exchange Act ("government securities") or repurchase and reverse repurchase agreements on government securities ("Government Securities ATSs") to: eliminate the exemption from compliance with Regulation ATS for an ATS that limits its securities activities to government securities or repurchase and reverse repurchase agreements on government securities, and registers as a broker-dealer or is a bank; require the filing of public Form ATS-G, which would require a Government Securities ATS to disclose information about its manner of operations and the ATS-related activities of the registered broker-dealer or government securities broker or government securities dealer that operates the ATS and its affiliates; require, among other things, public posting of certain Form ATS-G filings and to provide a process for the Commission to review Form ATS-G filings and, after notice and opportunity for hearing, declare Form ATS-G filings ineffective; and apply the fair access rule under Rule 301(b)(5) of Regulation ATS to Government Securities ATSs that meet certain volume thresholds in U.S. Treasury Securities or

in a debt security issued or guaranteed by a U.S. executive agency, as defined in 5 U.S.C. 105, or government-sponsored enterprise, as defined in 2 U.S.C. 622(8) ("Agency Securities"). The Commission is also proposing changes to correct and modernize Regulation ATS, Form ATS, Form ATS-N, and Form ATS-R. In addition, the Commission is proposing to amend Regulation Systems Compliance and Integrity to apply it to ATSs that meet certain volume thresholds in U.S. Treasury Securities or Agency Securities. Finally, the Commission is issuing a concept release on the regulatory framework for electronic platforms that trade corporate debt and municipal securities.

DATES: Comments should be received on or before [INSERT DATE [60] DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/proposed.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-12-20 on the subject line.

Paper Comments:

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-12-20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/proposed.shtml). Comments are also

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at www.sec.gov to receive notifications by e-mail.

FOR FURTHER INFORMATION CONTACT: Regulation ATS: Tyler Raimo, Assistant Director, at (202) 551-6227; Matthew Cursio, Special Counsel, at (202) 551-5748; David Garcia, Special Counsel, at (202) 551-5681; Megan Mitchell, Special Counsel, at (202) 551-4887; and Joanne Kim, Law Clerk, at (202) 551-4393, and for Regulation SCI: David Liu, Special Counsel, at (312) 353-6265 and Sara Hawkins, Special Counsel, at (202) 551-5523, Office of Market Supervision, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

The Commission is proposing to: (1) amend Rule 300 (17 CFR 242.300) and Rule 301 (17 CFR 242.301) of Regulation ATS under the Exchange Act to eliminate the current exemption from compliance with Rules 300 through 304 (17 CFR 242.300 through 242.304) ("Regulation ATS") under the Exchange Act for an ATS that limits its securities activities to government securities or repurchase and reverse repurchase agreements on government

securities, and registers as a broker-dealer or is a bank and require such ATS to comply with applicable provisions of Regulation ATS; (2) amend Rule 3a1-1(b) (17 CFR 242.3a1-1(b)) under the Exchange Act to require a Government Securities ATS, which otherwise qualifies for the Rule 3a1-1(a) exemption, to register as a national securities exchange if the ATS meets certain, specified volume levels in U.S. Treasury Securities and Agency Securities, and the Commission determines that such exemption is not necessary or appropriate in the public interest or consistent with the protection of investors; (3) include Government Securities ATSs within the scope of Rule 304 (17 CFR 242.304) of Regulation ATS,[1] which would provide new requirements for Government Securities ATSs seeking to use the exemption from the definition of "exchange" under Regulation ATS; (4) require that Government Securities ATSs use new Form ATS-G in accordance with Rule 3a1-1(a) (17 CFR 240.3a1-1(a)); (5) amend Rule 301(b)(5) (17 CFR 242.301(b)(5)) of Regulation ATS ("Fair Access Rule") to require Government Securities ATSs that meet certain trading volume thresholds in transactions in U.S. Treasury Securities or Agency Securities to comply with the Fair Access Rule; (6) amend Rule 301 of Regulation ATS and Form ATS and Form ATS-R to provide that such forms must be electronically filed; and (7) amend Rule 1000 (17 CFR 242.1000) of Regulation Systems Compliance and Integrity ("Regulation SCI") under the Exchange Act by expanding the definition of "SCI alternative trading system" to include Government Securities ATSs that meet a specified volume threshold

[1] The Commission adopted Rule 304 on July 18, 2018. See Securities Exchange Act Release No. 83663 (July 18, 2018), 83 FR 38768 (August 7, 2018) ("NMS Stock ATS Adopting Release").

in transactions in U.S. Treasury Securities or Agency Securities, and as a result subject these Government Securities ATSs to the requirements of Regulation SCI.[2]

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[2] The Commission adopted Regulation SCI on November 19, 2014. See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) ("Regulation SCI Adopting Release").

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I. Government Securities ATS: Background

A. ATS Markets for U.S. Government Securities

An ATS is a trading system for securities that meets the definition of "exchange" under federal securities laws but is not required to register with the Commission as a national securities exchange if it complies with the conditions to an exemption provided under Regulation ATS. Since Regulation ATS was adopted in 1998, ATSs have become increasingly important venues

for trading government securities.[3] Currently, ATSs, particularly those that operate in the secondary interdealer markets for on-the-run U.S. Treasury Securities, have become a significant source of orders and trading interest for government securities.[4] ATSs for government securities now operate with complexity similar to that of markets that trade NMS stocks in terms of automation and speed of trading, the use of limit order books, order types, algorithms, connectivity, data feeds, and the active participation of principal trading firms ("PTFs") on ATSs.[5] Furthermore, government securities[6] make up more than half of the outstanding debt issuances in the U.S. bond market[7] and play a critical role in the U.S. and global economies. Over the last six months of 2019, the average daily trading volume in government securities was

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3 A venue for trading government securities can include, among other things, an exchange, an ATS, an OTC market maker, or any other broker or dealer operated platform for executing trading interest internally by trading as principal or crossing orders as agent.

4 See infra Section X.B.1.

5 See NMS Stock ATS Adopting Release, supra note 1, at 38771 for a discussion about the current operational complexities of ATSs that trade National Market System stocks ("NMS Stock ATSs").

6 Under the Exchange Act, government securities are defined as, among other things, securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States. See 15 U.S.C. 78c(42)(A). Government securities include U.S. Treasury securities, debt securities issued or guaranteed by a U.S. executive agency, as defined in 5 U.S.C. 105, or government-sponsored enterprise, as defined in 2 U.S.C. 622(8), and Agency Mortgage-Backed Securities. Government securities also include (i) securities which are issued or guaranteed by the Tennessee Valley Authority or by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors; (ii) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission; and (iii) any put, call, straddle, option, or privilege on one of the aforementioned (subject to limited exceptions). 15 U.S.C. 78c(42)(B)-(C).

7 See infra Section X.B.1.

approximately $835 billion, or roughly 95 percent of all fixed income trading volume in the U.S.[8]

The most liquid and commonly traded government securities are U.S. Treasury Securities, which are direct obligations of the U.S. Government issued by the U.S. Department of the Treasury ("Treasury Department"). The Treasury Department issues several different types of securities, including Treasury bills, nominal coupons notes and bonds, Floating Rate Notes, and Treasury Inflation Protected Securities. For each security type, the most recently issued ("on-the-run") securities are generally considered most liquid in the secondary market.[9] Market participants commonly refer to securities issued prior to "on-the-run" securities as "off-the-run" securities.[10] Market participants use U.S. Treasury Securities as an investment instrument, hedging vehicle, and to source orders and trading interest, among other things. U.S. banks commonly own U.S. Treasury Securities due to their low risk and strong liquidity characteristics.

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8 See SIFMA Fixed Income Trading Volume, available at https://www.sifma.org/resources/research/us-fixed-income-trading-volume/. This includes U.S. Treasury Securities, Agency Mortgage-Backed Securities, and Federal Agency Securities. The six-month average is the mean of the average daily trading volume for these instruments from July to December 2019.

9 On-the-run U.S. Treasury Securities are the most recently issued nominal coupon securities. Nominal coupon securities pay a fixed semi-annual coupon and are currently issued at original maturities of 2, 3, 5, 7, 10, 20, and 30 years. These standard maturities are commonly referred to as "benchmark" securities because the yields for these securities are used as references to price a number of private market transactions.

10 Off-the-run or "seasoned" U.S. Treasury Securities are the issues that preceded the current on-the-run securities. The U.S. Treasury Securities market also comprises futures and options on U.S. Treasury Securities, and securities financing transactions in which U.S. Treasury Securities are used as collateral. See Department of the Treasury Release No. 2015-0013 (January 22, 2016), Notice Seeking Public Comment on the Evolution of the Treasury Market Structure, 81 FR 3928, 3928 ("Treasury Request for Information"). For the purpose of this proposal, the Commission focuses on the secondary cash market.

Additionally, U.S. Treasury Securities are often used as collateral in lending arrangements or as margin on other financial transactions.

For U.S. Treasury Securities, the secondary market is generally bifurcated between the dealer-to-customer market, in which dealers trade with their customers (e.g., investment companies, pension funds, insurance companies, corporations, or retail) and the interdealer market, in which dealers and specialty firms trade with one another.[11] Trading in the U.S. Treasury Securities dealer-to-customer market is generally – and has historically been – conducted through bilateral transactions. Customers, also referred to as "end users," have not traditionally traded directly with other end users.[12] Rather, end users primarily trade with dealers, and dealers use the interdealer market as a source of orders and trading interest to help facilitate their trading with clients in the dealer-to-customer market. Such trading often occurs either over the phone or on trading venues that facilitate the matching of buy and sell orders through electronic systems. Broker-dealers also internalize a portion of their customer flow, although the extent to which broker-dealers internalize is unclear.[13]

In the interdealer market, the majority of trading in on-the-run U.S. Treasury Securities currently occurs on ATSs using central limit order books supported by advanced electronic

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[11] See id.

[12] See id.

[13] See id. For the purposes of this proposal, internalization refers to a broker filling a customer order either from the firm's own inventory or by matching the order with other customer order flow, instead of sending the order to an interdealer market for execution. See id. at 3928 n.5.

trading technology.[14] For off-the-run U.S. Treasury Securities,[15] the majority of interdealer trading occurs via bilateral transactions through traditional voice-assisted brokers and electronic trading platforms that offer various trading protocols to bring together buyers and sellers,[16] though, some interdealer trading of off-the-run U.S. Treasury Securities does occur on ATSs.[17] Furthermore, interdealer trading for on-the-run U.S. Treasury Securities is generally concentrated within a very small number of ATSs, especially when compared to the market for NMS stocks, which is dispersed among many trading venues. Specifically, over the past several years, the majority of overall trading in the interdealer secondary market for on-the-run U.S. Treasury Securities has occurred on ATSs.[18] For example, during the 4th quarter of 2019, one

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14 See Joint Staff Report: The U.S. Treasury Market on October 15, 2014, at 11, 35-36, available at https://www.sec.gov/files/treasury-market-volatility-10-14-2014-joint-report.pdf ("October 15 Staff Report"). The October 15 Staff Report is a joint report about the unusually high level of volatility and rapid round-trip in prices that occurred in the U.S. Treasuries market on October 15, 2014. Among other things, the October 15 Staff Report provides an overview of the market structure, liquidity, and applicable regulations of the U.S. Treasury market, as well as the broad changes to the structure of the U.S. Treasury market that have occurred over the past two decades.

15 Also, as noted in the October 15 Staff Report issued by the U.S. Department of the Treasury, Board of Governors of the Federal Reserve System, Federal Reserve Bank of New York, the Commission, and U.S. Commodity Futures Trading Commission, trading in off-the-run U.S. Treasury Securities has always been less active than trading in on-the-run U.S. Treasury Securities, and price discovery in the cash markets primarily occurs in on-the-run securities. See id.

16 See id. at 35.

17 While trading in on-the-run securities likely accounts for more than half of total daily trading volumes, off-the-run U.S. Treasury Securities make up over 95 percent of the outstanding marketable U.S. Treasury Securities. See James Clark, Chris Cameron, and Gabriel Mann, Examining Liquidity in On-the-Run and Off-the-Run Treasury Securities, Treasury Notes Blog, https://www.treasury.gov/connect/blog/Pages/Examining-Liquidity-in-On-the-Run-and-Off-the-Run-Treasury-Securities.aspx.

18 See text accompanying infra note 583; Table X.2 and accompanying text.

ATS accounted for $15.60 trillion in total dollar volume in all U.S. government securities, the majority of which were on-the-run U.S. Treasury Securities.[19]

Another type of government securities is Agency Securities. Agency Securities include securities issued by or guaranteed by U.S. Government corporations and U.S. Government sponsored enterprises ("GSEs").[20] For example, the Government National Mortgage Association ("Ginnie Mae") is a U.S. Government corporation that issues mortgage-backed securities guaranteed by the full faith and credit of the U.S. Government. The assets collateralized into the securities issued by Ginnie Mae are federally insured and guaranteed mortgage loans. Agency Securities issued by GSEs include those issued by the Federal Home Loan Banks ("FHLBs"), the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), and the Student Loan Marketing Association ("Sallie Mae").[21] Agency Securities issued by GSEs are not normally backed by the full faith and credit of the U.S. Government and therefore, may present some default and credit risk.

Agency Securities, while often not backed by the full faith and credit of the U.S. Government, are generally considered to be very liquid and offer state and local tax advantages to the holder. Market participants frequently use ATSs to buy and sell Agency Securities, although, based on the Commission's review of Form ATS-R filings, transaction volume of

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19 For an additional discussion of trading volume in the U.S. bond market as a whole and U.S. Treasury Securities, see infra Section X.B.

20 See U.S. Department of the Treasury Resource Center, "Fixed Income: Agency Securities," available at https://www.treasury.gov/resource-center/faqs/Markets/Pages/fixedfederal.aspx.

21 See id. The housing sector GSEs are Fannie Mae, Freddie Mac, and the FHLB institutions, the latter of which issue debt through the joint Office of Finance. Sallie Mae is a higher education sector GSE that currently is in the transition process to full privatization. See id.

Agency Securities is not as large as that of U.S. Treasury Securities on ATSs.[22] Investors, banks, and other market participants often acquire Agency Securities in the secondary market to support various investing strategies, such as hedging against other more risky investments in a given portfolio.

Trading of both U.S. Treasury Securities and Agency Securities has become increasingly electronic, and ATSs that trade government securities have evolved into very complex markets. This is particularly true for the trading of on-the-run U.S. Treasury Securities,[23] but is also the case for the trading of other U.S. Treasury Securities and Agency Securities.[24] For example, based on the Commission's review of Form ATS filings by ATSs that trade government securities, and discussions with market participants for government securities, the Commission believes that Government Securities ATSs often offer subscribers a variety of order types to

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22 Additionally, repurchase and reverse repurchase agreements on government securities are also traded on some ATSs.

23 The growth of electronic trading has contributed to a marked shift in the composition of the interdealer cash market for U.S. Treasury Securities over time. Traditionally, interdealer brokers only allowed primary dealers to access their trading venues. After 1992, however, interdealer brokers expanded access to all entities that were netting members of the Government Securities Clearing Corporation (which is now the Fixed Income Clearing Corporation's Government Securities Division). Thereafter, other entities gained access to these trading venues through their prime brokers, who themselves had access, and in recent years the trading venues granted direct access to an even wider range of participants, including non-dealer PTFs, which account for more than half of the trading activity in the futures and electronically brokered interdealer cash markets. See October 15 Staff Report, supra note 14, at 36. See also Treasury Request for Information, supra note 10, at 3928.

24 See James Collin Harkrader and Michael Puglia, Fixed Income Market Structure: Treasuries vs. Agency MBS, Board of Governors of the Federal Reserve System: FEDS NOTES (August 25, 2020), available at https://www.federalreserve.gov/econres/notes/feds-notes/fixed-income-market-structure-treasuries-vs-agency-mbs-20200825.htm ("August 25th FEDS Notes") (explaining the recent evolution of the government securities market structure).

pursue both aggressive and passive trading strategies, and low latency, high-speed connectivity to the ATS. These ATSs frequently use automated systems, such as a central limit order book, to match orders anonymously on a price/time priority basis, and offer subscribers direct data feeds and co-location services. Some Government Securities ATSs also segment orders into categories by participants or allow participants the ability to interact with specific counterparty groups on the ATS and facilitate order interaction and execution.[25]

With regard to the interdealer secondary markets for on-the-run U.S. Treasury Securities, the continued growth of electronic trading has contributed to an increased presence of PTFs in the marketplace.[26] Currently, PTFs account for the majority of trading and provide significant top-of-the-book liquidity for on-the-run U.S. Treasury Securities on electronic interdealer trading venues.[27] From July 1, 2019 to December 31, 2019, PTFs traded on 13 Government Securities ATSs accounting for approximately 55 percent of total Government Securities ATS trading volume.[28] PTFs usually have direct access to electronic interdealer trading venues for U.S. Treasury Securities, and as is the case with the equity markets, PTFs trading on the electronic

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[25] This evolution in the interdealer secondary cash markets for U.S. Treasury Securities was also highlighted in the October 15 Staff Report, see October 15 Staff Report, supra note 14, the Treasury Request for Information, see Treasury Request for Information, supra note 10, at 3928, and public comment received by the Commission, see infra Section I.C.

[26] PTFs are not, however, very active in the electronic markets for Agency Securities. See August 25th FEDS Notes, supra note 24 ("Though parts of the agency MBS market have moved from voice-based to screen-based trading since the early 2000s, algorithmic high-frequency electronic trading still does not comprise a meaningful share of average daily volume and the market remains devoid of PTF participation.").

[27] See October 15 Staff Report, supra note 14, at 36; Remarks of Deputy Secretary Justin Muzinich at the 2019 US Treasury Market Structure Conference (September 23, 2019), available at https://home.treasury.gov/news/press-releases/sm782 ("Muzinich Remarks").

[28] See infra Table X.2. (ATS PTF volume / ATS volume) x 100 = PTF share of ATS volume (%).

interdealer trading venues for on-the-run U.S. Treasury Securities often employ automated algorithmic trading strategies that rely on speed and allow the PTFs to cancel or modify quotes in response to perceived market events.[29] Furthermore, most PTFs trading U.S. Treasury Securities on these trading venues for on-the-run U.S. Treasury Securities also restrict their activities to principal trading and do not hold positions long term[30] while dealers use the interdealer market as a source of orders and trading interest to help facilitate their trading with clients in the dealer-to-customer market. As explained in the October 15 Staff Report, the increase in trading by PTFs in the interdealer market may affect the amount of liquidity available to end users in the dealer-to-customer market.[31]

B. Current Regulatory Framework for Government Securities ATSs

Despite the critical role of government securities in the U.S. and global economy, the significant volume in government securities transacted on ATSs, and these ATSs' growing importance to investors and overall securities market structure, an ATS that limits its securities activities to government securities or repurchase and reverse repurchase agreements on government securities ("repos"), and registers as a broker-dealer or is a bank ("Currently Exempted Government Securities ATS") is exempt from exchange registration and is not required to comply with Regulation ATS. Furthermore, ATSs that trade both government securities and non-government debt securities (e.g., corporate bonds) are not subject to all the provisions of Regulation ATS, such as the Fair Access Rule, and are not subject to Regulation SCI.

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29 See October 15 Staff Report, supra note 14, at 32, 35-36, 39.

30 See id. at 38.

31 See id. at 37.

Regulation ATS and its related rules provide an exemption from the definition of "exchange" under Section 3(a)(1) of the Exchange Act,[32] coupled with alternate regulatory requirements with which ATSs must comply to achieve and maintain their eligibility for the exemption. Exchange Act Rule 3b-16(a) provides a functional test to assess whether a trading platform meets the definition of "exchange" under Section 3(a)(1) of the Exchange Act.[33] Under Rule 3b-16(a), an organization, association, or group of persons shall be considered to constitute, maintain, or provide a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange, if such organization, association, or group of persons: (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.[34] Accordingly, an entity that provides a marketplace for bringing together buyers and sellers for government securities, regardless of the applied technology, would need to

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[32] 15 U.S.C. 78c(a)(1). Pursuant to Section 3(a)(1) of the Exchange Act, the statutory definition of "exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

[33] See 15 U.S.C. 78e and 78f.

[34] 17 CFR 240.3b-16(a). Exchange Act Rule 3b-16(b) explicitly excludes from that definition certain systems that do not meet the definition of "exchange," such as order routers and systems that allow persons to enter orders for execution against the bids and offers of a single dealer. See 17 CFR 240.3b-16(b). See also NMS Stock ATS Adopting Release, supra note 1, at n.32 and accompanying text.

consider whether its activities meet the definition of an "exchange" under the federal securities laws.[35]

Section 5 of the Exchange Act[36] requires an organization, association, or group of persons that meets the definition of "exchange" under Section 3(a)(1) of the Exchange Act,[37] unless otherwise exempt, to register with the Commission as a national securities exchange pursuant to Section 6 of the Exchange Act.[38] Exchange Act Rule 3a1-1(a)(2)[39] provides an exemption from national securities exchange registration for ATSs, which are systems that meet the Rule 3b-16(a) criteria and do not perform self-regulatory activities.[40] As a result of the exemption, an organization, association, or group of persons that meets the definition of an exchange and complies with Regulation ATS is not required by Section 5 of the Exchange Act to register as a national securities exchange pursuant to Section 6 of Exchange Act and is not a self-

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35 For example, whether or not a particular system is an exchange does not turn solely on the level of automation used; "orders" can be given over the telephone, as well as electronically. See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70850 (December 22, 1998) ("Regulation ATS Adopting Release").

36 15 U.S.C. 78e.

37 15 U.S.C. 78c(a)(1).

38 15 U.S.C. 78f.

39 See 17 CFR 240.3a1-1(a)(2).

40 See 17 CFR 242.300(a). Rule 300(a) of Regulation ATS defines an ATS as any organization, association, person, group of persons, or system: (1) that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of Rule 3b-16; and (2) that does not: (i) set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system; or (ii) discipline subscribers other than by exclusion from trading.

regulatory organization ("SRO"), and therefore, is not required to comply with regulatory requirements applicable to national securities exchanges and SROs.[41]

The vast majority of ATSs that operate today do so pursuant to the exemption provided by Exchange Act Rule 3a1-1(a)(2), which requires the ATSs to comply with Regulation ATS and register as broker-dealers. Currently Exempted Government Securities ATSs, however, operate pursuant to Exchange Act Rule 3a1-1(a)(3)[42] and Rule 301(a)(4)(ii)(A).[43] These provisions currently exempt an ATS from compliance with the requirements in Rule 301(b) of Regulation ATS[44] if, in relevant part, the ATS is registered as a broker-dealer under Sections 15(b)[45] or 15C[46] of the Exchange Act, or is a bank, and limits its securities activities to government securities, as defined in Section 3(a)(42) of the Exchange Act, repos, any puts, calls, straddles, options, or privileges on government securities, other than puts, calls, straddles, options, or privileges that: (1) are traded on one or more national securities exchanges; or (2) for which quotations are disseminated through an automated quotation system operated by a

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41 See 15 U.S.C. 78e (Section 5 of the Exchange Act); 78f (Section 6 of the Exchange Act); and 78s (Section 19 of the Exchange Act). See also NMS Stock ATS Adopting Release, supra note 1, at 78772. An ATS that fails to comply with Regulation ATS would no longer qualify for the exemption provided under Rule 3a1-1(a)(2) and thus risks operating as an unregistered exchange in violation of Section 5 of the Exchange Act. See 15 U.S.C. 78e. See also NMS Stock ATS Adopting Release, supra note 1, at 78772.

42 17 CFR 240.3a1-1(a)(3).

43 17 CFR 242.301(a)(4)(ii)(A).

44 17 CFR 242.301(b).

45 See 15 U.S.C. 78o(b) (Section 15(b) of the Exchange Act pertains to the registration and regulation of brokers and dealers).

46 See 15 U.S.C. 78o-5 (Section 15C of the Exchange Act pertains to government securities brokers and dealers).

registered securities association, and commercial paper.[47] Accordingly, such Currently Exempted Government Securities ATSs are not required to register as a national securities exchange or comply with Regulation ATS.[48] To the Commission's knowledge, most Currently Exempted Government Securities ATSs operating pursuant to this exemption limit their securities activities solely to government securities and register as broker-dealers with the Commission.[49]

ATSs that trade government securities or repos and other securities – such as corporate bonds or municipal securities – cannot use this exemption because these ATSs do not limit their securities activities solely to government securities or repos. Such ATSs must either register as a national securities exchange or comply with Regulation ATS pursuant to Exchange Act Rule 3a1-1(a)(2), which includes, among other things, registering as a broker-dealer under Section 15 of the Exchange Act. As a registered broker-dealer, an ATS must also, in addition to complying with Regulation ATS, comply with broker-dealer filing and conduct obligations, including

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47 See 15 U.S.C. 78c(a)(42). The Commission notes that the definition of "government securities" in Section 3(a)(42) of the Exchange Act includes certain puts, calls, straddles, options, or privileges on government securities, other than puts, straddles, options, or privileges that: (1) are traded on one or more national securities exchanges; or (2) for which quotations are disseminated through an automated quotation system operated by a registered securities association. See supra note 6. Therefore, references to "government securities" throughout this proposal include such puts, calls, straddles, options, or privileges on government securities.

48 See 17 CFR 242.301(a)(4)(i) and (ii)(A). Although not required to register as a national securities exchange or comply with Regulation ATS, a Currently Exempted Government Securities ATS may need to register as a broker-dealer under Section 15(b) or as a government securities broker or government securities dealer pursuant to Exchange Act Section 15C, and comply with associated regulatory requirements. See, e.g., 17 CFR, Subchapter A – Regulations under Section 15C of the Securities Exchange Act of 1934.

49 Some ATSs that are eligible for the exemption voluntarily comply with Regulation ATS, even though ATSs that trade only government securities are not required to comply with Regulation ATS at all.

becoming a member of an SRO, such as the Financial Industry Regulatory Authority ("FINRA"). Among other things, Government Securities ATSs that are currently subject to Regulation ATS must report transactions in U.S. Treasury Securities and Agency Securities to the Trade Reporting and Compliance Engine ("TRACE"),[50] and FINRA publicly disseminates data about these transactions. Currently, FINRA publishes weekly aggregated transaction information on U.S. Treasury Securities and disseminates certain transaction information on Agency Securities immediately upon receipt of a transaction report.[51]

In addition to registering as a broker-dealer, an ATS that trades government securities or repos and securities other than government securities or repos must file notices with the Commission on Form ATS (which are "deemed confidential" and "available only to the

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50 See FINRA Rule 6730(a)(1) requires FINRA members to report transactions in TRACE-Eligible Securities, which FINRA Rule 6710 defines to include U.S. Treasury Securities and Agency Securities. For each transaction in U.S. Treasury Securities and Agency Securities, a FINRA member would be required to report the CUSIP number or similar numeric identifier or FINRA symbol; size (volume) of the transaction; price of the transaction (or elements necessary to calculate price); symbol indicating whether transaction is a buy or sell; date of trade execution ("as/of" trades only); contra-party's identifier; capacity (principal or agent); time of execution; reporting side executing broker as "give-up" (if any); contra side introducing broker (in case of "give-up" trade); the commission (total dollar amount), if applicable; date of settlement; if the member is reporting a transaction that occurred on an ATS, the ATS's separate Market Participant Identifier ("MPID"); and trade modifiers as required. For when-issued transactions in U.S. Treasury Securities, a FINRA member would be required to report the yield in lieu of price. See FINRA Rule 6730(c).

51 FINRA Rule 6750(a) requires FINRA to disseminate information on all transactions on certain securities, including Agency Securities (but excluding U.S. Treasury Securities), immediately upon receipt of the transaction report. FINRA is permitted to publish or distribute weekly aggregated transaction information and statistics on U.S. Treasury Securities, and has stated that it intends to publish weekly volume information aggregated by U.S. Treasury subtype (e.g., Bills, Floating Rate Notes, Treasury Inflation-Protected Securities, and Nominal Coupons). See Securities Exchange Release No. 87837 (December 20, 2019), 84 FR 71986 (December 30, 2019) (approving a proposed rule change to allow FINRA to publish or distribute aggregated transaction information and statistics on U.S. Treasury Securities).

examination of Commission staff, state securities authorities, and the self-regulatory organizations") to disclose their operations to the Commission pursuant to Rule 301(b)(2); cooperate with the Commission's or an SRO's inspection, examination, or investigation of the ATS or any of the ATS's subscribers pursuant to Rule 301(b)(7); make, keep current, and preserve certain records as prescribed under Rule 302 and Rule 303 of Regulation ATS pursuant to Rule 301(b)(8); periodically report certain information about trading activities on Form ATS-R pursuant to Rule 301(b)(9); adopt written safeguards and written procedures to protect subscriber confidential trading information and separate ATS functions from other broker-dealer functions, including principal and customer trading pursuant to Rule 301(b)(10); and not use in its name the word "exchange," or derivations of the word "exchange" pursuant to Rule 301(b)(11).[52]

Such Government Securities ATSs, however, are subject to only certain provisions of Regulation ATS because not all the provisions of Regulation ATS are applicable to trading in government securities. In particular, government securities are not included in any category of securities under the Fair Access Rule.[53] Today, the categories of securities under the Fair Access Rule include NMS stocks, equity securities that are not NMS stocks and for which transactions are reported to an SRO, municipal securities, and corporate debt securities.[54] Under the Fair Access Rule, an ATS that meets the average daily volume threshold for a category of securities

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52 See 17 CFR 242.301(b)(1); 301(b)(2); and 301(b)(7) through (b)(11). The order display and execution access provisions under Rule 301(b)(3) and the related fee restrictions of Rule 301(b)(4) of Regulation ATS only apply to an ATS's NMS stock activities. See 17 CFR 242.301(b)(3)-(4).

53 17 CFR 242.301(b)(5).

54 See id.

during at least four of the preceding six calendar months must: (1) establish written standards for granting access to trading on its system; (2) not unreasonably prohibit or limit any person in respect to access to services offered by such ATS by applying the above written standards in an unfair or discriminatory manner; and (3) make and keep certain records. In addition, Regulation SCI does not apply to ATSs with respect to their trading in government securities.[55] The capacity, integrity, and security of automated systems provisions of Rule 301(b)(6) under Regulation ATS ("Capacity, Integrity, and Security Rule")[56] also do not apply to the government securities activities of an ATS.[57]

Finally, Government Securities ATSs that trade only government securities or repos are not required to comply with rules applicable to ATSs that trade NMS stocks, including Rule 304 of Regulation ATS.[58] Rule 304 requires only NMS Stock ATSs to file a public Form ATS-N, which discloses the manner of the NMS Stock ATS's operations and the ATS-related activities of the broker-dealer operator and its affiliates. Form ATS-N disclosures are subject to review by the Commission and an NMS Stock ATS is prohibited from operating unless the Form ATS-N is effective. ATSs that transact in government securities or repos are also not required to comply

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55 See infra Section VI (describing the types of entities that are currently subject to the requirements of Regulation SCI).

56 17 CFR 242.301(b)(6).

57 Rule 301(b)(6) requires an ATS that trades only municipal securities or corporate debt securities with 20 percent or more of the average daily volume traded in the United States during at least four of the preceding six calendar months to comply with the Capacity, Integrity, and Security Rule. Prior to the Commission's adoption of Regulation SCI, the requirements of Rule 301(b)(6) also applied to ATSs with regard to their trading in NMS stocks and non-NMS stocks; however, Regulation SCI superseded and replaced the requirements of Rule 301(b)(6) with regard to ATSs that trade NMS stocks and non-NMS stocks. See infra Section VI (describing each requirement of Regulation SCI).

58 17 CFR 242.304.

with the order display and execution access provisions under Rule 301(b)(3)[59] and the related fee restrictions of Rule 301(b)(4),[60] both of which only apply to an ATS's NMS stock activities.

C. Prior Comments Received about Government Securities Markets

On July 18, 2018, the Commission adopted amendments to Regulation ATS and Exchange Act Rule 3a1-1 to enhance operational transparency of, and increase Commission oversight for, NMS Stock ATSs.[61] In the Commission's proposal for these amendments, the Commission solicited comment about whether the proposal should apply to other types of ATSs, including Currently Exempted Government Securities ATSs and Government Securities ATSs. The Commission also acknowledged the observations made in the October 15 Staff Report about the significance of the government securities markets and the rapid and continuing evolution of the electronic secondary market in U.S. Treasury Securities. The Commission solicited comment about removing the exemption for Currently Exempted Government Securities ATSs and amending Regulation ATS to apply provisions of Regulation ATS to Government Securities ATSs, including the Fair Access Rule.[62]

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59 Rule 301(b)(3) only applies to ATSs that (1) display subscriber orders in an NMS stock to any person (other than an employee of the ATS) and (2) during at least four of the preceding six calendar months, had an average daily trading volume of 5 percent or more of the aggregate average daily share volume for that NMS stock, as reported by an effective transaction reporting plan. See 17 CFR 242.301(b)(3).

60 Under Rule 301(b)(4), an ATS must not charge any fee to broker-dealers that access the ATS through a national securities exchange or national securities association that is inconsistent with the equivalent access to the ATS that is required under Rule 301(b)(3)(iii), and thus, the requirements of Rule 301(b)(4) also only apply to ATSs that transact in NMS stock and trigger the order display requirements of Rule 301(b)(3). See 17 CFR 242.301(b)(4).

61 See NMS Stock ATS Adopting Release, supra note 1.

62 See Securities Exchange Act Release No. 76474 (November 18, 2015), 80 FR 80998, 81018-20 (December 28, 2015) ("NMS Stock ATS Proposing Release").

The Commission received several comments regarding Government Securities ATSs.[63] Commenters generally supported increasing operational transparency for Government Securities ATSs.[64] Several commenters suggested that the current exemption should be eliminated or that Regulation ATS should be amended to apply to Currently Exempted Government Securities ATSs,[65] and several commenters stated that the proposal relating to the oversight of NMS Stock

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63 All comments received on the NMS Stock ATS Proposing Release regarding Government Securities ATS are available at: https://www.sec.gov/comments/s7-23-15/s72315.shtml.

64 See, e.g., Letter from Venu Palaparthi, Senior Vice President, Virtu Financial, to Brent J. Fields, Secretary, Commission, dated December 2, 2015 ("Virtu Letter"), at 2; Letter from Dennis M. Kelleher, President and Chief Executive Officer, Stephen W. Hall, Legal Director & Securities Specialist, and Allen Dreschel, Attorney, Better Markets, Inc., to Brent J. Fields, Secretary, Commission, dated February 26, 2016 ("Better Markets Letter"), at 8; and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission, dated March 7, 2016 ("SIFMA Letter"), at 36. See also Letter from Jonathan A. Clark, Chief Executive Officer, and James C. Dolan, Chief Compliance Office, Luminex Trading & Analytics LLC, to Brent J. Fields, Secretary, Commission, dated February 23, 2016 ("Luminex Letter"), at 3 (supporting public disclosure of Form ATS for all ATSs); Letter from David W. Blass, General Counsel, Investment Company Institute, to Brent J. Fields, Secretary, Commission, dated February 25, 2016 ("ICI Letter"), at 11-12; and Letter from Marc R. Bryant, Senior Vice President and Deputy General Counsel, Fidelity Investments, to Brent J. Fields, Secretary, Commission, dated February 26, 2016 ("Fidelity Letter"), at 7 (generally supporting improving transparency into the operations of non-NMS Stock ATSs by providing public disclosure of Form ATS).

65 See Virtu Letter, supra note 64, at 2 (stating that Regulation ATS should be amended to include electronic platforms for government securities because greater public transparency and enhanced monitoring of trading activity in these securities would result in greater investor confidence with respect to U.S. Treasury Securities markets); Letter from Rick A. Fleming, Investor Advocate, Office of the Investor Advocate, Commission, to Brent J. Fields, Secretary, Commission, dated September 9, 2016 ("OIA Letter"), at 16-19 (supporting the elimination of the exemption for Currently Exempted Government Securities ATSs and making their Form ATS public as an interim step); and Letter from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel LLC, to Brent J. Fields, Secretary, Commission, dated March 1, 2016 ("Citadel Letter"), at 4. Another commenter also did not object to applying the requirements of Regulation ATS to systems that cross trades in government securities. See Letter from Howard Meyerson,

ATSs should be expanded to include Government Securities ATSs.[66] One commenter, however, stated that Government Securities ATSs should not be subject to increased regulation, as such requirements would place such ATSs at a disadvantage with respect to non-ATS trading venues that trade government securities.[67] Another commenter stated that Government Securities ATSs should be excluded from the scope of the Form ATS-N-like requirements because of the different trading characteristics they offer and the relatively recent entry of ATSs into this

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General Counsel, Liquidnet, Inc., to Brent J. Fields, Secretary, Commission, dated February 26, 2016 ("Liquidnet Letter"), at 3.

66 See, e.g., Letter from Kurt N. Schacht, Managing Director, Standards & Advocacy, CFA Institute, and James C. Allen, Head, Capital Markets Policy, CFA Institute, to Brent J. Fields, Secretary, Commission, dated February 26, 2016, at 3-4 (stating that there is not a compelling case that public disclosure of relatively fundamental organizational structure would harm trading venues and should, therefore, be hidden from market participants); Letter from Micah Hauptman, Financial Services Counsel, Consumer Federation of America, to Brent J. Fields, Secretary, Commission, dated February 26, 2016, at Section II.A (stating that requiring all ATSs to publicly disclose their Form ATS-N should foster greater competition for order flow among ATSs on terms that are beneficial to investors); Better Markets Letter, supra note 64, at 8 (stating that all investors in securities deserve equally robust protections against conflicts of interest and assurances of access to transparent information relating to their trading venues, and that all trading venues should be able to conduct their businesses on a level regulatory playing field regardless of the types of securities trading they seek to offer to investors); Letter from Dave Lauer, Chairman, Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated February 26, 2016 ("HMA Letter"), at 5-6 (stating that while market characteristics across asset classes are different and such differences may render information that is extremely material for one asset class irrelevant to trading in another asset class, those circumstances are generally rare); Citadel Letter, supra note 65, at 4; and Letter from Stuart J. Kaswell, Executive Vice President, Managing Director, and General Counsel, Managed Funds Association, and Jiří Król, Deputy Chief Executive Officer, Global Head of Government Affairs, Alternative Investment Management Association, to Brent J. Fields, Secretary, Commission, dated February 26, 2016 ("MFA/AIMA Letter"), at 2-4.

67 See Letter from John A. McCarthy, General Counsel, KCG Holdings, Inc., to Brent J. Fields, Secretary, Commission, dated March 15, 2016 ("KCG Letter"), at 13. See also Liquidnet Letter, supra note 65, at 3 (stating that the enhanced transparency requirements should be limited to the trading of equity securities). This commenter, however, did not object to the requirements of Regulation ATS applying to ATSs that cross trades in government securities. See id.

space.[68] The commenter also stated that any additional regulatory proposals with respect to Government Securities ATSs should be informed by the results of any review of the U.S. Treasury Securities market structure in connection with the October 15 Staff Report.[69]

Of the several commenters that expressed support for expanding the ATS-N disclosure regime to include Government Securities ATSs,[70] one commenter in particular described the importance of the U.S. Treasury Securities market and the depth, liquidity, and significant volume in recently issued benchmark or on-the-run U.S. Treasury Securities transacted on ATSs.[71] This commenter also stated that the U.S. Treasury Securities market has undergone significant changes with the transition to electronic trading and the entry of new liquidity providers.[72] The commenter stated that removing the exemption for Government Securities ATSs would subject them to appropriate oversight and that market participants using these ATSs

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68 See SIFMA Letter, supra note 64, at 35-36. This commenter, however, generally supported increased transparency for Government Securities ATSs, although it stated that disclosure to give effect to this goal should be tailored to the unique characteristics of the government securities market, and that it would support making current Form ATS for Government Securities ATSs publicly available as an interim step. Id. at 36. Another commenter stated that the disclosure required by Form ATS-N might not be appropriate for securities other than NMS stocks at this time in their development, and recommended that the Commission carefully study these other markets before proceeding with an enhanced disclosure regime for ATSs that offer trading exclusively in non-NMS stocks. See ICI Letter, supra note 64, at 11. However, this commenter did not explicitly comment on Government Securities ATSs, or whether ATSs that currently transact solely in government securities should or should not be required to comply with the Regulation ATS requirements or be subject to any transparency requirements at this time. Id.

69 See SIFMA Letter, supra note 64, at 35. See also October 15 Staff Report, supra note 14, at 47 (stating that the authors of the report, among other items, support a review of the current regulatory requirements applicable to the government securities market and its participants).

70 See supra note 64.

71 See Citadel Letter, supra note 65, at 4.

72 See id.

would benefit from increased operational transparency regarding subscriber segmentation, potential conflicts of interest, order types, and fees.[73]

Another commenter stated that many of the concerns surrounding potential conflicts of interest that arise between an ATS and the activities of its broker-dealer operator and affiliates are equally relevant with respect to Government Securities ATSs as with NMS Stock ATSs.[74] This commenter stated that there is little information available to investors and the public about Government Securities ATSs and that Form ATS-N-like disclosures for these ATSs could greatly enhance public transparency of these markets.[75] Another commenter stated that making the Form ATS public for Government Securities ATSs would enhance transparency and provide important disclosures to market participants and the public about increasingly important venues of cash trading in government securities.[76] In addition, of the commenters who stated that Government Securities ATSs should be subject to similar obligations as NMS Stock ATSs,[77] one commenter specifically asserted that Government Securities ATSs should be subject to the Fair Access Rule to prevent them from arbitrarily excluding specific market participants.[78] This commenter stated that these requirements would not only promote market safety, stability, and integrity, but would also improve conditions for investors through increased transparency, more

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73 See id.

74 See MFA/AIMA Letter, supra note 66, at 3.

75 See id. This commenter also stated that at a minimum, a trading venue should clearly disclose the manner of its operations. See id. at 4.

76 See OIA Letter, supra note 65, at 19.

77 See supra note 64.

78 See Citadel Letter, supra note 65, at 4. This commenter also stated that government securities trading venues that do not currently meet the definition of ATS, such as trading venues that use request for quote systems, should be subject to equivalent regulation as well. Id. at 5.

competition, better pricing, and new sources of orders and trading interest.[79] Moreover, this commenter supported a comprehensive review of the current regulatory framework for electronic trading platforms for government securities in an effort to improve market transparency, fairness, and resiliency. This commenter stated that requiring electronic trading platforms for government securities to comply with the systems compliance and integrity standards in Regulation SCI, among other things, would promote a transparent, efficient, and resilient market.[80]

II. Proposed Amendments to Regulation ATS for Government Securities ATSs

The Commission recognizes that Form ATS and the requirements of Regulation ATS were designed before Government Securities ATSs operated as electronic platforms with the automation, speed, and complexity that they do today, and that market conditions for government securities have substantially changed since the adoption of Regulation ATS in 1998. The Commission has carefully considered prior comments it received relating to Government Securities ATSs, the significant role of Government Securities ATSs in today's government securities market structure, and the complexity of Government Securities ATS operations, and is proposing the amendments described below.[81]

A. Proposed Amendment to Exchange Act Rule 3a1-1(b)

The Commission is proposing to amend the existing classes of securities set forth in Exchange Act Rule 3a1-1(b)(3)[82] to add U.S. Treasury Securities and Agency Securities for

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79 See id. at 4.

80 See id.

81 See infra Sections II.A-H and III.

82 17 CFR 240.3a1-1(b).

which transactions are reported to an SRO.[83] As a result of the proposed change, the Commission could require a Government Securities ATS, which otherwise meets the conditions to the Rule 3a1-1(a) exemption,[84] to register as a national securities exchange if the ATS meets specified volume levels in U.S. Treasury Securities or Agency Securities[85] and the Commission finds that the exemption would not be necessary or appropriate in the public interest or consistent with the protection of investors.[86]

The Commission would provide a Government Securities ATS with notice and an opportunity to respond before determining the exemption from national securities exchange registration is not necessary or appropriate in the public interest or consistent with the protection of investors. The Commission would take into account the requirements for exchange registration under Section 6 of the Exchange Act and the objectives of the national market system. This amendment would extend the existing provision under Rule 3a1-1(b) applicable to ATSs that trade NMS stocks, corporate debt, municipal securities, and OTC equity securities to ATSs that trade U.S. Treasury Securities or Agency Securities and enhance the Commission's ability to regulate certain large volume ATSs whose registration as a national securities

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83 The Commission is proposing to specify that Rule 3a1-1(b) would apply to U.S. Treasury Securities and Agency Securities for which transactions are reported to an SRO to allow the Commission and market participants to calculate the volume level threshold provided under the rule.

84 See supra note 40 and accompanying text.

85 The volume thresholds are met if during three of the preceding four calendar quarters, the ATS had (i) fifty percent or more of the average daily dollar trading volume in any security and five percent or more of the average daily dollar trading volume in any class of securities; or (ii) forty percent or more of the average daily dollar trading volume in any class of securities. See 17 CFR 240.3a1-1(b)(1).

86 See 17 CFR 240.3a1-1(b)(2).

exchange, and the associated increased obligations that arise therefrom, may be in the public interest.

Request for Comment

1. Should the Commission amend Exchange Act Rule 3a1-1(b) to add U.S. Treasury Securities and Agency Securities to the list of existing classes of securities set forth in Rule 3a1-1(b)(3)?

B. Proposed Definitions for Government Securities ATSs Rules

The Commission is proposing to amend Rule 300 of Regulation ATS to define "Government Securities ATS" to mean an alternative trading system, as defined in Rule 300(a), that trades government securities, as defined in section 3(a)(42) of the Exchange Act (15 U.S.C. 78c(a)(42)),[87] or repurchase and reverse repurchase agreements on government securities.[88] To meet the definition of a Government Securities ATS, the organization, association, person, group of persons, or system must meet the definition of an alternative trading system under Rule 300(a) of Regulation ATS.[89] The Commission is also proposing that a Government Securities ATS shall not trade securities other than government securities or repos[90] and that trading of securities other than government securities or repos would require the separate filing of either a Form ATS

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87 The definition of government security in section 3(a)(42) of the Exchange Act encompasses "any put, call, straddle, option, or privilege" on any government security listed in subsections (A)-(C) of the definition, other than any put, call, straddle, option or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated through an automated quotation system operated by a registered securities association. 15 U.S.C. 78c(a)(42)(D).

88 See proposed Rule 300(l).

89 17 CFR 242.300(a). See Regulation ATS Adopting Release, supra note 35, at 70851-52.

90 See proposed Rule 300(l).

or a Form ATS-N, depending on the types of securities traded.[91] This amendment would not, however, impose new compliance requirements on such ATSs other than complying with Rule 304 and filing Form ATS-G.[92] Under the proposal, if a registered broker-dealer or government securities broker or government securities dealer that operates the ATS ("broker-dealer operator") that currently operates an ATS for government securities and non-government securities such as, for example, corporate bonds, the broker-dealer operator would operate two separate ATSs: (1) a Government Securities ATS that would trade government securities, which would be subject to Rule 304, and file disclosures on proposed Form ATS-G and (2) a non-Government Securities ATS that would trade corporate bonds, which would not be subject to Rule 304, and file disclosures on its existing Form ATS, as amended to remove references to government securities. To provide that the same approach applies to broker-dealers that operate NMS Stock ATSs and non-NMS Stock ATSs, and to clarify requirements applicable to NMS Stock ATSs, the Commission is proposing to amend the definition of "NMS Stock ATS" to state that an NMS Stock ATS shall not trade securities other than NMS stocks.[93] Today, securities other than NMS stocks are not traded in any NMS Stock ATS and the proposed amendment to

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91 An ATS that does not trade NMS stocks or government securities, as proposed, must file Form ATS.

92 Broker-dealers that operate Government Securities ATSs that are currently subject to Regulation ATS already must have established written safeguards and written procedures to protect subscribers' confidential trading information, pursuant to Rule 301(b)(10), and already must make and keep records pursuant to Rule 301(b)(8) that are tailored to the types of securities the ATS trades and the subscribers that trade those securities on the ATS. The Commission believes the proposal is broadly consistent with the manner in which broker-dealers that operate NMS Stock ATSs and non-NMS Stock ATSs currently comply with Regulation ATS. For further discussion, see infra Section II.E.

93 See proposed Rule 300(k).

the definition of NMS Stock ATS would have no impact on any existing ATS nor on the requirements applicable to existing NMS Stock ATSs.[94]

The Commission is also proposing to amend Rule 300 of Regulation ATS to define the terms "Covered ATS" and "Covered Form."[95] The proposed terms would be used throughout Rule 304 because Government Securities ATSs, in addition to NMS Stock ATSs, would be subject to Rule 304 of Regulation ATS.[96] "Covered ATS" would mean an NMS Stock ATS or Government Securities ATS and "Covered Form" would mean a filing on Form ATS-N or Form ATS-G, as applicable. To facilitate the orderly transition to the heightened requirements for Government Securities ATSs that are currently operating, the Commission is defining such ATSs as "Legacy Government Securities ATSs."[97] The Commission believes these proposed definitions are non-substantive and enhance the readability of the rule text.

The Commission is also proposing to add definitions of "U.S. Treasury Security" and "Agency Security" for purposes of Regulation ATS.[98] "U.S. Treasury Security" would mean a security issued by the U.S. Department of the Treasury. "Agency Security" would mean a debt security issued or guaranteed by a U.S. executive agency, as defined in 5 U.S.C. 105, or

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94 Broker-dealer operators of NMS Stock ATSs are currently required to file a Form ATS-N for NMS Stock ATS operations and a separate Form ATS for any non-NMS Stock ATS operations. See current Rule 301(b)(2)(viii). This would not change under this proposal.

95 See proposed Rule 300(m)-(n).

96 See infra Section II.F-H.

97 See proposed Rule 300(o). Legacy Government Securities ATSs would include all Government Securities ATSs operating as of [the date 120 calendar days after the date of publication of the final rule in the Federal Register] ("Compliance Date"), including both (1) Currently Exempted Government Securities ATSs and (2) Government Securities ATSs operating pursuant to a Form ATS on file with Commission as of the Compliance Date.

98 See proposed Rule 300(p)-(q).

government-sponsored enterprise, as defined in 2 U.S.C. 622(8). The proposed definitions are designed to provide the scope of securities a Government Securities ATS must include when calculating whether the fair access requirements set forth in Rule 301(b)(5) are applicable and to facilitate compliance with the Fair Access Rule.[99] In addition, the Commission is proposing to use these definitions in the proposed amendment to Exchange Act Rule 3a1-1(b)(3) to provide the scope of securities for which the Commission could remove the exemption from national securities exchange if certain volume thresholds are met.[100]

Request for Comment

2. Should the Commission adopt a more limited or expansive definition of Government Securities ATS than the definition that is being proposed?
3. Should the Commission cite to the section 3(a)(42) (15 U.S.C. 78c(a)(42)) definition of government securities for purposes of defining Government Securities ATS? Should the securities encompassed by the definition (e.g., certain options on government securities) be considered "government securities" for purposes of this regulation?
4. Should the Commission modify the proposed definitions of U.S. Treasury Securities and Agency Securities in any way?
5. The proposed amendments to the definitions of NMS Stock ATS and Government Securities ATS are not designed to limit a broker-dealer operator for an NMS Stock ATS or Government Securities ATS with respect to other types of securities that the broker-dealer operator may wish to trade in an ATS that is subject to Rule 301(b)(2) of Regulation ATS or how the broker-dealer operator may elect to structure the operations

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99 See infra Section II.D. The proposed definitions are similar to those in FINRA's rules. See FINRA Rule 6710(l) and FINRA Rule 6710(p).

100 See supra Section II.A.

of its ATS businesses. Would the proposed amendments to the definitions of NMS Stock ATS and Government Securities ATS impose any operational or other burdens on the broker-dealer operator, other than those related to filing Form ATS, Form ATS-R, Form ATS-G or Form ATS-N, as applicable?

C. Proposed Elimination of the Exemption for ATSs that Limit Securities Activities to Government Securities and Repos

The Commission is proposing amendments to Regulation ATS that would require a Currently Exempted Government Securities ATS that seeks to operate pursuant to the exemption from the definition of an "exchange" under Exchange Act Rule 3a1-1(a)(2), and thus not be required to be registered as a national securities exchange, to comply with Regulation ATS. A Currently Exempted Government Securities ATS that opts to comply with Regulation ATS would then be subject to the conditions to the exemption from exchange registration that are designed to provide its subscribers with investor protections and enable Commission oversight, including the surveillance and examination of ATSs, and to help assure fair and orderly markets.[101] The Commission is also proposing to subject Currently Exempted Government Securities ATSs to the enhanced public transparency requirements of Rule 304 and Form ATS-G.

At present, Exchange Act Rule 3a1-1(a)(3) and Rule 301(a)(4) of Regulation ATS exempt from the definition of an "exchange" under Section 3(a)(1) of the Exchange Act an ATS that is operated by a registered broker-dealer or a bank that solely trades government securities or repos.[102] The Commission is proposing to amend Regulation ATS to eliminate the exemption

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[101] See Regulation ATS Adopting Release, supra note 35, at 70878. See also infra notes 121-131 and accompanying text.

[102] See 17 CFR 240.3a1-1(a)(3) and 17 CFR 242.301(a)(4).

under Rule 301(a)(4) of Regulation ATS for ATSs that solely trade government securities and repos. As a result of this proposed amendment, any system that meets the definition of an "exchange" under Section 3(a)(1) of the Exchange Act and Rule 3b-16(a) thereunder and solely trades government securities or repos would no longer be exempt from the definition of an "exchange" and would either have to register as a national securities exchange or operate pursuant to an exemption to such registration, such as the exemption under Regulation ATS.[103]

The Commission is also proposing to amend Rule 301(b)(1) of Regulation ATS, which currently requires an ATS to register as a broker-dealer under Section 15 of the Exchange Act,[104] to allow an ATS to register either as a broker-dealer under Exchange Act Section 15 or a government securities broker or government securities dealer under Exchange Act Section 15C(a)(1)(A).[105] Registration pursuant to Section 15C(a)(1)(A) specifically applies to government securities brokers and dealers other than registered broker-dealers or financial

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103 The Commission is proposing to delete the text of Rule 301(a)(4)(ii)(A)-(C) and replace each paragraph with the term "Reserved." The Commission is not proposing to eliminate Rule 301(a)(4)(ii)(D), which exempts an ATS from compliance with Regulation ATS if the ATS limits its securities activities to commercial paper. Accordingly, the only ATSs that would continue to be exempt under Rule 301(a)(4) would be ATSs that are registered broker-dealers or are banks and limit their securities activities to commercial paper.

104 15 U.S.C. 78o.

105 See 15 U.S.C. 78o-5. Exchange Act Section 15C(a)(1)(A) makes it unlawful for a government securities broker or government securities dealer (other than a registered broker or dealer or a financial institution) to make use of the mails or any means or instrumentality of interstate commerce to effect a transaction in any government securities unless the government securities broker or government securities dealer is registered with Commission pursuant to Exchange Act Section 15C(a)(2). See 15 U.S.C. 78o-5(a)(1)(A). Section 15C(e) in turn generally requires that a government securities broker or government securities dealer that is registered or required to be registered under Section 15C(a)(1)(A) must be a member of a registered national securities exchange or registered securities association such as FINRA.

institutions.[106] Registration as a broker-dealer under Section 15 or government securities broker or government securities dealer under Section 15C(a)(1)(A) of the Exchange Act is important because, among other things, it requires membership in an SRO, such as FINRA.[107] Because ATSs that register as broker-dealers or government securities brokers or dealers do not have self-regulatory responsibilities, the Commission believes it is important for these ATSs to be members of an SRO and thus subject to SRO examination and surveillance,[108] trade reporting obligations,[109] and certain investor protection rules.[110] Like ATSs registered as broker-dealers under Section 15, an ATS registered as a government securities broker or government securities dealer under Section 15C(a)(1)(A) would be subject to oversight and surveillance by an SRO.[111]

In contrast, SRO membership is not required for a bank or other financial institution that registers as a government securities broker or dealer.[112] Accordingly, the amendment to

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106 Broker-dealers that limit their activity to government securities require specialized registration under Section 15C of the Exchange Act and do not have to register as general-purpose broker-dealers under Section 15(b). See 15 U.S.C. 78o-5.

107 See Regulation ATS Adopting Release, supra note 35, at 70863 (discussing the importance of an ATS being a member of an SRO because ATSs registered as broker-dealers will not have self-regulatory responsibilities). As noted above, Section 15C(e) generally requires SRO membership for a government securities broker or government securities dealer that is registered or required to be registered under Section 15C(a)(1)(A). Similarly, Section 15(b)(8) generally requires a registered broker-dealer to be a member of a registered securities association such as FINRA.

108 See, e.g., FINRA Rule 1000 Series, FINRA Rules 4140, 4510, 4520, 4530, and 8210.

109 See, e.g., FINRA Rule 6730.

110 See, e.g., FINRA Rules 3110, 4370, 5210, 5220, 5230, 5310, and 5340.

111 See Regulation ATS Adopting Release, supra note 35, at 70863.

112 As proposed, Currently Exempted Government Securities ATSs that are operated by banks would be required to structure their business to either comply with Regulation ATS or register as a national securities exchange. For example, to comply with Regulation ATS, the Government Securities ATS might move its ATS operations into a new or existing broker-dealer affiliate of the bank. Unlike registered broker-dealers (Section 15(b)(8)) and government securities brokers or government securities dealers that are

Regulation ATS would not permit a bank or other financial institution to satisfy the broker-dealer registration requirement by registering as a government securities broker or government securities dealer under Section 15C(a)(1)(B) of the Exchange Act.[113] The Commission believes it is important for an ATS to be a member of an SRO, and unlike registrants under Sections 15 and 15C(a)(1)(A), a bank or other financial institution that registers under Section 15C(a)(1)(B) is not required to be a member of an SRO.[114]

As a result, a bank-operated ATS that trades only government securities or repos would be unable to rely on the exemption provided by Regulation ATS, as proposed to be amended, and could not otherwise operate unless registered as a national securities exchange pursuant to Section 5 of the Exchange Act. However, this is the case currently with respect to bank-operated ATSs that trade securities other than government securities, and it is the Commission's

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registered or required to be registered under Section 15C(a)(1)(A) (Section 15C(e)), there is no statutory requirement of SRO membership for banks. Because banks typically operate in reliance on exceptions from broker or dealer status, they are not required to become a member of an SRO, such as FINRA. In this regard, Exchange Act Section 3(a)(4)(B)(iii)(II) excludes from the definition of "broker" a bank that effects transactions in "exempted securities" such as government securities. 15 U.S.C. 78c(a)(4)(B)(iii)(II). See Exchange Act Section 3(a)(12) (defining "exempted securities" to include "government securities' as defined in Section 3(a)(42) of the Exchange Act). Exchange Act Section 3(a)(5)(C)(i)(II) similarly excepts from the definition of "dealer" a bank that buys or sells exempted securities. 15 U.S.C. 78c(a)(5)(C)(i)(II).

113 Exchange Act Section 15C(a)(1)(B) makes it unlawful for any government securities broker or government securities dealer that is a registered broker or dealer or a financial institution to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any government security unless such government securities broker or government securities dealer has filed with the appropriate regulatory agency written notice that it is a government securities broker or government securities dealer. 15 U.S.C. 78o-5(a)(1)(B)(i).

114 See Exchange Act Sections 3(a)(6) (defining "bank") and 3(a)(46) (defining "financial institution").

understanding that these ATSs often are operated by bank affiliates that are themselves registered broker-dealers, rather than by the banks themselves. The Commission believes that a bank that operates an ATS that trades only government securities might adopt a similar registered affiliate structure for its government securities operations. The Commission is requesting comment, however, on whether it should amend Rule 301(b)(1) to make the Regulation ATS exemption available to entities registered under Section 15C(a)(1)(B), and whether some transition period is required if a bank decides to restructure the operation of its Government Securities ATS. Eliminating the exemption from the definition of "exchange" for broker-dealers and banks that operate an ATS for solely government securities or repos would bring these markets within the Commission's regulatory framework for exchanges and, as discussed in more detail above, enhance regulatory oversight, protect investors, and help ensure fair and orderly markets for government securities and repos.[115] Additionally, this proposal seeks to bring greater transparency to a very important market, and removing the exemption under Rule 301(a)(4) of Regulation ATS would accomplish this goal.

In addition to Rule 301(b)(1) of Regulation ATS, with which most Currently Exempted Government Securities ATSs currently comply,[116] a Currently Exempted Government Securities ATS would be required to comply with the conditions of the Regulation ATS exemption, as proposed to be amended. This includes Rule 304, which would require that Government Securities ATSs file Form ATS-G. Government Securities ATSs would not, however, be subject

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115 See supra text accompanying note 101 (describing that the proposed amendments would provide better Commission oversight of and public transparency over Currently Exempted Government Securities ATSs).

116 See supra text accompanying note 49 (stating that most Currently Exempted Government Securities ATSs register as broker-dealers with the Commission).

to the order display and execution access provisions under Rule 301(b)(3) or the fees provision of Rule 301(b)(4) that are applicable only to NMS Stock ATSs.[117] As discussed further below, the Commission is proposing to require Government Securities ATSs that meet a certain volume threshold to comply with the Fair Access Rule with respect to trading in U.S. Treasury Securities and Agency Securities.[118] Because the Commission is proposing to apply Regulation SCI to certain Government Securities ATSs that trade U.S. Treasury Securities and/or Agency Securities, the Capacity, Integrity, and Security Rule under Rule 301(b)(6) would not apply to the trading of government securities on ATSs.[119]

The Commission believes that it is important to apply these conditions to the exemption to Currently Exempted Government Securities ATSs because the conditions are designed to protect investors and to facilitate Commission oversight. Therefore, the Commission is proposing that a Currently Exempted Government Securities ATS must:

- Permit the examination and inspection of its premises, systems, and records, and cooperate with the examination, inspection, or investigation of subscribers, whether such examination is being conducted by the Commission or by an SRO of which such subscriber is a member, pursuant to Rule 301(b)(7).[120] The Commission believes that because subscribers to whom the Commission's inspection authority does not extend could use a Currently Exempted Government Securities ATS to manipulate the

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117 See 17 CFR 242.301(b)(3)-(4).

118 See infra Section II.D.

119 See infra Section VI.

120 See 17 CFR 242.301(b)(7). See also Regulation ATS Adopting Release, supra note 35, Section IV.A.2.f.

market in a security, it is important that these ATSs cooperate in all inspections, examinations, and investigations.[121]

- Make and keep certain records specified in Rule 302[122] and preserve records specified in Rule 303,[123] pursuant to Rule 301(b)(8).[124] The recordkeeping requirements would require the Currently Exempted Government Securities ATSs to create a meaningful audit trail and allow the Commission to examine whether the ATS is in compliance with federal securities laws.[125]
- Periodically report certain information about transactions on the ATS and information about certain activities on Form ATS-R within 30 calendar days after the end of each calendar quarter in which the market has operated pursuant to Rule 301(b)(9).[126] The

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121 See Regulation ATS Adopting Release, supra note 35, at 70877.

122 Rule 302 requires all ATSs to make and keep current certain records, including: a record of subscribers to the ATS; daily summaries of trading in the ATS; and time-sequenced records of order information in the ATS. See 17 CFR 242.302.

123 Rule 303, and specifically Rule 303(a)(1), requires an ATS to preserve: all records required to be made pursuant to Rule 302; all notices provided to subscribers, including notices addressing hours of operations, system malfunctions, changes to system procedures, and instructions pertaining to access to the ATS; documents made or received in the course of complying with the Capacity, Integrity, and Security Rule in Rule 301(b)(6), if applicable; and, if the ATS is subject to the Fair Access Rule under Rule 301(b)(5), a record of its access standards. Rule 303(a)(2) requires that certain other records must be kept for the life of the ATS and any successor enterprise, including partnership articles or articles of incorporation (as applicable), and copies of reports filed pursuant to Rule 301(b)(2), which includes current Form ATS, and records made pursuant to Rule 301(b)(5). In particular, reports required to be maintained for the life of the ATS or any successor enterprise include initial operation reports, amendments, and cessation of operations reports, filed on Form ATS.

124 See 17 CFR 242.301(b)(8). See also Regulation ATS Adopting Release, supra note 35, Section IV.A.2.g.

125 See Regulation ATS Adopting Release, supra note 35, at 70878.

126 See 17 CFR 242.301(b)(9). See also infra Section II.E; Regulation ATS Adopting Release, supra note 35, Section IV.A.2.h (Rule 301(b)(9)). Form ATS-R requires the

information reported on Form ATS-R by Currently Exempted Government Securities ATSs will permit the Commission to monitor the trading on these ATSs for compliance with the Exchange Act and applicable rules thereunder and enforce the Fair Access Rule.[127]

- Adopt written safeguards and written procedures to protect confidential trading information and to separate ATS functions from other broker-dealer functions, including principal and customer trading pursuant to Rule 301(b)(10).[128] The Commission believes that applying the requirements of Rule 301(b)(10) to Currently Exempted Government Securities ATSs will help prevent the potential for abuse of subscriber confidential trading information.[129]
- Not use in its name the word "exchange," or any derivation of the word "exchange" pursuant to Rule 301(b)(11).[130] The Commission believes that the use of the word "exchange" by an ATS, including a Currently Exempted Government Securities ATS,

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ATS to report, among other things, the aggregate quarterly volume data for specified categories of securities, a list of all securities traded on the ATS during the quarter, and a list of all subscribers that were participants during the quarter. In addition, Form ATS-R requires an ATS that is subject to the fair access obligations under Rule 301(b)(5) of Regulation ATS to report a list of all persons granted, denied, or limited access to the ATS during the period covered by the Form ATS-R and designate for each person: (a) whether access was granted, denied, or limited; (b) the date the ATS took such action; (c) the effective date of such action; and (d) the nature of any denial or limitation of access. Rule 301(b)(9) requires an ATS to complete and file Form ATS-R within 10 calendar days after ceasing to operate. See Form ATS-R.

127 See Regulation ATS Adopting Release, supra note 35, at 70874 and 70878.

128 See 17 CFR 242.301(b)(10); NMS Stock ATS Adopting Release, supra note 1, Section VI.

129 See NMS Stock ATS Adopting Release, supra note 1, at 38864.

130 See 17 CFR 242.301(b)(11); Regulation ATS Adopting Release, supra note 35, Section II.C.

would be deceptive and could lead investors to believe incorrectly that such ATS is registered as a national securities exchange.[131]

Request for Comment

6. Should the Commission amend Regulation ATS to eliminate the exemption from compliance with Regulation ATS under Rule 301(a)(4)(ii)(A) for all Currently Exempted Government Securities ATS, including those operated by banks?
7. Should the proposed elimination of the exemption from compliance with Regulation ATS only apply to Government Securities ATSs that trade a certain type of government security (e.g., only U.S. Treasury Securities or only Agency Securities)? Should the proposed elimination of the exemption from compliance with Regulation ATS only apply to Government Securities ATSs that trade government securities (and not repos)? If so, for which type of Government Securities ATS should the exemption be eliminated?
8. Should Government Securities ATSs seeking to operate pursuant to the exemption provided by Regulation ATS have the alternative option to satisfy broker-dealer registration with the Commission pursuant to Section 15C(a)(1)(A)?
9. Should the Commission adopt any alternatives to requiring Government Securities ATSs to register with the Commission as broker-dealers under Section 15 or Section 15C(a)(1)(A)? For example, should the Commission amend Rule 301(b)(1) of Regulation ATS to include an alternative for a bank to register as a government

[131] See Securities Exchange Act Release No. 39884 (April 17, 1998), 63 FR 23504, 23523 (April 29, 1998) ("Regulation ATS Proposing Release").

securities broker or dealer pursuant to Section 15C(a)(1)(B), which would not require the bank to become a member of an SRO?

10. Should there be a transition period for Currently Exempted Government Securities ATSs that are currently operated by banks to comply with the proposed amendments to Rule 301(b)(1), including ATSs provided and operated by an affiliate of the bank? If so, how long should the transition period be?
11. Should there be a transition period for Currently Exempted Government Securities ATSs to comply with all or some of the requirements of Regulation ATS? If so, which requirements would require such a transition period, and how long should such transition period be?
12. Should the Commission amend Regulation ATS to remove the exemption from Regulation ATS for ATSs that limit their securities activities to commercial paper? Do market participants use ATSs to trade commercial paper? If so, how is commercial paper traded on an ATS? Should the Commission remove any other exemption from Regulation ATS available under Rule 301?
13. Should the Commission require Currently Exempted Government Securities ATSs to comply with all of the requirements of Regulation ATS applicable to all ATSs that are currently required to comply with Regulation ATS? If not, which requirements should a Currently Exempted Government Securities ATS not be required to comply with and why?

D. Application of Fair Access to Government Securities ATSs

The Commission believes that the proposal to amend Regulation ATS to include U.S. Treasury Securities and Agency Securities as categories of securities under the Fair Access Rule would promote fair and orderly markets given the importance of Government Securities ATSs.

When Regulation ATS was adopted, the Commission explained that the fair treatment by ATSs of potential and current subscribers is particularly important when an ATS captures a large percentage of trading volume in a security, because viable alternatives to trading on such a system are limited.[132] The Commission further explained that if an ATS has a significantly large percentage of the volume of trading in a security or type of security, unfairly discriminatory actions can hurt investors lacking access to that ATS.

Currently, Rule 301(b)(5) only applies to the trading of NMS stocks, equity securities that are not NMS stocks and for which transactions are reported to an SRO, municipal securities, and corporate debt securities, but not to trading in government securities.[133] An ATS subject to the Fair Access Rule must, among other things, establish written standards for granting access to trading on systems and apply these standards fairly, and is prohibited from unreasonably prohibiting or limiting any person with respect to trading in the stated security when that trading exceeds certain volume thresholds.[134] These requirements are designed to ensure that qualified market participants have fair access to the nation's securities markets.

Government Securities ATSs have become a significant source of orders and trading interest in U.S. Treasury Securities and Agency Securities for investors.[135] Regulation ATS, however, does not provide a mechanism to prevent unfair denials or limitations of access by Government Securities ATSs that trade U.S. Treasury Securities or Agency Securities or regulatory oversight of such denials or limitations of access. The Commission believes that today, the principles undergirding the Fair Access Rule are equally relevant to a Government

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132 See Regulation ATS Adopting Release, supra note 35, at 70872.

133 See 17 CFR 242.301(b)(5)(i).

134 See supra Section I.B.

135 See infra Section X.B.1.

Securities ATS and amending the Fair Access Rule to include the trading of U.S. Treasury Securities and Agency Securities would help ensure the fair treatment of potential and current subscribers to ATSs that consist of a large percentage of trading volume in these two types of securities.[136]

Under the proposed amendments to Rule 301(b)(5), a Government Securities ATS would be subject to the Fair Access Rule if during at least four of the preceding six calendar months, the Government Securities ATS had, (1) with respect to U.S. Treasury Securities, five percent or more of the average weekly dollar volume traded in the United States as provided by the self-regulatory organization to which such transactions are reported, and (2) with respect to Agency Securities, five percent or more of the average daily dollar volume traded in the United States as provided by the self-regulatory organization to which such transactions are reported.[137]

The Commission is proposing five percent volume thresholds for subjecting a Government Securities ATS to the Fair Access Rule. Specifically, a Government Securities ATS would be subject to the Fair Access Rule for its trading of U.S. Treasury Securities if its volume

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[136] Under the proposal, the Fair Access Rule would not apply to Government Securities ATSs that trade repos, including repos on U.S. Treasury Securities and Agency Securities. Based on information available to the Commission, the Commission does not believe that ATSs today capture a significant market share for trading repos or that these markets are as liquid as the markets for securities currently covered by the Fair Access Rule. The Commission also notes FINRA does not require ATSs to report transactions for repos. The Commission is requesting comment on its preliminary assessment and on whether the Commission should amend Regulation ATS to require Government Securities ATSs that trade repos, including repos on U.S. Treasury Securities and Agency Securities, to be subject to the requirements of the Fair Access Rule.

[137] Dollar volume is measured in par value, where par value is the face value or nominal value of a bond. The Commission notes that TRACE Security Activity Report and TRACE Fact Book report volume in the same unit, "par value volume" or "par value traded." See FINRA Rule 7730(g)(7). See also FINRA, TRACE Fact Book, available at https://www.finra.org/filing-reporting/trace/trace-fact-book.

surpasses the five percent threshold for U.S. Treasury Securities. Similarly, a Government Securities ATS would be subject to the Fair Access Rule for its trading in Agency Securities if its volume surpasses the five percent threshold for Agency Securities.[138] When the Commission adopted Rule 301(b)(5), the Fair Access Rule threshold was 20 percent of the average daily trading volume.[139] Currently, the Fair Access Rule applies on a security-by-security basis for NMS stocks and equity securities that are not NMS stocks, and on a category basis for corporate bonds and municipal securities. The original volume threshold was reduced to five percent for all categories of securities when the Commission adopted Regulation NMS, and the Commission proposes to apply five percent volume thresholds for the trading of U.S. Treasury Securities and Agency Securities.[140]

The proposed thresholds include only such securities for which transactions are reported to an SRO. FINRA publishes weekly aggregate data on U.S. Treasury Securities based on the mandatory transaction reports of its members to TRACE, and disseminates transactions data about Agency Securities immediately upon receipt of a transaction report.[141] Because weekly dollar volume data about transactions in U.S. Treasury Securities and daily dollar volume data

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138 As such, a Government Securities ATS with high trading volume in U.S. Treasury Securities and low trading volume in Agency Securities might only be subject to the Fair Access Rule for U.S. Treasury Securities. Likewise, a Government Securities ATS with high Agency Securities trading volume and low U.S. Treasury Securities trading volume might only be subject to the Fair Access Rule for Agency Securities. A Government Securities ATS that surpasses each of the two thresholds would be subject to the Fair Access Rule for U.S. Treasury Securities and Agency Securities.

139 See Regulation ATS Adopting Release, supra note 35, at 70873.

140 See Securities and Exchange Act Release No. 51808 (June 9, 2005) 70 FR 37496, 37550 (June 29, 2005) (File No. S7–10–04).

141 See supra notes 50-51.

about transactions in Agency Securities are publicly available via TRACE, Government Securities ATSs will be able to readily calculate whether they meet the applicable thresholds.

The Commission believes that separate volume thresholds for U.S. Treasury Securities and Agency Securities would advance the investor protection goals of the Fair Access Rule. U.S. Treasury Securities and Agency Securities make up the vast amount of government securities traded on ATSs today, and also constitute different sources of potential orders and trading interest for market participants.[142] The proposed volume thresholds would help ensure that the Fair Access Rule applies to the category of security for which an ATS has significant trading volume. If a Government Securities ATS has significant trading volume in U.S. Treasury Securities but not Agency Securities, for example, the proposed rule would help ensure that investors are provided fair access to the ATS's services with respect to U.S. Treasury Securities, even if the ATS's combined trading volume in both U.S. Treasury Securities and Agency Securities would not exceed a five percent volume threshold. The Commission believes that it would be unnecessary and overly burdensome to require a Government Securities ATS to comply with the Fair Access Rule for a category of government security for which that ATS does not have significant volume. Additionally, given that U.S. Treasury Securities and Agency Securities are types of debt securities, the Commission believes that it is appropriate to determine these five percent volume thresholds on a category basis because doing so would be consistent with the Fair Access Rule's application to other categories of fixed income securities (i.e., corporate bonds and municipal securities).

The Commission believes that the proposed five percent volume threshold test is consistent with the Commission's current threshold for identifying significant markets for

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[142] See infra Section X.B.1. See also supra Section I.A.

purposes of the Fair Access Rule and is appropriate for determining whether a Government Securities ATS should be subject to the Fair Access Rule for trading in the categories of U.S. Treasury Securities and Agency Securities. Currently, the Commission estimates that three ATSs trading U.S. Treasury Securities and one ATS trading Agency Securities would be subject to the Fair Access Rule under the proposed five percent volume thresholds.[143] The ATS with the largest market volume in U.S. Treasury Securities has approximately 24 percent of market volume, while the second and third largest are both slightly above five percent market share. The one ATS that would exceed the proposed threshold for Agency Securities accounts for roughly 13 percent of volume in Agency Securities. If the Commission were to propose a four percent volume threshold, the number of ATSs that would be subject to the Fair Access Rule for U.S. Treasury Securities and Agency Securities would not change, but if the Commission proposed a three percent volume threshold test, the Commission estimates a total of four ATSs would be subject to the Fair Access Rule for U.S. Treasury Securities and the number of ATSs subject to the Fair Access Rule for Agency Securities would remain at one.[144]

If the proposed volume thresholds were 10 percent, however, only one ATS trading U.S. Treasury Securities and one ATS trading Agency Securities would be subject to the Fair Access Rule.[145] The Commission believes that the proposed five percent volume thresholds – in addition to being consistent with the current volume threshold for categories of debt securities under the Fair Access Rule – are appropriately designed to capture those ATSs that are significant liquidity venues for U.S. Treasury Securities or Agency Securities. That said, as

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143 See infra Table X.1.

144 See id.

145 See id.

further specified below, the Commission is requesting comment on whether these proposed volume thresholds should be set higher or lower for ATSs trading government securities.

The proposed fair access volume threshold for U.S. Treasury Securities would have a different data benchmark than that for Agency Securities. The former would be based on average weekly dollar volume traded, and the latter would be based on average daily volume traded. This proposed difference is because FINRA only provides weekly aggregated transaction information on U.S. Treasury Securities but provides individual trade reports for Agency Securities transactions. Currently, FINRA neither provides individual trade reports nor aggregate daily volume data for U.S. Treasury Securities transactions to TRACE subscribers (or to the public). Thus, Government Securities ATSs will only have weekly-volume data upon which to make fair access determinations for U.S. Treasury Securities. FINRA, however, provides individual trade reports for all Agency Securities transactions to TRACE subscribers, and therefore,[146] Government Securities ATSs will be able determine the average daily trading volume for a given month by aggregating these trade reports. Accordingly, the Commission proposes an average daily volume threshold for Agency Securities, which is consistent with the current volume thresholds in 301(b)(5).[147]

Lastly, the Commission is proposing that a Government Securities ATS would only be required to comply with the Fair Access Rule only if it has met at least one of the applicable

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146 The Commission believes that the vast majority – and likely, all – broker-dealer operators of Government Securities ATSs that trade Agency Securities currently subscribe to TRACE. The Commission is, however, requesting public comment on the extent to which Government Securities ATSs (both Currently Exempted Government Securities ATSs and those subject to current Regulation ATS) have access to TRACE trade reports for Agency Securities.

147 See supra notes 138-140.

volume thresholds during at least four of the preceding six calendar months.[148] This is the same time period for evaluating the applicability of the Fair Access Rule to ATSs that trade U.S. Treasury Securities or Agency Securities that is currently applied to ATSs that trade NMS stocks, equity securities that are not NMS stocks and for which transactions are reported to an SRO, municipal securities, and corporate debt securities. Because of the similarity of Government Securities ATSs to the other ATSs, the Commission believes that the range of time is an appropriate period to evaluate the trading volume of an ATS and strikes an appropriate balance; the threshold will not be triggered by atypical periods of increased trading or a few occurrences of very large trades, but will be timely triggered after an ATS attains a significant role in the market.

Request for Comment

14. Should any other type of government securities be included as a category of securities under Rule 301(b)(5)? Should the Commission apply Rule 301(b)(5) to all Government Securities ATSs? What would be the costs and benefits associated with such a requirement?
15. Should the proposed five percent fair access threshold for U.S. Treasury Securities be applied to all types of U.S. Treasury Securities or only to a subset(s) of U.S. Treasury Securities? For example, should the five percent fair access threshold be applied to transaction volume in only on-the-run U.S. Treasury Securities? Should the five percent

[148] However, if, for example, during the six month period from January to June, the Government Securities ATS met the threshold for U.S. Treasury Securities only during January and April and met the threshold for Agency Securities only during February and May, the Government Securities ATS would not be subject to the Fair Access Rule in July because the ATS would not have met the threshold for either type of security during at least four of the preceding six months in either U.S. Treasury Securities or Agency Securities.

fair access threshold should be applied to all Agency Securities or only to a subset(s) of Agency Securities?

16. Should the proposed five percent fair access threshold for U.S. Treasury Securities be set higher or lower than five percent? If so, what should that percentage threshold should be? Should there be no threshold? Please support your views. Is the five percent threshold an appropriate threshold to capture ATSs that are significant markets for trading in U.S. Treasury Securities or Agency Securities? Would the five percent threshold capture ATSs that are not significant markets for U.S. Treasury Securities and Agency Securities? If there should be a percent threshold for a subset of U.S. Treasury Securities, for example on-the-run U.S. Treasury Securities or off-the-run U.S. Treasury Securities, what should that threshold should be?
17. Would the proposed four out of six month period be an appropriate period to measure the volume thresholds for U.S. Treasury Securities, Agency Securities, or both? If not, what period of time would be appropriate?
18. Would it be appropriate to use five percent of average weekly dollar volume traded in the United States as a fair access threshold for U.S. Treasury Securities?
19. If the average weekly dollar volumes were to include transactions for U.S Treasury Securities by non-FINRA members, which currently are not reported to, or collected by, the SRO that makes public average weekly dollar volume statistics, should the fair access threshold change? If so, what should be the appropriate threshold?
20. Would it be appropriate to use five percent of average daily dollar volume traded in the United States as a fair access threshold for Agency Securities? Do ATSs that trade Agency Securities currently subscribe to TRACE and, therefore, receive TRACE trade

reports for Agency Securities? If not, what percentage of these ATSs do not currently subscribe to TRACE?

21. Should the requirements under the Fair Access Rule be amended specifically for Government Securities ATS? If so, how?

22. Should the proposed five percent fair access threshold for U.S. Treasury Securities be applied on a security-by-security basis?

23. Should the proposed fair access volume threshold measurement for Government Securities ATSs, and current fair access threshold measurements applicable to ATSs that trade NMS stock, OTC equity securities, corporate bonds, and municipal securities, take into account whether the ATSs are under common control share the same technology platform? A broker-dealer may be the registered broker-dealer for multiple types of ATSs that trade different types of securities (e.g., an NMS Stock ATS and a non-NMS Stock ATS) or a broker-dealer may also be the registered broker-dealer for multiple ATSs that trade the same type of securities but are separate and distinct from each other (e.g., a broker-dealer registered for, and operates, two NMS Stock ATSs that each maintains a separate book of orders that are governed by distinct priority and order interaction rules). In both instances, each of the ATSs operated by the broker-dealer operator is separate from each other and must independently comply with Regulation ATS. Should two or more ATSs under common control and operated by the same broker-dealer be viewed as a single ATS required to aggregate volume of transactions for purposes of determining whether the fair access threshold has been satisfied? If yes, what factors should be considered when determining the fair access threshold test for multiple ATSs operated by the same broker-dealer, and why?

E. Filing Requirements for Broker-Dealers that Operate ATSs that Trade Government Securities and Non-Government Securities

The Commission is proposing to revise Rule 301(b)(2)(viii)[149] of Regulation ATS to provide that a Legacy Government Securities ATS that is operating pursuant to a Form ATS as of the Compliance Date will continue to be subject to the Rule 301(b)(2) requirements to file a Form ATS. However, once the ATS files a Form ATS-G, it will no longer be subject to Rule 301(b)(2)(i) through (vii) and will instead be subject to the reporting requirements under Rule 304, which provides the rules for filing of Form ATS-G. The Commission is also proposing to provide that as of the Compliance Date, an entity seeking to operate as a Government Securities ATS will not be subject to the requirements of Rule 301(b)(2)(i) through (vii) and will instead be required to file reports under Rule 304. In addition, the Commission is proposing rules to make clear that a Currently Exempted Government Securities ATS would be subject to Rule 304 and would not be subject to Rule 301(b)(2)(i) through (viii). Other than changes to refer to Government Securities ATSs, the relevant compliance dates, and the treatment of Currently Exempted Government Securities ATSs, these rules are identical to the existing rules that were applied to Legacy NMS Stock ATSs operating during the Commission review period for Form

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[149] 17 CFR 242.301(b)(2)(viii). Current Rule 301(b)(2)(viii) provides that NMS Stock ATSs must file with the Commission the reports and amendments required by Rule 304 and that NMS Stock ATSs are not subject to Rule 301(b)(2). NMS Stock ATSs or entities seeking to operate as NMS Stock ATSs would continue to file reports pursuant to Rule 304. Because the Commission review period for all Forms ATS-N filed by Legacy NMS Stock ATSs ended in October 2019, the Commission is proposing to delete references in Rule 301(b)(2)(viii) to Legacy NMS Stock ATSs. The Commission is also proposing to consolidate the current provisions of Rule 301(b)(2)(viii) applicable to NMS Stock ATSs to state that NMS Stock ATSs or entities seeking to operate as an NMS Stock ATS shall not be subject to the requirements of Rule 301(b)(2)(i) through (vii) and would be subject to Rule 304.

ATS-N and would avoid Government Securities ATSs from being subject to potentially duplicative requirements in Rule 304 and Rule 301(b)(2).

The Commission is proposing to amend Rule 301(b)(2)(viii) to make clear that NMS Stock ATSs and Government Securities ATSs are required to file reports pursuant to § 242.304 and ATSs that are not NMS Stock ATSs or Government Securities ATSs are subject to Rule 301(b)(2). A broker-dealer may be the registered broker-dealer for multiple types of ATSs that trade different types of securities (e.g., NMS Stock ATS and non-NMS Stock ATS) or a broker-dealer may be the registered broker-dealer for multiple ATSs that trade the same type of securities but are separate and distinct from each other (e.g., a broker-dealer registered for, and operates, two NMS Stock ATSs, each of which maintains a separate book of orders that is governed by distinct priority and order interaction rules for one type of security). In both instances, each of the ATSs is separate from the other and must independently comply with Regulation ATS.[150] The Commission is proposing to add to Rule 301(b)(2)(viii) to provide that an NMS Stock ATS or a Government Securities ATS that is operated by a broker-dealer that is the registered broker-dealer for more than one ATS must independently comply with Regulation ATS, including the filing requirements of Rule 304. The Commission believes that the proposed language makes clear that the proposal would not require compliance with the heightened transparency requirements of Regulation ATS for ATSs that are not NMS Stock ATSs or Government Securities ATSs. Under the proposal, a broker-dealer operator, for example, for an ATS that noticed on its initial operation report on Form ATS that the ATS trades government

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150 See Rule 3a1-1(a)(2) (providing that an organization, association, or group of persons shall be exempt from the definition of "exchange" if it is in compliance with Regulation ATS) and Rule 301(a) (providing that an ATS shall comply with the requirements of Rule 301(b)).

securities and corporate debt securities would be the broker-dealer operator for two types of ATSs that would be separate from each other with regard to trading these securities and independently comply with Regulation ATS. These two types of ATSs would be (1) a Government Securities ATS that would file a Form ATS-G with respect to government securities and (2) a non-Government Securities ATS that would file a Form ATS with respect to corporate debt.[151] In addition, each of the two ATSs would be required to comply with the conditions to Regulation ATS, including, among other things, each adopting written safeguards and written procedures to protect subscriber confidential trading information for the ATS pursuant to Rule 301(b)(10) and each making and keeping records for the ATS pursuant to Rule 301(b)(8).[152]

The Commission also is proposing to amend Rule 301(b)(9) of Regulation ATS.[153] This rule requires an ATS to report transaction volume in various types of securities, including government securities and repos, on Form ATS-R on a quarterly basis and within 10 calendar days after it ceases operation.[154] As discussed above, the Commission is proposing to define "Government Securities ATS" and to clarify the definition of "NMS Stock ATS" to make clear

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151 Under the proposed rules, a broker-dealer operator for an ATS that currently trades government securities and corporate bonds, for example, would file a Form ATS-G to disclose its government securities activities for the Government Securities ATS. The broker-dealer operator would disclose the corporate bond activities of its existing ATS by filing with the Commission a material amendment to its Form ATS pursuant to Rule 301(b)(2)(ii) of Regulation ATS to remove information regarding government securities activities. See Regulation ATS Adopting Release, supra note 35, at 70864 (discussing circumstances under which an ATS would file a material amendment to Form ATS pursuant to Rule 301(b)(2), which, among other things, includes changes to the operating platform, the types of securities traded, or types of subscribers).

152 See supra note 92 and accompanying text.

153 See 17 CFR 242.301(b)(9).

154 The information filed on Form ATS-R permits the Commission to monitor trading on an ATS. See Regulation ATS Adopting Release, supra note 35, at 70878.

that a Government Securities ATS cannot trade securities other than government securities or repos and that an NMS Stock ATS cannot trade securities other than NMS stocks.[155] For example, a Government Securities ATS operated by a broker-dealer that is also the registered broker-dealer for a non-Government Securities ATS would be separate from the non-Government Securities ATS and would be required to file a Form ATS-R for the Government Securities ATS. The broker-dealer would be required to file a separate Form ATS-R for the non-Government Securities ATS. The Commission is proposing to amend Rule 301(b)(9) by removing language stating that an ATS must "separately file" a Form ATS-R for transactions in NMS stocks and for transactions in securities other than NMS stocks to simplify the text and convey that each ATS, whether operated by a broker-dealer that operates multiple types of ATS, must file a Form ATS-R. This is consistent with the current Form ATS-R filing process for a broker-dealer that operates an NMS Stock ATS and non-NMS Stock ATS.[156]

Request for Comment

24. Should an NMS Stock ATS or Government Securities ATS that is operated by a broker-dealer that is a registered broker-dealer for more than one ATS be subject to Rule 304 independently from any other ATS for which its broker-dealer is registered?
25. Should a broker-dealer that is the registered broker-dealer for more than one ATS be required to file separate Forms ATS-R for each of the ATSs it operates?

F. Enhanced Filing Requirements for Government Securities ATSs

The Commission is proposing a process for the Commission to review disclosures on Form ATS-G and declare a Form ATS-G ineffective if the Commission finds, after notice and

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155 See supra note 94 and accompanying text.

156 See NMS Stock ATS Adopting Release, supra note 1, Section III.B.5.

opportunity for hearing, that such action is necessary and appropriate in the public interest and the protection of investors. The proposed effectiveness process is not merit based and is the same effectiveness process that is currently applicable to NMS Stock ATSs. The effectiveness process is designed to facilitate the Commission's oversight of Government Securities ATSs, as the process has facilitated the review of NMS Stock ATSs, and address, for example, material deficiencies with respect to the accuracy, currency, and completeness of disclosures on Form ATS-G.

The Commission is proposing to amend Rule 304(a) to require that a Covered ATS, which will include a Government Securities ATS, must comply with Rules 300 through 304 of Regulation ATS as applicable to be exempt pursuant to Rule 3a1-1(a)(2).[157] As proposed, all Government Securities ATSs would be required to comply with Rule 304, as amended, to, among other things, file Form ATS-G with the Commission. The Commission is proposing to apply to Government Securities ATSs the existing provisions of current Rule 304(a) for the filing and Commission review of an initial Covered Form, which will include Form ATS-G,[158] with a modification to the circumstances under which the Commission can extend the review period for an initial Covered Form.[159] The Commission believes this process is appropriate for the same reasons stated in the NMS Stock ATS Adopting Release.[160] The Commission believes that this review process will facilitate the Commission's oversight of Government Securities ATSs and help ensure that information is disclosed in a complete and comprehensible manner. The

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157 As proposed, references to "NMS Stock ATSs" throughout Rule 304 would be changed to refer to "Covered ATSs," which would encompass Government Securities ATSs. See supra Section II.B.

158 See infra notes 161-167 and accompanying text.

159 See infra notes 168-170 and accompanying text.

160 See NMS Stock ATS Adopting Release, supra note 1, Section IV, at 38782.

differences between Form ATS-G and Form ATS-N would not warrant a different review and effectiveness process and the Commission is proposing to apply the same provisions that are applicable to NMS Stock ATSs to Government Securities ATSs, which include the following:

- No exemption is available to a Government Securities ATS pursuant to Exchange Act Rule 3a1-1(a)(2) unless the Government Securities ATS files with the Commission an initial Form ATS-G,[161] and the initial Form ATS-G is effective.[162]
- To permit the Commission, by order, to declare ineffective an initial Form ATS-G no later than 120 calendar days from the date of filing with the Commission, or, if applicable, the end of the extended Commission review period.[163] During the Commission review period, the Government Securities ATS shall amend its initial Form ATS-G by filing updating amendments and correcting amendments, as applicable.[164]

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161 The Commission staff may reject a Form ATS-G filing that is defective because, for example, it is missing sections or missing responses to any sub-questions, or does not comply with the electronic filing requirements. This is a separate process from the determination to declare a Form ATS-G ineffective. See NMS Stock ATS Adopting Release, supra note 1, at 38791.

162 See Rule 304(a)(1)(i). Because NMS Stock ATSs must file a Form ATS-N and Government Securities ATSs must file a Form ATS-G, the Commission is proposing a change to current Rule 304(a)(1)(i) to state that no exemption is available to a Covered ATS pursuant to § 240.3a1-1(a)(2) unless the Covered ATS files with the Commission an "applicable" initial Covered Form.

163 See proposed Rule 304(a)(1)(ii). As proposed, the Commission may extend the initial Form ATS-G review period for: (1) an additional 90 calendar days, if the Commission determines that a longer period is appropriate, in which case the Commission will notify the Government Securities ATS in writing within the initial 120-calendar day review period and will briefly describe the reason for the determination for which additional time for review is required; or (2) any extended review period to which a duly authorized representative of the Government Securities ATS agrees in writing. See infra note 169.

164 As proposed, to make material changes to its initial Form ATS-G during the Commission review period, the Government Securities ATS shall withdraw its filed initial Form

- An initial Form ATS-G, as amended, will become effective, unless declared ineffective, upon the earlier of: (1) the completion of review by the Commission and publication pursuant to Rule 304(b)(2)(i); or (2) the expiration of the Commission review period, or, if applicable, the end of the extended review period.[165]
- The Commission will, by order, declare an initial Form ATS-G ineffective if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors.[166] If the Commission declares an initial Form ATS-G ineffective, the Government Securities ATS shall be prohibited from operating as a Government Securities ATS pursuant to Exchange Act Rule 3a1-1(a)(2). An initial Form ATS-G declared ineffective does not prevent the Government Securities ATS from subsequently filing a new Form ATS-G.[167]

ATS-G and may refile an initial Form ATS-G pursuant to Rule 304(a)(1). See Rule 304(a)(1)(ii)(B).

165 See proposed Rule 304(a)(1)(iii)(A).

166 Like the review process for Form ATS-N, the Commission's review of Form ATS-G would not be merit-based; instead it would focus on the completeness and comprehensibility of the disclosures. See NMS Stock ATS Adopting Release, supra note 1, at 38790. In the NMS Stock ATS Adopting Release, the Commission discussed the circumstances under which the Commission would declare a Form ATS-N amendment ineffective. Such circumstances would also apply to the Commission's review of an amendment to Form ATS-G filed by a Government Securities ATS. For example, the Commission believes it would be necessary or appropriate in the public interest, and consistent with the protection of investors, to declare ineffective a Form ATS-G if, for example, the Commission finds, after notice and opportunity for hearing, the Form ATS-G was filed by an entity that does not meet the definition of a Government Securities ATS; one or more disclosures reveal non-compliance with federal securities laws, or the rules or regulations thereunder, including Regulation ATS; or one or more disclosures on Form ATS-G are materially deficient with respect to their completeness or comprehensibility. For further discussion, see id. at Section IV.B.2.

167 See Rule 304(a)(1)(iii)(B).

The Commission is proposing to amend Rule 304(a)(1)(ii)(A)(1), which currently provides that the Commission may extend the initial Form ATS-N review period for an additional 90 calendar days if the Form ATS-N is unusually lengthy or raises novel or complex issues that require additional time for review.[168] The Commission is extending the rule to Form ATS-G, and furthermore, the Commission believes that it is appropriate to extend the Commission review period for a Covered Form if it finds that an extension is appropriate.[169] For example, if an ATS's disclosures on an initial Form ATS-G are difficult to understand or appear to be incomplete, the Commission may need additional time to discuss the disclosures with the ATS to ascertain whether to declare the Form ATS-G ineffective, even if the form is not unusually lengthy or does not raise novel or complex issues. Rather than moving to declare an initial Form ATS-G ineffective because of material deficiencies with respect to completeness and comprehensibility, the Commission could extend the review period to allow the filer to resolve the deficiencies. The Commission is therefore proposing that the Commission may extend the initial Covered Form review period by an additional 90 calendar days if it determines a longer period is appropriate. The proposed standard is the same standard for extending the Commission review period for SRO rule filings under Section 19 of the Exchange Act.[170] As under current Rule 304(a)(1)(ii)(A)(1), in such case, the Commission will notify the Covered ATS in writing

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168 See Rule 304(a)(1)(ii)(A)(1). As proposed, the Commission may also extend the initial Covered Form review period for any extended review period to which a duly authorized representative of the Covered Form agrees in writing. See Rule 304(a)(1)(ii)(A)(2).

169 In the Commission's experience reviewing Forms ATS-N, the Commission review period was extended (either by the Commission or by the agreement of a duly authorized representative of the ATS) for 31 of the 35 Forms ATS-N that the Commission has reviewed and published. In its review of each Form ATS-N, the Commission staff engaged in extensive conversations with the NMS Stock ATS with regard to the NMS Stock ATS's disclosures on its initial Form ATS-N.

170 See 15 U.S.C. 78s(b)(2).

within the initial 120-calendar day review period and will briefly describe the reason for the determination for which additional time for review is required.

The Commission is also proposing that Legacy Government Securities ATSs that have a Form ATS on file with the Commission as of the Compliance Date be subject to identical rules (other than changes to terminology) during the transition from operating pursuant to a Form ATS to operating pursuant to a Form ATS-G as those that were applied to Legacy NMS Stock ATSs during the Commission's review period. In addition, to allow a Currently Exempted Government Securities ATS to continue to operate without disruption while its initial Form ATS-G is under Commission review, the Commission is proposing to amend Rule 304(a)(1)(i) to provide that a Currently Exempted Government Securities ATS may continue to operate pursuant to Regulation ATS until its initial Form ATS-G becomes effective. The Commission believes that all Legacy Government Securities ATSs – whether they are operating pursuant to a Form ATS or whether they have operated as a Currently Exempted Government Securities ATS – should be permitted to continue to operate during the Commission review period. The Commission is therefore proposing that Legacy Government Securities ATSs can operate pursuant to Form ATS-G on a provisional basis during the Commission review period. A Government Securities ATS would file with the Commission an initial Form ATS-G no earlier than the Compliance Date[171] and no later than the date 150 calendar days after the date of publication of the final rule in the Federal Register. An initial Form ATS-G filed by a Legacy Government Securities ATS would supersede and replace a previously filed Form ATS of the Legacy Government Securities ATS. A Legacy Government Securities ATS that fails to comply with the requirements of Regulation ATS by filing Form ATS-G by the 150th calendar day and

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171 See supra note 97.

continues operating as a Government Securities ATS would no longer qualify for the exemption provided under Rule 3a1–1(a)(2), and thus, risks operating as an unregistered exchange in violation of Section 5 of the Exchange Act. If a Legacy Government Securities ATS that has a Form ATS on file with the Commission to trade, for example, government securities and corporate bonds fails to file a Form ATS-G by the 150th calendar day, the ATS must either file a cessation of operations report on Form ATS or file a material amendment on Form ATS to remove information related to government securities.

For the same reasons discussed above,[172] the Commission is proposing to amend Rule 304(a)(1)(iv)(B) to provide that the Commission can extend the initial Form ATS-G review period by an additional 120 calendar days if it determines that a longer period is appropriate, even if the form is not unusually lengthy or does not raise novel or complex issues.

Other than the proposed changes to the circumstances under which the Commission may extend the Commission review period, the Commission is also proposing that the process for the Commission review and ineffectiveness determination for an initial Form ATS-G filed by a Legacy Government Securities ATS would be the same as the process for an initial Form ATS-N filed by a Legacy NMS Stock ATS.[173] Given the intended uses of proposed Form ATS-G to

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172 See supra notes 168-170 and accompanying text.

173 See Rule 304(a)(1)(iv)(B), which, as proposed, will provide that the Commission may, by order, as provided in Rule 304(a)(1)(iii), declare an initial Form ATS-G filed by a Legacy Government Securities ATS ineffective no later than 120 calendar days from the date of filing with the Commission, or, if applicable, the end of the extended review period. As proposed, the Commission may extend the initial Form ATS-G review period for a Legacy Government Securities ATS for: (1) an additional 120 calendar days if the Commission determines that a longer period is appropriate, in which case the Commission will notify the Legacy Government Securities ATS in writing within the initial 120-calendar day review period and will briefly describe the reason for the determination for which additional time for review is required; or (2) any extended

allow the Commission to monitor developments and carry out its oversight functions over Government Securities ATSs and to enable market participants to make more informed decisions about how their orders will be handled by the ATSs, the Commission believes that it is important for a Government Securities ATS to maintain an accurate, current, and complete Form ATS-G.[174] Providing the Commission with the opportunity to review Form ATS-G disclosures would help ensure that information is disclosed in a complete and comprehensible manner.[175]

As the intended uses of Form ATS-G and Form ATS-N disclosures are similar, the Commission is proposing the same filing requirements that are currently applicable to Form ATS-N amendments filed by NMS Stock ATSs to Form ATS-G amendments filed by Government Securities ATSs. A Government Securities ATS would be required to amend Form ATS-G:

- At least 30 calendar days prior to the date of implementation of a material change to the operations of the Government Securities ATS or to the activities of the broker-dealer operator or its affiliates that are subject to disclosure on the Form ATS-G, other than changes related to order display or fair access, which will be contingent amendments reported pursuant to Rule 304(a)(2)(i)(D).[176]

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review period to which a duly-authorized representative of the Legacy Government Securities ATS agrees in writing. See supra note 172.

174 See NMS Stock ATS Proposing Release, supra note 62, at 81025 (discussing the proposed process for amendments to, and Commission review of, Form ATS-N).

175 See NMS Stock ATS Adopting Release, supra note 1, Section IV.A.3.

176 See Rule 304(a)(2)(i)(A). Scenarios that are particularly likely to implicate a material change include: (1) a broker-dealer operator or its affiliates beginning to trade on the Government Securities ATS; (2) a change to the broker-dealer operator's policies and procedures governing the written safeguards and written procedures to protect the confidential trading information of subscribers pursuant to Rule 301(b)(10)(i) of Regulation ATS; (3) a change to the types of participants on the Government Securities

- No later than 30 calendar days after the end of each calendar quarter to correct information that has become inaccurate or incomplete for any reason and was not required to be reported to the Commission as a material amendment, correcting amendment, or contingent amendment.[177]
- Promptly to correct information in any previous disclosure on the Form ATS-G, after discovery that any information previously filed on a Form ATS-G was materially inaccurate or incomplete when filed.[178]
- No later than seven calendar days after information required to be disclosed in Part III, Item 24 on Form ATS-G, which addresses fair access, has become inaccurate or incomplete. Because the order display and execution access rule under Rule

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ATS; (4) the introduction or removal of a new order type on the Government Securities ATS; (5) a change to the order interaction and priority procedures; (6) a change to the segmentation of orders and participants; (7) a change to the manner in which the Government Securities ATS displays orders or trading interest; and (8) a change of a service provider to the operations of the Government Securities ATS that has access to subscribers' confidential trading information. This list is not intended to be exhaustive, and does not mean to imply that other changes to the operations of a Government Securities ATS or the activities of the broker-dealer operator or its affiliates could not constitute material changes. Further, the Government Securities ATS should generally consider whether the cumulative effect of a series of changes to the operations of the Government Securities ATS or the activities of the broker-dealer operator or its affiliates with regard to the Government Securities ATS is material. In addition, in determining whether a change is material, an ATS generally should consider whether such change would affect: (1) the competitive dynamics among ATS subscribers; (2) the execution quality or performance of the orders of any subscriber or category of subscribers; (3) the fees that any subscriber or category of subscribers would pay to access and/or use the ATS; (4) the nature or composition of counter-parties with which any subscriber or category of subscribers interact; and (5) the relative speed of access or execution of any subscriber or group of subscribers. For further discussion, see NMS Stock ATS Adopting Release, supra note 1, Section IV.B.1.a.

[177] See Rule 304(a)(2)(i)(B).

[178] See Rule 304(a)(2)(i)(C). For a discussion of when an ATS should file a correcting amendment, see NMS Stock ATS Adopting Release, supra note 1, at 38806.

301(b)(3) does not apply to Government Securities ATSs, Form ATS-G does not include a requirement to disclose information pertaining to order display and execution access. Accordingly, Rule 304(a)(2)(i)(D) will only apply to the fair access disclosure on Form ATS-G.[179]

Like amendments to Form ATS-N, the Commission will, by order, declare ineffective any Form ATS-G amendment filed pursuant to Rule 304(a)(2)(i)(A) through (D), no later than 30 calendar days from filing with the Commission, if it finds that such action is necessary or appropriate in the public interest and is consistent with the protection of investors.[180]

The Commission is further proposing to apply current Rule 304(a)(3) to require a Government Securities ATS to notice its cessation of operations on a Form ATS-G at least 10 business days prior to the date it will cease to operate as a Government Securities ATS and to cause the Form ATS-G to become ineffective on the date designated by the Government Securities ATS. In addition, the Commission is proposing to apply Rule 304(a)(4) to Government Securities ATSs, which would provide that the Commission will, by order, if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest and is consistent with the protection of investors, suspend for a period not exceeding twelve months,[181] limit, or revoke the exemption for a Covered ATS pursuant to Rule

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179 The Commission is proposing to revise Rule 304 to replace references to "Order Display and Fair Access Amendments" with "Contingent Amendments." The term "Contingent Amendment" would apply to the relevant amendments under Rule 304(a)(2)(i)(D) to both Form ATS-N and Form ATS-G.

180 See Rule 304(a)(2)(ii).

181 The proposed limitation on the time frame for suspension is consistent with federal securities law provisions pursuant to which the Commission may suspend the activities or registration of a regulated entity. See, e.g., Exchange Act Section 15(b)(4) (15 U.S.C.

3a1-1(a)(2).[182] Rule 304(a)(4)(ii) would provide that if the exemption for a Government Securities ATS is suspended or revoked pursuant to Rule 304(a)(4)(i), the Government Securities ATS would be prohibited from operating pursuant to the Rule 3a1-1(a)(2) exemption.[183] If the exemption for a Government Securities ATS is limited pursuant to Rule 304(a)(4)(i), the Government Securities ATS shall be prohibited from operating in a manner otherwise inconsistent with the terms and conditions of the Commission order.

In addition, Rule 304(a)(4) would provide that prior to issuing an order suspending, limiting, or revoking a Government Securities ATS's exemption pursuant to Rule 304(a)(4)(i), the Commission will provide notice and opportunity for hearing to the Government Securities ATS, and make the findings specified in Rule 304(a)(4)(i) described above, that, in the Commission's opinion, the suspension, limitation, or revocation is necessary or appropriate in the public interest and is consistent with the protection of investors.[184]

78o(b)(4)) and 15B(c)(2) (15 U.S.C. 78o-4(c)(2)). See NMS Stock ATS Proposing Release, supra note 62, at 81031 n.322.

182 See proposed Rule 304(a)(4)(i).

183 See Rule 304(a)(4). In making a determination as to whether suspension, limitation, or revocation of a Government Securities ATS's exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors, the Commission would, for example, take into account whether the entity no longer meets the definition of Government Securities ATS under Rule 300(l), does not comply with the conditions to the exemption (in that it fails to comply with any part of Regulation ATS, including Rule 304), or otherwise violates any provision of federal securities laws. For further discussion of such examples as applied to NMS Stock ATSs, see NMS Stock ATS Proposing Release, supra note 62, at 81032.

184 Pursuant to the Commission's current information sharing practices with the Department of the Treasury, the Commission expects to provide the Department of the Treasury with prompt notice in certain cases, such as when the Commission is requiring registration for certain large volume Government Securities ATSs under Rule 3a1-1(b), declaring a Form ATS-G ineffective under Rule 304(a)(1)(iii)(b), or suspending, limiting, or revoking the exemption of a Government Securities ATS under Rule 304(a)(4).

Request for Comment

26. Should Government Securities ATSs be required to file proposed Form ATS-G instead of Form ATS?
27. Should Form ATS, or parts thereof, for ATSs that effect transactions in government securities or repos and securities other than government securities or repos be made available to the public? Is current Form ATS sufficient to elicit information for the public about the operations of Government Securities ATSs?
28. Do commenters believe that broker-dealers that effect transactions in government securities or repos generally, or U.S. Treasury Securities or Agency Securities, specifically, might choose to modify their business models so that they would not be required to comply with enhanced regulatory or operational transparency requirements for Government Securities ATSs?
29. Should Government Securities ATSs be subject to Rule 304(a), in whole or in part?
30. Should Rule 304(a) be amended to provide that an initial Covered Form be made effective by Commission order or any other means instead of upon publication by the Commission?
31. Should Rule 304(a) only apply to Government Securities ATSs that trade a certain type of government security (e.g., U.S. Treasury Securities, Agency Securities)? If so, to which type of Government Securities ATS should Rule 304 apply (e.g., Government Securities ATSs that trade U.S. Treasury Securities or Government Securities ATSs that trade Agency Securities)?

32. Should the Commission require a Currently Exempted Government Securities ATS to file Form ATS-G and comply with the requirements of Rule 304 to qualify for the exemption from the definition of exchange?
33. Would the proposal to require a Currently Exempted Government Securities ATS to file Form ATS-G by the date 150 calendar days after the date of publication of the final rule in the Federal Register provide the ATS sufficient time to transition to compliance with Regulation ATS and the proposed requirements under Rule 304? Would the proposal to require a Legacy Government Securities ATS to file a Form ATS-G by the date 150 calendar days after the date of publication of the final rule in the Federal Register provide the ATS sufficient time to transition to compliance with Rule 304?
34. Should the Commission be permitted to extend the initial Covered Form review period if it finds that it is appropriate to extend such review period?
35. Should a Legacy Government Securities ATS be allowed to continue operations during the Commission's review of its initial Form ATS-G? Should the Commission make a Legacy Government Securities ATS's Form ATS-G publicly available upon filing?
36. Are there any aspects of Rule 304(a)(2) relating to the filing and review of amendments that should be modified specifically for Form ATS-G amendments filed by Government Securities ATSs?
37. What changes or types of changes to an ATS's operations or the activities of the broker-dealer operator or its affiliates do commenters believe are particularly likely to be material as so to require a material amendment to Form ATS-G?
38. Currently, and as proposed, Rule 304(a)(2) does not provide for the Commission to extend the length of the Commission review period for amendments to a Covered

Form.[185] The Commission has 30 days to review the amendment, engage in discussion with the ATS, and, if necessary or appropriate in the public interest, and consistent with the protection of investors, declare the amendment ineffective. If, however, after the end of the Commission review period for an amendment, the Commission finds that, in light of such amendment, it is necessary or appropriate in the public interest and consistent with the protection of investors, the Commission may, after notice and opportunity for hearing, suspend, limit, or revoke a Covered ATS's exemption from the definition of "exchange" pursuant to Rule 3a1-1(a)(2). Should the Commission amend Rule 304(a)(2) to allow the Commission to extend the length of the Commission review period for amendments to a Covered Form? If so, under what circumstances should the Commission be permitted to extend the length of the Commission review period for a Covered Form amendment and how long should an extension be (e.g., 15, 30, 45 calendar days)?

39. Should the Commission consider any other factors in determining whether a Form ATS-G filed by a Government Securities ATS should become effective or ineffective? If so, what are they and why?

40. Is the process for the Commission to suspend, limit, or revoke an NMS Stock ATS's exemption from the definition of "exchange" to Government Securities ATSs necessary or appropriate to protect investors?

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185 Based on the Commission's review of Form ATS-N filings, the Commission has observed that material amendments are often complex and the Commission staff has frequently engaged in extensive dialogue with the ATS regarding such disclosures. To date, the Commission has not declared a Form ATS-N amendment ineffective.

G. Public Disclosure of Form ATS-G and Related Commission Orders

The Commission is also proposing to make public certain Form ATS-G reports filed by Government Securities ATSs by applying existing Rule 304(b) to Covered Forms, which would include Form ATS-G.[186] Commission orders related to the effectiveness of Form ATS-G would also be publicly posted on the Commission's website. Applying existing Rule 304(b) to Government Securities ATSs would mandate greater public disclosure of the operations of these ATSs through the publication of Form ATS-G and related filings available on the Commission's website.[187] Accordingly, the Commission is proposing the following:

- Similar to Form ATS-N, every Form ATS-G filed pursuant to Rule 304 shall constitute a "report" within the meaning of Sections 11A, 17(a), 18(a), and 32(a) and any other applicable provisions of the Exchange Act.[188]
- The Commission will make public via posting on the Commission's website, each: (1) effective initial Form ATS-G, as amended; (2) order of ineffective initial Form ATS-G; (3) Form ATS-G amendment to an effective Form ATS-G; (4) order of ineffective Form ATS-G amendment; (5) notice of cessation; and (6) order suspending, limiting, or revoking the exemption for a Government Securities ATS from the definition of an "exchange" pursuant to Exchange Act Rule 3a1-1(a)(2).[189]

The Commission is proposing to apply Rule 304(b)(3) to require each Government Securities ATS that has a website to post a direct URL hyperlink to the Commission's website

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186 See proposed revisions to Rule 304(b)(1) (providing that every Form ATS-G filed pursuant to Rule 304 shall constitute a "report" within the meaning of Sections 11A, 17(a), 18(a), and 32(a) and any other applicable provisions of the Exchange Act).

187 See infra Section III.

188 See Rule 304(b)(1).

189 See Rule 301(b)(2).

that contains the documents enumerated in Rule 304(b)(2), which include the Government Securities ATS's Form ATS-G filings.

In addition, to promote further transparency, the Commission is proposing to amend Rule 304(b)(3) to require each Covered ATS to post on its website the most recently disseminated Covered Form (excluding Part IV, which is non-public information) within one business day after publication on the Commission's website, except for any amendment that the Commission has declared ineffective or that has been withdrawn. The most recently disseminated Covered Form shall be maintained on the Covered ATS's website until: (a) the Covered ATS ceases operations; or (b) the exemption of the Covered ATS is revoked or suspended, in which cases the Covered ATS shall remove the Covered Form from its website within one business day of such cessation, revocation or suspension, as applicable.[190] A Covered ATS that has submitted a Covered Form or amendment thereto that is under Commission review prior to dissemination could monitor the Commission's website to ensure that the ATS's website reflects the most current version of the form.[191]

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[190] If the broker-dealer operator has not created a website specific for the ATS, the broker-dealer operator would place the Covered Form, the hyperlink to the Commission's website, and any other information related to the Covered Form (e.g., aggregate platform-wide data or direct/indirect ownership information) on the broker-dealer operator's website in a conspicuous place for the public to view.

[191] The Commission believes that Covered ATSs could reasonably anticipate when an initial Covered Form and amendments thereto would be disseminated. Filers receive an automated notice when a filing is accepted by EDGAR. Once accepted, amendments to a Covered Form (other than material amendments) would be disseminated. Material amendments would be made public following the expiration of the 30-calendar day Commission review period. Although an initial Covered Form may be disseminated at any time within the 120-calendar day Commission review period or any extension thereof, the Commission expects to engage in dialogue with the Covered ATS during such review period so that the ATS could reasonably anticipate when its initial Covered Form would be disseminated.

Request for Comment

41. Should the requirements of Rule 304(b) apply to Form ATS-G reports filed by Government Securities ATSs, in whole or in part? Should the Commission modify Rule 304(b) in any way for all Covered ATSs?

42. Rule 304(b)(2) currently provides that the Commission make Form ATS-N filings available on its website. The Commission disseminates Form ATS-N and amendments thereto through the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"). Should Rule 304(b) be amended so that only filers of a Covered Form make filings public, rather than the Commission (by EDGAR or by any other form of filing)?

43. Should Rule 304(b) be amended to require Covered ATSs to post the Covered Form on their websites? Should Covered ATSs be required to post the Covered Form on their websites in addition to or instead of posting a hyperlink to the Commission website?

44. Should Rule 304(b) only apply to Government Securities ATSs that trade a type of government securities (e.g., U.S. Treasury Securities, Agency Securities)? If so, to which type of Government Securities ATS should Rule 304 apply?

45. Are there any other requirements that should apply to making public a Form ATS-G report filed by a Government Securities ATS? Please support your arguments, and if so, please list and explain such procedures in detail.

46. Should Rule 304(b) apply to Form ATS-G reports filed by a Currently Exempted Government Securities ATS? If not, which aspects of Rule 304(b) should not apply and why?

H. Form ATS-G Requirements

The Commission is proposing to apply existing Rule 304(c) to Covered ATSs, which would include Government Securities ATSs. As proposed, Rule 304(c) would require Government Securities ATSs to file a Form ATS-G in accordance with the instructions therein. Other than references to Government Securities ATSs and Form ATS-G and the relevant compliance dates, the proposed instructions to Form ATS-G are identical to the instructions to Form ATS-N. They require, among other things, that a Government Securities ATS provide all the information required by Form ATS-G, including responses to each Item, as applicable, and the Exhibits, and disclose information that is accurate, current, and complete.[192] Given that the Commission expects market participants will use Form ATS-G to decide where to send their orders for execution, the Commission believes that it is important that Form ATS-G filings comply with the instructions and that the information provided on Form ATS-G is accurate, current, and complete. The Commission is also proposing that Form ATS-G, like Form ATS-N,[193] be filed electronically in a structured format through EDGAR.[194]

The Commission is proposing to apply Rule 304(c)(2) to Government Securities ATSs, which would provide that any report required under Rule 304 shall be filed on a Form ATS-G, and include all information as prescribed in the Form ATS-G and the instructions to the Form ATS-G. Rule 304(c)(2) would provide that a Form ATS-G be executed at, or prior to, the time the Form ATS-G is filed and shall be retained by the Government Securities ATS in accordance with Rules 302 and 303, and the instructions in the Form ATS-G. In the Regulation ATS

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192 See Instructions to proposed Form ATS-G.

193 See NMS Stock ATS Adopting Release, supra note 1, Section VII.

194 See infra Section IV.

Adopting Release, the Commission stated that the requirements to make and preserve records set forth in Regulation ATS are necessary to create a meaningful audit trail and permit surveillance and examination to help ensure fair and orderly markets[195] and that expanding Rule 304(c) to encompass Form ATS-G would further these goals for Government Securities ATSs.

Request for Comment

47. Should Rule 304(c) be applied, in whole or in part, to Government Securities ATSs?
48. Should Rule 304(c) only apply to Government Securities ATSs that trade a certain type of government security (e.g., U.S. Treasury Securities, Agency Securities)? If so, to which type of Government Securities ATS should it apply?

III. Proposed Form ATS-G for Government Securities ATSs

As outlined above, the Commission proposes to require Government Securities ATSs to file a proposed Form ATS-G, which would be a public report that provides detailed information about the manner of operations of the ATS and about the ATS-related activities of the broker-dealer operator and its affiliates. Despite the significant role of ATSs in the government securities market structure and the complexity of their operations, most market participants have limited access to information that permits them to adequately compare and contrast how their orders would be handled by different Government Securities ATSs. The Commission believes that proposed Form ATS-G's public disclosures would provide important information to market participants that would help them better understand these operational facets of Government Securities ATSs and select the best trading venue based on their needs. In addition, in the Commission's experience reviewing disclosures on Form ATS-N, the Commission observed that the information responsive to the form is not proprietary or commercially sensitive. Because the

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[195] See Regulation ATS Adopting Release, supra note 35, at 70877-78.

disclosures that would be required on proposed Form ATS-G are similar to those of Form ATS-N, the Commission believes that likewise, the vast majority of responsive information would not be proprietary or commercially sensitive.[196]

The Commission also believes that the proposed disclosures on Form ATS-G about the conflicts of interest that might arise from the business structures of the Government Securities ATS and the ATS-related activities of the broker-dealer operator and its affiliates would help subscribers protect their interests when using the services of the ATS.[197] As the Commission has previously stated, the broker-dealer operator controls all aspects of the ATS's operations and the broker-dealer operator's non-ATS and ATS functions may overlap.[198] Currently, market participants have limited information about conflicts of interest that might arise from the non-ATS activities of the broker-dealer operator of a Government Securities ATS, and different classes of subscribers may have different levels of information about the operations of the ATS.[199] Because of overlap between a broker-dealer's ATS operations and its other operations, there is a risk of information leakage of subscribers' confidential trading information to other business units of the broker-dealer operator or its affiliates. The Commission believes that some market participants would want to consider the trading activity of the broker-dealer operator, or its affiliates, when evaluating potential conflicts of interest on a Government Securities ATS and may also like to know the range of services and products that the broker-dealer operator or its affiliates offer subscribers for use on the ATS because such services or products may have an impact on the subscribers' access to, or trading on, the ATS. Some commenters have also stated

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196 See infra Section III.

197 See infra Section III.B.

198 See NMS Stock ATS Proposing Release, supra note 62, at 81010, 81041.

199 See id. at 81010.

that there are close similarities between the operations of NMS Stock ATSs and some Government Securities ATSs, particularly with respect to U.S. Treasury Securities, and that trading in U.S. Treasury Securities may present potential conflicts of interest similar to those for NMS Stock ATSs.[200] The Commission also believes that the disclosures on proposed Form ATS-G would better inform the Commission and other regulators about the activities of Government Securities ATSs and their role in the government securities markets, which in turn, would facilitate better oversight of these ATSs and the markets to the benefit of investors.

Given the similarities of operations between NMS Stock ATSs and Government Securities ATSs, almost all requests for information on proposed Form ATS-G are similar to or derived from Form ATS-N; however, certain requests have been tailored for Government Securities ATSs. The differences between the forms include that: Form ATS-G does not have an item corresponding to Part III, Item 16 (Routing) of Form ATS-N; Form ATS-G does not have an item corresponding to Part III, Item 24 (Order Display and Execution Access) of Form ATS-N as the associated rule is inapplicable to government securities; and Form ATS-G added proposed Part III, Item 16 requiring information about non-government securities markets (e.g., futures, currencies, swaps, corporate bonds) used in conjunction with the ATS. The Commission is requesting comment on each of the requests for information on proposed Form ATS-G and information about the operations of Government Securities ATSs and ATS-related activities of the broker-dealer operator and its affiliates that would be important to subscribers and market participants.

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[200] See MFA/AIMA Letter, supra note 66, at 3; OIA Letter, supra note 65, at 18-19.

A. Cover Page and Part I of Form ATS-G

1. Cover Page

To make clear that the Commission is not conducting a merit-based review of Form ATS-G disclosures filed with the Commission, the Commission proposes to include a legend on the Form ATS-G cover page stating that the Commission has not passed upon the merits or accuracy of the disclosures in the filing. On the cover page of proposed Form ATS-G, the ATS would be required to identify whether it is a Legacy Government Securities ATS currently operating as of the Compliance Date (either pursuant to a Form ATS or an exemption under Exchange Act Rule 3a1-1(a)(3)). In addition, the Government Securities ATS would indicate the type of filing by marking the appropriate checkbox.[201]

If the Government Securities ATS is filing an amendment, the ATS would be required to indicate the Part and Item number of the Form ATS-G that is the subject of the change(s), provide a brief summary of the change(s), and state whether or not the change(s) applies to all subscribers and the broker-dealer operator.[202] In addition, the Government Securities ATS would be required to provide the EDGAR accession number for the Form ATS-G filing to be amended so that market participants can identify the filing that is being amended. The

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201 The proposed cover page would provide that a filing may be an initial Form ATS-G, or a Form ATS-G material amendment, updating amendment, correcting amendment, or contingent amendment.

202 See Instruction A.7.g of Form ATS-G. If a change subject to the amendment would equally apply to all subscribers and the broker-dealer operator, the Government Securities ATS would indicate that the change applies to all subscribers and the broker-dealer equally. If a change would apply differently among subscribers or types of subscribers, between subscribers and the broker-dealer operator, or between the broker-dealer operator and its affiliates (which may be subscribers to the ATS), the Government Securities ATS would state so and describe the differences in treatment. This is the same as how NMS Stock ATSs describe whether or not a change applies to all subscribers and the broker-dealer operator in amendments on Form ATS-N.

Commission is proposing to apply Rule 304(b)(2)(iii) to Form ATS-G to provide that the Commission would make public the cover page of a filed Form ATS-G material amendment upon filing and then make public the entirety of the material amendment following the expiration of the review period pursuant to Rule 304(a)(2)(ii). For updating and correcting amendments, which would be made public upon filing, the Commission believes that the information in the narrative could assist market participants in understanding the general nature of the change that the Government Securities ATS is implementing.

If the filing is a cessation of operations, the Commission is proposing that the Government Securities ATS provide the date that the ATS will cease to operate. The Commission is also proposing to include a checkbox where the ATS could indicate whether it wishes to withdraw a previously-filed Form ATS-G filing and provide the EDGAR accession number for the filing to be withdrawn. The instructions to Form ATS-G would state that a Government Securities ATS may withdraw an initial Form ATS-G or an amendment before the end of the applicable Commission review period. In addition, the Commission is proposing that a Government Securities ATS may withdraw a notice of cessation of operations at any time before the date that the ATS indicated it intended to cease operating.

2. Part I of Form ATS-G: Identifying Information

Part I of Form ATS-G, as proposed, would be substantively the same as that for Form ATS-N, as proposed to be amended,[203] except that unlike Form ATS-N, Form ATS-G would require an ATS to identify whether it trades U.S. Treasury Securities, Agency Securities, repos, or other securities. To parallel the Form ATS-N requirement, the Commission is proposing that

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[203] The Commission is proposing changes to Form ATS-N, which are described infra Section V.D.

Form ATS-G would require an ATS to identify the registered broker-dealer that operates the ATS. Part I, Item 1.a of Form ATS-G would require the ATS to state whether the filer is a broker-dealer registered with the Commission. The Commission is also proposing that the Government Securities ATS provide the name of the registered broker-dealer or government securities broker or government securities dealer for the Government Securities ATS (i.e., the broker-dealer operator), as it is stated on Form BD, in Part I, Item 2 of Form ATS-G. Part I, Item 1.b of Form ATS-G would require the ATS to indicate whether the broker-dealer operator has been authorized by a national securities association to operate an ATS.[204] To comply with Regulation ATS, and thus qualify for the Rule 3a1–1(a)(2) exemption, an ATS must register as a broker-dealer and thus become a member of an SRO. As a member of the SRO, the ATS must comply with the rules of the SRO, including obtaining any required approvals by the SRO in connection with operating an ATS in accordance with applicable SRO rules.[205] The Commission believes that proposed Part I, Item 1.b would facilitate compliance with and Commission oversight of this requirement.

To the extent that a commercial or "DBA" (doing business as) name or names are used to identify the Government Securities ATS to the public, the Commission, or its SRO, or if a registered broker-dealer operates multiple Government Securities ATSs, Form ATS-G would require the full name(s) of the Government Securities ATS under which business is conducted, if different, in Part I, Item 3 of Form ATS-G. Part I, Item 4 of Form ATS-G would require the Government Securities ATS to provide the broker-dealer operator's SEC File Number and

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[204] The Commission is proposing herein to add this subpart to Form ATS-N. See infra Section V.D.

[205] See 15 U.S.C. 78o(b)(8). See also NMS Stock ATS Adopting Release, supra note 1, at 38773.

Central Registration Depository ("CRD") Number. Part I, Item 5 of Form ATS-G would require the Government Securities ATS to select the types of securities the ATS trades (i.e., U.S. Treasury Securities, Agency Securities, repos, or other). If the ATS selects "other," it would be required to list the types of government securities that it trades.[206] Part I, Item 6 of Form ATS-G would require the Government Securities ATS to provide the full name of the national securities association of the broker-dealer operator, the effective date of the broker-dealer operator's membership with the national securities association, and its MPID. Pursuant to FINRA rules, each ATS is required to use a unique MPID in its reporting to FINRA, such that its volume reporting is distinguishable from other transaction volume reported by the broker-dealer operator of the ATS, including volume reported for other ATSs or trading desks operated by the broker-dealer operator.[207] The broker-dealer operator would provide the unique MPID for the Government Securities ATS and assess the functionalities related to trading under that MPID and describe them, as applicable, in response to the information requests on Form ATS-G. Providing the name of the Government Securities ATS or DBAs and its MPID would identify the ATS to the public and Commission. The Commission believes that the name, identity of the broker-dealer operator, any "DBA" name, and the ATS's MPID are basic information critical to market participants for identifying the ATS and should be disclosed.

Proposed Part I, Item 7 of Form ATS-G would require the Government Securities ATS to provide a URL address for the website of the ATS and proposed Part I, Item 8 of Form ATS-G would require the ATS to provide the physical street address, if any, of a secondary location for the ATS that may be used in the event that the primary physical location is not available.

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206 The types of securities traded would be limited to government securities (15 U.S.C. 78c(a)(42)) and repos on government securities. See proposed Rule 300(l).

207 See FINRA Rules 6160, 6170, 6480, and 6720.

Proposed Part I, Items 9 and 10 would require a Government Securities ATS to attach its most recently filed or amended Schedule A of the broker-dealer operator's Form BD disclosing information related to direct owners and executive officers, and its most recently filed or amended Schedule B of the broker-dealer operator's Form BD disclosing information related to indirect owners as Exhibits 1 and 2, respectively. In lieu of attaching those schedules, the Government Securities ATS can indicate, via a checkbox, that the information under those schedules is available on its website and is accurate as of the date of the filing of the Form ATS-G.[208] In addition, the Commission is proposing Part I, Item 11 of Form ATS-G to require the Government Securities ATS, for filings made pursuant to Rule 304(a)(2)(i) (i.e., Form ATS-G amendments), to attach as Exhibit 3 a marked document to indicate changes to "yes" or "no" answers and additions or deletions from any item in Part I, Part II, and Part III, as applicable.

Request for Comment

49. A Legal Entity Identifier ("LEI") is a 20-character reference code that uniquely identifies legally distinct entities that engage in financial transactions[209] and is used by numerous domestic and international regulatory regimes. Although several existing

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[208] Like Form ATS-N, Part I, Items 9 and 10 and Part III, Item 25 (see infra Section III.A.2 and Section III.C.25) are the only requests for information that would allow a Government Securities ATS to cross-reference to information on the Government Securities ATS's website instead of providing it in the form disclosures. Like Form ATS-N, Form ATS-G disclosures would be the vehicle for disseminating to the public information about the operations of the Government Securities ATS and the ATS-related activities of the broker-dealer operator and its affiliates under Rule 304, which are required to be kept current, accurate, and complete by the ATS. Accordingly, Government Securities ATSs would be required to provide information required by the form in the Form ATS-G disclosures and not cross-reference to other sources.

[209] See Securities Act Release No. 10425, 82 FR 50988 at 51005 (November 2, 2017) (stating that LEIs are intended to improve market transparency by providing clear identification of participants).

ATS broker-dealer operators currently have an LEI, not all broker-dealers have an LEI. An LEI can be obtained for a $65 initial cost and a $50 per year renewal cost.[210] Should the Commission require a Government Securities ATS to disclose the LEI of its broker-dealer operator, in addition to its CRD Number and the MPID for the Government Securities ATS, on Form ATS-G?

B. Part II of Form ATS-G: ATS-Related Activities of the Broker-Dealer Operator and Affiliates

The Commission believes that the interests of the broker-dealer operator or its affiliates sometimes compete against the interests of those that use the ATS's services. These competing interests, at times, may give rise to conflicts of interest for the broker-dealer operator and its affiliates or the potential for information leakage of subscribers' confidential trading information. Proposed Part II of Form ATS-G is designed to provide subscribers and market participants with information about these competing interests, and inform them about: (1) the operation of the Government Securities ATS — regardless of the corporate structure of the ATS — and of its broker-dealer operator, or any arrangements the broker-dealer operator may have made, whether contractual or otherwise, pertaining to the operation of its Government Securities ATS; and (2) ATS-related activities of the broker-dealer operator and its affiliates that may give rise to conflicts of interest for the broker-dealer operator and its affiliates or the potential for information leakage of subscribers' confidential trading information. The Commission believes that these disclosures would enable subscribers to protect their interests while participating on the ATS. At the same time, the Commission also believes that Form ATS-G should not require

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[210] Prices retrieved from Bloomberg Finance, L.P., https://lei.bloomberg.com/docs/faq#what-fees-are-involved. Bloomberg is one of twelve Legal Entity Identifier issuers that are accredited to issue LEIs specifically to U.S. entities.

public disclosure of activities or affiliate relationships of the broker-dealer operator that do not relate to the Government Securities ATS and thus, do not present a potential conflict of interest.

The proposed definitions of "affiliate" and "control," which are identical to those in Form ATS-N,[211] are intended to encompass all relevant affiliate relationships between the broker-dealer operator and other entities that the Commission believes would help market participants' evaluation of potential conflicts of interest.[212]

1. Broker-Dealer Operator and its Affiliate Trading Activities on the Government Securities ATS

The Commission is proposing that Part II, Items 1(a) and 2(a) of Form ATS-G ask whether business units of the broker-dealer operator or its affiliates, respectively, are permitted to enter or direct the entry of orders and trading interest into the Government Securities ATS. If the person that operates and controls an ATS is also able to trade on that ATS, there may be an incentive to design the operations of the ATS to favor the trading activity of the operator of the ATS or affiliates of the operator. The operator of an ATS that also trades on the ATS it operates

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211 Proposed Form ATS-G would define "affiliate" as, with respect to a specified person, any person that, directly or indirectly, controls, is under common control with, or is controlled by, the specified person. "Control" would be defined to mean the power, directly or indirectly, to direct the management or policies of the broker-dealer of an alternative trading system, whether through ownership of securities, by contract, or otherwise. A person is presumed to control the broker-dealer of an alternative trading system if that person: (1) is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (2) directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the broker-dealer of the alternative trading system; or (3) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the broker-dealer of the alternative trading system. In this proposal, the Commission is proposing to update the definition of person for the purposes of Forms ATS-N and ATS-G. See infra Section V.D.

212 See NMS Stock ATS Adopting Release, supra note 1, at 38818-19.

would likely have informational advantages over others trading on the ATS, such as a better understanding of the manner in which the system operates or who is trading on the ATS. In the most egregious case, the operator of the ATS might use the confidential trading information of other traders to advantage its own trading on or off of the ATS.[213] Part II, Items 1(a) and 2(a) of Form ATS-G disclosures are designed to inform market participants about whether the Government Securities ATS permits the broker-dealer operator or its affiliates to trade on the ATS. If the Government Securities ATS permits the broker-dealer operator or its affiliates to enter orders and trading interest on the ATS, whether on an agency or principal basis, the ATS would be required to only list the business units or affiliates that actually enter or direct the entry of orders and trading interest into the ATS. The Commission believes that if a business unit or affiliate of the broker-dealer operator enters or directs the entry of orders and trading interest into the Government Securities ATS, market participants would find it useful to know that they may be trading with those business units, affiliates, or client orders entered by those entities. The Commission believes that disclosure of whether a broker-dealer operator of a Government Securities ATS or its affiliates may trade on that ATS would be important to subscribers given the conflicts of interest that may arise from the unique position the broker-dealer operator occupies in relation to the ATS.

Part II, Items 1(a) and 2(a) of proposed Form ATS-G would require the Government Securities ATS to list the business unit or affiliate if, for example, a trading desk of the broker-dealer operator or an affiliate uses a direct connection to the ATS or algorithm to submit orders or trading interest into the ATS. Likewise, if an affiliated asset manager of the broker-dealer

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[213] For a further discussion about how a conflict of interest related to trading by the broker-dealer operator on its own ATS could be harmful to other subscribers, see NMS Stock ATS Adopting Release, supra note 1, at 38771, 38824-29.

operator uses the services of a third-party broker-dealer to direct orders to the Government Securities ATS (i.e., the asset manager instructs the third-party broker-dealer to send its orders to the ATS), the ATS would be required to list that affiliated asset manager under Item 2(a). However, if that affiliated asset manager submits orders to a third-party broker-dealer, and that third-party broker-dealer using its own discretion, directs the orders of the asset manager into the affiliated Government Securities ATS, the ATS would not be required to list the affiliated asset manager under Item 2(a); under such circumstances, the affiliate would not be "directing" orders to the ATS because the third-party broker-dealer is using its discretion to direct the affiliate's orders and thus, it would not be required to be listed under Item 2(a).

The proposed requests also specify the type of information that must be provided with regard to business units or affiliates of the broker-dealer operator. Specifically, Item 1(a) would require the Government Securities ATS to name and describe each type of business unit of the broker-dealer operator that enters or directs the entry of orders and trading interest into the ATS (e.g., Government Securities ATS, type of trading desks, market maker, sales or client desk) and, for each business unit, to provide the applicable MPID and list the capacity of its orders and trading interest (e.g., principal, agency, riskless principal). Item 2(a) would require the Government Securities ATS to name and describe each type of affiliate that enters or directs the entry of orders and trading interest into the ATS (e.g., broker-dealers, investment companies, hedge funds, market makers, PTFs) and, for each of those affiliates, provide the applicable MPID and list the capacity of its orders and trading interest (e.g., principal, agency, riskless principal). The Commission believes that market participants will find it useful to know both the types of

broker-dealer operator business units and affiliates that can trade in the Government Securities ATS, and their trading activities.[214]

Part II, Items 1(c) and 2(c) of proposed Form ATS-G would require Government Securities ATSs to disclose the broker-dealer operator's or any of its affiliates' role as a liquidity provider on the ATS, if applicable. These Items would require the Government Securities ATS to disclose – in the form of a "yes" or "no" response – whether there are any formal or informal arrangements with any of the sources of orders or trading interest of the broker-dealer operator or affiliates identified in Item 1(a) and Item 2(a), respectively, to provide orders or other trading interest to the ATS (e.g., undertaking to buy or sell continuously, or to meet specified thresholds of trading or quoting activity). If the Government Securities ATS answers "yes," it must identify the business unit(s) or affiliate(s) and respond to the Item with information about liquidity providers on the ATS.[215] The Commission believes that highlighting whether the broker-dealer operator or affiliate acts as a liquidity provider on the Government Securities ATS would help market participants evaluate the potential for conflicts of interest or information leakage on the trading platform.

Finally, Part II, Item 1(d) and Item 2(d) of proposed Form ATS-G would require the Government Securities ATSs to disclose information about sending orders and trading interest to a trading venue operated or controlled by the broker-dealer operator or any of its affiliates, respectively. These Items would require the Government Securities ATS to disclose – in the

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214 Although the narrative responses to Items 1(a) and 2(a) could typically be kept up-to-date via updating amendments to Form ATS-G, the Commission also notes that in most cases, if the "yes" or "no" response to Items 1(a) or 2(a) changes (e.g., the Government Securities ATS changes its operations to allow affiliates to trade whereas they could not do so prior, or vice versa), the Government Securities ATS would be required to file a material amendment. See NMS Stock ATS Adopting Release, supra note 1, at 38826.

215 This request is contained in Part III, Item 12. See infra Section III.C.12.

form of a "yes" or "no" response – whether orders and trading interest in the ATS can be sent to a trading venue operated or controlled by the broker-dealer operator or any of its affiliates. If the Government Securities ATS answers "yes," it must identify the trading venue and explain when and how the order or trading interest are sent from the ATS to the trading venue. NMS Stock ATSs are required to provide on Form ATS-N Part III, Item 16 information related to the routing of orders from the ATS if they indicated that the ATS sent trading interest to a trading center operated by the broker-dealer operator or any of its affiliates in Part II, Items 1(d) and 2(d). Because the routing of government securities among trading centers is not as prevalent as in the market for NMS stocks, the Commission is not proposing to require on Form ATS-G the same information about routing that would otherwise be covered under Part III, Item 16 of Form ATS-N. Instead, the Commission is requiring a Government Securities ATS to disclose information about the trading venue where orders and trading interest may be sent and when and how orders and trading interest are sent in Part II, Items 1(d) and 2(d) of Form ATS-G. The Commission believes that such information would help market participants evaluate whether the ATS sending orders to a trading venue operated or controlled by the broker-dealer operator or its affiliates poses a conflict of interest and is consistent with its trading objectives.

Request for Comment

50. What information about trading by the broker-dealer operator and its affiliates related to the Government Securities ATS is important to market participants?
51. Are there potential conflicts of interest for broker-dealer operators of Government Securities ATSs or their affiliates that may justify greater operational transparency for Government Securities ATSs?

52. Should the Commission require separate disclosures for different types of trading by the broker-dealer operator on the Government Securities ATS, such as trading by the broker-dealer operator for the purpose of correcting error trades executed on the ATS, as compared to other types of principal trading? If so, what types of principal trading should be addressed separately and why? What disclosures should the Commission require about principal trading and why?

53. Should the Commission limit or expand in any way the proposed disclosure requirements to require disclosure of arrangements regarding access by the broker-dealer operator or its affiliates to both other trading venues and affiliates of those other trading venues?

54. Form ATS-N requires, and Form ATS-G as proposed would require, that a Covered ATS name the affiliate(s) of the broker-dealer operator permitted to enter or direct the entry of orders and trading interest into the Covered ATS. The Covered ATS is required to describe the type of affiliates on the Covered Form. Should the Commission amend Form ATS-N, and not require in Form ATS-G, that the name(s) of affiliate(s) be disclosed?

55. Should the Commission require Government Securities ATSs to disclose the percentage of trading on the ATS attributable to each or all of the broker-dealer operator's business units, affiliates or both? Should Form ATS-G require a Government Securities ATS to disclose specific trade volume data for its trading with business units of the broker-dealer operator or its affiliates? If so, how should that volume be measured (e.g., executed trades, dollar volume)? Should the Commission amend Form ATS-N to

require such trading percentages or data for NMS Stock ATSs that execute orders with business units of the broker-dealer operator or its affiliates?

56. Would the disclosure of information about trading by the broker-dealer operator and its affiliates in the ATS be sufficient to address potential conflicts of interest? If disclosure alone is insufficient, are there other measures the Commission could take to mitigate potential conflicts of interest regarding trading? Should the Commission prohibit some or all trading by the broker-dealer operator and its affiliates in the ATS?

2. Order Interaction with Broker-Dealer Operator; Affiliates

Part II, Item 3 of proposed Form ATS-G would request information about the interaction of orders and trading interest between unaffiliated subscribers to the Government Securities ATS and orders and trading interest of the broker-dealer operator and its affiliates in the ATS. Part II, Item 3(a) of proposed Form ATS-G would require a Government Securities ATS to disclose whether a subscriber can opt out of interacting with orders and trading interest of the broker-dealer operator in the ATS, and Part II, Item 3(b) would require a Government Securities ATS to disclose whether a subscriber can opt out of interacting with the orders and trading interest of an affiliate of the broker-dealer operator in the ATS.[216] Part II, Item 3(c) of proposed Form ATS-G would require the Government Securities ATS to disclose whether the terms and conditions of the opt-out processes for the broker-dealer operator and affiliates required to be identified in Items 3(a) and (b) are the same for all subscribers. The Commission believes that proposed Part II, Item 3 would be important to unaffiliated market participants trading on an ATS because,

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[216] For example, if a broker-dealer operator uses algorithms to submit subscriber orders into the ATS, any steps that either the broker-dealer operator or the subscriber needs to take so that the ATS prevents those orders from trading with the broker-dealer operator or its affiliates would be required disclosures under Items 3(a) and 3(b), respectively.

given the potential for informational advantages by the broker-dealer operator or its affiliates,[217] some unaffiliated subscribers may not wish to interact with the order flow of the broker-dealer operator or its affiliates. This disclosure could also help subscribers understand whether and how they may avoid trading with the broker-dealer operator and its affiliates should they elect to use the services of the Government Securities ATS.

Request for Comment

57. Should proposed Form ATS-G request more or less information about how a market participant can limit its interaction on a Government Securities ATS with the broker-dealer operator or its affiliates? If commenters believe Form ATS-G should request more information, please provide specific information that would be useful along with an explanation of its utility.

3. Arrangements with Other Trading Venues

Part II, Item 4 of proposed Form ATS-G is designed to provide for the disclosure of formal or informal arrangements (e.g., mutual, reciprocal, or preferential access arrangements)[218] between the broker-dealer operator or an affiliate of the broker-dealer operator and a trading venue (e.g., ATS, OTC market maker, futures or options market)[219] to access the Government

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217 See supra Section III.B.1.

218 See NMS Stock ATS Adopting Release, supra note 1, at 38831 n.769-70 and accompanying text. As the Commission discussed in the NMS Stock ATS Adopting Release, the disclosures required by Part II, Item 4 of proposed Form ATS-G are not so broad as to require the Government Securities ATS to list each unaffiliated subscriber that accesses its system. See id. at 38831.

219 The Commission is using the term "trading venue" for proposed Form ATS-G instead of the term "Trading Center," which is used in Form ATS-N, because "Trading Center" is a defined term for purposes of Regulation NMS (17 CFR 600(b)(78)). A trading venue for government securities can include, among other things, an ATS, an OTC market maker, a futures or options market, or any other broker- or dealer-operated platform for executing trading interest internally by trading as principal or crossing orders as agent.

Securities ATS services (e.g., arrangements to effect transactions or to submit, disseminate, or display orders and trading interest in the ATS).

Proposed Part II, Item 4 would require disclosure of an arrangement between the broker-operator for the Government Securities ATS or affiliate of the broker-dealer operator and a broker-dealer operator of an unaffiliated Government Securities ATS under which the broker-dealer operator would send orders or other trading interest to the unaffiliated Government Securities ATS for possible execution before sending them to any other destination. Item 4 also would require disclosure of the inverse arrangement pursuant to which any subscriber orders sent out of the unaffiliated Government Securities ATS would be sent first to the Government Securities ATS before any other trading venue. Item 4 would also require a summary of the terms and conditions of the arrangement such as, for example, whether the broker-dealer operator of the Government Securities ATS is providing monetary compensation or some other brokerage service to the unaffiliated Government Securities ATS. To the extent that a broker-dealer operator has an arrangement with another trading venue operated by the broker-dealer operator or an affiliate, or an unaffiliated trading venue, the Commission believes that market participants are likely to consider information about such arrangements relevant to their evaluation of a Government Securities ATS as a potential trading venue and such an arrangement may raise concerns about conflicts of interest or information leakage. The Commission is therefore proposing disclosure of such arrangements in Part II, Item 4 of proposed Form ATS-G.[220]

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[220] In the NMS Stock ATS Adopting Release, the Commission provided examples of when potential conflicts of interest and information leakage could occur as a result of preferential routing arrangements (e.g., an affiliate is contractually obligated to route all unexecuted orders to ATS) or routing arrangements with affiliates (e.g., all orders routed

Request for Comment

58. What type of arrangements might a broker-dealer operator of a Government Securities ATS have with a trading venue for government securities or repos? Please explain and describe what information, if any, market participants may wish to know about such an arrangement.

4. Other Products and Services

Part II, Item 5(a) of proposed Form ATS-G is designed to disclose whether the broker-dealer operator offers subscribers any products or services for the purpose of effecting transactions or submitting, disseminating, or displaying orders and trading interest in the Government Securities ATS (e.g., algorithmic trading products that send orders to the ATS, order management or order execution systems, data feeds regarding orders and trading interest in, or executions occurring on, the ATS, order hedging or aggregation functionality), and if applicable, to indicate whether the terms and conditions of the services or products required to be identified in Part II, Item 5(a) are the same for all subscribers and the broker-dealer operator.[221]

Customers of a broker-dealer operator could be both subscribers to its ATS and customers of the broker-dealer operator and the broker-dealer operator may offer its customers

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by the NMS Stock ATS must first be routed to an the affiliate(s)). Specifically, the former might result in information leakage should the arrangement provide that all orders not executed by the affiliate are to be sent to the NMS Stock ATS and the latter could provide incentive for the NMS Stock ATS to route orders to an affiliate instead of trying to execute the order in the ATS. The Commission believes that these issues could arise in the government securities markets, as well, so those examples are also applicable to this proposal. See id. at 38831 n.771.

221 For example, if a broker-dealer operator offers subscribers alternative algorithms to handle orders, including sending such orders to the Government Securities ATS, and there is a difference in the latency in which each of the alternatives transmits information, such differences in latency would need to be disclosed in Part II, Item 5 of proposed Form ATS-G.

trading products and services in addition to its ATS services. In certain cases, the product and service offered might be used by the customer in conjunction with the customer's use of the ATS. Broker-dealer operators of Government Securities ATSs may, directly or indirectly through an affiliate, offer products or services to subscribers for the purpose of, for example, submitting orders, or receiving information about displayed interest, in the ATS.[222] For example, a Government Securities ATS would be required to disclose any aggregation functionality that the broker-dealer operator or its affiliate(s) offers to subscribers, which, for example, could be used by subscribers to interface with the ATS to send or receive orders and trading interest to and from other markets, including U.S. Treasury Securities markets, over-the-counter spot markets, or futures markets. The Commission believes that subscribers to the Government Securities ATS would be interested in understanding the use of an aggregation functionality with the ATS and how it can help achieve their trading strategies. If the broker-dealer operator or its affiliate offered a product for effecting transactions or submitting, disseminating, or displaying orders and trading interest in the Government Securities ATS that was used in conjunction with related financial markets for non-government securities (e.g.,

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222 See NMS Stock ATS Proposing Release, supra note 62, at 81048. See also NMS Stock ATS Adopting Release, supra note 1, at 38832 n.779. For example, order hedging functionalities could encompass a product or service offered by the broker-dealer operator to a customer that the customer may use as a subscriber to the broker-dealer operator's ATS to hedge exposures of trading interest in or outside the ATS. A broker-dealer operator that offers such a functionality for use with the ATS would describe the terms and conditions for a subscriber to use the functionality in Part II, Item 5 and explain its use with regard to the ATS in Part III of Form ATS-G. For example, if the order hedging functionality affects order interaction in the ATS, the ATS would explain the functionality in Part III, Item 11(c). If the order hedging functionality involves futures and trading interest in the ATS, the Government Securities ATS would explain the related procedures under Part III, Item 16.

futures, currencies, swaps, corporate bonds), the ATS would summarize the terms and conditions for use of such a product in this item and explain the product's use under Part III, Item 16.

The Commission believes subscribers want to know the products or services that the broker-dealer operator or its affiliates may offer for the purpose of effecting transactions, or submitting, disseminating, or displaying orders and trading interest on the Government Securities ATS because such products or services may impact the subscribers' access to, or trading on, the ATS.[223] In some cases, a broker-dealer operator offering products or services in connection with a subscriber's use of the Government Securities ATS may result in the subscribers receiving more favorable terms from the broker-dealer operator with respect to their use of the ATS. For example, if a subscriber purchases a service offered by the broker-dealer operator of a Government Securities ATS, the broker-dealer operator might also provide that subscriber more favorable terms for its use of the ATS than other subscribers who do not purchase the service. Such favorable terms could include fee discounts or access to a faster connection line to the Government Securities ATS. Additionally, a broker-dealer operator of a Government Securities ATS may offer certain products and services only to certain subscribers or may offer products and services on different terms to different categories of subscribers. The Commission believes that subscribers would want to know, when assessing a Government Securities ATS as a potential trading venue, the range of services or products that the broker-dealer operator or its affiliates offers subscribers of the ATS, and any differences in treatment among subscribers, because such services or products may impact the subscribers' access to, or trading on, the ATS.

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[223] Services for the purpose of effecting transactions, or submitting, disseminating, or displaying orders and trading interest on the Government Securities ATS that are offered by a third-party in contract with the broker-dealer operator or affiliates would also be responsive to this Item.

To the extent that a customer is a subscriber to the Government Securities ATS and is offered use of products and services by the broker-dealer operator or its affiliate for the purpose of effecting transactions or submitting, disseminating, or displaying orders and trading interest in the ATS, Part II, Item 5 of proposed Form ATS-G would require disclosures about those products or services. For example, if a broker-dealer operator offers its customers an order management system that can also be used by customer-subscribers to the Government Securities ATS to manage orders in the ATS (e.g., adjust the pricing or size of an ATS order in relation to an order resting in or outside the ATS, modify order instructions to execute or cancel at a specified time or under certain market conditions), the ATS would be required to identify the order management system, provide a summary of the terms and conditions for its use, and identify the Part and Item number in Form ATS-G for where the order management system is explained. In addition, any services offered by the broker-dealer operator for subscribers to mitigate risk, such as limits on gross or net notional exposures by a subscriber, identification of duplicative orders in the ATS, or other checks offered related to order entry or authorizations to trade in the ATS, would be identified in this Item and explained further in Part III, Item 8 (Order Sizes). However, the proposed requests in Part II, Item 5 would not encompass trading products or services offered by the broker-dealer operator to customers that are not for the purpose of effecting transactions or submitting, disseminating, or displaying orders and trading interest in the Government Securities ATS.

To alleviate any concerns regarding the potential disclosure of commercially sensitive information in this disclosure request, the proposed disclosure request would require the Government Securities ATS to provide only a summary of the terms and conditions for the products and services disclosed and to explain how the product or service is used with the ATS

in the applicable Item number in Part III of proposed Form ATS-G. The Commission believes that requiring only a summary narrative would normally not require the broker-dealer operator to disclose commercially sensitive information.

Request for Comment

59. What types of products and services do broker-dealer operators of Government Securities ATS or affiliates of the broker-dealer operator offer to subscribers and how are such products and services used in connection with the ATS?
60. What information about the products and services offered by broker-dealer operators would be helpful to market participants?
61. Should the Commission expand Part II, Item 5 of proposed Form ATS-G to require disclosure of products or services offered by the broker-dealer operator or its affiliates to subscribers, but not necessarily offered in connection with transacting on the Government Securities ATS?

5. Activities of Service Providers

a. Shared Employees

Part II, Item 6(a) of proposed Form ATS-G is designed to solicit disclosures relating to any employee of the ATS's broker-dealer operator or employee of its affiliate that provides services for both the operations of the Government Securities ATS and any other business unit or any affiliate of the broker-dealer operator ("shared employee") that has access to subscriber confidential trading information. The Commission believes that disclosures about shared employees with access to subscriber confidential trading information would help market participants evaluate circumstances when there is the potential for information leakage. For example, the Commission believes that market participants would likely want to know if an employee of the broker-dealer operator (or employee of an affiliate of the broker-dealer operator)

that is responsible for the operations of a system containing subscriber confidential trading information from the Government Securities ATS is also responsible for supporting, for instance, the principal trading activity of the broker-dealer operator, or another trading venue operated by the broker-dealer, or a trading venue that is an affiliate of the broker-dealer operator.

Request for Comment

62. Should the Commission expand the proposed disclosures in Part II, Item 6(a) to other employees, personnel, or independent contractors of the broker-dealer operator? If so, which employees, personnel, or independent contractors should be included and what information about such persons should be solicited?

b. Third-Party Service Providers

Part II, Item 6(b) of proposed Form ATS-G is designed to provide disclosures relating to any entity, other than the broker-dealer operator, that supports the services or functionalities of the Government Securities ATS. Information about the roles and responsibilities of service providers to the ATS is important because it could inform market participants about the potential for information leakage on the Government Securities ATS.[224] The Commission is not proposing that the third-party service provider requests encompass purely administrative items, such as human resources support, or basic overhead items, such as phone services and other utilities. The information solicited in this disclosure is meant to provide information about the

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[224] Legacy Government Securities ATSs that operate pursuant to a Form ATS on file with the Commission are currently subject to the disclosure requirement of Exhibit E of Form ATS, which requires ATSs to disclose the name of any entity other than the ATS that will be involved in the operation of the ATS, including the execution, trading, clearing, and settling of transactions on behalf of the ATS; and to provide a description of the role and responsibilities of each entity. See Item 7 of Form ATS (describing the requirements for Exhibit E of Form ATS). Proposed Part II, Item 6(b) would expand upon this requirement.

extent to which a third party may be able to influence or control the operations of the ATS through involvement with its operations (such as operating the ATS's proprietary data feeds sent to subscribers). For example, any service provider for clearance and settlement of transactions on the ATS, consulting relating to the trading systems or functionality, regulatory compliance, and recordkeeping for the Government Securities ATS would be responsive to this request.[225]

Furthermore, the proposed requests under Part II, Items 6(c)-(d) would require the Government Securities ATS to disclose whether any service providers or their affiliates use the services of the ATS. If they do, the ATS would be required to identify the service providers, the service(s) used, and whether there is any disparate treatment between those service providers and other subscribers. Thus, a Government Securities ATS would only be required to obtain and disclose information about third-party vendors and their affiliates that actively use the services of the ATS; the ATS should be aware of all parties that use its services under its current recordkeeping obligations. The Commission believes that market participants, when analyzing potential conflicts of interest or information leakage, would find it very useful to understand whether potential counterparties with whom they are trading, and who also service the operation of the Government Securities ATS, have access to different or unique ATS-related services. Part II, Item 6(d) of proposed Form ATS-G would require the Government Securities ATS to identify and explain any differences in ATS services to a service provider and all other subscribers. Additionally, depending on the role and responsibilities of the third-party service provider,

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[225] If a summary of the role and responsibilities of the service provider is disclosed in response to Part III of Form ATS-G, the Government Securities ATS need only list the applicable Item number in response to this Item. If there are services or functionalities that are not applicable to Part III, the ATS would identify the service provider, the services and functionalities, and also provide a summary of the role and responsibilities of the service provider in proposed Part II, Item 6(b).

market participants may wish to consider evaluating the robustness of the Government Securities ATS's safeguards and procedures to protect confidential subscriber information.

This request for summary information is designed to provide market participants with a general understanding of the types of technology or hardware provided by the service provider as part of its responsibilities, and how that hardware or technology is used by the Government Securities ATS. The purpose of this disclosure is to provide information that subscribers can use to better understand whether the service provider might be able to access subscriber confidential trading information, so Government Securities ATSs should draft their disclosure with the goal of conveying such information. Simply stating that a third party provides technology or hardware to the ATS would not be responsive to the required summary of the service provider's role, but, on the other hand, the ATS would not have to provide information about the manufacturer of its hardware components.

Request for Comment

63. Are there any critical services or functionalities (e.g., matching engine, market data) that, if provided by a third party, should be required to be described in a higher level of detail than the proposed "summary" level? If so, which services and functionalities?

6. Protection of Confidential Trading Information

Part II, Item 7(a) of proposed Form ATS-G would require a Government Securities ATS to describe its written safeguards and written procedures to protect the confidential trading information of subscribers to the ATS, including: (i) written standards controlling employees of the ATS that trade for employees' accounts; and (ii) written oversight procedures to ensure that the safeguards and procedures described above are implemented and followed. The protection of confidential trading information is a bedrock component of the regulation of ATSs and is essential to ensuring the integrity of ATSs as execution venues. If such information is not

protected, many of the advantages or purposes for which a subscriber may choose to send its orders to an ATS (e.g., to trade anonymously and/or to mitigate the impact of trading in large positions) are eliminated. In cases where the confidential trading information of a subscriber is impermissibly shared with the personnel of the broker-dealer operator or any of its affiliates, such an abuse is also compounded by the conflicting interests of the broker-dealer operator. That is, in such a case, the broker-dealer operator has invited subscribers to trade on its ATS and may have abused that relationship to provide itself or its affiliates with a direct competitive advantage over that subscriber. Accordingly, the Commission believes that disclosures informing market participants about broker-dealer operators' written safeguards and written procedures to protect confidential trading information are necessary so market participants can independently evaluate the robustness of the safeguards and procedures and decide for themselves whether they wish to do business with a particular Government Securities ATS.

The Commission is proposing Part II, Items 7(b) and (c) to require a Government Securities ATS to disclose whether a subscriber can consent and withdraw consent, respectively, to the disclosure of its confidential trading information to any person (not including those employees of the ATS who are operating the system or responsible for its compliance with applicable rules). Subscribers should be able to give consent if they so choose to share their confidential trading information.[226] ATSs that transact in government securities vary in terms of the types of orders, indications of interests ("IOIs"), or other forms of trading interest that are confidential on their systems and what information about such trading interest may be shared. For example, an ATS might provide that no IOIs submitted by subscribers will be considered confidential, but may provide subscribers with the option to restrict the information in the IOI

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[226] See Regulation ATS Adopting Release, supra note 35, at 70879.

message to just the symbol and side (i.e., buy or sell). For this example, Part II, Items 7(b) and 7(c) of proposed Form ATS-G would require the Government Securities ATS to describe the means by which a subscriber could control some of the information contained in the IOI message by providing consent or withdrawing such consent for the sharing of its confidential trading information.[227] For example, a subscriber can consent to its open trading interest being displayed to certain subscribers that the subscriber believes are less likely to misuse or exploit such information, or that have open trading interest on the contra side in the same symbol. If a Government Securities ATS allows subscribers to consent in this manner, the ATS would mark "yes" to Part II, Item 7(b). Continuing the example, if the subscriber can subsequently withdraw its consent to this display of its open trading interest, the Government Securities ATS would mark "yes" to Part II, Item 7(c).

Finally, the Commission is proposing Part II, Item 7(d) to require a Government Securities ATS to provide a summary of the roles and responsibilities of any persons that have access to confidential trading information, the confidential trading information that is accessible by them, and the basis for the access. In responding to this Item, the Government Securities ATS would initially need to describe what it considers to be confidential trading information. For example, the ATS would need to disclose whether only pre-trade order information would be considered confidential trading information, or whether post-trade information would also be treated as confidential trading information, and for what period of time. Furthermore, to explain the basis for the access, the Government Securities ATS would need to provide the basis for a

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[227] See id. The Commission believes that there may be some Government Securities ATSs that might not offer any means by which a subscriber could consent to the dissemination of its confidential trading information. A Government Securities ATS would be required to disclose this fact pursuant to Item 7(a). See id. at 70891 n.437.

person to have access to the confidential trading information and any limitations placed on that person's access.

Request for Comment – Part II

64. Should the Commission require the disclosure of the information in Part II of Form ATS-G? If so, what level of detail should be disclosed?
65. Would Part II of proposed Form ATS-G capture the information that is most relevant to understanding the Government Securities ATS and its relationship with the broker-dealer operator and the broker-dealer operator's affiliates? Please support your arguments.
66. Would the proposed disclosures in Part II require broker-dealer operators of Government Securities ATSs to reveal too much (or not enough) information about their structure and operations?
67. Is there other information about the activities of the broker-dealer operator and its affiliates that market participants might find relevant or useful in their assessment of use of the ATS? If so, describe such information and explain whether or not such information should be required to be provided under proposed Form ATS-G.
68. Should the proposed disclosures in Part II not be required to be disclosed on proposed Form ATS-G due to concerns regarding confidentiality, business reasons, trade secrets, burden, or any other concerns? If so, what information and why?
69. Are there ways to obtain the same information as would be required from Government Securities ATSs by Part II other than through disclosure on proposed Form ATS-G? If so, how else could this information be obtained and would such alternative means be preferable to the proposed disclosures in Part II?

70. Should Government Securities ATSs be required to publicly disclose in their entirety on Form ATS-G their written safeguards and written procedures to protect the confidential trading information of subscribers? Should the Commission require less information be disclosed about the written safeguards and procedures?

71. Would the information about written safeguards and written procedures to protect the confidential trading information of subscribers described in Form ATS-G be sufficient for subscribers to independently evaluate such safeguards and procedures and thus evaluate the ATS as a destination for their orders? Should the Commission prohibit the disclosure of confidential subscriber information in some circumstances?

C. Part III Form ATS-G: Manner of ATS Operations

Part III of proposed Form ATS-G is designed to provide public disclosures to help market participants understand, among other things, how subscribers' orders and trading interest are handled, matched, and executed on the Government Securities ATS. Part III of Form ATS-G is modeled after Form ATS-N with few differences. Form ATS-G does not have an item corresponding to Part III, Item 16 (Routing) of Form ATS-N nor does it have an item corresponding to Part III, Item 24 (Order Display and Execution Access) of Form ATS-N as the associated rule is inapplicable to government securities. And, because of the close relationship between government securities markets and markets for other financial instruments (e.g., futures), the Commission is proposing Part III, Item 16 of Form ATS-G to specifically highlight for market participants how the broker-dealer operator and subscribers may use a functionality or procedure to facilitate trading on, or source of pricing for, the Government Securities ATS in

conjunction with a related market (e.g., futures).[228] In Form ATS-G, the Commission has included "yes" or "no" questions, which the Commission believes would allow market participants to find information more efficiently and facilitate comparisons across Government Securities ATSs. The Commission also has included a requirement to identify and explain any differences in the treatment of subscribers and the broker-dealer operator that the Commission believes would help market participants discern any benefit or disadvantage they may receive in comparison to other market participants or the broker-dealer operator.[229] The Commission believes that the disclosure about differences in treatment of subscribers is important to market participants and would better allow them to decide whether submitting order flow to that Government Securities ATS aligns with their trading objectives.

1. Types of ATS Subscribers

Part III, Item 1 of proposed Form ATS-G is designed to provide information on the type(s) of subscribers that can use the Government Securities ATS services. The Item would provide market participants with information about the type of order flow in the Government Securities ATS based on the types of subscribers that use it. Government Securities ATSs may

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228 On Form ATS-N, an NMS Stock ATS that offers a functionality or procedure that subscribers could use on the ATS in conjunction with a related market (e.g., futures, options) would disclose this information under Part II, Item 5 and Part III, Item 11.

229 For example, in Part III, Item 5, if a Government Securities ATS designed its operations to allow only certain types of subscribers to enter orders into the ATS through direct means (e.g., FIX protocol) and other types of subscribers to enter orders into the ATS through indirect means (e.g., SOR or algorithm), the ATS would describe these means of entry in Part III, Items 5(a) and 5(c), respectively. If, for example, the Government Securities ATS were to treat a subscriber that enters orders directly into the ATS differently from other subscribers that also enter orders directly into the ATS with respect to means of order entry, the ATS would describe that different treatment in Part III, Item 5(b). Differences in treatment of subscribers and the broker-dealer operator are disclosed in the same way on Form ATS-N.

design their system for trading by retail investors, institutional investors, dealers, or any other type of market participant. The Commission is providing a list of market participants in Part III, Item 1 of proposed Form ATS-G that, in the Commission's experience, are commonly used.[230] The list includes: retail investors, asset managers, brokers, dealers, investment companies, hedge funds, market makers, PTFs, insurance companies, pension funds, corporations, and banks. The list is non-exhaustive and a Government Securities ATS would be required to list any type of subscriber that can use the ATS's services.[231] In addition to disclosing its subscribers, a Government Securities ATS may use Part III, Item 1 to disclose any types of participants whose trading interest may reach the ATS. For example, for an ATS that only allows brokers or dealers as subscribers, the ATS could identify the types of customers for which the brokers or dealers send orders to the ATS.

Request for Comment

72. Should Form ATS-G include information about the types of subscribers to the ATS? Based on Commission experience, some ATSs only accept broker-dealers as subscribers to the ATS and various types of market participants send orders into the ATS through the broker-dealer subscriber. Should the Commission require the identification of the types of market participants whose orders may be sent to the ATS, whether directly or indirectly, by a broker-dealer subscriber to the Government Securities ATS? Should the

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230 As compared to Form ATS-N, the Commission is modifying the checkboxes listing types of subscribers to remove types that are not applicable to the government securities market and adding insurance companies, pension funds, and corporations to the list of checkboxes. The Commission is also proposing to add these checkboxes to Form ATS-N. See infra Section V.D. The Commission believes that adding these checkboxes will provide more granular information on the types of subscribers participating on an ATS in an easier-to-read format.

231 See NMS Stock ATS Adopting Release, supra note 1, at 38820-21 (discussing the definition of "subscriber" and the persons encompassed thereunder).

Commission require the same information from NMS Stock ATSs by amending Form ATS-N? Would this information be useful to understanding the type of order flow in the ATS?

2. Eligibility for ATS Services

Part III, Item 2 of proposed Form ATS-G is designed to provide market participants with information about whether the Government Securities ATS requires subscribers to be registered broker-dealers or enter a written agreement to use the ATS services, and whether there are any other conditions that the ATS requires a person to satisfy before accessing the ATS services. This Item would require the conditions a person must satisfy "before accessing the ATS services." On the other hand, Part III, Item 3 of proposed Form ATS-G (discussed infra), would require disclosures about any conditions that would exclude a subscriber, in whole or in part, from using the Government Securities ATS as a result of subscriber behavior while already actively participating in the ATS.[232]

The Commission believes that the disclosures required by Part III, Item 2 would allow market participants to understand the conditions that they would need to satisfy to participate on the Government Securities ATS. If the Government Securities ATS indicates that it does have conditions that a person must satisfy before accessing the ATS services, the request would require the ATS to list and provide a "summary" of those conditions. Some Government Securities ATSs may only have the eligibility requirement that a person be a client of the broker-dealer operator. In that case, any eligibility requirements to become a client of the broker-dealer

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[232] For example, if a Government Securities ATS has a practice of excluding subscribers that do not meet certain percentage thresholds for submitting firm-up orders in response to receiving an IOI or conditional order sent to them by the ATS, then this practice would be subject to disclosure under Part III, Item 3 of proposed Form ATS-G ("Exclusion from ATS Services") and not Part III, Item 2 ("Eligibility for ATS Services").

operator would be responsive to this Item. For example, if a subscriber must be a customer of the broker-dealer operator, the Government Securities ATS would provide a summary of conditions the subscriber, as a customer, would need to satisfy (e.g., know your customer) before its orders can be entered into the ATS. If the Government Securities ATS requires subscribers to be members of a third party for purposes of clearance and settlement, such as the Fixed Income Clearing Corporation's Government Securities Division, such information would be responsive.

Request for Comment

73. What eligibility requirements to access a Government Securities ATS are important to a potential subscriber or participant to the ATS and why?

3. Exclusion from ATS Services

Based on the Commission's experience, ATSs often have rules governing subscribers' participation on the ATS, and if a subscriber fails to comply with these rules, the ATS may limit or deny access to the ATS.[233] Part III, Item 3 of proposed Form ATS-G would require the Government Securities ATS to provide information about whether the ATS can exclude, in whole or in part, any subscriber from the ATS services, and if so, to list and provide a summary of the conditions for excluding (or limiting) a participant from using the ATS. The disclosures are designed to provide subscribers with information about when the Government Securities ATS can exclude, in whole or in part, a subscriber from the services of the ATSs and help them reasonably anticipate the types of activities that may cause them to be excluded (or limited) from using the services of the ATS. The Commission believes that allowing for a summary of

[233] These limitations can result in some subscribers having different levels of functionality or more favorable terms of access than others. For example, in the Commission's experience, some ATSs exclude subscribers that frequently fail to respond with a firm-up order after receiving an IOI or request for quote.

conditions for excluding (or limiting) a participant would alert subscribers about the types of activities that may cause them to be excluded (or limited) from using the services of the Government Securities ATS while allowing the ATS to reasonably control the activities and quality of flow on its platform and not allowing subscribers to game a more detailed description of conditions for excluding.

Request for Comment

74. Is there any subscriber behavior for which ATSs commonly exclude a subscriber in whole or in part? What is that behavior(s) and what form of exclusion is commonly employed (e.g., disqualification from ATS, limitation of services)?

4. Hours of Operations

Part III, Item 4 is intended to provide market participants with information about the days and hours of operations of the Government Securities ATS, including the times when orders or trading interest can be entered on the ATS, and any hours of operations outside of its regular trading hours, as established by the ATS. Notably, the Item would require a Government Securities ATS to provide the hours when it is operating, which would include functions such as accepting orders. Accordingly, the disclosure required is not limited to only those hours when the matching and execution of orders are occurring. The Commission believes that it is important for market participants and the Commission to understand when a Government Securities ATS operates and when orders can be entered, including when the ATS will accept orders outside of its regular trading hours. Making such information publicly available would enable market participants to more easily compare when trading interest can be entered on trading venues.

5. Means of Entry

Part III, Item 5 of proposed Form ATS-G is intended to disclose the means that can be used to directly enter orders and trading interest into the Government Securities ATS and any other means for entering orders and trading interest into the ATS (e.g., smart order router, algorithm, order management system, sales desk, or aggregation functionality). The Government Securities ATS would be required to identify and explain the other means for entering orders and trading interest, indicate whether the means are provided through the broker-dealer operator itself, through a third-party contracting with the broker-dealer operator, or through an affiliate of the broker-dealer operator, and list and provide a summary of the terms and conditions for entering orders or trading interest into the ATS through these means.

Subscribers may submit orders or trading interest to the Government Securities ATS both directly and indirectly. A direct method of sending orders or trading interest to an ATS, for example, may include the use of a direct market access platform or FIX Protocol connection, which allows subscribers to enter orders or trading interest into the ATS without an intermediary. An example of an indirect method of submitting orders or trading interest to an ATS could include the use of a smart order router ("SOR"), algorithm or similar functionality, website, graphical user interface ("GUI"), aggregation interface, or front-end system. The means of order entry into an ATS (e.g., direct or indirect) could impact the speed with which a subscriber's order is handled and potentially executed and could increase the risk of information leakage. The government securities markets are not interconnected markets like those for NMS stocks and therefore SOR technology may not be applied in the same manner by broker-dealer operators of Government Securities ATSs. The Commission believes, however, that SOR technology may be used to send or receive orders from a Government Securities ATS to reduce latency or send

orders to markets with better prices for certain government securities, and to the extent it does, the ATS should be required to provide information about the SOR as required.

The Commission believes that the disclosures regarding the direct or indirect means of order entry would inform subscribers about the functionalities that their orders and trading interest pass through on their way to the ATS and help them assess any potential advantages that orders sent through the broker-dealer operator may have with respect to other subscribers on the Government Securities ATS. A Government Securities ATS would be required to identify the functionality that directly connects to the ATS (e.g., algorithm) and, if present, any intermediate functionality that an ATS order passes through on its way to the functionality that directly connects to the ATS.[234] Conversely, if ATS orders submitted through an algorithm are sent to another intermediate functionality, and then submitted to the ATS by that functionality, such information would need to be disclosed pursuant to this Item.[235]

The proposed disclosure requirements would only require the Government Securities ATS to "list and provide a summary of the terms and conditions for entering orders or trading interest into the ATS" through these sources. Therefore, the Government Securities ATS would not need to provide a detailed description of the programming of the indirect means for entering order and trading interests that could put the ATS at a competitive disadvantage with competitors. However, if, for example, an ATS "throttled" the number of messages allowed for

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234 If an intermediate application or functionality has access to a subscriber's order information, the Government Securities ATS must take appropriate measures to protect the confidentiality of such information pursuant to Rule 301(b)(10) of Regulation ATS.

235 If a broker-dealer operator permits subscribers to send orders to the ATS by excluding all other trading venues from where such orders could be sent, this procedure would in effect allow a subscriber to direct an order to the ATS and would be responsive to Part III, Item 5.

a given type of connection, that information would be responsive as a term or condition of that means of entry.

Among the advantages and disadvantages that market participants should be able to discern from the disclosure of Part III, Item 5(b) are any differences in the latency of the alternative means for entering orders and trading interest into the Government Securities ATS. The Commission understands that there might be different latencies associated with each alternative. For instance, in some cases, a direct connection to the Government Securities ATS may have reduced latencies as compared to indirect means where orders and trading interest pass through an intermediate functionality. A broker-dealer operator could also, for example, configure the Government Securities ATS to provide reduced latencies for certain means of order entry used by itself or its affiliates.[236] The Commission also believes that it is important for subscribers to understand a means of entry provided by an affiliate, even if it does not provide an advantage to a particular entity.

The Commission believes that disclosures about a broker-dealer operator's use of its or an affiliate's direct or indirect functionality to enter orders into the Government Securities ATS are important to market participants to allow them to assess the potential for information leakage. The indirect means of access (e.g., SOR or algorithm) may obtain information about subscriber orders or trading interest that have been sent to the Government Securities ATS (and may now be resting on the ATS) and subscriber orders that have been sent out of the ATS. The high likelihood that an indirect means of accessing the Government Securities ATS could lead to leakage of subscribers' confidential trading information necessitates disclosure of certain

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[236] The proposed rule would not require that the Government Securities ATS calculate and disclose precise latencies for each means of entry.

information to subscribers about the use of such indirect means to send subscriber orders to or out of the ATS. In addition, there may be Government Securities ATSs where an intermediate functionality or entity is used by the ATS as the primary means to bring together the orders for securities of multiple buyers and sellers using established nondiscretionary methods (such as providing the means to enter, display or execute orders) and in this manner may be considered part of the ATS for purposes of Regulation ATS and Form ATS-G.[237]

Request for Comment

75. Are there any means for entering orders and trading interest into the Government Securities ATS where a higher level of detail should be required to explain their operation? Are there any aspects of those means of entry that are particularly important?

6. Connectivity and Co-location

Part III, Item 6(a) of Form ATS-G would ask whether the Government Securities ATS offers co-location and related services, and if so, would require a summary of the terms and conditions for such services, including the speed and connection (e.g., fiber, copper) options offered. Part III, Item 6(c) of Form ATS-G would require a Government Securities ATS to indicate whether it provides any other means besides co-location and related services described in the Item to increase the speed of communication with the ATS, and if so, to explain the means and offer a summary of the terms and conditions for its use. The Commission is also proposing to require in Part III, Item 6(e) the Government Securities ATS to indicate whether it offers any means to reduce the speed of communication with the ATS and if so, to provide a summary of the terms and conditions for its use.

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[237] See NMS Stock ATS Adopting Release, supra note 1, at 38832 and 38844.

Latency is an important feature of trading in certain government securities and market participants are interested in understanding the functionalities employed by Government Securities ATSs to influence it.[238] The Item would require a summary of the terms and conditions where a trading venue employs mechanisms to increase the latency or the length of time for orders, trading interest, or other information to travel from a user to the system. Subscribers of co-location services can experience faster or slower connection speeds to a Government Securities ATS depending on factors such as the distance of the customer servers from the matching engine, or the use or non-use of "coiling" to its matching engine to equalize connection speeds among subscribers, among others. Such differences in connection speed or latency would be required to be disclosed under Part III, Item 6(b). The Commission believes that the information disclosed in Item 6 would help market participants understand their connectivity options to the ATS and expedite the order entry process for subscribers.

Request for Comment

76. Are there any aspects of the means for increasing or reducing the speed of communication with Government Securities ATSs that the Commission should specifically require under this Item?

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238 See October 15 Staff Report, supra note 14, at 36-37; Treasury Request for Information, supra note 10, at 3928. See also Letter from Dan Cleaves, Chief Executive Officer, BrokerTec Americas, and Jerald Irving, President, ICAP Securities USA LLC, to David R. Pearl, Office of the Executive Secretary, Treasury Department, dated April 22, 2016 ("BrokerTec/ICAP Letter"), at 3-4, available at https://www.treasurydirect.gov/instit/statreg/gsareg/ICAPTreasuryRFILetter.pdf; Letter from C. Thomas Richardson, Managing Director, Head of Electronic Trading Service, Wells Fargo Securities, and Cronin McTigue, Managing Director, Head of Liquid Products, Wells Fargo Securities, to Treasury Department, dated April 21, 2016, at 6-7, available at https://www.treasurydirect.gov/instit/statreg/gsareg/RFIcommentWellsFargo.pdf.

7. Order Types and Attributes

Part III, Item 7 would require a Government Securities ATS to identify and explain each order type offered by the ATS. To provide transparency to market participants and the Commission, the Item would require a complete and detailed description of the order types available on the Government Securities ATS, their characteristics, operations, and how they are handled. The Commission believes that all market participants should have full information about the operations of order types available on a Government Securities ATS for market participants to comprehensively understand how their orders and trading interest will be handled and executed on the ATS. Order types are a primary means by which users of a Government Securities ATS communicate their instructions for handling their trading interest to the ATS. Given the importance, diversity, and complexity of order types, the Commission is proposing to require Government Securities ATSs to disclose the information called for by Part III, Item 7 on proposed Form ATS-G.

The Commission believes that market participants should have sufficient information about all aspects of the operations of order types available on a Government Securities ATS to understand how to use order types to achieve their trading objectives, as well as to understand how order types used by other market participants could affect their trading interest. The Commission believes that a detailed description of the characteristics of the order types of a Government Securities ATS would assist subscribers in better understanding how their orders would function and interact with other orders on the ATS. It also would allow market participants to see what order types could be used by other market participants, which could affect the probability, timing, and quality of their own executions. For example, if the time priority of a pegged order changes in response to changes in the reference price, that would affect the likelihood of execution for such an order.

Request for Comment

77. What are the most prevalent order types on Government Securities ATSs? Are there more important means than order types for subscribers to communicate the handling of their trading interest on Government Securities ATSs? Does Form ATS-G capture all of the means for subscribers to communicate the handling of their trading interest? Are there any aspects of order types on Government Securities ATSs that should be specifically addressed in the Item? If yes, please explain.

8. Order Sizes

Part III, Item 8 would require a Government Securities ATS to provide information about any requirements related to the permissible size of trading interest (e.g., minimum or maximum size, odd-lot, mixed-lot, trading increments) and specify any trading interest size requirements and any related handling procedures.[239] This information would inform subscribers about the permissible size of orders and trading interest that a subscriber could enter on the ATS. For example, if a Government Securities ATS has minimum or maximum order sizes, or a minimum increment size requirement for order modifications, those requirements and related handling procedures would be responsive to the Item. Broker-dealer operators employ market access and risk management controls and procedures that prevent the entry of erroneous orders and orders that are above a subscriber's predetermined threshold. If order size requirements are imposed on subscribers as part of a risk management procedure, an explanation of those procedures as they relate to the ATS would be responsive to this Item. An explanation of how a Government Securities ATS's requirements and conditions related to the size of trading interest differ among

[239] The Commission is consolidating the information requested in Part III, Item 8(a)-8(f) of Form ATS-N into 2 subparts (Part III, Item 8(a) and 8(b)) in Form ATS-G to streamline the format of responses. The Commission believes the information requested is the same.

subscribers and persons would also provide a market participant with information regarding how its trading interest would be handled vis-à-vis other market participants. The information that would be required by Item 8 would also be useful to the Commission's monitoring of developments in market structure.

Request for Comment

78. Are there any operations or procedures, either of an ATS or a broker-dealer operator, that could limit the entry, or size of, a subscriber's orders submitted to the ATS? If so, please describe these operations or procedures and explain why they are important to subscribers.

9. Indications of Interest

Part III, Item 9 of proposed Form ATS-G is designed to provide information about whether the Government Securities ATS sends or receives any messages indicating trading interest, and if so, to identify and explain the use of the messages, including information contained in messages, how and when messages are transmitted, the type of persons that receive the message, the possible responses to IOIs by recipients, and the conditions under which the messages might result in an execution in the ATS.[240]

Government Securities ATSs use IOIs to convey trading interest available on those trading venues. Understanding the manner in which Government Securities ATSs use messages that convey trading interest, such as IOIs and similar functionalities, could be useful to market

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[240] See NMS Stock ATS Adopting Release, supra note 1, at 38847 for additional discussion of IOIs, actionable IOIs, conditional orders, and similar functionalities. The Commission removed the terms "conditional orders" and "actionable IOIs" that were included on the corresponding item on Form ATS-N. These terms appear to be less prevalent in the government securities market. However, the Commission believes the term "IOI" used herein would encompass both conditional orders and actionable IOIs.

participants for finding a contra-party as well as understanding potential information leakage. In the Commission's experience, the information that Government Securities ATS include in IOIs can vary, including different combinations of symbol, size, and/or price, and the Commission believes that this information would be relevant to market participants when understanding what information about their orders and trading interest is communicated to others and assessing potential information leakage. Identifying the type of persons that receive the message and possible responses, moreover, could help market participants understand when an IOI would result in a match, how market participants can use the ATS, who will see their trading interest, how their trading interest will be executed, and the potential for information leakage. If a Government Securities ATS employs a negotiation functionality that begins with IOIs to arrive at matches between subscribers, the ATS would describe the steps undertaken by the ATS from the initial IOI to the eventual match of trading interest.

Request for Comment

79. Are there aspects of IOIs as they are used in Government Securities ATSs that are not covered by this Item? What information about IOIs or the process for transmitting IOIs are important to subscribers?

10. Opening and Reopening

Part III, Item 10 of proposed Form ATS-G is designed to provide information about whether a Government Securities ATS uses any special procedures to match orders at the opening, or to set a single opening or reopening price to, for example, maximize liquidity and accurately reflect market conditions at the opening or reopening of trading. The Commission believes that market participants would likely want to know about any special opening or reopening processes employed by a Government Securities ATS, including which order types participate in the ATS's opening or reopening processes.

Information about when the Government Securities ATS will price and prioritize orders and trading interest during the opening or reopening of the ATS would provide market participants with the information they need to plan and execute their trading strategies during these periods. The Item would also, for example, require disclosure of any procedures to match orders to set a single opening or reopening price to maximize liquidity and accurately reflect market conditions at the opening or reopening of trading. For any orders allowed to be submitted before an ATS opens for trading, the Item would require an explanation of what priority rules would apply to those orders. The Commission believes most participants consider important the procedures for the pricing and priority of orders and trading interest, and the order types allowed because these rules and procedures can directly impact their execution price.

11. Trading Services, Facilities and Rules

Part III, Item 11(a) would require a Government Securities ATS to provide a summary of the structure of the ATS marketplace and explain the means and facilities for bringing together the orders of multiple buyers and sellers on the ATS. Part III, Item 11(c) would require a Government Securities ATS to explain the established, non-discretionary rules and procedures of the ATS. Part III, Item 11 is designed to solicit disclosures about the facilities, functionalities, and mechanisms that the Government Securities ATS uses to match the orders and trading interest of counterparties and facilitate transactions on the ATS and to inform market participants and the Commission about the type of marketplace the ATS provides (e.g., crossing system, auction market, limit order matching book, voice).

An ATS brings together orders when orders entered into the system for a given security have the opportunity to interact with other orders entered into the system for the same

security.[241] An ATS can bring together orders through various methods. For instance, an organization, association, or group of persons brings together orders if it displays, or otherwise represents, trading interests entered on the system, such as a consolidated quote screen, to users.[242] The bringing together of orders can also occur if subscribers' orders are centrally collected for future processing and execution through, for example, a limit order matching book that allows subscribers to display buy and sell orders in particular securities and to obtain execution against matching orders contemporaneously entered or stored in the system.[243] As explained above, to qualify for the Exchange Act Rule 3a1-1(a)(2) exemption from the statutory definition of "exchange," an ATS must, among other things, bring together the orders of multiple buyers and sellers.[244]

Government Securities ATSs may offer subscribers various types of trading mechanisms to bring together orders that would be disclosed under Part III, Item 11. For example, many ATSs bring together multiple buyers and sellers using limit order matching systems. Other ATSs use crossing mechanisms that allow participants to enter unpriced orders to buy and sell securities, with the ATS's system crossing orders at specified times at a price derived from another market.[245] Some ATSs use an auction mechanism (or similar workup functionality) that

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241 See Regulation ATS Adopting Release, supra note 35, at 70849.

242 See id.

243 See id.

244 See id. As explained in the Regulation ATS Adopting Release, systems in which there is only a single seller, such as systems that permit issuers to sell their own securities to investors, would not be included within Rule 3b-16. See id. at 70849. The Commission emphasized in the Regulation ATS Adopting Release that the mere interpositioning of a designated counterparty as riskless principal for settlement purposes after the purchasing and selling counterparties to a trade have been matched would not, by itself, mean that the system does not have multiple buyers and sellers. See id.

245 See id. at 70849 n.37.

matches multiple buyers and sellers by first pausing execution in a certain security for a set amount of time, during which the ATS's system seeks out and/or concentrates liquidity for the auction; after the trading pause, orders will execute at either a single auction price or according to the priority rules for the auction's execution. In a workup, an ATS may have a private phase, where the two original contra parties submitting orders can negotiate, and a public phase where all subscribers can submit orders at the workup price. Some ATSs use a blotter scraping functionality, which may inform the ATS about trading interest residing on a participant's order management system but not yet entered into the ATS; the ATS or broker-dealer operator oftentimes can automatically generate orders from the trading interest and enter them into the ATS on behalf of the subscriber, in accordance with the relevant terms and conditions, when certain contra-side trading interest exists in the ATS. Certain ATSs may use a voice system to bring together orders as well, or a combination of voice and electronic systems. A Government Securities ATS could also offer services or functionalities to facilitate trading on, or source pricing for, the Government Securities ATS in conjunction with related markets for government securities that would be encompassed under this Item.[246]

The Commission believes that information about the trading facilities, functionalities, and mechanisms offered by a Government Securities ATS would help market participants evaluate whether the operations of the ATS comports with their trading strategies. Part III, Item 11(a) of proposed Form ATS-G would require Government Securities ATSs to provide a summary of the structure of the ATS marketplace, which would describe the type of market the ATS operates,

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[246] If a Government Securities ATS offers subscribers a functionality, for example, in conjunction with a non-government securities market, the Government Securities ATS would provide information about the use of the functionality with the ATS and non-government securities market in Part III, Item 16 of proposed Form ATS-G.

such as a limit order book, auction market, or crossing system, in a more concise manner. This Item would require more detailed responses when explaining the means and facilities for bringing together the orders of multiple buyers and sellers on the Government Securities ATS. The Commission is also proposing to request information on whether the means and facilities are the same for all subscribers and the broker-dealer operator in Part III, 11(b) and is formatting the subpart request as a "yes" or "no" question.

Part III, Item 11(c) is designed to inform market participants about the rules and procedures used to determine how orders and trading interest may interact upon being entered into a Government Securities ATS.[247] The Commission previously explained in the Regulation ATS Adopting Release that use of established, non-discretionary methods could include operation of a trading facility or the setting of rules governing subscribers' trading.[248] For example, the Commission considers the use of an algorithm by an electronic trading system, which sets trading procedures and priorities, to be a trading facility that uses established, non-discretionary methods.[249] Similarly, the Commission has previously stated that rules imposing execution priorities, such as time and price priority rules, would be "established, non-discretionary methods."[250] As proposed, a Government Securities ATS would be required to address each aspect of the non-discretionary rules and procedures that are specifically listed as being included in Part III, Item 11(c).

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247 As compared to Part III, Item 11(c) of Form ATS-N, the Commission has added examples of functionalities used in the government securities market for which the Government Securities ATS would be required to explain the non-discretionary rules and procedures, if applicable.

248 See Regulation ATS Adopting Release, supra note 35, at 70851-52.

249 See id. at 70851.

250 See id. at 70852.

The Commission is also proposing that a Government Securities ATS disclose pricing methodologies used for each type of security traded by the ATS under Part III, Item 11(c). For example, orders may be priced using spreads off of a benchmark price, or spreads between two different maturities of a security. An ATS may also restrict the allowable deviation from a benchmark price, or allow for indicative pricing of certain securities. If a transaction has more than one leg, the ATS may price both legs according to a price derived from one of the securities traded. In response to this request, a Government Securities ATS would be required to describe the ATS's procedures for determining all pricing methodologies and to the extent the pricing methodologies differ among subscribers and the broker-dealer operator, the ATS must disclose those differences.

Item 11 would require Government Securities ATSs to disclose the various terms and conditions under which orders interact and match. Some Government Securities ATSs may offer price-time priority to determine how to match orders (potentially with various exceptions), while others may offer midpoint-only matching with time priority. Some Government Securities ATSs might also take into account other factors to determine priority. For example, a Government Securities ATS may assign either a lower or higher priority to an order entered by a subscriber in a certain class (e.g., orders of principal traders or retail investors) or sent from a particular source (e.g., orders sent by an algorithm or similar functionality) when compared to an equally priced order entered by a different subscriber or via a different source. Furthermore, a Government Securities ATS might elect to apply different priority rules for matching IOIs than it does for matching orders. An ATS may also have rules concerning how the ATS would handle the order of a subscriber who seeks to execute at a size larger than what is available at the existing workup price. Also, if applicable, the Item would require an explanation of which party to a trade would

receive any price improvement depending on the priority, order type, and prices of the matched orders and the percentage of price improvement the party would receive. A broker-dealer operator could also act as the counterparty for each side of a transaction that matches on its ATS. These disclosures would allow the Commission to better evaluate whether the entity that filed a proposed Form ATS-G meets the criteria of Exchange Act Rule 3b-16 and the definition of a Government Securities ATS.

A description of the "established, non-discretionary rules and procedures" of the Government Securities ATS is a principal requirement of Item 11(c), and the Commission is proposing to require that any differences among subscribers and the broker-dealer operator related to these methods be identified and explained in Part III, Item 11(d).

Request for Comment

80. Are there any specific means or facilities used to bring together multiple buyers and sellers on ATSs that trade government securities and repos that should be specifically included as an example in this Item? Are there any rules and procedures that govern trading of government securities and repos that should be specifically included as examples in this Item?

12. Liquidity Providers

Part III, Item 12 would request information about any formal or informal arrangements with any subscriber or the broker-dealer operator to provide orders or trading interest to the Government Securities ATS. The Item is designed to provide information about arrangements whereby a liquidity provider undertakes to buy or sell continuously, or to meet specified thresholds of trading or quoting activity. A Government Securities ATS may want to ensure that there is sufficient liquidity in a particular government security to incentivize market participants to send order flow in that government security to the ATS. To do this, the ATS may engage

certain subscribers to provide liquidity to the Government Securities ATS and perform similar functions to that of a market maker on a national securities exchange.[251] The obligations required of liquidity providers and the benefits that they provide could vary across Government Securities ATSs. The Commission believes that information about liquidity providers would be useful to subscribers and market participants who, for example, may want their orders to only interact with agency orders (and not with those of a liquidity provider), or, conversely, may themselves want to become liquidity providers on the Government Securities ATS. The Commission believes that such arrangement could take many forms and the function of the liquidity provider on an ATS could depend on the structure and trading protocols of the ATS. Therefore, this Item could cover, for example, arrangements or agreements between the broker-dealer operator and another party to trade on the Government Securities ATS. The proposed Item does not cover agreements with a subscriber that has no obligation to buy or sell government securities or repos on the ATS.

Request for Comment

81. Are there any arrangements between Government Securities ATSs and market participants to provide orders or trading interest to the Government Securities ATS that may not be required by this Item but should be? If any, what is the nature of those arrangements and why are they important to disclose publicly on Form ATS-G?

[251] These liquidity providers may quote in a particular government security on the ATS during trading hours and may receive a benefit for performing this function, such as discounts on fees, rebates, or the opportunity to execute with a particular type of segmented order flow.

13. Segmentation; Notice

Part III, Item 13 of proposed Form ATS-G would require a Government Securities ATS to disclose information about how orders and trading interest in the ATS can be segmented into categories, classifications, tiers, or levels. This Item would provide market participants with an understanding of the categories of order flow or types of market participants with which they may interact. In addition, the information provided would allow them to both assess the consistency of a segmented group and determine whether the manner in which the trading interest is segmented comports with their views of how certain trading interest should be categorized. Disclosure of the procedures and parameters used to segment categories would allow a market participant to determine whether its view of what constitutes certain trading interest it wants to seek or avoid is classified in the same way by the Government Securities ATS. For example, a subscriber may find it useful to understand the standards a Government Securities ATS uses to categorize high frequency trading firms so that it can compare the criteria used by the ATS with its view of what constitutes a high frequency trading firm, and thus be able to successfully trade against or avoid such trading interest. Similarly, information regarding the procedures applicable to trading among segmented categories would allow market participants to evaluate whether they can successfully trade against or avoid the segments of trading interest.

Some Government Securities ATSs segment order flow entered in the ATS according to various categories for purposes of order interaction. For example, a Government Securities ATS could elect to segment trading interest by type of participant (e.g., buy-side or sell-side firms, PTFs, agency-only firms, firms above or below certain assets under management thresholds). When segmenting order flow in the ATS, a Government Securities ATS might look to the underlying source of the trading interest such as the trading interest of retail customers. Some Government Securities ATSs segment by the nature of the trading activity, which could include

segmenting by patterns of behavior, time horizons of traders, or the passivity or aggressiveness of trading strategies. Government Securities ATSs might use some combination of these criteria or other criteria altogether. The ATS might use these segmented categories to design its order interaction rules, allowing only orders from certain categories to interact with each other.

The Commission recognizes the potential concern that describing the precise criteria used by the ATS to segment orders and trading interest could result in gaming by subscribers of those criteria and thus, the reduction of the effectiveness of segmentation as a control. On the other hand, the Commission believes that market participants are interested in understanding how their orders and trading interest are categorized on the ATS and the types of market participants that would interact with those orders and trading interest. The Commission believes that Part III, Item 13 of proposed Form ATS-G appropriately balances these competing interests by soliciting a summary of the parameters for each segmented category. By requiring Government Securities ATSs to provide a summary of these parameters on Form ATS-G, rather than a detailed analysis of the parameters and how they are calculated, this Item is designed to avoid responses that could allow the gaming or manipulation of segmentation criteria.

The Commission believes disclosing the origin of a customer order of a broker-dealer could be a form of segmentation because it can facilitate users restricting their trading to only certain types of market participants and it can contribute to information leakage and adverse selection of orders of institutional investors, who generally trade passively. Accordingly, the Commission is proposing to require a Government Securities ATS to disclose if it identifies orders or trading interest entered by a customer of a broker-dealer on the ATS as a customer order.

Request for Comment

82. What information about the segmentation of order flow by a Government Securities ATS would be important to persons that use the services of the ATS?

14. Counter-Party Selection

Part III, Item 14 of proposed Form ATS-G would require Government Securities ATSs to provide information about whether orders or trading interest can be designated to interact or not interact with certain orders or trading interest in the ATS. To analyze whether the ATS is an appropriate venue to accomplish their trading objectives, market participants have an interest in knowing whether – and how – they may designate their orders or trading interest to interact or avoid interacting with specific orders, trading interest, or persons on the ATS. Part III, Item 14 is designed to require disclosure of such information.

For instance, the disclosures proposed under this Item would allow a participant in the Government Securities ATS to know whether it can interact with certain categories of orders and trading interest on the ATS or can designate an order submitted to the ATS to interact only with orders of certain other types of ATS participants. For example, the ATS might allow subscribers to choose from categories of orders or categories of subscribers that the broker-dealer operator segments in the ATS. For example, buy-side or institutional subscribers might seek to trade only against other buy-side or institutional order flow, or might seek to avoid trading against PTFs or so-called high frequency trading firms. Also, it would also be responsive to this Item for an ATS to state whether a subscriber can restrict interacting with its own orders, whether such restrictions are by default or only upon subscriber request, and any applicable limitations on such restrictions. This Item would require description of any procedures allowing a subscriber to limit its counterparty on an order-by-order basis or a participant-by-participant basis, how it would go about doing so, and how such selection would affect the interaction and priority of trading interest. For example, an ATS would include in its response to this Item whether a participant

can select a category of orders or category of subscribers for counterparty designation by marking its order to interact with them or whether the broker-dealer operator performs the action, and also, whether the broker-dealer operator implements the counterparty designation during the same trading day as the subscriber's selection or on a date thereafter.

Request for Comment

83. Should proposed Form ATS-G request more or less information about how orders or trading interest can be designated to interact or not interact with certain orders or trading interest in the Government Securities ATS? Are there important forms of counter-party selection that the Commission should address?

15. Display

Part III, Item 15 of proposed Form ATS-G would require a Government Securities ATS to disclose how and when orders and trading interest bound for or resting in the ATS may be displayed or made known to any person. The Commission believes that many market participants are sensitive to precisely how and when their trading interest is displayed or otherwise made known both inside and outside the Government Securities ATS as such information could result in other market participants trading ahead of their positions, and thus in inferior execution prices. These participants could use these disclosures to evaluate whether sending orders to a particular Government Securities ATS would achieve their trading strategies.

The display of subscriber orders and trading interest can occur in a number of ways. For instance, a Government Securities ATS may offer a direct data feed from the ATS that contains real-time order information.[252] Some ATSs have arrangements, whether formal or informal (oral

[252] In the case of a Government Securities ATS offering a direct data feed with information about orders or trading interest in the ATS, the ATS would be required to disclose under Part III, Item 15 what information the data feed provides about the orders and trading

or written) with third parties to display the Government Securities ATS's trading interest outside of the ATS, such as IOIs from the subscribers being displayed on vendor systems, or arrangements with third parties to transmit IOIs between subscribers. An ATS would be required to include this type of information in its response to this Item.

The Commission believes that subscribers that use the services of the Government Securities ATSs, including customers of the broker-dealer operator, have limited information about the extent to which their orders and trading interest sent to the ATS could be displayed outside the ATS. For instance, when a Government Securities ATS sends electronic messages outside of the ATS that expose the presence of orders or other trading interest on the ATS, it is displaying or making known orders or other trading interest on the ATS. An ATS would be required to disclose the circumstances under which the ATS sends these messages, the types of market participants that received them, and the information contained in the messages, including the exact content of the information, such as symbol, price, size, attribution, or any other information made known. In another example of display, subscribers' orders or trading interests directed to the Government Securities ATS could pass through the broker-dealer operator's non-ATS systems or functionalities before entering the ATS, such as an algorithm or a SOR. Such non-ATS systems and functionalities could be used to support the broker-dealer operator's other business units, including any trading venues.[253] Proposed Part III, Item 15(b) would also require the ATS to describe differences in latencies with the Government Securities ATS displaying

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interest, the associated timing in receiving the feed (e.g., real-time, delayed), how a subscriber would receive the feed (e.g., connectivity), and if all subscribers are treated the same in receiving the feed, including whether all subscribers are eligible to receive it and any differences in latency receiving the feed.

[253] The broker-dealer operator typically controls the logic contained in these systems or functionality that determines where an order that the broker-dealer operator receives will be handled or sent.

subscribers' orders and trading interest due to a functionality of the ATS. For example, if a Government Securities ATS transmits and displays its proprietary data feed to certain subscribers faster than to other subscribers as a result of the alternative means offered by the ATS to connect, such information would be responsive.

In response to this Item, the Commission is proposing that a Government Securities ATS identify the recipient of displayed information by identifying the functionality of the broker-dealer operator (e.g., SOR, algorithm) or the type of market participant,[254] or both, that receives the displayed information. For example, if orders bound for the Government Securities ATS pass through the broker-dealer operator's common gateway, or algorithm, the ATS would need to disclose these functionalities as the order was displayed to a functionality of the broker-dealer operator that would likely be outside the ATS. If orders resting in the Government Securities ATS are displayed to certain subscribers or one or more of the broker-dealer operator business units, the ATS would need to identify these types of subscribers and business units of the broker-dealer operator by type of market participant (e.g., institutional investors, PTFs, market makers, affiliates, trading desks at the broker-dealer operator, market data vendors, clearing entities, and potential subscribers, among others). The Item would also require a Government Securities ATS that offers workups to match orders to disclose the information that is displayed to all subscribers or certain subscribers in public or private phases of the workup, as well as what characteristics of the orders are displayed.

The proposed Item would not require information about employees of the Government Securities ATS in non-trading related roles, such as technical, quality assurance, compliance or

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[254] See Part III, Item 1 of proposed Form ATS-G (providing examples of types of market participants).

accounting roles, among others, that support the ATS's operations and to whom orders and trading interest are made known in the performance of their duties.[255]

Request for Comment

84. What information involving government securities and repos does an ATS display? Are there levels of displayed information that an ATS may offer to market participants? If so, what are the levels and are there any specific terms and conditions for a market participant to access that information? What functionalities does the ATS use to display information in government securities and repos? Please explain the purpose and operation of any such functionality.

85. For Government Securities ATSs that display trading interest both on the ATS and outside the ATS, what is the process for market participants to submit orders to interact with the trading interest that is displayed outside the ATS?

86. Are there any aspects in relation to the display of trading interest on the Government Securities ATS that should be specifically addressed in the Item? Are there any aspects of display that are unique to Government Securities ATSs?

16. Interaction with Related Markets

Part III, Item 16 of proposed Form ATS-G would require a Government Securities ATS to provide information about any functionality or procedure to facilitate trading on, or source

[255] The Government Securities ATS, as proposed, would be subject to the requirements of Rule 301(b)(10) and would be required to establish adequate safeguards and procedures to protect subscribers' confidential trading information, which must include: limiting access to the confidential trading information of subscribers to those employees of the ATS who are operating the system or responsible for its compliance with these or any other applicable rules; and implementing standards controlling employees of the ATS trading for their own accounts. See 17 CFR 242.301(b)(10).

pricing for, the Government Securities ATS that is offered by the broker-dealer operator or its affiliates[256] and used in conjunction with markets for financial instruments related to government securities. Markets for financial instruments related to government securities could include those non-government securities markets that trade futures, currencies, fixed income, and swaps, for example ("Related Markets"). If applicable, the Government Securities ATS would: (i) identify the functionality, procedures, and source of pricing and the Related Market; (ii) state whether the functionality, procedure, and source of pricing is provided or operated by the broker-dealer operator or its affiliate, and whether the Related Market is provided or operated by the broker-dealer operator or its affiliate; (iii) explain the use of the functionality, procedures, and source of pricing with regard to the Related Market and the Government Securities ATS, including how and when the functionality, procedures, and source of pricing can be used, by whom, and with what markets; and (iv) state whether the functionality, procedures, and source of pricing identified are the same for all subscribers and the broker-dealer operator.

Item 16 requires the Government Securities ATS to disclose how the broker-dealer operator and subscribers may use a functionality or procedure with the Government Securities ATS and a Related Market. Such functionalities or procedures could include, for example, offering order types to facilitate transactions on the ATS and the Related Market, or procedures to allow subscribers to perform multi-leg transactions involving another market and the ATS. A Government Securities ATS could offer, for example, Exchange-for-Physical ("EFP") transactions that can involve markets in addition to the ATS. An EFP transaction where ATS

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[256] Services to facilitate trading or source pricing for the Government Securities ATS in conjunction with non-government securities markets that are offered by a third-party in contract with the broker-dealer operator or affiliates would also be required to be disclosed under this Item.

subscribers agree to exchange a financial product, such as a futures contract on a government security, for the underlying related government security, would be responsive to this Item. The Commission believes that it would be important to subscribers to understand functionality and procedures offered such as these, as they can impact subscribers' experience on the ATS.[257]

A Government Securities ATS would also be required to provide information about how the ATS uses market data from a Related Market, through an aggregator or otherwise, to provide the services it offers.[258] Among other things, for example, the Government Securities ATS would need to disclose in response to this Item its use of such market data to display, price, prioritize, execute, and remove trading interest on the ATS.[259] As part of this explanation, the Government Securities ATS would specify, if applicable, when the ATS may change between its use of different sources of market data to provide its services. In response to Part III, Item 16 of proposed Form ATS-G, the Government Securities ATS would explain how, for example, market data from a Related Market, is received by the ATS, compiled, and delivered to the matching engine. For example, among other possible arrangements, the Government Securities ATS could explain that market data from a Related Market is received by the broker-dealer operator and assembled there, and subsequently delivered to the matching engine, or that market

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257 To the extent that a Government Securities ATS offers subscribers a functionality or procedure that the subscriber can use on the ATS in conjunction with a market for government securities (e.g., trading venue for U.S. Treasury Securities or options), the Government Securities ATS should disclose information about that functionality and procedure in Part III, Item 11 of proposed Form ATS-G.

258 If a Government Securities ATS uses market data from another market that trades government securities, that information would be disclosed under Part III, Item 23 of proposed Form ATS-G.

259 Disclosure of any market data used by the Government Securities ATS for government securities, including market data for options and repos on government securities, would be required under Part III, Item 23 of proposed Form ATS-G.

data is sent directly to the matching engine, which normalizes the data for its use. For example, a Government Securities ATS would disclose whether it uses market data from the futures market to price and execute EFP transactions and describe how it uses that market data under this Item.

A broker-dealer operator's activities in financial instruments related to government securities or offerings of a Related Market, such as a futures exchange, along with its operation of an ATS, raise the potential for information leakage of a subscriber's confidential trading information, or the broker-dealer operator could provide certain advantages to subscribers that use a Related Market that it operates. As such, Item 16 would require information about whether the functionality, procedures, and source of pricing on the Government Securities ATS or the Related Markets are provided or operated by the broker-dealer operator or its affiliates. Finally, the Government Securities ATS would be required to indicate whether the functionality, procedure, and source of pricing are the same for all subscribers and the broker-dealer operator, and if not, to explain any differences.

Request for Comment

87. What are commenters' views on the relationship between markets for government securities and Related Markets and how investors may use these markets together with a Government Securities ATS to achieve their trading objectives?
88. What aspects of government securities markets and Related Markets, such as the futures markets, do market participants use for trading on a Government Securities ATS? What information about those markets might be useful to a subscriber and why?
89. Trading in NMS stocks can involve other markets for financial instruments that are not NMS stocks, such as options or futures on NMS stocks, and an NMS Stock ATS that

offers a functionality or procedure that subscribers could use with the ATS and another market would be required to explain it under Part II, Item 5 and Part III, Item 11 on Form ATS-N. Should the Commission adopt amendments to Form ATS-N to include an item similar to proposed Item 16 in Form ATS-G to separate and highlight disclosures about such a functionality?

17. Closing

Part III, Item 17 of proposed Form ATS-G would require Government Securities ATSs to disclose information about differences between how orders and trading interest are treated on the ATS during any closing session(s) and during regular trading hours established by the ATS. The Item is designed to provide market participants with information about processes the Government Securities ATS uses to transition to the next trading day, including whether the ATS offers any particular order types during a closing session(s) or has different procedures for closing trading for a particular trading session and transitioning trading to the next trading day. The vast majority of requests in Part III of proposed Form ATS-G relate to trading during the Government Securities ATS's regular hours. Therefore, when discussing differences between trading during the Government Securities ATS's closing session(s) and during regular hours set by the ATS, the Government Securities ATS would be required to discuss differences as compared to relevant information disclosed in Part III Items, including, among others, order types (Item 7), order interaction, priority, matching, and execution procedures (Item 11), segmentation (Item 13), and display (Item 15). The Commission believes this information would

be important for market participants to understand the closing procedures around a particular trading session, if any, to carry out their trading objectives.[260]

18. Trading Outside of Regular Trading Hours

Part III, Item 18(a) of proposed Form ATS-G would require a Government Securities ATS to provide information about its procedures for trading outside its regular trading hours, and subpart (b) would require the ATS indicate whether there are any differences between trading outside of its regular trading hours and trading during its regular hours. To the extent that there are differences, the Government Securities ATS must describe those differences. Similar to Item 17 (requesting differences between any closing session(s) and regular trading hours), a Government Securities ATS would be required to disclose differences between trading outside of its regular trading hours and during regular trading hours with respect to the relevant information disclosed in Part III Items, including, among others, order types (Item 7), order interaction, priority, matching, and execution procedures (Item 11), segmentation (Item 13), and display (Item 15). Many of the disclosures discussed elsewhere in Form ATS-G will relate to the ATS's regular trading hours so the ATS can simply discuss any differences between trading during its regular hours and trading outside its regular trading hours in Part III, Item 18(b), if applicable. The Commission believes that market participants would likely want to understand unique trading procedures that the Government Securities ATS offers outside its regular trading hours to assess whether participating in such trading would help accomplish their trading objectives.

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260 The Item would, for example, require disclosure of any procedures to match orders to set a single closing price to maximize liquidity and accurately reflect market conditions at the close of trading in the ATS.

19. Fees

Part III, Item 19 of proposed Form ATS-G would require a Government Securities ATS to provide information on any fees or charges for use of the ATS's services, including any fees or charges for use of the ATS's services that are bundled with the subscriber's use of non-ATS services or products offered by the broker-dealer operator or its affiliates, and any rebate or discount of fees or charges. The Commission believes that disclosures regarding fees on proposed Form ATS-G are necessary and important, and should not be voluntary for Government Securities ATSs. Fee disclosures on proposed Form ATS-G are designed to allow all market participants to analyze the fee structures across Government Securities ATSs in an expedited manner and decide which ATS offers them the best pricing according to the characteristics of their order flow, the type of participant they are (if relevant), or any other aspects of an ATS's fee structure that serves to provide incentives or disincentives for specific market participants or trading behaviors. Requiring disclosures of ATS fees is warranted as, in the Commission's experience, fees can be a primary factor for market participants in deciding where to send their orders and trading interest.

Part III, Item 19 would request that Government Securities ATSs include in their descriptions the structure of the fee, variables that impact the fee, and differentiation among types of subscribers, and the Commission provided examples of responsive information included in a parenthetical in the text of each subpart.[261] The Item also would require a range

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[261] The Commission is including non-exhaustive lists of examples of responsive information in parentheticals in the text of the Item. For instance, for descriptions of the structure of the fee, the Commission is providing as examples a fixed fee, volume-based and transaction-based fee structures. For the description of variables that may impact the fee, the Commission is providing as examples: the types of securities traded, block orders, and the form of connectivity to the ATS. For the description of the differentiation among

for each type of fee (e.g., subscription, connectivity, and market data[262]) charged on the Government Securities ATS. With regard to the variables that impact the fees set, ATSs would be required to be specific and delineate how a given variable would likely impact the fee level (e.g., higher or lower).

The Commission recognizes that the fee structures of Government Securities ATSs can vary and that not all Government Securities ATSs apply set tiers or categories of fees for subscribers; however, the Commission believes that a market participant should have sufficient information to understand the fees for using the services of the Government Securities ATS. Recognizing the various fees that can be charged by Government Securities ATSs, the Commission is specifying in the fee request the types of information that a Government Securities ATS must provide in response to the Commission's proposed request to describe its fees (e.g., the structure of the fees, variables that impact each fee, differentiation among types of subscribers, and the range of fees). These disclosures are designed to provide market participants with more insight regarding the fees charged so that they can better understand how fees may apply to them and assess how such fees may impact their trading strategies. Although the fees charged for Government Securities ATS services may be individually negotiated between the broker-dealer operator and the subscriber, the disclosures about the type of fees charged by the Government Securities ATS are designed to help market participants discern how the ATS's fees are organized and compare that information across Government Securities ATSs, which could reduce the search costs of market participants in deciding where to send

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types of subscribers for the fee, the Commission is providing as examples of the types of subscribers: broker-dealers, institutional investors, and retail investors.

262 For example, if a Government Securities ATS distributed a market data feed and charged a fee for it, the ATS would be required to provide the information responsive to Item 19 regarding that fee.

their orders and trading interest. The Commission believes that Government Securities ATSs should be required to disclose differences in the treatment among "types of subscribers." This information would allow subscribers to observe whether a Government Securities ATS is offering preferential treatment for certain types of subscribers with respect to fees.

Part III, Item 19(b) of proposed Form ATS-G would require a description of any bundled fees, including a summary of the bundled services and products offered by the broker-dealer operator or its affiliates, the structure of the fee, variables that impact the fee (including, for example, whether the particular broker-dealer services selected would impact the fee), differentiation among types of subscribers, and range of fees. Part III, Item 19(b) is designed to allow market participants to better evaluate fees for bundled services that include access to the Government Securities ATS. Government Securities ATSs would be required to provide information, including the relevant services and products offered by the broker-dealer operator and its affiliates for each bundled fee offered, that will provide context to market participants with which to assess how bundled fees could apply to them as subscribers.[263]

Part III, Item 19(a) of proposed Form ATS-G covers charges to subscribers for their "use of the Government Securities ATS services"[264] and does not request information on fees charged for non-ATS services by a third party not in contract with the broker-dealer operator.[265] The disclosure requests under proposed Part III, Item 19 contain a stand-alone Item – Item 19(c)

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263 See NMS Stock ATS Adopting Release, supra note 1, at 38858 (discussing responses to Item 19(b) depending on whether there is an explicit fee for the ATS as part of any bundled services).

264 The NMS Stock ATS services generally include those services used for the purpose of effecting transactions in NMS Stock, or for submitting, disseminating or displaying orders on the ATS. See 17 CFR 242.300(b).

265 See NMS Stock ATS Adopting Release, supra note 1, at 38858 (discussing what fees should be categorized as for use of the ATS's services).

– which requests information about rebates and discounts of fees that are identified in subparts (a) and (b) of Item 19. Item 19(c) would require information about rebates and discounts that is similar to that which is required for fees (e.g., the structure of the rebate or discount, variables that impact the rebate or discount, differentiation among types of subscribers, and range of rebate or discount).

Request for Comment

90. An ATS that is subject to the Fair Access Rule for a covered security is required to comply with fair access requirements under Rule 301(b)(5) of Regulation ATS, which, among other things, requires an ATS to establish written standards for granting access to trading on its system and not unreasonably prohibit or limit any person with respect to access to services offered by the ATS by applying the written standards in an unfair or discriminatory manner. An ATS that charges certain fees to one class of subscribers but different fees to other classes of subscribers for the same services could not, if it were subject to the Fair Access Rule, discriminate in this manner unless it adopted written reasonable standards and applied them in a fair and non-discriminatory manner. Should an ATS that is subject to the Fair Access Rule and is a meaningful source of orders and trading interest for NMS stocks or government securities be required to disclose the fees that the ATS charges for access to its services on Form ATS-N and proposed Form ATS-G? Would such a disclosure of the fees of an ATS that is subject to the Fair Access Rule provide additional transparency to subscribers and market participants and help ensure that the ATS does not unreasonably prohibit or limit any person with respect to access to the ATS's services by applying the written standards in an unfair or discriminatory manner?

91. In the alternative, should the Commission require NMS Stock ATSs and Government Securities ATSs that are subject to the Fair Access Rule and that exceed even higher volume thresholds to disclose their fee schedule on Form ATS-N and Form ATS-G? For example, should only an NMS Stock ATS and a Government Securities ATS that exceeds 10 percent, 20 percent, 30 percent, or 40 percent average weekly or daily trading volume in NMS stocks, U.S. Treasury Securities, or Agency Securities, respectively, be required to publicly disclose their fee schedule on Form ATS-N and Form ATS-G as applicable?

92. What fees should the Commission require an ATS subject to the Fair Access Rule to disclose on Form ATS-N or Form ATS-G?

20. Suspension of Trading

Part III, Item 20 of proposed Form ATS-G would require a Government Securities ATS to provide information about any procedures for suspending or stopping trading on the ATS, including the suspension of trading in a U.S. Treasury Security or an Agency Security. This Item is designed to, for example, inform market participants of whether, among other things, a Government Securities ATS will continue to accept orders and trading interest after a suspension or stoppage occurs, whether the ATS cancels, holds, or executes orders and trading interest that were resting in the ATS before the suspension or stoppage was initiated, and what type of notice the ATS provides to subscribers regarding a suspension or stoppage. Examples of system disruptions would include, but are not limited to, internal software problems that prevent the Government Securities ATS's system from opening or continuing trading,[266] a significant

[266] See Regulation SCI Adopting Release, supra note 2, at 72254-55 n.28.

increase in volume that exceeds the ability of the trading system of the ATS to process incoming orders,[267] and the failure of the ability of the trading system of the ATS to receive external pricing information that is used in the system's pricing methodology. The Commission believes that information regarding a Government Securities ATS's procedures about how orders and trading interest might be handled by the ATS during a suspension or stoppage of trading would be useful to market participants because an ATS's procedures might require the cancelation of existing orders or preclude the acceptance or execution of orders or trading interest during a suspension, both of which would impact a subscriber's orders or its ability to trade on the ATS. This information would better inform a subscriber's trading decisions at the time of such an event and thus help that subscriber accomplish its trading objectives. If a Government Securities ATS establishes different procedures for suspending or stopping trading on the ATS depending on whether the source of the disruption is internal or external, a description of both procedures would be responsive to this request. In addition, this Item would require disclosure of procedures whereby a Government Securities ATS suspends trading in U.S. Treasury Securities or Agency Securities so that it does not cross the relevant volume thresholds and become subject to the Fair Access Rule under Regulation ATS, or Regulation SCI (as proposed herein).

The Commission also believes that information regarding the procedures for how a Government Securities ATS would handle orders during a suspension of trading or system disruption or malfunction would help the Commission better monitor the securities markets.

Request for Comment

93. Should proposed Form ATS-G request more or less information about any procedures for suspending or stopping trading on the Government Securities ATS?

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[267] See id. at 72255 n.29.

21. Trade Reporting

Part III, Item 21 of proposed Form ATS-G would require a Government Securities ATS to provide information on any procedures and material arrangements for reporting transactions on the ATS. Trade reporting furthers the transparent, efficient, and fair operation of the securities markets.[268] FINRA member firms are required to report transactions in U.S. Treasury Securities and Agency Securities to TRACE.[269]

Part III, Item 21 would require a Government Securities ATS to disclose its trade reporting procedures for reporting transactions in government securities on the ATS to an SRO. For example, it would be responsive to Item 21 for a Government Securities ATS to disclose whether the ATS has a specific procedure for reporting transactions in a government security to the SRO at different times based on, for example, a subscriber's use of a particular order type, or the type of subscriber involved in the transaction. Government Securities ATSs would also be required to disclose "material" arrangements for reporting transactions on the ATS. The Commission recognizes that there could be arrangements relevant to trade reporting, such as the specific software used to report, that play a minor role in the ATS's trade reporting and need not be disclosed. On the other hand, if an ATS uses a third party to report transactions occurring on the ATS or has a backup facility that it uses for trade reporting, that information is likely to be responsive as a material arrangement. By proposing to require reporting only of material arrangements, the Commission hopes to reduce potential burdens on Government Securities ATSs while providing market participants with sufficient information to understand how their

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268 See Regulation ATS Adopting Release, supra note 35, at 70887 (stating the market-wide transaction and quotation reporting plans operated by the registered national securities exchanges are responsible for the transparent, efficient, and fair operations of the securities markets).

269 See supra notes 50-51 and accompanying text.

trade information will be reported. Also, the Commission believes the proposed disclosure of the trade reporting procedures would allow the Commission to more easily review the compliance of the Government Securities ATS with its applicable trade reporting obligations as a registered broker-dealer (as proposed herein).

22. Clearance and Settlement

Part III, Item 22 is designed to provide information on any procedures and material arrangements undertaken to facilitate the clearance and settlement of transactions on the Government Securities ATS. The integrity of the trading markets depends on the prompt and accurate clearance and settlement of securities transactions. For example, counterparties to a trade face counterparty credit risk, regardless of whether they choose to clear and settle bilaterally or through a central counterparty, and therefore knowledge of the clearing process promotes market integrity.[270] As a preliminary matter, "clearance and settlement" refers generally to the activities that occur following the execution of a trade. These post-trade processes are critical to ensuring that a buyer receives securities and a seller receives proceeds in accordance with the agreed-upon terms of the trade by settlement date. The disclosures required by this Item are intended to cover each of the steps in the post-trade process from the time of execution (including whether the Government Securities ATS is a counterparty to a transaction and whether the obligations of a counterparty are ever assigned or novated), through trade matching and other clearing procedures (including whether the Government Securities ATS

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[270] See Treasury Market Practices Group (TMPG), White Paper on Clearing and Settlement in the Secondary Market for U.S. Treasury Securities (July 12, 2018), available at https://www.newyorkfed.org/medialibrary/Microsites/tmpg/files/CS-DraftPaper-071218.pdf. "The TMPG found that many market participants do not understand the role of the [interdealer brokers] platform in terms of who their counterparty credit risk was to and the roles of various market participants in settlement and clearing." Id. at 27.

requires its participants to be a member of a registered clearing agency, whether participants have any particular clearing obligations, and whether transactions are — wholly or partially — submitted to a registered clearing agency or cleared bilaterally using clearing banks or clearing agents), until settlement of the transaction (including whether counterparties make use of custodians, settlement banks, or a registered clearing agency). If the Government Securities ATS has adopted clearing and settlement processes or imposes any obligations on its participants in the event of a disruption (for example, a settlement fail, counterparty default, or liquidity shortfall), this proposed Item should include a discussion of these processes and any resulting participant obligations.

The Item requires the disclosure of "material" arrangements to facilitate the clearance and settlement of transactions on the Government Securities ATS. For example, an arrangement under which a third party would have a role in clearance and settlement may constitute a material arrangement that could trigger the disclosure requirement under Part III, Item 22. Limiting the explanation required to material arrangements would reduce the burden on Government Securities ATSs while at the same time still allowing market participants to understand and more easily compare clearing arrangements required across Government Securities ATSs.

Part III, Item 22 is designed to help market participants understand the measures the Government Securities ATS takes to facilitate clearance and settlement of transactions. Market participants should know and be able to understand any requirements a Government Securities ATS places on its subscribers, or other persons whose orders are sent to the ATS, to have clearance and settlement systems and/or arrangements with a clearing firm. The Commission believes market participants would likely find the disclosures required by this Item to be useful in understanding the measures undertaken by a Government Securities ATS to facilitate

clearance and settlement of subscriber orders on the ATS and allow them to more easily compare the clearance arrangements required across Government Securities ATSs as part of deciding where to send their trading interest. The Commission believes that these disclosures may assist the Commission in better understanding the clearance and settlement procedures of Government Securities ATSs and risks and trends in the market as part of its overall review of market structure.

Request for Comment

94. What aspects of the procedures and material arrangements undertaken to facilitate the clearance and settlement of transactions on Government Securities ATSs are important for ATSs to disclose on proposed Form ATS-G for the benefit of market participants?

23. Market Data

Part III, Item 23 of proposed Form ATS-G would require a Government Securities ATS to provide information about the sources of market data in government securities and repos used by the ATS and how the ATS uses that market data from these sources to provide the services that it offers. The Commission believes that market participants would likely find it useful to know the source and specific purpose of the market data that the Government Securities ATS might use as the market data received by the ATS might affect the price at which orders and trading interest are prioritized and executed in the ATS, including orders that are pegged to an outside reference price. A Government Securities ATS would also be required to provide information about how the ATS uses market data in government securities and repos to provide the services it offers.[271] Among other things, for example, proposed Part III, Item 23 would

[271] Market data reflecting options traded on government securities that is used by the ATS should be discussed in response to Part III, Item 16.

require the disclosure of the use of market data to display, price, prioritize, execute, and remove trading interest. As part of this explanation, the ATS would be required to specify, if applicable, when the ATS may change sources of market data to provide its services. A Government Securities ATS would also be required to explain how market data is received by the ATS, compiled, and delivered to the matching engine. For example, among other possible arrangements, the Government Securities ATS could explain in response to the Item that market data in government securities or repos is received by the broker-dealer operator and assembled there, and subsequently delivered to the matching engine, or that market data is sent directly to the matching engine, which normalizes the data for its use.

Request for Comment

95. What are the sources of market data in government securities and repos that are available to market participants as well as to Government Securities ATSs and how do market participants and ATSs use this information? What disclosures about an ATS's use of market data would be important to market participants?

24. Fair Access

Part III, Item 24 of proposed Form ATS-G would provide a mechanism under which a Government Securities ATS would notify market participants whether it has triggered the proposed fair access threshold and, if so, whether the ATS is subject to the Fair Access Rule. If subject to the Fair Access Rule, the Government Securities ATS would be required to describe the written standards for granting access to trading required to comply with Rule 301(b)(5)(ii) of Regulation ATS (as proposed to be applied herein).

If an ATS crosses the fair access thresholds, Rule 301(b)(5)(ii)(B) requires the ATS to "not unreasonably prohibit or limit any person in respect to access to services offered by such alternative trading system by applying the [written] standards . . . in an unfair or discriminatory

manner."[272] The Commission believes that the proposed disclosures would facilitate its oversight of Government Securities ATSs and their compliance with Rule 301(b)(5) (as proposed herein). In addition, the proposed disclosures would allow market participants to assess whether fair access is in fact being applied by a Government Securities ATS that meet the fair access threshold, in part by making publicly available a description of the ATS's written standards for granting access.[273]

Request for Comment

96. Is there other information that market participants might find important or useful regarding the written standards for granting access to trading on an ATS that is subject to the Fair Access Rule? If so, describe such information and explain whether, and if so why, such information should be required to be provided under proposed Form ATS-G, Form ATS-N, or both.

25. Aggregate Platform-Wide Data; Trading Statistics

Part III, Item 25 of proposed Form ATS-G is designed to make public aggregate, platform-wide order flow and execution statistics that a Government Securities ATS already otherwise collects and publishes, or provides to one or more subscribers to the ATS. The Commission believes that a Government Securities ATS may choose to create and publish or provide to one or more subscribers or persons information concerning order flow and execution quality for different reasons. To the extent that a Government Securities ATS has made a

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272 See 17 CFR 242.301(b)(5)(ii)(B). The Commission is proposing that any change in a Government Securities ATS's response to Item 24 would be filed as a contingent amendment. See supra note 176 and accompanying text.

273 The Commission is not including an item similar to Part III, Item 24 of Form ATS-N (Order Display and Execution Access) because Rule 301(b)(3) of Regulation ATS, which forms the basis for the item, only applies to an ATS's NMS stock activities.

determination to create and publish or provide to subscribers certain aggregate platform-wide order flow and execution quality statistics, the Commission believes that others may also find such information useful when evaluating the ATS as a possible venue for their orders. Proposed Part III, Item 25 would impose the same disclosure requirement as Part III, Item 26 of Form ATS-N for NMS Stock ATSs.[274]

Item 25 would not require a Government Securities ATS to amend its Form ATS-G every time it receives a data request. To comply with the requirements under Part III, Item 25, Form ATS-G only requires a Government Securities ATS that supplies aggregate platform-wide data to update its disclosures for this Item on a quarterly basis.[275] For instance, if a participant were to request updated or new aggregate platform-wide statistics in January, the Government Securities ATS would not be required to immediately file an updating amendment containing these statistics after complying with the participant's request. Rather, the ATS would need to file an updating amendment within 30 days following the end of the quarter. That updating amendment must contain the most recently distributed version of these statistics, as well as the most recently distributed version of all other aggregate platform-wide data that is provided during that quarter. The Commission notes that communications associated with the responsive statistics are not required to be publicly filed. In the prior example, for instance, if the statistics

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274 See NMS Stock ATS Adopting Release, supra note 1, at 38861-63.

275 If, for example, a Government Securities ATS publishes or provides a particular statistic on a daily basis, the ATS would include in Exhibit 4 of proposed Form ATS-G the statistic that was published or provided to one or more subscribers on the last trading day of the calendar quarter (e.g., the statistic published or provided on June 30th or last trading day prior to June 30th). If a Government Securities ATS publishes or provides a particular statistic weekly, the ATS would be required to include in Exhibit 4 of proposed Form ATS-G the statistic that was published or provided to one or more subscribers at the end of the week prior to the end of the calendar quarter (e.g., the statistic published for the last full week of June).

provided in the quarterly amendment are the ones provided in January (i.e., those are the latest version of those aggregate platform-wide statistics the ATS distributed), the ATS would not (and should not) also attach to Form ATS-G the participant's email requesting the statistics.

Furthermore, Part III, Item 25 of proposed Form ATS-G would only require a Government Securities ATS to publicly disclose aggregate platform-wide data. As such, a Government Securities ATS would not be required to disclose individualized or custom reports containing data relating to that participant's specific usage of the ATS. For example, an individual participant's trade reports, order and execution quality statistics, and other statistics specific to a participant's trading on the ATS would not be covered by the disclosure request in Part III, Item 25. Whether a specific type of statistic should be categorized as an order and execution statistic or considered aggregate, platform-wide data will depend on the nature of the specific statistics being compiled by the Government Securities ATS. A Government Securities ATS would independently evaluate any statistics that it compiles and distributes to determine whether they are responsive to this disclosure request.

Part III, Item 25 would require the Government Securities ATS to attach both the responsive statistics and its explanation of the categories or metrics of those statistics as Exhibits 4 and 5, respectively. Also, in lieu of filing Exhibits 4 and 5, the Government Securities ATS could certify that the information requested under Exhibits 4 and 5 is available at the website provided in Part I, Item 7 of the form and is accurate as of the date of the filing.

Request for Comment

97. Does Part III of proposed Form ATS-G capture the information that is most relevant to understanding the operations of the Government Securities ATS? Are there any Items that commenters believe are unnecessary? If so, why?

98. Is there other information that market participants might find relevant or useful regarding the operations of Government Securities ATSs? If so, describe such information and explain whether, and if so why, such information should be required to be provided under proposed Form ATS-G.

99. Is there any information related to repos that Form ATS-G should require?

100. Is there any information related to options on government securities that Form ATS-G should require?

101. Is there any information that would be required by Part III of proposed Form ATS-G that a Government Securities ATS that should not be required to disclose due to concerns regarding confidentiality, business reasons, trade secrets, commercially sensitive information, burden, or any other concerns?

102. Should the Commission adopt a more limited or expansive definition of "affiliate" for purposes of Part III?[276]

103. Would the disclosures under Part III of proposed Form ATS-G help market participants better evaluate trading opportunities and decide where to send orders to reach their trading objectives?

104. Would the proposed disclosures in Part III of proposed Form ATS-G require a Government Securities ATS to reveal too much (or not enough) information about its structure and operations?

105. Are there ways to obtain the same information as would be required from Government Securities ATSs by Part III of proposed Form ATS-G other than through disclosure on proposed Form ATS-G? If so, how else could this information be obtained?

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[276] See supra note 211 for the definition of affiliate under Form ATS-G.

106. Could the proposed requirement to disclose the information that would be required by Part III of proposed Form ATS-G impact innovation on Government Securities ATSs?

107. Are there any aggregate platform-wide order flow and execution statistics of the Government Securities ATS that should not be required to be disclosed under Item 25?

D. Part IV of Proposed Form ATS-G

Part IV of proposed Form ATS-G would require a Government Securities ATS to provide certain basic information about the point of contact for the ATS, such as the point of contact's name, title, telephone number, and email address. Part IV would also require the Government Securities ATS to consent to service of any civil action brought by, or any notice of any proceeding before, the Commission or an SRO in connection with the ATS's activities. The Commission is proposing that Form ATS-G would be filed electronically and require an electronic signature. The signatory to each Form ATS-G filing would be required to represent that the information and statements contained on the submitted Form ATS-G, including exhibits, schedules, attached documents, and any other information filed, are current, true, and complete. Given that the Commission believes market participants would use information disclosed on Form ATS-G to evaluate potential venues, and that the Commission intends to use the information to monitor developments of Government Securities ATSs, the Commission believes it is important that Form ATS-G contain disclosures that are current, true, and complete, and therefore is proposing to require that the signatory to Form ATS-G make such an attestation.

IV. EDGAR Filing Requirements; Structured Data

The Commission is proposing that Form ATS-G be filed electronically in a structured format through EDGAR. By filing in EDGAR, Government Securities ATSs would be given the option of filing using a web-fillable Form ATS-G that will render into XML in EDGAR, or to file directly in XML using the XML schema for ATSs as published on the Commission's

website. With both options, the Commission would receive the Form ATS-G disclosures in XML format. All Form ATS-G filings made public will be centrally located on EDGAR for the public to access in the same XML format in which the Commission received the Form ATS-G filing. Form ATS-G would be filed in the same format as current Form ATS-N.[277] The Commission believes, as discussed in the NMS Stock ATS Adopting Release, its XML schema and architecture for the web-fillable Form ATS-G would incorporate certain validations to ensure consistency and completeness among filings.[278] The Commission is also proposing that Form ATS and Form ATS-R be filed electronically through EDGAR[279] and both forms would be available only to the Commission staff with the exceptions discussed below.

Request for Comment

108. Are the proposed EDGAR filing requirements for Form ATS-G, Form ATS, and Form ATS-R appropriate? Should the Commission adopt an alternative means by which NMS Stock ATSs file Form ATS-N instead of EDGAR? As an alternative, should filers be required to submit Form ATS-G, Form ATS, and/or Form ATS-R to the Commission through another means, such as the Commission's SRO Rule Tracking System/Electronic Form Filing System ("SRTS/EFFS") or email?

109. Should the Commission adopt the proposal that Form ATS-G be filed with the Commission in a structured format? If so, what standards of structuring should be used for information to be provided on proposed Form ATS-G? If not, what format should proposed Form ATS-G take? Please identify the format and explain.

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277 See NMS Stock ATS Adopting Release, supra note 1, at Section VII.

278 See id.

279 See infra Section V.C.

110. Should the Commission require filers to submit Form ATS-G, Form ATS, and/or Form ATS-R in the Inline XBRL format?

V. Amendments to Regulation ATS, Form ATS, Form ATS-R, and Form ATS-N

A. Amendments to Rules 301(b)(5) and 301(b)(6) of Regulation ATS

The Commission is also proposing to remove an exclusion for compliance with the Fair Access Rule that is applicable to ATSs that trade equities[280] under Rule 301(b)(5) and the Capacity, Integrity, and Security Rule under Rule 301(b)(6). An ATS is excluded from complying with the requirements of the Fair Access Rule and the Capacity, Integrity, and Security Rule if the ATS: (a) matches customer orders for a security with other customer orders; (b) such customers' orders are not displayed to any person, other than employees of the ATS; and (c) such orders are executed at a price for such security disseminated by an effective transaction reporting plan, or derived from such prices.[281] In adopting the exclusion, the Commission stated that ATSs of this nature, the so-called "passive systems," did not contribute significantly to price discovery; however, the Commission also stated that they had the potential to and frequently do affect the markets from which their prices are derived, and thus, the

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280 When adopting the exclusion, the Commission contemplated that it would apply only to ATSs that trade equity securities, as one of the elements of the exclusion requires that the prices on the ATS be based on the SIP. The third prong of each exception states that if an ATS meets the requirement, among others, to execute customer orders "at a price for such security disseminated by an effective transaction reporting plan, or derived from such prices," the ATS would not be subject to the Fair Access Rule or Capacity, Integrity, and Security Rule, as applicable. 17 CFR 242.301(b)(5)(iii)(c); 17 CFR 242.301(b)(6)(iii)(c).

281 17 CFR 242.301(b)(5)(iii); 17 CFR 242.301(b)(6)(iii).

Commission would continue to monitor these systems and reconsider whether the requirements should apply if concerns arise in the future.[282]

The Commission has reconsidered the exclusion for passive systems to compliance with the Fair Access Rule and believes it should be removed. In the Regulation ATS Adopting Release, the Commission explained that fair treatment by ATSs of subscribers is particularly important when an ATS captures a large percentage of trading volume in a security because investors lack access to viable alternatives to trading on the ATS.[283] Since the adoption of Regulation ATS, passive systems (as the term is used in the Regulation ATS Adopting Release) for NMS stocks have garnered a significant percentage of trading volume in securities and have come to play an important role in matching buyers and sellers of securities.[284] The Commission believes that eliminating the Rule 301(b)(5)(iii) exclusion would ensure that the Fair Access Rule is applied as intended and help ensure fair treatment of potential and current subscribers by any type of ATS that captures a large percentage of trading in a security or type of security.

The Commission is also proposing to amend Rule 301(b)(6) to remove the exclusion for compliance with the Capacity, Integrity, and Security Rule under Rule 301(b)(6)(iii).[285] As part of Regulation SCI, Rule 301(b)(6) of Regulation ATS was amended to no longer apply to ATSs that trade equities because Regulation SCI superseded and replaced the requirements of the Capacity, Integrity, and Security Rule with regard to ATSs that trade NMS stocks and non-NMS stocks.[286]

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282 Regulation ATS Adopting Release, supra note 35, at 70853.

283 Id. at 70872.

284 See NMS Stock ATS Adopting Release, supra note 1, at 38770-71.

285 17 CFR 242.301(b)(6)(iii). See supra note 56 and accompanying text.

286 See Regulation SCI Adopting Release, supra note 2, at 72252, 72267.

In addition, the Commission is proposing to amend Rules 301(b)(5) and 301(b)(6) to clarify the rule text. For purposes of determining whether an ATS crossed the average daily volume thresholds for compliance with the Fair Access Rule, Rule 301(b)(5)(i) does not specify whether the ATS's transaction volume in an NMS stock or an equity security that is not an NMS stock and for which transactions are reported to an SRO is calculated using the dollar or the share volume.[287] In the Regulation ATS Adopting Release, when discussing the Fair Access Rule, the Commission stated that for these two types of securities, the test should be based on the share volume.[288] Similarly, Rules 301(b)(5)(i) and 301(b)(6)(i) do not specify whether, for purposes of determining compliance with the Fair Access Rule and the Capacity, Integrity, and Security Rule, the volume for municipal securities or corporate debt securities is calculated based on the dollar or the share volume.[289] In the Regulation ATS Adopting Release, the Commission intended the test applicable to debt securities to be the dollar volume.[290] To mitigate any potential confusion, the Commission is adding these terms to Rules 301(b)(5)(i) and 301(b)(6)(i)

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287 17 CFR 242.301(b)(5)(i)(A)-(B).

288 See Regulation ATS Adopting Release, supra note 35, at 70873 ("Accordingly, if an [ATS] accounted for twenty percent or more of the share volume in any equity security, it must comply with the fair access requirements in granting access to trading in that security.") (emphasis added).

289 17 CFR 242.301(b)(5)(i)(C)-(D); 17 CFR 242.301(b)(6)(i)(A)-(B).

290 See Regulation ATS Adopting Release, supra note 35, at 70873, 70875 (requiring compliance with the Fair Access Rule and the Capacity, Integrity, and Security Rule if an ATS accounted for more than 20 percent of the total "share volume" in a security with respect to equity securities, and for more than 20 percent of the "volume" in a security with respect to debt securities). While Form ATS-R requires an ATS to report total volume in terms of both units and dollars for equity securities, it requires an ATS to report the total settlement value only in dollar terms for debt securities, which include municipal securities and corporate debt securities. See id. at 70878.

to align the rule text with the Regulation ATS Adopting Release.[291] Furthermore, the Commission is proposing to amend Rules 301(b)(5)(i)(C) and (D) to clarify that the average daily dollar volume in municipal securities and corporate debt securities is provided by the self-regulatory organization to which such transactions are reported. When Regulation ATS was adopted, transaction reporting plans for municipal securities and corporate debt securities were being developed.[292] Today, transactions in municipal securities are reported to the Municipal Securities Rulemaking Board ("MSRB") and transactions in corporate debt securities are reported to FINRA. These two SROs provide the information that can be used by ATSs to determine whether the ATS is subject to the Fair Access Rule for these two categories of securities.[293] The Commission believes that this amendment will add clarity to the rule given the established transaction reporting regimes for municipal securities and corporate debt securities.

The Commission is also proposing to amend Rule 301(b)(5)(ii)(A) of Regulation ATS to add the word "reasonable" before the word "written standards," to clarify that ATSs subject to the Fair Access Rule are required to have "reasonable written standards" for granting access to trading on its system. The Commission believes that the addition is consistent with its intent as expressed in the Regulation ATS Adopting Release. Specifically, in discussing the Fair Access Rule, the Commission stated that "fair treatment . . . is particularly important" when ATSs reach significant volume in a security, and the rule would serve to prohibit "unreasonably"

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291 See proposed Rule 301(b)(5)(i)(A)-(D); proposed Rule 301(b)(6)(i)(A)-(B).

292 See Regulation ATS Adopting Release, supra note 35, at 70873.

293 See MSRB Rule G-14; FINRA Rule 6730. Electronic Municipal Market Access ("EMMA"), which is a service operated by the MSRB, and FINRA disseminate information on transactions in municipal securities and corporate debt securities, respectively. See EMMA Information Facility, available at http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/Facilities/EMMA-Facility.aspx; FINRA Rule 6750.

discriminatory denials of access.[294] The Commission believes that adding the word "reasonable" to the rule text will help make clear that the written standards the ATS must apply in a fair and non-discriminatory manner (pursuant to Rule 301(b)(5)(ii)(B)) must be reasonable in the first instance.

B. Amendment to Rule 301(b)(2)(vii)

Rule 301(b)(2)(vii) provides that all reports filed pursuant to Rules 301(b)(2) and 301(b)(9) are "deemed confidential" and "available only to the examination of Commission staff, state securities authorities, and the self-regulatory organizations."[295] As a result, the Commission does not make Form ATS and Form ATS-R disclosures available to the public, including the types of securities that the ATS trades or intends to trade. Currently, the Commission makes public on a monthly basis on the Commission website information about ATSs that have a Form ATS on file with the Commission, which includes the name of the ATS, any name(s) under which business is conducted, and the location of each ATS. The list also identifies each ATS that filed a cessation of operations report in the prior month. While the Commission does not approve Form ATS filings, the list is designed to inform the public about ATSs that have noticed their operations with the Commission.

The Commission is proposing to amend Rule 301(b)(2) to clarify that being "deemed confidential" means receiving confidential treatment under a relevant Commission regulation subject to applicable law[296] and to eliminate confidential treatment for information about the type(s) of securities that the ATS trades as disclosed in the Exhibit B, subpart (a) of Form ATS

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294 See Regulation ATS Adopting Release, supra note 35, at 70872, 70874.

295 See 17 CFR 242.301(b)(2)(vii).

296 See, e.g., 17 CFR 200.83, 240.24b-2.

and Form ATS-R. The Commission does not believe that ATSs will be harmed by these disclosures because a vast majority of ATSs currently publicize the types of securities in which they transact, for example, on the website for the ATS or the website of the ATS broker-dealer operator. The Commission publishes on its website a list of ATSs that have an active Form ATS on file with the Commission; however, information about types of securities traded is not provided on that list and the Commission frequently receives requests from the public and regulators for more detail in the Commission's publication about the types of securities traded by ATSs. The Commission believes that disclosing this information could help the public understand a fundamental aspect of an ATS. To allow for this narrow exception, the Commission is proposing to amend Rule 301(b)(2)(vii) of Regulation ATS to state that the content of reports filed under Rule 301(b)(2) and Rule 301(b)(9) "(except for types of securities traded provided on Form ATS and Form ATS-R) will be accorded confidential treatment subject to applicable law."

Request for Comment

111. Should the Commission eliminate the exclusion from compliance with the Fair Access Rule under Rule 301(b)(5)(iii) and with the Capacity, Integrity, and Security Rule under Rule 301(b)(6)(iii)?

112. Should the Commission amend Rule 301(b)(2)(vii) to make Form ATS, Form ATS-R, or both public? Should the Commission amend Rule 301(b)(2)(vii) to make any other disclosures provided on Form ATS or Form ATS-R public?

113. Should the Commission eliminate confidential treatment for information about the type(s) of securities that the ATS trades as disclosed on Form ATS and Form ATS-R?

C. Modernization and Electronic Filing of Form ATS and Form ATS-R

The Commission is proposing revisions to Rule 301(b)(2), Form ATS, and Form ATS-R to modernize Form ATS and Form ATS-R and to provide that they are filed electronically. Every ATS subject to Rule 301(b)(2) of Regulation ATS is required to file an initial operation report ("IOR"),[297] amendments to the IOR,[298] and cessation of operations report with the Commission on Form ATS.[299] ATSs are also required to file the information required by Form ATS-R[300] pursuant to Rule 301(b)(9) within 30 calendar days after the end of each calendar quarter in which the ATS has operated.[301]

First, the Commission is proposing an amendment to Rule 301(b)(2)(vi), which currently states that "[e]very notice or amendment filed pursuant to this paragraph (b)(2) shall constitute a 'report'" within the meaning of applicable provisions of the Exchange Act. The Commission

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297 Form ATS, which provides the Commission with notice about of an ATS's operations and changes to such operations, is not approved by the Commission. See Regulation ATS Adopting Release, supra note 35, at 70864. Form ATS requires the ATS to submit the information specified in eleven exhibits (Exhibits A through I). Form ATS is used for three types of submissions: an IOR; an amendment to the IOR; and a cessation of operations report. An ATS designates the type of submission on Form ATS. Form ATS and the Form ATS instructions are available at http://www.sec.gov/about/forms/formats.pdf.

298 See 17 CFR 242.301(b)(2). An ATS is required to file an amendment on Form ATS at least 20 calendar days prior to implementing a material change to the operation of the ATS, within 30 calendar days after the end of a quarter when information contained in an IOR filed on Form ATS becomes inaccurate, and promptly upon discovering that an IOR filed on Form ATS or an amendment on Form ATS was inaccurate when filed.

299 See 17 CFR 242.301(b)(2)(vi).

300 See Form ATS-R. See also supra note 126.

301 See 17 CFR 242.301(b)(9)(i). An ATS must also file Form ATS-R more frequently upon request of the Commission. See Form ATS-R Instructions.

proposes to add a reference to Rule 301(b)(9) to state that Form ATS-R, as is the case with Form ATS, constitutes a report within the meaning of applicable provisions of the Exchange Act.[302]

Next, the Commission is proposing to require that all Forms ATS and ATS-R are filed with the Commission electronically. Currently, ATSs are required to submit paper submissions of Forms ATS and ATS-R to the Commission.[303] The Commission proposes to amend Rule 301(b)(2)(vii) to require that an ATS must file a Form ATS or a Form ATS-R in accordance with the instructions therein. The Commission is proposing to revise the instructions to Form ATS and Form ATS-R to require that they be submitted electronically via EDGAR.[304] The Commission is also proposing to require in Rule 301(b)(2)(vii) that reports provided for in Rule 301(b)(2) and (b)(9) shall be filed on Form ATS and Form ATS-R, as applicable, and include all information as prescribed in Form ATS or Form ATS-R, as applicable, and the instructions thereto.[305] In addition, the Commission is proposing to require that any Form ATS or Form

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302 This amendment would be consistent with Rule 301(b)(2)(vii), which states that "[a]ll reports filed pursuant to this paragraph (b)(2) and paragraph (b)(9)" of Rule 301 are, as proposed, accorded confidential treatment subject to applicable law. See 17 CFR 242.301(b)(2)(vii). The instructions to Form ATS and Form ATS-R require an ATS to submit one original and two copies of Form ATS and Form ATS-R to the Commission. See Form ATS and Form ATS-R Instructions. In addition, Rule 301(b)(2)(vii) requires that an ATS file copies of its Form ATS filings with the examining authority of the SRO with which it is registered (e.g., FINRA) at the same time it files with the Commission, and upon request, the ATS must provide its SROs surveillance personnel with duplicate Form ATS-R filings. See 17 CFR 242.301(b)(2)(vii).

303 Rule 301(b)(2)(vii) of Regulation ATS specifies that reports on Form ATS shall be considered filed upon receipt by the Division of Trading and Markets, at the Commission's principal office in Washington, D.C. See 17 CFR 242.301(b)(2)(vii).

304 See infra note 308 and accompanying text.

305 Accordingly, the Commission is proposing to delete the provisions of Rule 301(b)(2)(vii) related to paper submission. Specifically, the Commission is deleting the sentence that the reports shall be considered filed "upon receipt by the Division of Trading and Markets, at the Commission's principal office in Washington, D.C." Additionally, although the Commission will continue to require that duplicates of filings on Form ATS

ATS-R shall be executed at, or prior to, the time Form ATS or Form ATS-R is filed and shall be retained by the ATS in accordance with Rule 303 of Regulation ATS and Rule 302 of Regulation S-T, and the instructions in Form ATS or Form ATS-R, as applicable.[306] 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's staff when undertaking a review of these forms. Currently, Form ATS-N must be filed in EDGAR, and under this proposal, Form ATS-G would be as well. EDGAR is currently configured to support the Commission's receipt and review of filings under Regulation ATS, and requiring electronic Form ATS and Form ATS-R filings to be submitted via EDGAR would be the most efficient way to facilitate their electronic filing.[307]

To facilitate electronic filing, the Commission is proposing to amend the text of General Instructions A.4 of Forms ATS and ATS-R to require that all filings be submitted via EDGAR and prepared, formatted, and submitted in accordance with Regulation S-T and the EDGAR Filer Manual.[308] The Commission also proposes to amend Forms ATS and ATS-R General

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be provided to the SRO that is the examining authority for each ATS, and that duplicates of the Form ATS-R be made available to the surveillance personnel of such SRO upon request, the Commission proposes to eliminate the reference to "originals" in Rule 301(b)(2)(vii) because paper reports will no longer be furnished to the Commission and there will therefore be no "original" version of the reports.

306 The Commission notes that the proposed provisions would conform to similar provisions of Rule 304, which provide for the electronic filing of Form ATS-N. See 17 CFR 242.304(c).

307 See supra Section IV.

308 The Commission proposes to eliminate the language in the Form ATS instructions and Form ATS-R instructions requesting that an ATS type all information because an ATS would not otherwise have the option to handwrite any responses. The instructions for both forms would be amended to eliminate the option to use a "reproduction" of the

Instruction A.5 to state that a filing that is defective may be rejected and not be accepted by the EDGAR system and that any filing so rejected shall be deemed not be filed. This is consistent with the requirements of Regulation S-T, which provides the rules for EDGAR submissions.[309] The Commission also notes that the instructions for current Form ATS contain similar language,[310] but the current instructions for Form ATS-R do not contain such language. The Commission believes that it would be appropriate to reject a filing as defective if, for example, a Form ATS or Form ATS-R is missing exhibits or does not comply with the electronic filing requirements. The Commission is also proposing to amend General Instruction A.6 ("Recordkeeping") of both forms to reflect that records must be retained in accordance with the EDGAR Filer Manual and Rule 303 of Regulation ATS and to conform to the recordkeeping instructions on Form ATS-N and proposed Form ATS-G.[311]

In addition, the Commission is proposing to amend Form ATS to require an ATS filing an amendment on Form ATS to identify whether the Form ATS filing is a material amendment

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forms. The Commission also believes it is redundant to state that the Form ATS or Form ATS-R must be the "current version" as the ATS is required to attest that the form is "current." The Commission also proposes to delete the requirement to attach an execution page with original manual signatures for Form ATS because, as discussed above, the Form ATS and Form ATS-R would be signed electronically and thus there would be no need for an execution page. The Commission also proposes to delete the instruction that the name of the alternative trading system, CRD number, SEC file number, and report period dates be listed on each page, as this requirement will be unnecessary because the Form ATS or Form ATS-R will be submitted as a single submission. Because Form ATS and Form ATS-R would be submitted via EDGAR, the Commission is also proposing to delete references to submitting the "original" and "copies" of the form to the Commission at the Commission's mailing address.

309 17 CFR 232. This is also consistent with the requirements for current Form ATS-N.

310 The Form ATS Instructions state that "Form ATS shall not be considered filed, unless it complies with applicable requirements."

311 Rule 303 of Regulation ATS provides the record preservation requirements for ATSs. See 17 CFR 242.303.

under Rule 301(b)(2)(ii), a periodic amendment under Rule 301(b)(2)(iii), or a correcting amendment under Rule 301(b)(2)(iv).[312] An ATS currently identifies an amendment to current Form ATS by marking the "Amendment to Initial Operation Report" box on Form ATS, and Form ATS currently does not ask the ATS to specify whether the amendment to Form ATS is a material, periodic, or correcting amendment.[313] The Commission believes that requiring an ATS to specify the type of amendment would better enable the Commission to determine whether an ATS is in compliance with Regulation ATS. The Commission also proposes requiring an ATS to provide the date that the ATS ceased to operate, which is not currently required on Form ATS. The Commission believes that having information about the date that the ATS ceased to operate would enable the Commission to determine more readily whether an ATS is, or was, in compliance with Regulation ATS.[314]

The Commission is also proposing to amend Form ATS and Form ATS-R to change the solicitation of information relating to the name of the broker-dealer operator and the registration and contact information of the broker-dealer operator. Because many broker-dealer operators of ATSs engage in brokerage and/or dealing activities in addition to operating an ATS and some broker-dealers operate multiple ATSs, the name of the broker-dealer operator of an ATS often differs from the commercial name under which the ATS conducts business. To identify the broker-dealer operator of an ATS and to assist the Commission in collecting and organizing its

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312 See Rule 301(b)(2)(ii)-(iv).

313 The Commission is also proposing to add cites to the relevant rule text next to the check boxes on Form ATS identifying whether the ATS is filing an IOR, amendment to Form ATS, or a cessation of operations report.

314 See Rule 301(b)(2)(v) (requiring an ATS to promptly file a cessation of operations report on Form ATS in accordance with the instructions therein upon ceasing to operate as an alternative trading system).

filings and assessing whether the ATS has met its requirement to register as a broker-dealer, Forms ATS and ATS-R would require the ATS to indicate the full name of the broker-dealer operator of the ATS, as it is stated on Form BD, in Item 1 of Form ATS and Form ATS-R. To further facilitate compliance with the requirements of Regulation ATS, as proposed, Form ATS and Form ATS-R would require the ATS to indicate whether the filer is a broker-dealer registered with the Commission and whether the broker-dealer operator has been authorized by a national securities association to operate an ATS. Such requirements would conform to the proposed requirements of Form ATS-N and Form ATS-G.[315] The Commission is proposing to conform Item 1 of Form ATS and Form ATS-R[316] to the requirements of Form ATS-N, which is currently filed electronically, and proposed Form ATS-G, which the Commission is proposing would be filed electronically.[317] The Commission believes these requests would help the Commission in identifying and corresponding with ATSs.[318]

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315 See supra note 203 and accompanying text.

316 Form ATS and Form ATS-R currently ask for the ATS's main street address, mailing address, business telephone number and facsimile number, and the contact information for the ATS's contact person. The Commission is proposing to move the information requests for the name and title and telephone number of the contact employee to the signature block on the form, and to request an email address for such person. The proposed signature block would also ask for the primary street address and mailing address of the ATS. The current certifications required in Form ATS and Form ATS-R, including that the information filed is current, true, and complete, would remain unchanged. However, the Commission is proposing to delete the provision allowing for service of any civil action pursuant to confirmed telegram and instead, permit service of any civil action via email. The signature block on Form ATS and Form ATS-R would conform to the signature block in Form ATS-N, as proposed. See infra notes 323-324 and accompanying text.

317 See supra Section IV.

318 The Commission proposes to replace in Item 1 of Form ATS and Form ATS-R the requests for the ATS's main street address, mailing address, and business telephone number and facsimile number with a requirement that the ATS provide the primary, and if any, secondary physical street address of the ATS's matching system, as well as a URL

The Commission is proposing to amend Form ATS-R to make it easier for the Commission staff to identify if the ATS has met its reporting obligations. First, the Commission is proposing to require an ATS to specify whether it is filing a quarterly report amendment under Rule 301(b)(9)(i) or a report for an ATS that has ceased to operate under Rule 301(b)(9)(ii) and, if the latter, to indicate the date the ATS ceased to operate. The Commission believes that requiring an ATS to indicate its type of Form ATS-R filing would enable the Commission to more effectively review Form ATS-R submissions and determine whether an ATS is in compliance with Regulation ATS. The Commission is also proposing to amend Form ATS-R to ask whether the ATS was subject to the fair access obligations under § 242.301(b)(5) during any portion of the period covered by the report by adding a corresponding box for the ATS to check "yes" or "no." Currently, Form ATS-R requires an ATS that is subject to the Fair Access Rule to report a list of all persons for whom access to the ATS was granted, denied, or limited access during the period covered by the Form ATS-R.[319] The Commission believes that asking the ATS to indicate whether the ATS was subject to the Fair Access Rule during any portion of the period covered by the report would facilitate the Commission's review of Form ATS-R submissions.

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address for its website if it has a website. The Commission believes that knowing the location of the matching system address and secondary matching system address could be useful to the Commission in the event of, for instance, a natural disaster that could impact market participants' ability to trade on the ATS and potential latency that could be experienced due to the location of the secondary site of the ATS. The Commission is also requesting the full name of the national securities association of the broker-dealer operator, the effective date of the broker-dealer operator's membership with the national securities association, and MPID of the ATS. In addition, because any current or former names of the ATS would be searchable on EDGAR and there will be multiple identifiers included on the form, including MPID, the Commission is proposing to delete the requirement that the ATS indicate if it is changing its name and list its former name.

[319] See Form ATS-R and Form ATS-R Instructions, No. 8.

The Commission is also proposing changes to the Form ATS-R categories of securities to modernize them and add more specificity with regard to all categories of securities. Form ATS-R currently requires ATSs to indicate the total unit volume and total dollar volume of government securities transactions in the period covered by the report. The Commission is proposing to require that ATSs specify the total unit volume and total dollar volume of transactions in "U.S. Treasury Securities" and "Agency Securities" under the heading "Government securities."[320] As currently, ATSs would also be required to indicate the total unit volume and total dollar volume in government securities overall. The Commission believes that this change will help the Commission facilitate compliance with the thresholds for the Fair Access Rule and Regulation SCI, which the Commission is proposing would be based on trading volume in U.S. Treasury Securities and Agency Securities.[321] In addition, the Commission is proposing to amend Form ATS-R to update the descriptions of certain categories of securities for which volume is required to be reported on Form ATS-R by an ATS. Specifically, the Commission is proposing to replace the names of the securities categories, "Nasdaq National Market Securities" and "Nasdaq SmallCap Market Securities," reported in Items 4 and 6 of Form ATS-R, with "Nasdaq Global Market Securities" and "Nasdaq Capital Market Securities," respectively. The Commission believes that replacing the description of categories of securities that no longer are in use with current categories of securities would reduce potential confusion

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320 The Commission is proposing to add to the Form ATS-R instructions the definitions of U.S. Treasury Security and Agency Security, which would conform to the definitions the Commission is proposing in Rule 300(p) and Rule 300(q), respectively.

321 See supra Section II.D and infra Section VI.

for an ATS when completing Form ATS-R and would enable an ATS to reflect more accurately its trading activities during the applicable reporting period.

The Commission is also proposing to add new Item 4K to Form ATS-R, which requires ATSs to disclose the total dollar volume of transactions in repurchase agreements and reverse repurchase agreements. New Item 5C would require ATSs to list the types of securities subject to such repurchase or reverse repurchase agreements. In the Commission's experience, ATSs that trade repurchase or reverse repurchase agreements, which are currently disclosed as debt securities on Item 4N of Form ATS-R, currently provide on Form ATS-R a break-down of nominal trade value of each of these types of securities. The Commission believes that adding new Item 4K to Form ATS-R to require that ATSs provide the total dollar volume of transactions in repurchase or reverse repurchase agreements would require all ATSs that trade repurchase or reverse repurchase agreements to take a consistent approach in providing this information. The Commission is also proposing new Item 5C, which would require ATSs to list the types of securities subject to repurchase or reverse repurchase agreements reported in Item 4K of Form ATS-R. The Commission believes that this would provide information to the Commission about the types of securities that ATSs trade while imposing a minimal burden on filers.

Finally, the Commission is proposing to add new Item 5D, which would require an ATS to list the types of listed options reported in Item 4H of Form ATS-R. Item 4H of Form ATS-R currently requires ATSs to disclose the total unit volume and dollar volume of transactions in listed options. Under new Item 5D, an ATS might indicate, for example, that it trades equity

options and options on government securities. The Commission believes that this would provide the Commission with more specific information about the types of options that each ATS trades.

Request for Comment

114. Would the proposed changes to Form ATS and Form ATS-R enhance the Commission's oversight of ATSs? Do commenters disagree with any of the proposed modifications? If so, what alternatives should the Commission implement?

115. Form ATS-R requires an ATS to quarterly report volume of transactions for certain securities, all subscribers that were participants on the ATS, and securities that were traded on the ATS. Should the Commission adopt amendments to Form ATS-R to add, change, or modify any of the requests for information on Form ATS-R? Are the current categories of securities and the proposed categories of securities for reporting transaction volume to the Commission appropriate?

116. Form ATS requires an ATS to report information to the Commission in Exhibits A through I. These requests solicit information about the ATS, including but not limited to, types of subscribers and differential access to services, types of securities traded, counsel, governance documents, service providers, manner of operations, including order entry, order execution procedures, clearance and settlement procedures, and trade reporting, procedures for reviewing system capacity, security, and contingency planning, procedures to safeguard subscriber funds and securities, and direct owners. Should the Commission adopt amendments to Form ATS to add, change, or modify any of the requests for information on Form ATS? If so, please identify the request and explain how it should be amended.

117. Should the Commission adopt amendments to Form ATS to require disclosures similar to disclosures required on Part II of Form ATS-N and proposed Form ATS-G, which request information about ATS-related activities of the broker-dealer operator and its affiliates?

118. Should the Commission adopt amendments to Form ATS to include questions similar to those in Part III of Form ATS-N and proposed Form ATS-G, which request information about the manner of the ATS's operations?

119. Are there any specific items on Form ATS-N or proposed Form ATS-G that the Commission should incorporate into Form ATS?

120. Should the Commission propose amendments to Regulation ATS to require ATSs that trade OTC equity securities to comply with Rule 304, including filing with the Commission a public form with requirements similar to Form ATS-N or proposed Form ATS-G?

121. Should the Commission require an ATS to disclose the LEI of its broker-dealer operator, in addition to its CRD Number and the proposed disclosure of the MPID for the ATS on Form ATS?

D. Changes to Form ATS-N

The Commission is proposing to delete the check box on the cover page of Form ATS-N that requires an NMS Stock ATS to select whether the NMS Stock ATS currently operates pursuant to a Form ATS. Rules 304 and 301(b)(2)(viii) required an NMS Stock ATS to file a Form ATS-N no later than February 8, 2019. After February 8, 2019, this check box became obsolete. The Commission is also proposing new Part I, Item 1.B, which would require the NMS Stock ATS to indicate whether the registered broker-dealer has been authorized by its national securities association to operate an ATS. The Commission believes this would facilitate

compliance with and oversight of the requirement that an ATS complies with the rules of an SRO, including to obtain approval to operate an ATS.[322] In addition, to avoid confusion, the Commission is proposing to delete language in the signature block in Part IV of Form ATS-N that refers to the signatory as "duly sworn." The Commission notes that Form ATS-N filings, which are submitted to EDGAR, are not required to be notarized;[323] instead, they are subject to the rules governing electronic signatures set forth in Rule 302 of Regulation S-T.[324]

The Commission is proposing to replace the current definition of "Person" in Form ATS-N, which is provided by the Investment Advisers Act of 1940 ("Advisers Act")[325] with the different definition of "Person" as defined under the Exchange Act.[326] Because Regulation ATS is a Commission regulation under the Exchange Act, and NMS Stock ATSs are subject to various Exchange Act Rules,[327] the Commission believes that it is more appropriate to apply the definition of "Person" under the Exchange Act than the definition of "Person" under the Advisers Act, which is not applicable to ATSs. Although the definitions are not identical, the Commission believes the differences between the definitions are unlikely to result in differences to the disclosures required by Form ATS-N.[328] To the extent ATSs might have found ambiguous

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322 See supra note 203 and accompanying text.

323 Unlike Form ATS, Form ATS-N does not have a notarization block.

324 17 CFR 232.302.

325 15 U.S.C. 80a-2(a)(28) (defining "Person" as "a natural person or a company").

326 15 U.S.C. 78c(a)(9) (defining the term "person" as a natural person, company, government, or political subdivision, agency, or instrumentality of a government).

327 See NMS Stock ATS Adopting Release, supra note 1, at 38768.

328 The Exchange Act's inclusion of a "government, or political subdivision, agency or instrumentality of a government" under the definition of "Person" is unlikely to result in any changes to the disclosures required by the items in Form ATS-N that use the word

the Commission's use of the Advisers Act definition in the context of an Exchange Act rule, the Commission believes that this proposed change will mitigate any such concerns. The Commission is also proposing to change the definition of "NMS Stock ATS" to conform to the proposed changes to the definition in Rule 300 and state that NMS Stock ATSs shall not trade securities other than NMS stocks.[329]

In Part III, Item 1, the Commission is proposing to remove the checkbox "NMS Stock ATS" under the list of types of subscriber to an NMS Stock ATS. A broker-dealer operator of an NMS Stock ATS seeking to access another NMS Stock ATS would involve the broker-dealer operator for the NMS Stock ATS becoming a subscriber to the ATS, not the ATS that the broker-dealer operates. In this scenario, an NMS Stock ATS that accepts a broker-dealer operator for another NMS Stock ATS would mark the checkbox for broker and/or dealer in Part III, Item 1 on Form ATS-N as appropriate. The Commission is also proposing to add insurance companies, pension funds, and corporations to the list of types of subscribers in Part III, Item 1 on Form ATS-N. The Commission believes that adding these checkboxes will provide more granular information on the types of subscribers participating on an NMS Stock ATS in an easier-to-read format.

In Part II, Item 4(b) of Form ATS-N, the Commission is proposing to delete the phrase "if yes to Item 4(a)." This phrase was included in Form ATS-N in error. The NMS Stock ATS would be required to respond to Part II, Item 4(b) regardless of its response to Part II, Item 4(a).

In Part II, Item 6(a) of Form ATS-N, the Commission is proposing to add language to the definition of "shared employee" to clarify that the Item solicits disclosures relating to both any

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"Person" as, in the Commission's experience, these entities are generally not involved in the operations of NMS Stock ATSs as subscribers or otherwise.

329 See supra note 93 and accompanying text.

employee of the broker-dealer operator and any employee of its affiliate that provides services to both the operations of the NMS Stock ATS and any other business unit or any affiliate of the broker-dealer operator. The proposed amendment is designed to clarify the existing requirements of the Item.

The Commission is proposing to add the term "market data" to the examples listed in Part III, Item 19 of the types of fees that NMS Stock ATSs must disclose. While most NMS Stock ATSs do not disseminate market data, the Commission believes that they can and a description of an NMS Stock ATS's market data fees is currently required by the Item.[330] The Commission believes that adding the example could assist NMS Stock ATSs in responding comprehensively to the Item. The Commission is also including the example in Form ATS-G as Government Securities ATSs are primarily lit venues that offer market data to subscribers. The Commission is also proposing to change the term "Order Display and Fair Access Amendment" throughout Form ATS-N to "Contingent Amendment" to conform to proposed changes to Rule 304.[331] Furthermore, the Commission is proposing several grammatical and technical changes to Form ATS-N to correct and clarify certain items on the form. These changes are listed in Section XIII infra.

Request for Comment

122. Should the Commission adopt alternative EDGAR filing requirements or formats for Form ATS-N (e.g., filing in XBRL format)?

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330 Part III, Item 19 requires NMS Stock ATSs to identify and describe *any* (emphasis added) fees or charges for use of the Government Securities ATS services, including the type of fees.

331 See supra note 176.

123. Would the use of the Exchange Act definition of "Person" instead of the Advisers Act definition of "Person" result in differences to the information required to be disclosed by Form ATS-N?

124. Should the Commission require a broker-dealer operator for an NMS Stock ATS to disclose its LEI, in addition to its CRD Number and MPID, which NMS Stock ATSs are currently required to provide, on Form ATS-N?

VI. Proposed Amendments to Regulation SCI for Government Securities ATS

The Commission proposes to amend Regulation SCI to expand the definition of "SCI alternative trading system" to include Government Securities ATSs that meet a specified volume threshold. A Government Securities ATS that meets the proposed amended definition of "SCI alternative trading system" would fall within the definition of "SCI entity" and, as a result, would be subject to the requirements of Regulation SCI. The Commission believes that the proposal to extend the requirements of Regulation SCI to Government Securities ATSs that trade a significant volume in U.S. Treasury Securities or Agency Securities would help to address the technological vulnerabilities, and improve the Commission's oversight, of the core technology of key entities in the markets for government securities.

The Commission adopted Regulation SCI in November 2014 to strengthen the technology infrastructure of the U.S. securities markets.[332] As discussed in the Regulation SCI Adopting Release, a number of factors contributed to the Commission's proposal and adoption of Regulation SCI. These factors included: the evolution of the markets becoming significantly more dependent upon sophisticated, complex, and interconnected technology; the successes and

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[332] See Regulation SCI Adopting Release, supra note 2, at 72252-56 for a discussion of the background of Regulation SCI.

limitations of the Automation Review Policy ("ARP") Inspection Program; a significant number of, and lessons learned from, recent systems issues at exchanges and other trading venues;[333] and increased concerns over the potential for "single points of failure" in the securities markets.[334] Regulation SCI is designed to strengthen the infrastructure of the U.S. securities markets, reduce the occurrence of systems issues in those markets, improve their resiliency when technological issues arise, and establish an updated and formalized regulatory framework, thereby helping to ensure more effective Commission oversight of such systems.[335]

The key market participants that are currently subject to Regulation SCI are called "SCI entities" and include certain SROs (including stock and options exchanges, registered clearing agencies, FINRA and the MSRB) ("SCI SROs"); alternative trading systems that trade NMS and non-NMS stocks exceeding specified volume thresholds ("SCI ATSs"); the exclusive SIPs ("plan processors"); and certain exempt clearing agencies.[336] Regulation SCI, among other things, requires these SCI entities to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that their key automated systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that such systems operate in accordance with the Exchange Act and the rules and regulations thereunder and the entities' rules and governing documents, as applicable.[337] Broadly speaking, Regulation SCI

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333 See id. at 72253-56.

334 See id. at 72277-79.

335 Id. at 72253, 72256.

336 See 17 CFR 242.1000.

337 See 17 CFR 242.1001; infra notes 365-374.

also requires SCI entities to take appropriate corrective action when systems issues occur; provide certain notifications and reports to the Commission regarding systems problems and systems changes; inform members and participants about systems issues; conduct business continuity and disaster recovery testing and penetration testing; conduct annual reviews of their automated systems; and make and keep certain books and records.[338]

Regulation SCI applies primarily to the systems of, or operated on behalf of, SCI entities that directly support any one of six key securities market functions – trading, clearance and settlement, order routing, market data, market regulation, and market surveillance ("SCI systems").[339] With respect to security, Regulation SCI also applies to systems that, if breached, would be reasonably likely to pose a security threat to SCI systems ("indirect SCI systems").[340] In addition, certain systems whose function are critical to the operation of the markets, including those that represent single points of failure (defined as "critical SCI systems"), are subject to certain heightened requirements.[341]

When adopting Regulation SCI, the Commission included within the scope of Regulation SCI those entities "that play a significant role in the U.S. securities markets and/or have the

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338 See 17 CFR 242.1001-1007; infra notes 365-386.

339 See 17 CFR 242.1000.

340 Id.

341 Id. See also Regulation SCI Adopting Release, supra note 2, at 72277. Paragraph (1) of the definition of "critical SCI systems" in Rule 1000 of Regulation SCI specifically enumerates certain systems to be within its scope, including those that directly support functionality relating to: (i) clearance and settlement systems of clearing agencies; (ii) openings, reopenings, and closings on the primary listing market; (iii) trading halts; (iv) initial public offerings; (v) the provision of consolidated market data; or (vi) exclusively-listed securities. 17 CFR 242.1000(1).

potential to impact investors, the overall market, or the trading of individual securities."[342] The Commission identified by function the key market participants it believed were integral to ensuring the stability, integrity, and resiliency of securities market infrastructure.[343] As discussed below, SCI ATSs are currently among those entities that are subject to Regulation SCI, as they are heavily reliant on automated systems and represent a significant pool of liquidity for NMS and non-NMS stocks.[344] However, when the Commission adopted Regulation SCI, the Commission applied it to ATSs that trade NMS stocks and non-NMS stocks, but not to fixed income ATSs. Rather, in the context of the municipal and corporate debt markets, the Commission stated that fixed income markets rely much less on automation and electronic trading than markets that trade NMS stocks or non-NMS stocks.[345] The Commission also stated that the municipal and corporate debt markets tend to be less liquid than the equity markets, with slower execution times and less complex routing strategies.[346]

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342 See Regulation SCI Adopting Release, supra note 2, at 72258.

343 See id. at 72254.

344 See id. at 72262-63. Rule 1000 of Regulation SCI defines SCI ATS to mean an ATS, which, during at least four of the preceding six calendar months, had: (1) with respect to NMS stocks: (i) five percent or more in any single NMS stock, and 0.25 percent or more in all NMS stocks, of the average daily dollar volume reported by an effective transaction reporting plan, or (ii) one percent or more, in all NMS stocks, of the average daily dollar volume reported by an effective transaction reporting plan; or (2) with respect to equity securities that are not NMS stocks and for which transactions are reported to an SRO, five percent or more of the average daily dollar volume as calculated by the SRO to which such transactions are reported. See 17 CFR 242.1000. Rule 1000 also states that an ATS that meets one of these thresholds is not required to comply with Regulation SCI until six months after satisfying the threshold for the first time. See id.

345 See Regulation SCI Adopting Release, supra note 2, at 72270.

346 See id.

Although the Commission differentiated fixed income securities generally from equity securities when it adopted Regulation SCI, in light of the increasing automation of the government securities market and the operational similarities between many Government Securities ATSs and NMS Stock ATSs,[347] the Commission preliminarily believes that it would be appropriate to apply the requirements of Regulation SCI to Government Securities ATSs that meet certain volume thresholds. As the Commission previously stated, while technological developments provide many benefits to the U.S. securities markets, they also increased the risk of operational problems that have the potential to cause a widespread impact on the securities market and its participants.[348] The application of Regulation SCI to Government Securities ATSs that trade a significant volume of U.S. Treasury Securities or Agency Securities would further help to address those technological vulnerabilities, and improve the Commission's oversight, of the core technology used by key U.S. securities markets participants.

Accordingly, under this proposal, the definition of "SCI ATSs" would be expanded to include certain Government Securities ATSs that meet certain volume thresholds with respect to U.S. Treasury Securities and/or Agency Securities, as the Commission believes such ATSs similarly rely heavily on automated systems and represent a significant source of orders and trading interest in these asset classes.[349] Specifically, the definition of "SCI ATS" would be revised to include those ATSs which, during at least four of the preceding six calendar months: had, with respect to U.S. Treasury Securities, five percent (5%) or more of the average weekly dollar volume traded in the United States as provided by the SRO to which such transactions are

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347 See supra Section I.A.

348 See Regulation SCI Adopting Release, supra note 2, at 72253.

349 See paragraphs (3) and (4) of the proposed definition of "SCI ATS" under Rule 1000 of Regulation SCI.

reported; or had, with respect to Agency Securities, five percent (5%) or more of the average daily dollar volume traded in the United States as provided by the SRO to which such transactions are reported. These proposed thresholds are the same as those being proposed for Government Securities ATSs with respect to the Fair Access Rule under Regulation ATS.[350]

The Commission believes that the proposed thresholds for applying Regulation SCI to Government Securities ATSs are appropriate measures to identify those ATSs that have the potential to significantly impact investors and the market should a systems issue occur.[351] Currently, the Commission believes that approximately three ATSs trading U.S. Treasury Securities and one ATS trading Agency Securities would be subject to Regulation SCI under the proposed five percent volume thresholds.[352] The ATS with the largest market volume in U.S. Treasury Securities has around 24 percent of market volume, while each of the second and third largest is slightly above five percent market share. The one ATS that would exceed the proposed threshold for Agency Securities accounts for roughly 13 percent of volume in Agency Securities.[353] If the proposed volume thresholds were 7.5 or 10 percent, however, only one ATS trading U.S. Treasury Securities and one ATS trading Agency Securities would be subject to

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350 See supra Section II.D. (Application of Fair Access to Government Securities ATSs).

351 Under the proposal, Regulation SCI would not apply to Government Securities ATSs that trade repos, including repos on U.S. Treasury Securities and Agency Securities. Based on information available to the Commission, the Commission does not believe that ATSs today capture a significant market share for trading repos nor do they rely on the same level of automation as ATSs that trade U.S. Treasury Securities or Agency Securities. The Commission is requesting comment on this preliminary assessment and whether the Commission should amend Regulation SCI to require Government Securities ATSs that trade repos, including repos on U.S. Treasury Securities and Agency Securities, to be subject to the requirements of Regulation SCI.

352 See supra Section II.D and infra Section X.B.1a.

353 See infra Table X.1.

Regulation SCI.[354] The Commission is requesting comment on whether these proposed volume thresholds should be set higher or lower for trading of U.S. Treasury Securities or Agency Securities by a Government Securities ATS.

The Commission believes that the proposed volume thresholds to apply Regulation SCI to a Government Securities ATS that trades U.S. Treasury Securities and Agency Securities are reasonable as compared to volume thresholds for applying Regulation SCI to ATSs that trade NMS stocks and ATSs that trade equity securities that are not NMS stocks. First, an ATS that trades NMS stocks is subject to Regulation SCI if its trading volume reaches: (i) five percent or more in any single NMS stock and one-quarter percent or more in all NMS stocks of the average daily dollar volume reported by applicable transaction reporting plans; or (ii) one percent or more in all NMS stocks of the average daily dollar volume reported by applicable transaction reporting plans. With respect to non-NMS equity securities, an ATS is subject to Regulation SCI if its trading volume is five percent or more of the average daily dollar volume (across all non-NMS equity securities) as calculated by the SRO to which such transactions are reported. The proposed SCI volume thresholds for Government Securities ATSs would be similar to those for ATSs that trade non-NMS equity securities. The Commission believes that basing the thresholds on volume as provided by the SRO to which such transactions are reported is reasonable given that there is no transaction reporting plan for government securities and thus, the trading figures are based on dollar volume traded in the United States as provided by the SRO to which such transactions are reported.

In addition, the Commission believes that the proposed volume thresholds to apply Regulation SCI to a Government Securities ATS that trades U.S. Treasury Securities and Agency

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354 See id.

Securities are reasonable compared to volume thresholds that would subject an ATS to Rule 301(b)(6) under Regulation ATS (i.e., the Capacity, Integrity, and Security Rule) for the ATS's trading of corporate bonds and municipal securities. While Regulation SCI is not applicable to ATSs that trade corporate bonds or municipal securities, an ATS that trades corporate bonds or municipal securities is subject to Rule 301(b)(6) if its trading volume reaches 20 percent or more of the average daily volume traded in the United States for either corporate bonds or municipal securities.[355] When the Commission adopted Regulation SCI, it decided not to apply Regulation SCI and its lower volume thresholds to the fixed income markets, concluding that a systems issue in fixed income markets would not have had as significant or widespread an impact as in the equities market.[356] Among other things, the Commission reasoned that the fixed income markets at the time relied much less on automation and electronic trading than the equities markets, and that the municipal securities and corporate bond fixed income markets tended to be less liquid than the equity markets, with slower execution times and less complex routing strategies.[357] As explained above, however, ATSs for government securities now operate with complexity similar to that of markets that trade NMS stocks in terms of automation and speed of trading, the use of limit order books, order types, algorithms, connectivity, data feeds, and the active participation of PTFs.[358] Government securities also make up more than half of the

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355 See 17 CFR 242.301(b)(6). The requirements of Rule 301(b)(6) are less rigorous than the requirements of Regulation SCI. Among other things, Rule 301(b)(6) requires an ATS to notify the Commission staff of material systems outages and significant systems changes and that the ATS establish adequate contingency and disaster recovery plans. See id. Currently, there are no ATSs that are subject to requirements of Rule 301(b)(6) of Regulation ATS.

356 See Regulation SCI Adopting Release, supra note 2, at 72270.

357 See id.

358 See supra note 5.

outstanding debt issuances in the U.S. bond market and play a critical role in the U.S. and global economies.[359] An ATS whose government securities volume falls between five percent and 20 percent of trading volume could significantly impact investors and the market should a systems issue occur, as discussed below in this section. By proposing to apply Regulation SCI to Government Securities ATSs with a threshold of below 20 percent the Commission seeks to impose the more stringent protections of Regulation SCI to these ATSs because of their importance to the U.S. securities markets. The Commission also recognizes that ATSs for corporate bonds and municipal securities are becoming increasingly electronic and as part of this release, the Commission is requesting comment on, among other things, whether the 20 percent volume threshold under Rule 301(b)(6) of Regulation ATS should be amended to capture ATSs that might be critical markets for those securities.

When adopting Regulation SCI, the Commission stated that it would "monitor and evaluate the implementation of Regulation SCI, the risks posed by the systems of other market participants, and the continued evolution of the securities markets, such that it may consider, in the future, extending the types of requirements in Regulation SCI to additional categories of market participants."[360] The Commission believes that the continued evolution of the securities markets, including advancements in technology, have resulted in significant changes in how government securities trade.[361] In particular, the structure of the U.S. Treasury market has evolved in recent years and electronic trading has become an increasingly important feature of the interdealer market for U.S. Treasury Securities.[362] As stated by various sources, the

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359 See supra notes 5-7 and accompanying text.

360 See Regulation SCI Adopting Release, supra note 2, at 72270.

361 See supra Section I.A.

362 See supra note 14 and accompanying text.

secondary interdealer cash markets for on-the-run U.S. Treasury Securities have evolved such that those markets operate with complexity similar to that of markets that trade NMS stocks in terms of automation and speed of trading, the use of limit order books, order types, algorithms, and the active participation of PTFs on ATSs.[363]

Given this evolution in the U.S. Treasury market, the Commission now believes that there are Government Securities ATSs that operate with similar complexity as SCI ATSs that are currently subject to Regulation SCI, and that Government Securities ATSs with significant trading volume play an important role in the government securities markets and face similar technological vulnerabilities as existing SCI entities. The Commission believes that, without appropriate safeguards in place for these Government Securities ATSs, technological vulnerabilities could lead to the potential for failures, disruptions, delays, and intrusions, which could place government securities market participants at risk, and could possibly interfere with the maintenance of fair and orderly markets. For example, a systems issue could occur at a Government Securities ATS with significant trading volume (e.g., a systems disruption or a cybersecurity incident that prevented the ATS from operating or being accessible to its subscribers), such that certain market participants or the government securities markets broadly could be significantly impacted until such time that the issue was resolved at the ATS. In addition, applying Regulation SCI to these Government Securities ATSs would help the Commission improve its oversight of the market for government securities, thereby continuing its efforts to address technological vulnerabilities of the core technology systems of key U.S. securities markets entities.

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[363] See supra notes 14-15 and accompanying text.

As proposed, those Government Securities ATSs trading U.S. Treasury Securities and/or Agency Securities that met the volume thresholds under the revised definition of SCI ATS would be subject to the requirements of Regulation SCI, as described below.[364] Rule 1001(a) of Regulation SCI requires SCI entities to have policies and procedures reasonably designed to ensure that their SCI systems and, for purposes of security standards, indirect SCI systems, have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and includes certain minimum requirements for those policies and procedures relating to capacity planning, stress tests, systems development and testing methodology, the identification of vulnerabilities, business continuity and disaster recovery plans (including geographic diversity and resumption goals), market data, and monitoring.[365] Rule 1001(a)(3) of Regulation SCI requires that SCI entities periodically review the effectiveness of these policies and procedures, and take prompt action to remedy any deficiencies.[366] Rule 1001(a)(4) of Regulation SCI provides that, for purposes of the provisions of Rule 1001(a), an SCI entity's policies and procedures will be deemed to be reasonably designed if they are consistent with current SCI industry standards, which shall be comprised of information technology practices that are widely available to information technology professionals in the financial sector and issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or

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364 The Commission is requesting comment on whether all of the obligations in Regulation SCI should apply to Government Securities ATSs that would be SCI ATSs, or whether only certain requirements should be imposed, such as those requiring written policies and procedures, notification of systems problems, business continuity and disaster recovery testing (including testing with subscribers of ATSs), and penetration testing.

365 17 CFR 242.1001(a)(1)-(2).

366 17 CFR 242.1001(a)(3).

agencies, or widely recognized organization;[367] however, Rule 1001(a)(4) of Regulation SCI also makes clear that compliance with such "current SCI industry standards" is not the exclusive means to comply with these requirements.

Rule 1001(b) of Regulation SCI requires that each SCI entity establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems operate in a manner that complies with the Exchange Act and the rules and regulations thereunder and the entity's rules and governing documents, as applicable, and specifies certain minimum requirements for such policies and procedures.[368] Rule 1001(b)(3) of Regulation SCI requires that SCI entities periodically review the effectiveness of these policies and procedures, and take prompt action to remedy any deficiencies.[369] Rule 1001(b)(4) of Regulation SCI provides individuals with a safe harbor from liability under Rule 1001(b) if certain conditions are met.[370]

Rule 1001(c) of Regulation SCI requires SCI entities to establish, maintain, and enforce reasonably designed written policies and procedures that include the criteria for identifying

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367 17 CFR 242.1001(a)(4). The Commission notes that, concurrent with the Commission's adoption of Regulation SCI, Commission staff issued staff guidance on current SCI industry standards as referenced in Regulation SCI. The staff guidance listed examples of publications in nine domains describing processes, guidelines, frameworks, or standards an SCI entity could look to in developing reasonable policies and procedures to comply with Rule 1001(a) of Regulation SCI. See "Staff Guidance on Current SCI Industry Standards," November 19, 2014, available at: https://www.sec.gov/rules/final/2014/staff-guidance-current-sci-industry-standards.pdf. The domains included: application controls; capacity planning; computer operations and production environment controls; contingency planning; information security and networking; audit; outsourcing; physical security; and systems development methodology.

368 17 CFR 242.1001(b)(1)-(2).

369 17 CFR 242.1001(b)(3).

370 17 CFR 242.1001(b)(4).

responsible SCI personnel, the designation and documentation of responsible SCI personnel, and escalation procedures to quickly inform responsible SCI personnel of potential SCI events.[371] Rule 1000 of Regulation SCI defines "responsible SCI personnel" to mean, for a particular SCI system or indirect SCI system impacted by an SCI event, such senior manager(s) of the SCI entity having responsibility for such system, and their designee(s).[372] Rule 1000 also defines "SCI event" to mean an event at an SCI entity that constitutes a system disruption, a systems compliance issue, or a systems intrusion.[373] Rule 1001(c)(2) of Regulation SCI requires that SCI entities periodically review the effectiveness of these policies and procedures, and take prompt action to remedy any deficiencies.[374]

Under Rule 1002 of Regulation SCI, SCI entities have certain obligations related to SCI events. Specifically, when any responsible SCI personnel has a reasonable basis to conclude that an SCI event has occurred, the SCI entity must begin to take appropriate corrective action which must include, at a minimum, mitigating potential harm to investors and market integrity resulting from the SCI event and devoting adequate resources to remedy the SCI event as soon as reasonably practicable.[375] Rule 1002(b) provides the framework for notifying the Commission

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371 17 CFR 242.1001(c).

372 17 CFR 242.1000.

373 A "systems disruption" means an event in an SCI entity's SCI systems that disrupts, or significantly degrades, the normal operation of an SCI system. A "systems compliance issue" means "an event at an SCI entity that has caused any SCI system of such entity to operate in a manner that does not comply with the Act and the rules and regulations thereunder or the entity's rules or governing documents, as applicable." A "systems intrusion" means any unauthorized entry into the SCI systems or indirect SCI systems of an SCI entity." See 17 CFR 242.1000.

374 17 CFR 242.1001(c)(2).

375 See 17 CFR 242.1002(a).

of SCI events including, among other things, to: immediately notify the Commission of the event; provide a written notification within 24 hours that includes a description of the SCI event and the system(s) affected, with other information required to the extent available at the time; provide regular updates regarding the SCI event until the event is resolved; and submit a final detailed written report regarding the SCI event.[376] Rule 1002(c) of Regulation SCI also requires that SCI entities disseminate information to their members or participants regarding SCI events.[377] These information dissemination requirements are scaled based on the nature and severity of an event. Specifically, for "major SCI events," SCI entities are required to promptly disseminate certain information about the event to all of its members or participants. For SCI events that are not "major SCI events," SCI entities must, promptly after any responsible SCI personnel has a reasonable basis to conclude that an SCI event has occurred, disseminate certain information to those SCI entity members and participants reasonably estimated to have been affected by the event. In addition, dissemination of information to members or participants is permitted to be delayed for systems intrusions if such dissemination would likely compromise the security of the SCI entity's systems or an investigation of the intrusion.[378]

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376 See 17 CFR 242.1002(b). For any SCI event that "has had, or the SCI entity reasonably estimates would have, no or a de minimis impact on the SCI entity's operations or on market participants," Rule 1002(b)(5) provides an exception to the general Commission notification requirements under Rule 1002(b). Instead, an SCI entity must make, keep, and preserve records relating to all such SCI events, and submit a quarterly report to the Commission regarding any such events that are systems disruptions or systems intrusions.

377 See 17 CFR 242.1002(c).

378 See id. In addition, the information dissemination requirements of Rule 1002(c) do not apply to SCI events to the extent they relate to market regulation or market surveillance systems, or to any SCI event that has had, or the SCI entity reasonably estimates would have, no or a de minimis impact on the SCI entity's operations or on market participants. See 17 CFR 242.1002(c)(4).

Rule 1003(a) of Regulation SCI requires SCI entities to provide reports to the Commission relating to system changes, including a report each quarter describing completed, ongoing, and planned material changes to their SCI systems and the security of indirect SCI systems, during the prior, current, and subsequent calendar quarters, including the dates or expected dates of commencement and completion.[379] Rule 1003(b) of Regulation SCI also requires that an SCI entity conduct an "SCI review" not less than once each calendar year.[380] "SCI review" is defined in Rule 1000 of Regulation SCI to mean a review, following established procedures and standards, that is performed by objective personnel having appropriate experience to conduct reviews of SCI systems and indirect SCI systems, and which review contains: a risk assessment with respect to such systems of an SCI entity; and an assessment of internal control design and effectiveness of its SCI systems and indirect SCI systems to include logical and physical security controls, development processes, and information technology governance, consistent with industry standards.[381] Under Rule 1003(b)(2)-(3), SCI entities are also required to submit a report of the SCI review to their senior management, and must also submit the report and any response by senior management to the report, to their board of directors as well as to the Commission.[382]

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379 See 17 CFR 242.1003(a).

380 See 17 CFR 242.1003(b).

381 See 17 CFR 242.1000. Rule 1003(b)(1) of Regulation SCI also states that penetration test reviews of an SCI entity's network, firewalls, and production systems must be conducted at a frequency of not less than once every three years, and assessments of SCI systems directly supporting market regulation or market surveillance must be conducted at a frequency based upon the risk assessment conducted as part of the SCI review, but in no case less than once every three years. See 17 CFR 242.1003(b)(1)(i)-(ii).

382 See 17 CFR 242.1003(b)(2)-(3).

Rule 1004 of Regulation SCI sets forth the requirements for testing an SCI entity's business continuity and disaster recovery plans with its members or participants. This rule requires that, with respect to an SCI entity's business continuity and disaster recovery plan, including its backup systems, each SCI entity shall: (a) establish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans;[383] (b) designate members or participants pursuant to the standards established and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months; and (c) coordinate the testing of such plans on an industry- or sector-wide basis with other SCI entities.

SCI entities are required by Rule 1005 of Regulation SCI to make, keep, and preserve certain records related to their compliance with Regulation SCI.[384] Rule 1006 of Regulation SCI provides for certain requirements relating to the electronic filing, on Form SCI, of any notification, review, description, analysis, or report to the Commission required to be submitted under Regulation SCI.[385] Finally, Rule 1007 of Regulation SCI contains requirements relating to a written undertaking when records required to be filed or kept by an SCI entity under

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383 See 17 CFR 242.1004.

384 See 17 CFR 242.1005. Rule 1005(a) of Regulation SCI relates to recordkeeping provisions for SCI SROs, whereas Rule 1005(b) relates to the recordkeeping provision for SCI entities other than SCI SROs.

385 See 17 CFR 242.1006.

Regulation SCI are prepared or maintained by a service bureau or other recordkeeping service on behalf of the SCI entity.[386]

Request for Comment

125. Should Regulation SCI apply to Government Securities ATSs that meet the proposed definition of SCI ATS? If so, are the proposed revisions to the definition of SCI ATS appropriate?

126. What are the risks associated with systems issues at a significant Government Securities ATS? What impact would a systems issue have on the trading of government securities and the maintenance of fair and orderly markets? Should all the requirements set forth in Regulation SCI apply to Government Securities ATSs that meet the proposed definition of SCI ATS?

127. Should Government Securities ATSs that meet the proposed volume thresholds for SCI ATSs be governed by the Capacity, Integrity, and Security Rule instead of being defined as SCI entities? Are there Government Securities ATSs that play a significant role in the secondary market for U.S. Treasury Securities but do not meet the proposed volume thresholds for SCI ATSs for which a different threshold should be established to mandate compliance with the Capacity, Integrity, and Security Rule? If yes, what additional regulatory requirements, if any, should be imposed on such ATSs? What would be the costs and benefits associated with applying Rule 301(b)(6) to Government Securities ATSs that are not SCI ATSs?

128. Should the Commission amend Regulation ATS to require Government Securities ATSs to comply with Rule 301(b)(6) but adopt a threshold that is lower or higher than 20

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386 See 17 CFR 242.1007.

percent? For example, should the Commission amend Rule 301(b)(6) to subject Government Securities ATSs, or certain Government Securities ATSs, to the requirements of the rule if the Government Securities ATS reaches a 5 percent, 7.5 percent, 10 percent, or 15 percent volume threshold?

129. Do commenters believe that, even though certain Government Securities ATSs play a significant rule in the U.S. securities markets, regulatory requirements such as Regulation SCI and the Capacity, Integrity, and Security Rule are not necessary? If so, please specifically explain how the policy goals of Regulation SCI and the Capacity, Integrity, and Security Rule would continue to be achieved for such systems without relevant regulation.

130. Should the volume threshold to meet the definition of SCI ATS include trading in U.S. Treasury Securities and Agency Securities? Should Regulation SCI be applied to ATSs for any other type of government securities? Should Regulation SCI be applied to ATSs that trade repos or reverse repos on government securities, including repos or reverse repos on U.S. Treasury Securities, Agency Securities, or both?

131. Should the proposed five percent threshold test for U.S. Treasury Securities be applied to all types of U.S. Treasury Securities or only to a subset(s) of U.S. Treasury Securities? For example, should the five percent volume test only be applied to transaction volume in on-the-run U.S. Treasury Securities? Should the five percent threshold only be applied to transaction volume in all Agency Securities or only to a subset(s) of Agency Securities?

132. Is the five percent threshold an appropriate threshold to capture ATSs that are significant markets for trading in U.S. Treasury Securities or Agency Securities? Would the five

percent threshold capture ATSs that are not significant markets for U.S. Treasury Securities and Agency Securities? If commenters believe that there should be a percent threshold for a subset of U.S. Treasury Securities, such as on-the-run U.S. Treasury Securities or off-the-run U.S. Treasury Securities, what should that threshold be?

133. Should the Commission adopt a percent volume threshold that is lower than five percent for U.S. Treasury Securities, Agency Securities, or both? If so, what percentage threshold should the Commission adopt for Treasury Securities and Agency Securities? For example, should the Commission adopt a threshold that is four percent, three percent, two percent, or one percent for U.S. Treasury Securities? Should the Commission adopt a threshold that is four percent, three percent, two percent, or one percent for Agency Securities? Should there be no threshold for U.S. Treasury Securities? Should there be no threshold for Agency Securities? Please support your views.

134. Should the Commission adopt a percent volume threshold that is higher than five percent for U.S. Treasury Securities, Agency Securities, or both? For example, should the Commission adopt a threshold that is 7.5 percent, 10 percent, 15 percent, or 20 percent for U.S. Treasury Securities? Should the Commission adopt a threshold that is 7.5 percent, 10 percent, 15 percent, or 20 percent for Agency Securities?

135. Is it appropriate to use five percent of average weekly dollar volume traded in the United States as a threshold for application of Regulation SCI requirements to U.S. Treasury Securities? If the average weekly dollar volumes were to include transactions in the secondary cash market for U.S Treasury Securities by non-FINRA members, which currently are not reported to, or collected by, the SRO that makes public average weekly

dollar volume statistics, should the Regulation SCI threshold change? If so, what should be the appropriate threshold? Please support your views.

136. Is it appropriate to use five percent of average daily dollar volume traded in the United States as a threshold for the application of Regulation SCI requirements to Agency Securities?

137. Is the proposed four out of six month period an appropriate period to measure the volume thresholds for U.S. Treasury Securities, Agency Securities, or both? If not, what period of time would be appropriate?

138. Should the proposed Regulation SCI volume threshold measurement for Government Securities ATSs take into account whether Government Securities ATSs under common control share the same technology platform? For example, should two or more Government Securities ATSs under common control and operating on the same technology platform be viewed as a single entity required to aggregate volume for purposes of determining whether the threshold test has been satisfied?

139. Should only certain provisions of Regulation SCI apply to Government Securities ATSs that meet the proposed definition of SCI ATS? For example, should they only be subject to certain aspects of Regulation SCI? If so, which provisions should apply? Do commenters believe that different or unique requirements should apply to the systems of such Government Securities ATSs? What should they be and why?

140. In what instances, if at all, should the systems of Government Securities ATSs that meet the proposed definition of SCI ATS be defined as "critical SCI systems"? Please describe.

141. Which subscribers or types of subscribers should Government Securities ATSs that meet the proposed definition of SCI ATS consider as "designated members or participants" that should be required to participate in the annual mandatory business continuity and disaster recovery testing? Please describe.

142. Should Government Securities ATSs that meet the proposed definition of SCI ATS not be defined as SCI entities but should be required to comply with provisions comparable to provisions of Regulation SCI?

143. What are the current practices of Government Securities ATSs with respect to the subject matter covered by Regulation SCI? To what extent do Government Securities ATSs have practices that are consistent with the requirements under Regulation SCI? To what extent do Government Securities ATSs' practices differ from the requirements under Regulation SCI? Please describe and be specific. Would the application of Regulation SCI or the Capacity, Integrity, and Security Rule weaken ATSs' existing capacity, integrity, and security programs?

144. Are there characteristics specific to the government securities market that would make applying Regulation SCI broadly or any specific provision of Regulation SCI to Government Securities ATSs unduly burdensome and inappropriate?

145. As commenters think about whether and how to apply Regulation SCI to Government Securities ATSs, are there any lessons commenters can draw from the market stress during Spring 2020, including, for example, lessons learned regarding business continuity or capacity planning?

VII. General Request for Comment

The Commission is requesting comments from all members of the public. The Commission particularly requests comment from the point of view of persons who operate ATSs

that would meet the proposed definition of Government Securities ATS, subscribers to those systems, and investors. The Commission seeks comment on all aspects of the proposed rule amendments and proposed form, particularly the specific questions posed above. Commenters are requested to provide empirical data in support of any arguments or analyses. With respect to any comments, the Commission notes that they are of the greatest assistance to its rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to the Commission's proposals where appropriate.

VIII. Concept Release on Electronic Corporate Bond and Municipal Securities Market

The SEC Fixed Income Market Structure Advisory Committee ("FIMSAC"), formed by the Commission in 2017, was established to provide the Commission "with diverse perspectives on the structure and operations of the U.S. fixed income markets, as well as advice and recommendations on matters related to fixed income market structure."[387] In 2018, the Committee made a recommendation to the Commission concerning the regulation of corporate and municipal debt trading platforms.[388] The FIMSAC's core concern was the lack of regulatory harmonization among fixed income electronic trading platforms, recognizing that some firms were regulated as ATSs, while some were regulated as broker-dealers or not at all. The FIMSAC stated that the varying regulatory treatment among fixed income electronic trading platforms is

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387 FIMSAC Charter art. 3 (November 15, 2017), available at https://www.sec.gov/files/fimsac-charter.pdf.

388 See FIMSAC, Recommendation for the SEC to Review the Framework for the Oversight of Electronic Trading Platforms for Corporate and Municipal Bonds (July 16, 2018), available at https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-electronic-trading-platforms-recommendation.pdf. For purposes of this concept release, corporate debt securities ("corporate debt") and municipal debt securities ("municipal debt") are collectively referred to as "fixed income securities," which do not include government securities.

based on differences in trading protocols or business models. The FIMSAC concluded that these distinctions in regulatory oversight complicate efforts to improve the efficiency and resiliency of the fixed income electronic trading markets. Furthermore, the FIMSAC stated that without a unifying regulatory framework for all fixed income electronic trading platforms, market structures will likely fragment further as regulators adopt new regulations that apply to only one type of platform.

As such, the FIMSAC recommended, among other things, that the Commission form, together with FINRA and the MSRB, a joint working group to review the regulatory framework for oversight of fixed income electronic trading platforms.[389] Furthermore, when the Commission adopted the enhanced transparency rules for NMS Stock ATSs, the Commission stated that in light of the recent recommendations of the FIMSAC, and comments received on the proposal to amend Regulation ATS for NMS Stock ATSs, the Commission would review the regulatory framework for fixed income electronic trading platforms, including to consider whether the Commission should propose amendments to Regulation ATS (and any other applicable rules) to account for operational and regulatory differences among fixed income electronic trading platforms.[390]

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389 Specifically, the FIMSAC recommended that the SEC, FINRA, and MSRB form a joint working group to conduct a review of the regulatory framework for oversight of electronic trading platforms used in the corporate and municipal bond markets: (i) to ensure that the regulatory framework best promotes the growth of fair and effective fixed income electronic trading markets; (ii) to ensure that no regulatory gaps or inconsistencies in the application of such regulation exist that increase the potential for investor harm, systemic risk or unfair competition; (iii) to consider whether Regulation ATS (and any other applicable rules) should be amended to account for differences in protocols and market structures commonly used to trade fixed income as compared to equities; (iv) to ensure that regulation is not unfairly promoting or impeding specific trading protocols and business models over others; and (v) to consider whether any existing regulation impacting the fixed income electronic trading markets is unnecessary from a cost-benefit perspective. See id.

390 See Regulation NMS Stock ATS Adopting Release, supra note 1, at 38783-84.

While the trading protocols generally differ from those used in the interdealer secondary cash markets for on-the-run U.S. Treasury Securities, trading of corporate debt and municipal debt often does occur on ATSs and other electronic platforms. These electronic platforms might offer various protocols for bringing together buyers and sellers in fixed income securities, including auctions, central limit order books, negotiation functionalities, and request for quote platforms ("RFQ platforms"). The Commission is soliciting public comment to obtain information about fixed income electronic trading platforms, including their operations, services, fees, market data, and participants.[391] This information could help the Commission and other regulators evaluate potential regulatory gaps that may exist among these platforms with respect to access to markets, system integrity, surveillance, and transparency, among other things. The Commission expects that the comments it receives will ultimately inform regulatory policy. The Commission requests comment on the following:

146. Given the technological developments in the fixed income electronic trading markets and electronic trading of fixed income securities, do commenters believe that the current regulatory framework for fixed income electronic trading platforms best promotes the growth of fair and efficient markets for investors? If not, what regulatory approach(es) would best address the needs of the market and market participants? Does the current regulatory structure for national securities exchanges, broker-dealers, and ATSs cover the full range of fixed income electronic trading platforms operating today? If not,

[391] While this concept release is focused on electronic trading platforms for corporate debt and municipal debt, to the extent commenters believe comments are relevant to electronic trading platforms for other types of debt securities, including government securities, that information would be helpful to the Commission.

please explain any gaps in the regulatory structure and to which platforms it does not apply.

147. Exchange Act Rule 3b-16(a) sets forth a functional test of whether a system meets 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. Is the Commission's approach under Exchange Act Rule 3b-16(a) appropriate for fixed income electronic trading platforms? If not, what elements of the definition of exchange under Rule 3b-16(a) do commenters believe that the Commission should consider changing and why? For example, should or should not the element of "orders" in Rule 3b-16(a) be included in the definition of exchange with regard to fixed income electronic trading platforms?

148. Are there particular elements of the definition of exchange under Exchange Act Rule 3b-16(a) that should or should not be changed with respect to fixed income electronic trading platforms, or more specifically, the corporate debt markets or municipal debt markets? What are commenters' views on the potential consequences of expanding or limiting the definition of exchange under Rule 3b-16(a) with regard to these trading platforms or markets? For instance, what are commenters' views on how changing Rule 3b-16(a) could benefit or harm investors and the market participants that use fixed income electronic trading platforms? Should the Commission, rather than amending Rule 3b-16(a), issue guidance on the elements of Rule 3b-16(a) regarding considerations

relevant to the definition of exchange in the context of a fixed income platform? If so, what elements of Rule 3b-16(a) should the Commission issue guidance on and why? For example, should the Commission issue guidance on what is considered an "order" under Rule 3b-16(a)? Given the technological changes in the securities industry since Regulation ATS was adopted in 1998, should the Commission revise, or provide additional, examples in Regulation ATS of systems that fall within or outside the definition of exchange under Rule 3b-16?[392]

149. As noted above, fixed income electronic trading platforms offer a variety of different trading protocols and business models, and the FIMSAC expressed concern about varying regulatory treatment among these trading platforms. What do commenters believe are the key common characteristics of a fixed income electronic trading platform that should merit their common regulation under the securities laws?

150. As noted above, securities intermediaries generally are regulated either as exchanges or as brokers or dealers. What do commenters believe are the key regulatory standards that should apply to fixed income electronic trading platforms? Are there aspects of the current regulatory structure, other than regulatory treatment, that should not apply to these trading platforms? Are there other standards not addressed in the current regulation that should be considered? How could the current regulatory structure for these trading platforms be improved?

151. What do commenters believe are the key inconsistencies in the regulation of fixed income electronic trading platforms? Do these inconsistencies create risks to the integrity of the market for fixed income securities, and if so, how? Do these

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[392] See Regulation ATS Adopting Release, supra note 35, at 70854-56.

inconsistencies create burdens on competition among market participants, and if so, how?

152. Is the current regulatory framework for fixed income electronic trading platforms unfairly promoting or impeding specific trading platforms or trading protocols over others, and if so, how? How, if at all, is the current regulatory structure hindering automation of the markets?

153. The Commission, FINRA, and the MSRB all have important roles in the regulation of corporate and municipal debt markets. Do commenters believe that the combined regulation of these markets is effective? If not, how could collective regulation of these markets be improved?

154. Should the Commission consider a definition of exchange that is unique for fixed income electronic trading platforms? If so, what should that definition be and what aspects of the fixed income electronic trading markets should the definition address or not address? What are commenters' views on how such a definition would be advantageous or disadvantageous to market participants that use fixed income electronic trading platforms and investors? How would a definition of exchange tailored for fixed income electronic trading platforms promote fair and orderly markets? How could such a definition be crafted in a way that would account for potential changes in technology that could be applied to fixed income markets and trading in the future? Would a separate definition of exchange for fixed income electronic trading platforms conflict, or create investor confusion, with regard to a definition of exchange for other asset classes, such as government securities, NMS stock, or OTC equity securities?

155. Some electronic platform providers offer their customers a suite of different types of electronic trading protocols (e.g., auctions, request for quotes, central limit order books) that are designed to find and match counterparties. These electronic platform providers might also offer voice protocols or a hybrid of voice and electronic protocols and pricing data and facilitate trade reporting and clearing services. Do electronic platform providers such as these provide fixed income market participants with a marketplace for buying and selling fixed income products? Should all the protocols and services offered by electronic platform providers be considered together for purposes of the definition of exchange under federal securities laws?

156. Are the current conditions to the exemption from the definition of an "exchange" under Regulation ATS appropriate for ATSs that trade corporate or municipal debt securities ("Fixed Income ATSs")? For example, should Fixed Income ATSs that file a confidential Form ATS with the Commission be subject to the similar operational transparency rules as an NMS Stock ATS that files a public Form ATS-N with the Commission and disclose similar detailed information about the ATS's manner of operations and ATS-related activities of the broker-dealer operator and its affiliates? If yes, what types of disclosures should such a form solicit? What type of disclosures should such a form not solicit? How should the form compare to Form ATS-N?

157. Should the Commission continue to require Fixed Income ATSs to file a Form ATS but make Form ATS public? If so, how, if at all, should Form ATS be amended?

158. Rule 304 of Regulation ATS provides a process for the Commission to review Form ATS-N before it becomes effective and the NMS Stock ATS can operate pursuant to the exemption under Exchange Act Rule 3a1-1(a)(2). Rule 304 also provides the

Commission with the opportunity to declare the Form ATS-N ineffective after notice and opportunity for hearing. Fixed Income ATSs operate pursuant to the same exemption provided under Exchange Act Rule 3a1-1(a)(2) as NMS Stock ATSs but are not subject to Rule 304. Should the Commission amend Regulation ATS to apply Rule 304 of Regulation ATS to Fixed Income ATSs?

159. Today, ATSs can only transact in securities; however, an ATS may, in addition to its Rule 3b-16 activity, conduct secondary transactions in securities in manners that may not meet a criteria of Exchange Act Rule 3b-16(a). Should the Commission amend Regulation ATS to require Fixed Income ATSs to only operate in a manner that meets the criteria of Rule 3b-16(a)? What would be the advantages and disadvantages to investors and the Commission should the Commission require this?

160. The Fair Access Rule applies when an ATS, during at least four of the preceding six months, had five percent or more of the average daily volume of municipal securities traded in the United States or had five percent or more of the average daily volume of corporate debt securities traded in the United States. Do commenters believe that the current fair access threshold under Rule 301(b)(5) of Regulation ATS for Fixed Income ATSs continues to be appropriate to capture ATSs with a significant percentage of the trading volume in corporate debt and municipal debt? If not, do commenters believe that access to Fixed Income ATSs is an important goal that the Commission should consider in regulating such platforms? If so, are there circumstances in which a Fixed Income ATS should be able to limit access to its system, or alternatively, should be required to grant access to its system? Are the current requirements of the Fair Access Rule appropriate for Fixed Income ATSs? Should the definition of exchange and

Regulation ATS be amended so that the Fair Access Rule applies to transactions in fixed income securities occurring through various platforms offered by a broker-dealer and its affiliates in which the broker-dealer also operates a Fixed Income ATS? Should the Fair Access Rule apply to platforms that trade fixed income securities but are not Fixed Income ATSs?

161. The current Capacity, Integrity, and Security Rule under Rule 301(b)(6) of Regulation ATS applies when an ATS, during at least four of the preceding six months, had 20 percent or more of the average daily volume of municipal securities traded in the United States or had 20 percent or more of the average daily volume of corporate debt securities traded in the United States. Do commenters believe that the current Capacity, Integrity, and Security Rule continues to be appropriate to capture ATSs with a significant percentage of the trading volume in corporate debt and municipal debt? Should the Commission amend Rule 301(b)(6) to lower the current 20 percent threshold? If so, should the Commission adopt a threshold of, for example, 5 percent, 7.5 percent, 10 percent or 15 percent? Please support your views. Do commenters believe that the Capacity, Integrity, and Security Rule requirements are appropriate for Fixed Income ATSs? Should the requirements apply to all Fixed Income ATSs? Should the Capacity, Integrity, and Security Rule requirements apply to non-ATS platforms for corporate bonds and municipal securities operated by a broker-dealer that also operates a Fixed Income ATS? Should the Capacity, Integrity, and Security Rule apply to platforms that trade corporate bonds and municipal securities but are not Fixed Income ATSs?

162. ATSs that trade equity securities – both NMS stocks and non-NMS stocks – are no longer subject to the Capacity, Integrity, and Security Rule under Rule 301(b)(6) of

Regulation ATS. Rather they are now subject to the requirements of Regulation SCI.[393] Should the Fixed Income ATSs be subject to Regulation SCI rather than the Capacity, Integrity, and Security Rule under Regulation ATS? If yes, should the same threshold tests for applying Regulation SCI to an ATS be applied to Fixed Income ATSs when determining if a given Fixed Income ATS is an "SCI ATS?" If not, what trading volume or other threshold should apply to Fixed Income ATS?

163. Do commenters believe that it is clear when a fixed income electronic trading platform meets the definition of a broker-dealer under the Exchange Act? Should the Commission provide guidance? Are there particular fact patterns that commenters believe would be helpful for the guidance to address?

164. Should broker-dealers offering customers protocols or facilities to buy and sell fixed income securities that would not meet the Exchange Act definition of "exchange" otherwise be subject to the same operational transparency rules as ATSs? If yes, should these broker-dealers be required to: (1) file a form with the Commission similar to the confidential Form ATS; or (2) file a form with the Commission similar to public Form ATS-N for NMS Stock ATSs? Alternatively, should these broker-dealers be subject to operational transparency requirements that are different than ATSs? If so, what form of operational transparency is appropriate? What type of information would be important for the broker-dealer to disclose to its customers about the platform that it operates? Do commenters have concerns that increased operational transparency requirements for these broker-dealers might cause an undue burden on competition for them? Do

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393 See supra notes 286 and 345 and accompanying text.

commenters think that increasing operational transparency for these broker-dealers would benefit competition in the market?

165. Do commenters believe that there are fixed income electronic trading platforms that are not registered as either a broker-dealer or a national securities exchange and that do not operate as an ATS but perform similar market functions as a broker-dealer, national securities exchange, or an ATS? If so, please explain what these systems are and how they may be different or the same as a broker-dealer, national securities exchange, or ATS that operates as a fixed income electronic trading platform. Do commenters believe that such platforms should or should not be required to register with the Commission? Do commenters believe that such platforms should or should not be required to operate pursuant to an exemption from the definition of an exchange, such as Regulation ATS? Should such platforms be required to register as something other than a broker-dealer or national securities exchange? Should such systems be subject to the same operational transparency requirements for broker-dealers, national securities exchanges, or ATSs? What aspects of these systems would be important to market participants who may use these platforms? Do commenters believe that there is sufficient oversight of these platforms by the Commission? If not, how should the Commission enhance oversight of these platforms?

166. As commenters think about whether and how to change the regulatory framework for fixed income electronic trading platforms, are there any lessons commenters can draw from the market stress during Spring 2020, including, for example, lessons learned regarding business continuity or capacity planning?

IX. Paperwork Reduction Act

Certain provisions of the proposed rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[394] The Commission is submitting these collections of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid control number. The title of the new collection of information is "Form ATS-G." The titles of the existing collections of information are:

Rule	Rule Title	OMB Control Number
Rule 304 of Regulation ATS	Regulation ATS Rule 304 and Form ATS-N	3235-0763
Rule 301 of Regulation ATS	Regulation ATS Rule 301 Amendments	3235-0509
Rule 302 of Regulation ATS	Rule 302 (17 CFR 242.302) Recordkeeping Requirements for Alternative Trading Systems	3235-0510
Rule 303 of Regulation ATS	Rule 303 (17 CFR 242.303) Record Preservation Requirements for Alternative Trading Systems	3235-0505
Rule 15b1-1 under the Exchange Act	Form BD and Rule 15b1-1 Application for Registration as a Broker-Dealer	3235-0012
Rule 10(b) of Regulation S-T	Form ID	3235-0328
Rules 1001 through 1007 of Regulation SCI	Regulation SCI and Form SCI	3235-0703

A. Summary of Collection of Information

The proposed amendments to Regulation ATS include five new categories of obligations that would require a collection of information within the meaning of the PRA: (1) requiring Currently Exempted Government Securities ATSs to comply with the applicable provisions of

[394] 44 U.S.C. 3501 et seq.

Rule 301(b) of Regulation ATS;[395] (2) applying the requirements of proposed Form ATS-G to Government Securities ATSs, including both Currently Exempted Government Securities ATSs and Legacy Government Securities ATSs that operate pursuant to a Form ATS on file with the Commission as of the Compliance Date; (3) amending Regulation ATS to apply the Fair Access Rule to Government Securities ATSs that have significantly large trading volume in U.S. Treasury Securities or Agency Securities; (4) amending Form ATS and Form ATS-R to provide that such forms be filed electronically; (5) applying the requirements of Regulation SCI to the trading of U.S. Treasury Securities and Agency Securities on Government Securities ATSs. The proposed new collections of information are summarized in the following table below:

	Legacy Filers[396]	**Currently Exempted Government Securities ATSs**	**NMS Stock ATSs**	**ATSs that are not NMS Stock ATSs or Government Securities ATSs**
Broker-dealer registration (Rule 301(b)(1))	*Existing requirement*	New requirement	*Existing requirement*	*Existing requirement*
Fair Access Rule (Rule 301(b)(5))	New requirement	New requirement	*Existing requirement*	*Existing requirement for ATSs that trade certain securities*
Recordkeeping requirements (Rule 301(b)(8))	*Existing requirement*	New requirement	*Existing requirement*	*Existing requirement*
Form ATS-R reporting (Rule 301(b)(9))	Revised requirements of Form ATS-R	New requirement	Revised requirements of Form ATS-R	Revised requirements of Form ATS-R
Written safeguards and written procedures to ensure the confidential treatment of trading information (Rule 301(b)(10))	*Existing requirement*	New requirement	*Existing requirement*	*Existing requirement*
Recordkeeping requirements (Rule 302)	*Existing requirement*	New requirement	*Existing requirement*	*Existing requirement*

395 17 CFR 242.301. The applicable provisions are Rules 301(b)(1), 301(b)(8), 301(b)(9), and 301(b)(10).

396 See text accompanying infra note 422 for the definition of "Legacy Filers."

Record preservation requirements (Rule 303)	*Existing requirement*	New requirement	*Existing requirement*	*Existing requirement*
Form ATS/Form ATS-G/Form ATS-N filing requirements (Rules 301(b)(2) and 304)	New requirement under Rule 304	New requirement under Rule 304	Revised requirements of Form ATS-N, filed pursuant to Rule 304	Revised requirements of Form ATS, filed pursuant to Rule 301(b)(2)
Regulation SCI	New requirement	New requirement	*Existing requirement*	*Existing requirement for ATSs that trade certain securities*

1. Requirements Relating to Application of Rule 301(b) of Regulation ATS to Currently Exempted Government Securities ATSs

The Commission is proposing to amend Regulation ATS to remove the exemption from compliance for ATSs that solely trade government securities or repos and, therefore, require these ATSs to comply with the information collection requirements of Regulation ATS.[397]

2. Requirements Relating to Proposed Amendments to Rules 301(b)(2)(viii) and 304 of Regulation ATS, Including Proposed Form ATS-G, and Amendments to Rule 301(b)(9)

The Commission proposes that any ATS that meets the definition of Government Securities ATS would be required to complete Form ATS-G and file it with the Commission in a structured format via EDGAR.[398] The proposal would also require each Government Securities ATS to make public via posting on its website (i) a direct URL hyperlink to the Commission's website that contains Form ATS-G filings and (ii) the most recently disseminated Covered Form.[399]

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397 These requirements are listed on the table above and described in detail in supra Sections II.C and II.E.

398 See generally supra Sections II.F; II.H.

399 See supra Section II.G.

Proposed Form ATS-G would require that the responding entity provide information about the type of filing on the cover page.[400] Part I of proposed Form ATS-G would require information about the broker-dealer operator.[401] Proposed Part II would require a Government Securities ATS to disclose information about the ATS-related activities of the broker-dealer operator and its affiliates.[402] Proposed Part III would require the Government Securities ATS to provide certain disclosures about the manner of operations of the ATS.[403] Proposed Part IV would require the Government Securities ATS to provide contact information and consent to service of any civil action brought by, or any notice of any proceeding before, the Commission or an SRO in connection with the ATS's activities.[404]

A Government Securities ATS would be required by Rule 301(b)(9) to file a Form ATS-R filing for the ATS to report its trading volume in government securities and repos.[405] An ATS that is not an NMS Stock ATS or Government Securities ATS would be subject to Rule 301(b)(2) and file a Form ATS, and, in accordance with Rule 301(b)(9), a Form ATS-R.[406]

3. Requirements Relating to Proposed Amendments to Rule 301(b)(5)

The Commission is proposing to amend Regulation ATS to require an ATS that has a significantly large percentage of volume of trading in U.S. Treasury Securities or Agency

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400 See supra Section III.A.1.

401 See supra Section III.A.2.

402 See supra Section III.B.

403 See supra Section III.C.

404 See supra Section III.D.

405 See supra Section II.H.

406 See id.

Securities to comply with the Fair Access Rule.[407] Under proposed Rule 301(b)(5), an ATS that reaches a certain volume of trading in U.S. Treasury Securities or Agency Securities would be required to, among others things, establish written standards for granting access to trading on their systems and apply these standards fairly, and is prohibited from unreasonably prohibiting or limiting any person with respect to trading in the stated securities. Government Securities ATSs that meet the fair access thresholds would also need to comply with Rule 303(a)(1)(iii),[408] which requires that, for a period of not less than three years, the first two years in an easily accessible place, an ATS preserve at least one copy of its standards for access to trading, all documents relevant to its decision to grant, deny, or limit access to any person, and all other documents made or received by the ATS in the course of complying with Rule 301(b)(5).[409]

4. Requirements Related to Proposed Amendments to Rule 301(b)(2), Form ATS, and Form ATS-R

Rule 301(b)(2) of Regulation ATS requires that every ATS subject to Regulation ATS file an initial operation report,[410] amendments to its initial operation report,[411] and a cessation of operations report on Form ATS.[412] ATSs are required to file quarterly transaction reports on Form ATS-R pursuant to Rule 301(b)(9).[413] The Commission proposes to require respondents to

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407 17 CFR 242.301(b)(5). See supra Section II.D.

408 17 CFR 242.303(a)(1)(iii).

409 See supra note 123.

410 See 17 CFR 242.301(b)(2)(vi).

411 See 17 CFR 242.301(b)(2)(ii).

412 See 17 CFR 242.301(b)(2)(v).

413 See 17 CFR 242.301(b)(9)(i). An ATS must also file Form ATS-R more frequently upon request of the Commission. See Form ATS-R Instructions.

submit these reports electronically.[414] The Commission is also proposing changes to modernize Form ATS and Form ATS-R.[415]

5. Requirements Related to Amendments to Regulation SCI

The Commission is proposing to expand the definition of "SCI ATS" under Regulation SCI to include Government Securities ATSs that meet certain volume thresholds with respect to U.S. Treasury Securities and/or Agency Securities. Under the proposal, a Government Securities ATS that meets the proposed amended definition of "SCI ATS" would fall within the definition of "SCI entity" and, as a result, would be subject to the requirements of Regulation SCI.[416]

B. Proposed Use of Information

1. Proposed Amendments to Apply Rule 301(b) of Regulation ATS to Currently Exempted Government Securities ATSs

Records requested by Rule 301(b)(8), as well as Rules 302 and 303, and information provided pursuant to the proposed broker-dealer registration requirements under Section 15 or Section 15C(a)(1)(A) of the Exchange Act, including Form BD and SRO membership requirements, would allow the Commission and SROs to examine Currently Exempted Government Securities ATSs for compliance with the conditions of exemption provided under Exchange Act Rule 3a1-1(a) and Regulation ATS.[417] Information disclosed on Form ATS-R by Currently Exempted Government Securities ATSs under proposed Rule 301(b)(9) would permit the Commission to monitor the trading on these ATSs for compliance with the Exchange Act and applicable rules thereunder and enforce the Fair Access Rule. Information contained in the

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414 See supra Section IV.

415 See id.

416 For further details regarding the requirements of Regulation SCI, see Regulation SCI Adopting Release, supra note 2.

417 See supra note 101 and accompanying text.

records required to be preserved pursuant to proposed Rules 301(b)(10) and 303(a)(1)(v) would be used by the Commission, state securities regulatory authorities, and SROs to better understand how each Currently Exempted Government Securities ATS protects subscribers' confidential trading information.

2. Proposed Amendments to Rule 301(b)(5) of Regulation ATS

The Commission will use the information related to the Fair Access Rule for Government Securities ATSs to monitor the growth and development of Government Securities ATSs. In addition, the Commission believes that this information will help the Commission oversee Government Securities ATSs to evaluate for compliance with the Fair Access Rule, which the Commission believes will ensure that qualified market participants have fair access to the nation's securities markets.

3. Proposed Amendments to Rule 301(b)(2), Form ATS, and Form ATS-R

The Commission uses the information provided pursuant to Rule 301 to monitor the growth and development of ATSs and oversee ATSs for the purpose of protecting investors. In particular, the information collected and reported to the Commission by ATSs enables the Commission to evaluate the operation of ATSs with regard to national market system goals, and to monitor the competitive effects of these systems to ascertain whether the regulatory framework remains appropriate with respect to such systems. Without the information required by Rule 301, the Commission would be limited in its ability to comply with its statutory obligations, including to provide for the protection of investors and to promote the maintenance of fair and orderly markets.

4. Proposed Application of Regulation SCI to Government Securities ATSs

The Commission would use information provided pursuant to Regulation SCI to, among other things, advance the goal of improving Commission review and oversight of U.S. securities market infrastructure and help promote the maintenance of fair and orderly markets.[418]

5. Proposed Rules 301(b)(2)(viii) and 304 of Regulation ATS, Including Proposed Form ATS-G, and Proposed Rule 301(b)(9)

The Commission believes that market participants would use the information publicly disclosed on proposed Form ATS-G to compare and evaluate information about different Government Securities ATSs. In addition, the Commission would use the information disclosed on proposed Form ATS-G and Form ATS-R to oversee the growth and development of Government Securities ATSs. The Commission believes that the information contained in the records required to be preserved by Rule 303(a)(2)(ii) would be used by examiners and other representatives of the Commission, state securities regulatory authorities, and SROs to evaluate whether Government Securities ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations.

C. Respondents

The below table describes the applicable respondents for each category of "collection of information" requirements:

"Collection of Information" Requirement	Applicable Respondents
Applicable sections of Rule 301(b), Rule 302, and Rule 303	Currently Exempted Government Securities ATSs and any Government Securities ATSs that are established in the future[419]

418 See Regulation SCI Adopting Release, supra note 2, at Section V.B.

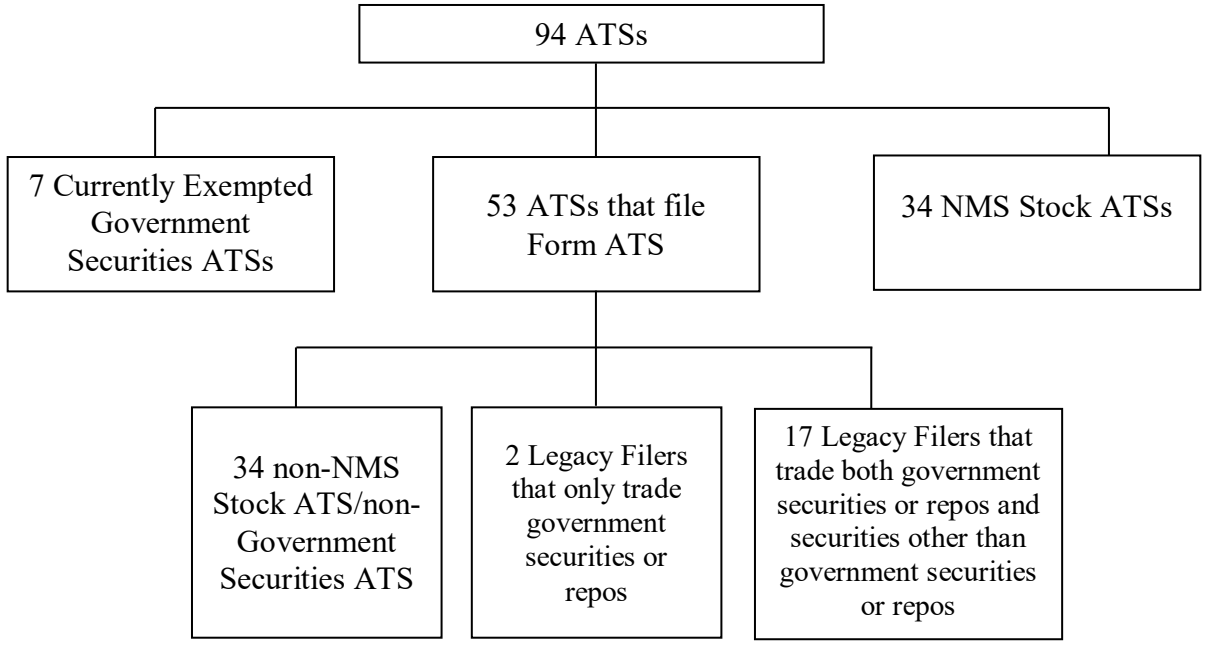
419 The "collection of information" requirements relating to Rule 301(b), Rule 302, and Rule 303 have previously been established for Legacy Government Securities ATSs that have

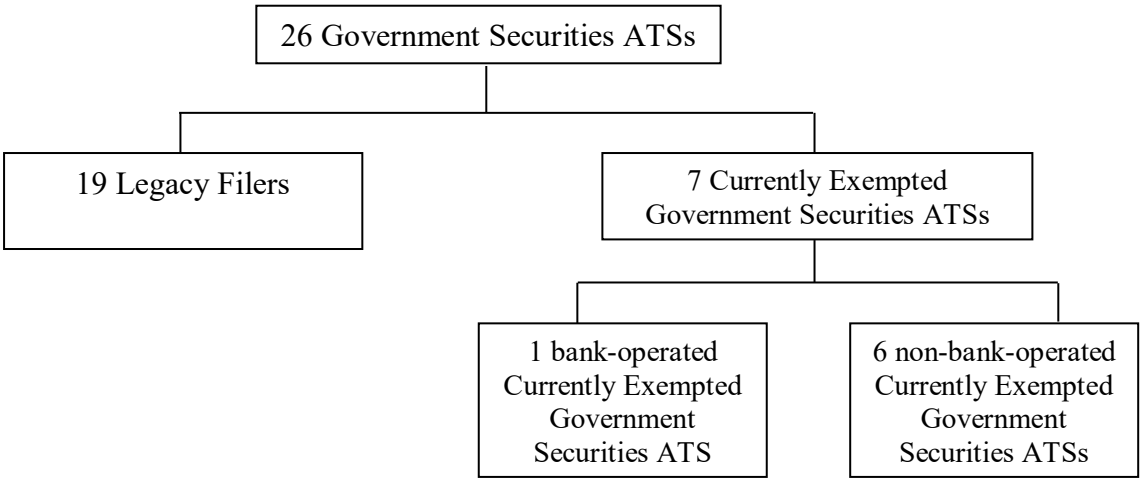
Rule 301(b)(2)(viii), Rule 304 and Form ATS-G, and Rule 301(b)(9)	All Government Securities ATSs[420]
Form ATS	All ATSs that file a Form ATS
Form ATS-R	All ATSs that file a Form ATS, Form ATS-N, or Form ATS-G
Rule 301(b)(5) and Regulation SCI	All Government Securities ATSs that reach the volume thresholds

previously disclosed on their Form ATS their intention to trade government securities or repos. See FR Doc. 2014-02143, 79 FR 6236 (February 3, 2014) (Submission for OMB Review, Extension: Rule 301 and Forms ATS and ATS-R; SEC File No. 270-451; OMB Control No. 3235-0509) ("Rule 301 OMB Update").

420 The "collection of information" requirements relating to Rule 304 and Form ATS-G would replace the requirements of current Rule 301(b)(2).

The following chart summarizes the Commission's estimated number of respondents:





The Commission estimates that there are 7 Currently Exempted Government Securities ATSs that would be newly subject to the requirements of the exemption under Rule 3a1-1(a)(2)

and required to comply with the applicable sections of Rule 301(b), Rule 302, and Rule 303.[421] Of these 7 Currently Exempted Government Securities ATSs, the Commission estimates that 1 is currently operated by a bank and would be newly subject to broker-dealer registration requirements under Section 15 or Section 15C(a)(1)(A) of the Exchange Act.

In addition, there are 19 ATSs operating pursuant to a Form ATS currently on file with the Commission that have noticed that they trade government securities or repos ("Legacy Filers").[422] Accordingly, the Commission estimates that 26 Government Securities ATSs would be required to comply with Regulation ATS, including Rule 304, Form ATS-G, and the proposed amendments related to Rule 301(b)(9).[423] Under the proposed amendments to Regulation ATS, 17 broker-dealers, each of which operates a Legacy Filer, would be required to file a Form ATS to disclose information about their activities in securities other than NMS stock, government securities, or repos, if any.[424] Consequently, these 17 broker-dealers would have to amend

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421 The Commission estimates that 5 ATSs that do not have a Form ATS on file with the Commission limit their trading activity to government securities and 2 ATSs limit their trading activity to repos.

422 Based on data compiled from Forms ATS submitted to the Commission as of July 1, 2020, 18 ATSs have disclosed on their Form ATS their intention to trade government securities, and 3 ATSs have disclosed their intention to trade repos. 2 of the 3 Government Securities ATSs that have noticed their intention to trade repos have also noticed their intention to trade government securities.

423 These 26 ATSs include 19 Legacy Filers that operate pursuant to a Form ATS as of June 1, 2020 and 7 Currently Exempted Government Securities ATSs that would be newly subject to the requirements of the Exchange Act Rule 3a1-1(a)(2) exemption. As discussed below, the Commission recognizes that there may be new entities that will seek to become Government Securities ATSs, that would be required to comply with Regulation ATS, including proposed amendments to Rule 304, Rule 301(b)(9), and Form ATS-G.

424 As of July 1, 2020, 2 of the 19 Legacy Filers trade only government securities or repos. Therefore, 2 broker-dealers that operate these Legacy Filers would not be subject to the proposed requirement to amend Form ATS and file separate Forms ATS-R.

Forms ATS to remove discussion of those aspects of the ATS related to the trading of government securities and repos, and on an ongoing basis, file separate Forms ATS-R to report trading volume in government securities or repos.[425]

The Commission believes that of the 19 Legacy Filers, most would continue to operate notwithstanding the proposed amendments to Regulation ATS. For the purposes of this analysis of the paperwork burden associated with the proposed amendments to Regulation ATS, and to make a complete account of the impact on potential respondents, the Commission assumes that there will be 26 respondents. The Commission believes that this number is reasonable, as it assumes that most Legacy Filers would file a Form ATS-G with the Commission, and acknowledges that there may be some entities that may choose to commence operations as a Government Securities ATS and others that cease operations altogether. In the Commission's experience with implementation of Form ATS-N, a small number of NMS Stock ATSs either filed a cessation of operations report before they were required to file an initial Form ATS-N or did not file an initial Form ATS-N. These ATSs may have ceased operations and did not file a cessation of operations report or determined not to file initial Form ATS-N for a variety of business reasons, including to not comply with the new requirements of Form ATS-N. The Commission observes that from 2015 through the end of 2019, there was an average of 1 new ATS per year that disclosed that it trades or expects to trade government securities or repos on its initial operation report on Form ATS and 1 Government Securities ATS that ceased operations each year. Based on this information, the Commission estimates that 1 new entity will file to become a Government Securities ATS and 1 Government Securities ATS will cease operations in each of the next three years.

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425 See proposed Rule 301(b)(9).

Currently, there are 53 ATSs that file Form ATS. As of July 1, 2020, 2 of these trade only government securities or repos and, as proposed, would only be required to file a Form ATS-G and amendments to Form ATS-G after the Compliance Date. Accordingly, the Commission estimates that 51 ATSs will continue to file Form ATS amendments. The Commission also estimates that 34 NMS Stock ATSs will continue to file Form ATS-N. In addition, the Commission estimates 94 ATSs will be required to file Form ATS-R, including 87 ATSs that currently file Form ATS-R and 7 Currently Exempted Government Securities ATSs.[426]

The Commission estimates that of the 26 Government Securities ATSs, 3 will meet the proposed volume thresholds and be subject to the Fair Access Rule and Regulation SCI.[427] The Commission believes that this number is reasonable based on the Commission's review of the Forms ATS-R of Legacy Filers.

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426 The numbers of respondents are based on data compiled from Forms ATS and ATS-R filed with the Commission as of July 1, 2020. One broker-dealer operates both a Legacy Filer and an NMS Stock ATS. For purposes of estimating the burden applicable to this Legacy Filer and NMS Stock ATS, the Commission counts each ATS operated by a broker-dealer as a separate respondent because each such ATS has separate filing obligations. See infra Section IX.D.4.

427 See supra Sections II.D and VI. The Commission believes that 3 Government Securities ATSs and 1 Government Securities ATS will meet the proposed volume threshold for U.S. Treasury Securities and Agency Securities, respectively. The Commission estimates that the Government Securities ATS that will meet the threshold for Agency Securities will also meet the threshold for U.S. Treasury Securities. Accordingly, the Commission estimates that, as proposed, 3 Government Securities ATSs will be subject to the Fair Access Rule and Regulation SCI. In addition, the Commission believes that 1 of the 3 Government Securities ATSs that would be subject to Regulation SCI is currently an SCI entity.

D. Total Initial and Annual Reporting and Recordkeeping Burdens

1. Rule 301(b) of Regulation ATS to Currently Exempted Government Securities ATSs

a. Application of Rule 301(b)(1) to Currently Exempted Government Securities ATSs

The Commission recognizes that applying Rule 301(b)(1) to Currently Exempted Government Securities ATSs would impose a new burden on Currently Exempted Government Securities ATSs that are banks, as proposed Rule 301(b)(1) would require these ATSs to register as broker-dealers under Section 15 or Section 15C(a)(1)(A) of the Exchange Act. Based upon the existing burdens for completing and filing Form BD and amending Form BD when information originally reported on Form BD changes or becomes inaccurate, the Commission estimates that burdens for registering with the Commission as a broker-dealer under Section 15 or Section 15C(a)(1)(A)[428] would impose the following initial and annual burdens:

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428 The Commission believes that the burden to register as a government securities broker or dealer would be, for the purposes for this PRA analysis, the same as the burden to register as a broker-dealer because the information the ATS is required to provide in Form BD and amended Form BD is similar regardless of whether the ATS is registering under Section 15 or Section 15C(a)(1)(A). Sole government securities broker-dealers must indicate that they are registering as a government securities broker or dealer under Section 15C of the Exchange Act on Item 2.C of Form BD. Otherwise, the information required to be provided on Form BD is identical.

Burden	Initial Burden	Annual Burden
Filing and amending Form BD	*Per ATS*: 2.75 hours[429] *Industry*: 2.75 hours[430]	*Per ATS*: 1 hour[431] *Industry*: 1 hour[432]

b. Application of Rules 301(b)(8), 302, and 303 of Regulation ATS to Currently Exempted Government Securities ATSs

The Commission recognizes that applying Rule 301(b)(8) to Currently Exempted Government Securities ATSs would impose a new burden on Currently Exempted Government Securities ATSs, which are currently not required to comply with these requirements. Rule 301(b)(8) would require Currently Exempted Government Securities ATSs to comply with the requirements of Rules 302 and 303 of Regulation ATS. Based on the Commission's currently approved estimates for ATSs, including Legacy Filers,[433] the Commission estimates that the

429 See FR Doc. 2019-16601, 84 FR 38086 (August 5, 2019) (Submission for OMB Review, Extension: Rule 15b1-1/Form BD; SEC File No. 270-19; OMB Control No. 3235-0012).

430 Compliance Manager at 2.75 hours x 1 bank-operated Currently Exempted Government Securities ATS = 2.75 burden hours. The Commission recognizes that the time necessary to complete Form BD would vary depending on the nature and complexity of the Currently Exempted Government Securities ATS.

431 The Commission estimates that the additional annual burden hours necessary for a Currently Exempted Government Securities ATS to complete and file an amended Form BD would be approximately 0.33 hours. The Commission received an average of 10,959 Form BD amendments per year from fiscal year 2016 to 2019. As of 2019, there were 3,700 broker-dealers registered with the Commission. Based on this estimate, the Commission estimates that Currently Exempted Government Securities ATSs would file 3 amendments per year.

432 Compliance Manager at 0.33 hours x 3 amendments x 1 Currently Exempted Government Securities ATS = 1 burden hour.

433 As the requirements of Rules 301(b)(8), 302, and 303 would be identical for Currently Exempted Government Securities ATSs and Legacy Filers, the Commission believes that the hourly burden would be the same for Currently Exempted Government Securities ATSs as it is for Legacy Filers.

proposed application of Rules 301(b)(8), 302, and 303 to Currently Exempted Government Securities ATSs would impose the following annual burdens:

Burden	Annual Burden
Recordkeeping requirements under Rule 302	*Per ATS*: 45 hours[434] *Industry*: 315 hours[435]
Record preservation requirements under Rule 303	*Per ATS*: 15 hours[436] *Industry*: 105 hours[437]
Total – Rule 301(b)(8)	*Per ATS*: 60 hours *Industry*: 420 hours

c. Application of Rule 301(b)(9) to Currently Exempted Government Securities ATSs

The Commission recognizes that the proposed application of Rule 301(b)(9) to Currently Exempted Government Securities ATSs would impose a burden on these respondents, as Currently Exempted Government Securities ATSs are currently not required to comply with these requirements. The Commission estimates that the proposed application of Rule 301(b)(9) to Currently Exempted Government Securities ATSs would impose the following annual burden:

434 Compliance Clerk at 45 hours = 45 burden hours. See FR Doc. 2019-19237, 84 FR 47028 (September 6, 2019) (Submission for OMB Review, Extension: Rule 302; SEC File No. 270-453; OMB Control No. 3235-0510).

435 45 hours x 7 Currently Exempted Government Securities ATSs = 315 burden hours.

436 Compliance Clerk at 15 hours = 15 burden hours. See FR Doc. 2016-16040, 81 FR 44338, 44339 (Submission for OMB Review, Extension: Rule 303; SEC File No. 270-450; OMB Control No. 3235-0505).

437 15 hours x 7 Currently Exempted Government Securities ATSs = 105 burden hours.

Burden	Annual Burden
Form ATS-R	*Per ATS*: 19 hours[438] *Industry*: 133 hours[439]

The Commission's currently approved estimate for the average compliance burden for each Form ATS-R filing, including Form ATS-R filings by Legacy Filers, is 4 hours.[440] The Commission is proposing amendments to Form ATS-R, which would add an additional burden of 0.75 hours per filing,[441] and therefore the average compliance burden for each Form ATS-R filing would be 4.75 hours.

d. Application of Rules 301(b)(10) and 303(a)(1)(v) to Currently Exempted Government Securities ATSs

The Commission recognizes that Rules 301(b)(10) and 303(a)(1)(v) of Regulation ATS would impose certain new burdens on respondents as Currently Exempted Government Securities ATSs are not currently subject to these requirements. Based on the currently-approved burdens for Legacy Filers,[442] the Commission estimates that the proposed application of Rules 301(b)(10) and 303(a)(1)(v) to Currently Exempted Government Securities ATSs would impose the following initial and annual burdens:

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438 Attorney at 3 hours + Compliance Manager at 0.25 hours + Compliance Clerk at 1.5 hours = 4.75 burden hours. See infra notes 525, 526, and 528. The annual burden per Currently Exempted Government Securities ATS would be 4.75 hours x 4 filings = 19 burden hours.

439 The aggregate annual burden would be 4.75 hours x 4 filings x 7 Currently Exempted Government Securities ATSs = 133 burden hours.

440 Attorney at 3 hours + Compliance Clerk at 1 hour = 4 burden hours. See Rule 301 OMB Update, supra note 419, at 6237.

441 See supra Section V.C and infra Section IX.D.4 (discussing proposed changes to Form ATS-R applicable to all ATSs).

442 See NMS Stock ATS Adopting Release, supra note 1, at 38868.

Burden	Initial Burden	Annual Burden
Written safeguards and written procedures requirement under Rules 301(b)(10) and 303(a)(1)(v)	*Per ATS*: 10 hours[443] *Industry*: 70 hours[444]	*Per ATS*: 4 hours[445] *Industry*: 28 hours[446]

2. Proposed Amendments to Rules 301(b)(2)(viii) and 304 of Regulation ATS, Including Proposed Form ATS-G

a. Baseline Measurements

The Commission estimates that the proposed amendments to Rules 301(b)(2)(viii) and 304 would impose the following initial and annual baseline burdens to Legacy Filers, which are equivalent to the currently approved estimates for Form ATS and Form ATS-R:

Baseline Burden	Initial Baseline Burden	Annual Baseline Burden
Initial operation report on Form ATS	*Per ATS*: 20 hours[447] *Industry*: 380 hours	N/A
Form ATS amendments (twice per year)[448]	N/A	*Per ATS*: 12 hours[449] *Industry*: 228 hours

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443 The Commission estimates that a Currently Exempted Government Securities ATS's initial, one-time burden would be approximately 10 hours (Attorney at 9 hours + Compliance Clerk at 1 hour = 10 burden hours) based on the Commission's highest approximation of the additional burden per ATS, but that the burden could range between 5 and 10 hours (Attorney at 4-9 hours + Compliance Clerk at 1 hour = 5-10 burden hours). See id.

444 (Attorney at 9 hours + Compliance Clerk at 1 hour) x 7 Currently Exempted Government Securities ATSs = 70 burden hours.

445 Attorney at 2 hours + Compliance Clerk at 2 hours = 4 burden hours. See NMS Stock ATS Adopting Release, supra note 1, at 38868.

446 4 hours x 7 Currently Exempted Government Securities ATSs = 28 burden hours.

447 Attorney at 13 hours + Compliance Clerk at 7 hours = 20 burden hours. See Rule 301 OMB Update, supra note 419, at 6237.

448 During the fiscal year of 2019, the Commission received 39 amendments from the 19 Legacy Filers. Accordingly, the Commission estimates that Legacy Filers amend their Form ATS on average twice per year.

449 The Commission estimates the current average compliance burden for each amendment to Form ATS is: Attorney at 4.5 hours + Compliance Clerk at 1.5 hours = 6 burden

Cessation of operations report on Form ATS	N/A	*Per ATS*: 2 hours[450] *Industry*: 2 hours[451]
Form ATS-R	N/A	*Per ATS*: 16 hours[452] *Industry*: 304 hours
Total – baseline burden	*Per ATS*: 20 hours *Industry*: 380 hours	*Per ATS*: 30 hours *Industry*: 534 hours

Currently Exempted Government Securities ATSs are not currently required to comply with the requirements of Rule 301(b)(2). The Commission estimates that the proposed amendments to Rules 301(b)(2)(viii) and 304 would impose initial and annual baseline burdens equivalent to those for Legacy Filers described above.

b. Burdens

The Commission believes that although many of the disclosures required by proposed Form ATS-G are currently required by Form ATS, proposed Form ATS-G would require a Government Securities ATS to provide significantly more detail in those disclosures than currently is required by Form ATS, as well as additional disclosures not currently mandated by Form ATS.[453] In addition, because Currently Exempted Government Securities ATSs are not

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hours. 2 Form ATS amendments filed annually x 6 hours per Form ATS amendment = 12 burden hours per ATS. See id.

450 Attorney at 1.5 hours + Compliance Clerk at 0.5 hours = 2 burden hours. See id.

451 2 hours x approximately 1 cessation of operations report on Form ATS per year = 2 burden hours. See supra Section IX.D.

452 Attorney at 3 hours + Compliance Clerk at 1 hour = 4 burden hours. See Rule 301 OMB Update, supra note 419, at 6237. 4 Form ATS-R filings annually x 4 hours per Form ATS-R filing = 16 burden hours.

453 In establishing the estimates below with respect to proposed Form ATS-G, the Commission has considered its estimate of the burden for an SRO to amend a Form 19b-4. Specifically, the Commission estimated that 34 hours is the amount of time required to complete an average rule filing; 129 hours is the amount of time required to complete a complex rule filing; and 3 hours is the amount of time required to complete an average

required to complete a Form ATS, the Commission estimates that Currently Exempted Government Securities ATSs will incur a burden equivalent to the current baseline burdens on Legacy Filers as a result of the proposal.[454]

i. Analysis of Estimated Additional Burden for Proposed Form ATS-G

Although Form ATS-G is tailored to describe operations relevant to Government Securities ATSs, the information requests on Form ATS-N and Form ATS-G are, for the most part, very similar. In the Commission's experience implementing Form ATS-N, the Commission believes that the estimates calculated in the NMS Stock ATS Adopting Release continue to be reasonable estimates of the burden hours imposed by Form ATS-N, and therefore, reasonable estimates of the burden hours imposed by Form ATS-G.[455] As discussed below, due to requests unique to Form ATS-G, the Commission estimates that Form ATS-G would require 5.75 more burden hours than Form ATS-N. Accordingly, the Commission estimates that the additional burden hours for filing a Form ATS-G would result in a total additional burden of 114.15 hours per Government Securities ATS above the current 20-burden hour baseline for an initial

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amendment to a rule filing. See Securities Exchange Act Release No. 50486 (October 4, 2004), 69 FR 60287, 60294 (October 8, 2004).

454 See supra Section IX.D.2.a.

455 See NMS Stock ATS Adopting Release, supra note 1, at 38869-81.

operation report on Form ATS.[456] The below chart compares the estimated burdens for Form ATS-G to the currently-approved estimates for Form ATS-N:[457]

Rule/Item	ATS-G	ATS-N
Part I[458]	*0.75 hours*	*0.5 hours*
Part I Total	0.75 hours	0.5 hours
Part II, 1(a)	4.25 hours	4.25 hours
Part II, 1(b)	0.25 hours	0.25 hours
Part II, 1(c)	1 hour	1 hour
Part II, 1(d)[459]	*1.5 hours*	*0.5 hours*
Part II, 2(a)	6.25 hours	6.25 hours
Part II, 2(b)	0.25 hours	0.25 hours
Part II, 2(c)	1 hour	1 hour
Part II, 2(d)[461]	*1.5 hours*	*0.5 hours*
Part II, 3	1.5 hours	1.5 hours

Rule/Item	ATS-G	ATS-N
Part III, 7	4 hours	4 hours
Part III, 8	1 hour	1 hour
Part III, 9	1 hour	1 hour
Part III, 10	1.25 hours	1.25 hours
Part III, 11	6 hours	6 hours
Part III, 12	1 hour	1 hour
Part III, 13	6 hours	6 hours
Part III, 14	2 hours	2 hours
Part III, 15[460]	*4.5 hours*	*5 hours*
Part III, 16[462]	*6 hours*	*2 hours*
Part III, 17	1.25 hours	1.25 hours

456 108.4 additional burden hours for filing a Form ATS-N that the Commission estimated in the NMS Stock ATS Adopting Release + 5.75 hours added to the burden for requests unique to Form ATS-G = 114.15 additional burden hours. See NMS Stock ATS Adopting Release, supra note 1, at Section IX.D.2. The NMS Stock ATS Adopting Release stated that the Commission estimated that Form ATS-N would add an additional 107.4 hours to the baseline for each ATS. See id. at n.1228 and accompanying text. However, the actual total of the estimated burden hours of the items in Form ATS-N in the NMS Stock ATS Adopting Release is 108.4 (not 107.4). See id. at 38868-81. Therefore, the Commission is using the estimated total of 108.4 additional burden hours for Form ATS-N as basis for estimating the additional burden hours for Form ATS-G.

457 See id. Items for which the burden hours differ between Form ATS-G and Form ATS-N are italicized.

458 See infra note 465 and accompanying text.

459 See supra note 466 and accompanying text.

460 See supra note 467 and accompanying text.

461 See supra note 466 and accompanying text.

462 See supra note 468 and accompanying text.

Part II, 4	4 hours	4 hours
Part II, 5	3 hours	3 hours
Part II, 6	5 hours	5 hours
Part II, 7	1.5 hours	1.5 hours
Part II Total	31 hours	29 hours
Part III, 1	0.5 hours	0.5 hours
Part III, 2	1 hour	1 hour
Part III, 3	1 hour	1 hour
Part III, 4	0.5 hours	0.5 hours
Part III, 5	10.5 hours	10.5 hours
Part III, 6	2.5 hours	2.5 hours

Part III, 18	1.25 hours	1.25 hours
Part III, 19	6 hours	6 hours
Part III, 20	2.5 hours	2.5 hours
Part III, 21 & 22	0.5 hours	0.5 hours
Part III, 23	5 hours	5 hours
Part III, 24 (only applies to select respondents)[463]	*10 hours*	*5 hours*
Part III, 25[464]	*7 hours*	*5 hours*
Part III, 26	*0 hours*	*7 hours*
Part III Total	82.25 hours	78.75 hours
Part IV Total	0 hours	0 hours
Total	114.15 hours	108.4 hours

Part I of proposed Form ATS-G is identical to Part I for Form ATS-N, as proposed, except that Part I, Item 5 of Form ATS-G requires a Government Securities ATS to select the types of securities the ATS trades (i.e., U.S. Treasury Securities, Agency Securities, repos, or other). If the ATS selects "other," it would be required to list the types of securities it trades. The Commission believes that the information required by the proposed disclosure under Part I, Item 5 is already required under Exhibit B of current Form ATS, which requires an ATS to provide, among other things, lists of securities and the types of securities the ATS trades or expects to trade. Consequently, the Commission believes that preparing this Item would not

463 See supra note 470 and accompanying text. Other than as described below, the information required by Part III, Item 24 of Form ATS-G is similar to the information required by Part III, Item 25 of Form ATS-N.

464 The information required by Part III, Item 25 of Form ATS-G is identical to the information required by Part III, Item 26 of Form ATS-G.

impose a significant additional burden above the baseline. The Commission estimates that, on average, preparing Part I, Item 5 for proposed Form ATS-G would add 0.25 hours above the baseline for each Government Securities ATS, resulting in an aggregate initial burden of 6.5 hours above the baseline for all Government Securities ATSs.[465]

Part II of proposed Form ATS-G is identical to Part II for Form ATS-N except for Part II, Items 1(d) and 2(d) of Form ATS-G. Part II, Items 1(d) and 2(d) of Form ATS-G would additionally require a Government Securities ATS to identify the trading venue operated or controlled by its broker-dealer operator or its affiliate, respectively, to which orders and trading interest in the ATS could be sent, and explain under what circumstances orders and trading interest are sent from the ATS to the trading venue. These requirements are similar to Part III, Item 16 of Form ATS-N, which requires an NMS Stock ATS to provide disclosures surrounding orders and trading interest in the ATS being routed to a destination outside the ATS. The Commission therefore estimates that, on average, preparing these narratives in Part II, Items 1(d) and 2(d) would each add one hour to the approved estimated burden hours to prepare Part II, Items 1 and 2 of Form ATS-N, resulting in an aggregate burden of 52 hours above the baseline for all Government Securities ATSs.[466]

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465 Compliance Clerk at 0.25 hours = 0.25 burden hours. 0.25 hours x 26 Government Securities ATSs = 6.5 burden hours.

466 Attorney at 0.25 hours + Compliance Manager at 0.25 hours + Sr. Systems Analyst at 0.5 hours = 1 burden hour. The burden hours to answer "yes" or "no" questions whether orders and trading interest in the Government Securities ATS can be sent to a trading venue operated or controlled by the broker-dealer operator or its affiliate in proposed Part II, Items 1(d) and 2(d) of Form ATS-G, respectively, are accounted for in the approved estimated burden for preparing Part II of Form ATS-N. See infra note 475. The aggregate hours would be: 26 Government Securities ATSs x (1 hour (for Part II, Item 1(d)) + 1 hour (for Part II, Item 2(d))) = 52 burden hours.

Part III of proposed Form ATS-G requires a Government Securities ATS to provide information similar to that in which an NMS Stock ATS is currently required to provide under Part III of Form ATS-N with certain exceptions. Unlike Form ATS-N, Part III, Item 15 of proposed Form ATS-G does not ask whether the ATS is an Electronic Communication Network as defined in Regulation NMS. Accordingly, the Commission believes that Item 15 of proposed Form ATS-G would impose a lesser burden than the approved estimated burden for Item 15 of Form ATS-N. The Commission estimates that, on average, preparing Part III, Item 15 for Form ATS-G would add 4.5 hours to the baseline, resulting in an aggregate initial burden of 117 hours above the baseline for all Government Securities ATSs.[467]

Part III, Item 16 of Form ATS-N asks about order routing; the Commission is not including such a question in Form ATS-G. Instead, Part III, Item 16 of Form ATS-G would require a Government Securities ATS to disclose its functionalities or procedures to facilitate trading on or source pricing for the Government Securities ATS using related markets. As the broker-dealer operator controls all aspects of the operation of the Government Securities ATS, the Commission believes that the broker-dealer operator should already be aware of the ATS's trading and pricing practices. Therefore, preparing this Item would not impose a substantial burden on the respondents. The Commission estimates that, on average, preparing Part III, Item 16 for Form ATS-G would add a total of 6 hours to the baseline per respondent, resulting in an aggregate initial burden of 156 hours above the baseline for all Government Securities ATSs.[468]

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[467] (Attorney at 0.9 hours + Compliance Manager at 1.8 hours + Sr. Systems Analyst at 1.8 hours) x 26 Government Securities ATSs = 117 burden hours. In contrast, the Commission estimated that Part III, Item 5 of Form ATS-N would require 5 hours per ATS to complete. See NMS Stock ATS Adopting Release, supra note 1, at n.1211.

[468] (Attorney at 2 hours + Compliance Manager at 2.5 hours + Sr. Systems Analyst at 1.5 hours) x 26 Government Securities ATSs = 156 burden hours. This is an additional 4

As proposed, Form ATS-G would not, unlike Form ATS-N, include a question pertaining to order display and execution access.[469] However, similar to Part III, Item 25 of Form ATS-N, Part III, Item 24 of proposed Form ATS-G would require a Government Securities ATS to disclose whether the ATS has triggered the proposed fair access thresholds and, if applicable, describe the written standards for granting access to trading on the ATS to comply with Rule 301(b)(5)(ii)(A) of Regulation ATS. Historically, Government Securities ATSs have crossed these thresholds very rarely, with at most 3 Government Securities ATSs crossing either of the applicable thresholds in any given year, and the Commission believes this would continue to occur very infrequently. Consistent with the burden hours for completing Part III, Item 25 of Form ATS-N, the Commission estimates that preparing Part III, Item 24 in a proposed Form ATS-G would add 5 hours for each class of securities.[470] Because Part III, Item 24 of Form ATS-G requires the Government Securities ATS to provide the fair access disclosures for two categories of government securities—U.S. Treasury Securities and Agency Securities—the Commission estimates that preparing this Item would add an additional 5 hours per respondent and a total of 10 hours above the baseline for each respondent for which both thresholds are applicable.[471] The Commission believes that 3 ATSs crossed the proposed fair access threshold for U.S. Treasury Securities, and 1 ATS crossed the proposed fair access threshold for Agency

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hours per ATS from the additional 2-hour burden for Part III, Item 16 estimated for Form ATS-N. See NMS Stock ATS Adopting Release, supra note 1, at n.1212.

469 See Part III, Item 24 of Form ATS-N. In the NMS Stock ATS Adopting Release, the Commission estimated this Item would impose a 5-hour additional burden per ATS. See NMS Stock ATS Adopting Release, supra note 1, at n.1225.

470 Attorney at 2 hours + Compliance Manager at 1 hour + Sr. Systems Analyst at 2 hours = 5 burden hours. See NMS Stock ATS Adopting Release, supra note 1, at 38880.

471 (Attorney at 2 hours + Compliance Manager at 1 hour + Sr. Systems Analyst at 2 hours) x 2 categories of government securities = 10 burden hours.

Securities in four of the preceding six calendar months. Accordingly, the Commission estimates that the preparing Part III, Item 24 for proposed Form ATS-G would result in an aggregate initial burden of 20 hours above the baseline.[472]

In total, Government Securities ATSs would incur the following initial burden, on average, to prepare proposed Form ATS-G:

Burden	**Initial Burden**
Baseline for initial operation report on Form ATS	*Per ATS*: 20 hours *Industry*: 520 hours
Part I	*Per ATS*: 0.75 hours[473] *Industry*: 19.5 hours[474]
Part II	*Per ATS*: 31 hours[475] *Industry*: 806 hours[476]
Part III	*Per ATS*: 82.25 hours[477]

472 (5 hours x 3 Government Securities ATSs that crossed the fair access threshold for U.S. Treasury Securities) + (5 hours x 1 Government Securities ATS that crossed the fair access threshold for Agency Securities) = 20 burden hours.

473 Per respondent burden hours to prepare all items in Part I of Form ATS-G, except Part I, Item 5, would be identical to those of Part I for Form ATS-N. Therefore, the burden hours to prepare all items in Part I, except Part I, Item 5, would be: Compliance Clerk at 0.5 hours = 0.5 burden hours. See NMS Stock ATS Adopting Release, supra note 1, at 38869. In aggregate, burden hours per Government Securities ATS to prepare Part I of Form ATS-G would be: Compliance Clerk at 0.75 hours = 0.75 burden hours.

474 Compliance Clerk at 0.75 hours x 26 Government Securities ATSs = 19.5 burden hours.

475 Per respondent burden hours to prepare all items in Part II of Form ATS-G, excluding the narratives in Part II, Items 1(d) and 2(d), would be identical to those of Part II for Form ATS-N. Therefore, the burden hours to prepare all items in Part II of Form ATS-G, except Part II, Items 1(d) and 2(d), would be: Attorney at 15 hours + Compliance Manager at 11 hours + Sr. Marketing Manager at 2 hours = 28 burden hours. See NMS Stock ATS Adopting Release, supra note 1, at 38869-73. Per respondent burden hours to prepare Part II of Form ATS-G, including the burden hours to prepare the narratives for Items 1(d) and 2(d), supra note 466, would be: Attorney at 15.5 hours + Compliance Manager at 12.5 hours + Sr. Systems Analyst at 1 hour + Sr. Marketing Manager at 2 hours = 31 burden hours.

476 31 hours x 26 Government Securities ATSs = 806 burden hours.

477 In aggregate, burden hours per Government Securities ATS to prepare Part III of Form ATS-G would be: Attorney at 23.5 hours + Compliance Manager at 28.2 hours + Sr.

	Industry: 1,898.5 hours[478]
Access to EDGAR (applicable only to select respondents)	*Per ATS*: 0.15 hours *Industry*: 0.15 hours
Total – Form ATS-G	*Per ATS*: 134.15 hours *Industry*: 3,244.15 hours

ii. Estimated Burden above the Current Baseline for a Form ATS-G, Form ATS-G Amendment, and Notice of Cessation on Form ATS-G

(a) Proposed Form ATS-G

Based on the above analysis, the Commission estimates that proposed Form ATS-G would, on average, require approximately 114.15 burden hours above the baseline per respondent. This would result in an estimated 134.15 burden hours in total per respondent, including the baseline.[479] Government Securities ATSs vary in terms of their structure and the manner in which they operate. Legacy Filers also vary with respect to the depth and extent of their disclosures on Form ATS. Consequently, the Commission believes that the estimated hour burdens herein regarding proposed Form ATS-G would likely vary among both Legacy Filers and Currently

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Systems Analyst at 30.55 hours = 82.25 burden hours. This estimate takes into account Part III, Items 24(a) and 24(b), which apply only to select respondents.

478 (72.25 hours x 26 Government Securities ATSs subject to Part III (other than Items 24(a) and 24(b))) + (5 hours x 3 Government Securities ATSs subject to Part III, Item 24(a)) + (5 hours x 1 Government Securities ATS subject to Part III, Item 24(b)) = 1,898.5 burden hours.

479 (Current Baseline at 20 hours) + (Part I at 0.75 hours) + (Part II at 31 hours) + (Part III at an average of 82.25 hours) + (Access to EDGAR at 0.15 hours, see infra Section IX.D.2.b.iv) = 134.15 burden hours. The aggregate totals by professionals, including the baseline, are estimated to be approximately 55 hours for an Attorney, 37.85 hours for a Compliance Manager, 31.55 hours for a Sr. Systems Analyst, 2 hours for a Sr. Marketing Manager, and 7.75 hours for a Compliance Clerk. This estimated burden for a Form ATS-G includes the hour burden associated with completing Part III, Item 24 of proposed Form ATS-G. The Commission believes that the majority of Government Securities ATSs would not be required to complete these items of the proposed form.

Exempted Government Securities ATSs, depending on such factors as the extent of their current disclosures on Form ATS (as applicable), the complexity and structure of their systems, and the extent of their other broker-dealer operator or affiliate activities.

(b) Form ATS-G Amendments

As previously stated, the Commission estimates that Legacy Filers submit 2 amendments to Form ATS, on average, each year.[480] In addition to the same three general categories of required amendments as Rule 301(b)(2) of Regulation ATS currently requires for Form ATS,[481] proposed Form ATS-G requires contingent amendments. Due to the greater detail and number of disclosures required by proposed Form ATS-G, the Commission believes that respondents may file more amendments to proposed Form ATS-G than Legacy Filers currently do on Form ATS. For example, proposed Form ATS-G requests information about the ATS-related activities of the broker-dealer operator and its affiliates in Part II of proposed Form ATS-G, which are not required disclosures under current Form ATS. To the extent information provided in response to these requests changes, a Government Securities ATS must file a Form ATS-G amendment. As with amendments to Form ATS, the burden on Government Securities ATS associated with updating From ATS-G to reflect current ATS functionality will vary depending on the frequency and scope of changes made by the ATS. Making complete and comprehensible disclosures of material changes to the Government Securities ATS's operations, such as the introduction of a new order type and its attributes or changes to segmentation procedures and parameters, would require more time and resources from a Government Securities ATS than providing complete and comprehensible disclosures of a simple change to the physical or website address of the ATS.

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480 See supra note 448.

481 See 17 CFR 242.301(b)(2).

Accordingly, the Commission is estimating that Government Securities ATSs will file 3 amendments to Form ATS-G per year. The Commission estimates that Government Securities ATSs would incur the following annual burdens to amend their Form ATS-G:

Burden	**Annual Burden**
Baseline burden related to Form ATS amendment	*Per ATS*: 18 hours (6 hours x 3 Form ATS amendments)[482] *Industry*: 468 hours
Form ATS-G amendment above the baseline	*Per ATS*: 9 hours (3 hours x 3 Form ATS-G amendments) *Industry*: 234 hours
Preparing a brief summary and Exhibit 3	*Per ATS*: 1.2 hours (0.4 hours x 3 Form ATS-G amendments) *Industry*: 31.2 hours
Total – Form ATS-G amendment	*Per ATS*: 28.2 hours[483] *Industry*: 733.2 hours[484]

As stated above, the Commission estimates that the hourly burden related to an amendment to Form ATS is 6 hours and that Currently Exempted Government Securities ATSs would have a baseline hourly burden of 6 hours to put them in the same position as Legacy Filers.[485] The Commission estimates that the average hourly burden above this baseline of 6 hours for each Form ATS-G amendment would be 3 hours to accommodate the more voluminous and detailed disclosures required by Form ATS-G as compared to Form ATS.[486] The Commission estimates that

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482 Current ATSs file approximately 2 amendments per year, for a total burden of 12 hours. See note 449 and accompanying text. To calculate the total burden imposed by Form ATS-G amendment requirements, the Commission is estimating a baseline filing requirement for each Form ATS-G amendment equivalent to 6 hours per amendment x 3 Form ATS-G amendments = 18 total baseline burden hours.

483 This would result in a total estimated hourly burden, including the baseline, of 9.4 hours for a Form ATS-G amendment. The annual burden per ATS would be: 9.4 hours x 3 amendments per year = 28.2 burden hours. The aggregate total by professional would be: 16.5 hours for an Attorney, 6 hours for a Compliance Manager, and 5.7 hours for a Compliance Clerk.

484 78 Form ATS-G amendments per year x 9.4 hours = 733.2 burden hours.

485 See supra note 449.

486 Attorney at 1 hour + Compliance Manager at 2 hours = 3 burden hours. The Commission believes that information required under Form ATS-N amendment is similar to that

the 26 Government Securities ATSs will file 3 Form ATS-G amendments each year, for a total of 78 Form ATS-G amendments. In addition, a Government Securities ATS would also be required to provide a brief summary of the amendment at the top of Form ATS-G[487] and submit as Exhibit 3 one marked document that indicates changes to "yes" or "no" answers or additions to or deletions to Parts I, II, and III. The Commission estimates that drafting the summary and preparing the marked documents showing the amendments the Government Securities ATS is making would add an additional burden of 0.4 hours.[488]

(c) Notice of Cessation on Proposed Form ATS-G

As previously noted, from 2015 through 2019, there has been an average of 1 Legacy Government Securities ATS that ceased operations each year.[489] Although it is unclear how many Government Securities ATSs might cease operations each year going forward, for purposes of making a PRA burden estimate, the Commission is estimating that this average would generally remain the same for Government Securities ATSs using Form ATS-G because economic conditions, business reasons, and other factors may cause some Government Securities ATSs to cease operations. Accordingly, the Commission estimates that 1 Government Securities ATS may file a cessation of operation report on proposed Form ATS-G each year. The Commission believes that the burden for filing a cessation of operation report on proposed Form ATS-G would not be

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required under proposed Form ATS-G amendment and, therefore, estimates that the burden for Form ATS-G amendment would be the same as the approved estimated burden for Form ATS-N amendment. See NMS Stock ATS Adopting Release, supra note 1, at 38881.

487 See Exhibit 3 to Form ATS-G.

488 Compliance Clerk at 0.4 hours = 0.4 burden hours. The Commission believes that most word processing software provides for this functionality. See NMS Stock ATS Adopting Release, supra note 1, at 38882.

489 See supra Section IX.C.

significantly greater than that for filing a cessation of operation report on current Form ATS. Both Form ATS and proposed Form ATS-G require that the ATS check the appropriate box indicating that the ATS is ceasing operations; however, proposed Form ATS-G also requires that the Government Securities ATS provide the date that the ATS expects to cease operating. The Commission therefore estimates that Government Securities ATSs that file a cessation of operation report would incur the following annual burden:

Burden	Annual Burden
Cessation of operation report on Form ATS-G	*Per ATS*: 2 hours[490] *Industry*: 2 hours[491]

iii. Estimated Burden for Legacy Filers to File a Form ATS to Disclose Information Related to Trading Activity in Other Securities on an ATS

A broker-dealer that operates an ATS that currently trades government securities or repos and securities other than government securities or repos would incur: (1) the above baseline burdens related to filing a Form ATS-G and Form ATS-G amendments;[492] (2) the additional burden of filing an amendment to Form ATS to only disclose information related to trading activity in securities other than government securities or repos on an ATS[493] and amending the Form ATS on an ongoing basis;[494] and (3) the burden of completing and filing 2 Forms ATS-R—one disclosing trading volume in government securities or repos and one disclosing trading

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490 Attorney at 1.5 hours + Compliance Clerk at 0.5 hours = 2 burden hours. See supra note 450.

491 2 hours x 1 Government Securities ATS = 2 burden hours.

492 See supra Section IX.D.2.b.ii.A and B.

493 See supra note 151 and accompanying text.

494 See supra Section IX.D.2.a and accompanying text for the baseline estimates for submitting an IOR for Form ATS and amendments to Form ATS.

volume in securities other than government securities or repos.[495] As of July 1, 2020, of the 19 Legacy Filers, 17 ATSs trade, or have indicated that they expect to trade, in Exhibit B to their Form ATS, both government securities or repos and non-government securities on the ATS.[496] Broker-dealers that operate Legacy Filers would incur the following initial and annual burdens to disclose information related to trading activity in securities other than government securities or repos on the ATS:

Burden	Initial Burden	Annual Burden
Form ATS amendment to remove references to	*Per Broker-Dealer*: 10 hours[497] *Industry*: 170 hours	N/A

495 See supra Section IX.D.2.a and accompanying text for the baseline estimate for submitting a Form ATS-R.

496 One of the 2 Legacy Filers also trade, or have indicated that it expects to trade, government securities in addition to repos and non-government securities. Therefore, 17 broker-dealers, each of which is a Legacy Filer, are subject to the burden in this section. The broker-dealer for 1 Legacy Filer currently also operates an NMS Stock ATS that files a Form ATS-N and a Form ATS-R to report transactions in NMS stocks. As proposed, this broker-dealer would be required to file 3 Forms ATS-R and maintain a Form ATS-G, Form ATS-N, and Form ATS for its transactions in government securities and repos, NMS stocks, and other securities, respectively. The burden related to the NMS Stock ATS filings was reflected in the NMS Stock ATS Adopting Release. See NMS Stock ATS Adopting Release, supra note 1, at 38882-83.

497 In the NMS Stock ATS Adopting Release, the Commission estimated that the burden for an ATS to separately file a Form ATS for its non-NMS stock trading activity and Form ATS-N for its NMS stock trading activity will be 20 burden hours to amend its initial operation report on Form ATS for its non-NMS stock trading activity. See NMS Stock ATS Adopting Release, supra note 1, at 38882. In the Commission's experience implementing Form ATS-N, it found that the actual burden for a broker-dealer to amend the initial operation report on Form ATS to remove references to NMS stocks was much less than the estimated 20 hour burden. The Commission believes that this burden would be similar for broker-dealers operating Government Securities ATSs. Accordingly, the Commission is estimating that filing a Form ATS amendment to remove references to government securities or repos would be 10 hours. Attorney at 6.5 hours + Compliance Clerk at 3.5 hours = 10 burden hours. Such estimated hourly burden may be less than the estimated 10 burden hours, as the description of such ATS's trading activity in securities other than government securities or repos should already be contained in the existing Form ATS.

government securities and repos		
Form ATS-G (excluding access to EDGAR)	*Per Broker-Dealer*: 134 hours *Industry*: 2,278 hours	N/A
Form ATS amendment for non-Government Securities ATS	N/A	*Per Broker-Dealer*: 13 hours[498] *Industry*: 221 hours
Form ATS-G amendment	N/A	*Per Broker-Dealer*: 28.2 hours[499] *Industry*: 479.4 hours
Two Forms ATS-R (one for Government Securities ATS and one for non-Government Securities ATS)	N/A	*Per Broker-Dealer*: 21 hours[500] *Industry*: 357 hours
Total – burden for broker-dealers that operate Legacy Filers that trade securities	*Per Broker-Dealer*: 144 hours *Industry*: 2,448 hours[501]	*Per Broker-Dealer*: 62.2 hours *Industry*: 1,057.4 hours

498 2 Form ATS amendments per year x 6.5 hours = 13 burden hours. The Commission estimates that, as proposed, the burden to file a Form ATS amendment is 6.5 hours, including the baseline burden and additional burden discussed in Section X.D.4. See supra note 449 and infra note 524.

499 3 Form ATS-G amendments per year x 9.4 hours = 28.2 burden hours.

500 In addition, the Commission estimates that the total burden for a broker-dealer to complete Forms ATS-R for both its Government Securities ATS and non-Government Securities ATS would be 5.25 hours per quarter (Attorney at 3.5 hours + Compliance Manager at 0.25 hours + Compliance Clerk at 1.5 hours = 5.25 burden hours), which is 1.25 hours above the baseline burden of 4 hours for currently filing a Form ATS-R (Attorney at 0.5 hours + Compliance Manager at 0.25 hours + Compliance Clerk at 0.5 hours = 1.25 burden hours). See infra notes 525, 526, and 528. See supra note 452 and accompanying text for the baseline estimate for submitting a Form ATS-R. The Commission believes that broker-dealers required to file two Forms ATS-R would incur an additional burden of 0.5 hours above the baseline because they would be required to divide their trading statistics between two forms and file each form separately (Attorney at 0.5 hours = 0.5 burden hours). The Commission does not believe that those broker-dealers would incur any additional burden to collect the required information because they currently assemble that information when preparing the current Form ATS-R filings.

501 (Form ATS amendment at 10 hours + Form ATS-G at 134 hours) x 17 broker-dealers = 2,448 aggregate burden hours. Broker-dealers that operate Legacy Filers do not have burden associated with gaining access to EDGAR, and therefore, burden for gaining access to EDGAR is not accounted for in the burden to complete Form ATS-G. See infra text accompanying note 505.

other than government securities or repos		

iv. Access to EDGAR

Government Securities ATSs would be required to submit Form ATS-G filings through the Commission's EDGAR system. Based on the widespread use and availability of the Internet, the Commission believes that filing Form ATS-G in an electronic format would be a less burdensome and more efficient filing process for Government Securities ATSs and the Commission, as it is likely to be less expensive and cumbersome than mailing and filing paper forms to the Commission.[502] For a Form ATS-G filer to gain access to submit filings on the EDGAR system, the filer must submit a Form ID as required by Rule 10(b) of Regulation S-T[503] and following the processes detailed in Volume I of the EDGAR Filer Manual. Once a Form ID has been successfully completed and processed, EDGAR will establish a Central Index Key ("CIK") number, which permits each authorized user to create EDGAR access code, which will enable the Government Securities ATS to use EDGAR.

All registered broker-dealers have been assigned a CIK number and do not need to submit a Form ID to access EDGAR.[504] Because all Legacy Filers and Currently Exempted Government Securities ATSs other than those that are operated by banks are operated by either

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502 All estimated burden hours with regard to completing Parts I through IV of proposed Form ATS-G include the estimated burden associated with the requirement that Government Securities ATSs file Form ATS-G in a structured XML format on EDGAR, including narrative responses that are block-text tagged, or use the web-fillable form.

503 17 CFR 232.10(b).

504 A broker-dealer that has never used EDGAR to make electronic submissions may use its assigned CIK number to receive access codes that will allow that broker-dealer operator to submit Form ATS-G filings on EDGAR without needing to apply for a Form ID.

registered broker-dealers under Section 15 or government securities brokers or dealers under Section 15C(a)(1)(A), the Commission estimates that there will be no burden associated with gaining access to EDGAR for Legacy Filers and Currently Exempted Government Securities ATSs that are not operated by banks.[505]

Based on the number of initial filings and cessation of operations reports on current Form ATS for Legacy Filers, the Commission estimates that 1 to 2 new entities would file proposed Form ATS-G to become a Government Securities ATS in each of the next three years. The Commission estimates that among these new entities, 1 new entity per year will be operated by an entity that has not previously registered as a broker-dealer, a government securities broker, or a government securities dealer or that does not otherwise already have access to EDGAR. The Commission therefore estimates that an estimated 1 bank-operated Currently Exempted Government Securities ATS and 1 new entity would incur the following initial and annual burdens, respectively, by submitting a Form ID to gain access to the EDGAR system:

Burden	**Initial Burden**	**Annual Burden**
Access to EDGAR	*Per ATS*: 0.15 hours[506] *Industry*: 0.15 hours[507]	*Per ATS*: 0.15 hours[508] *Industry*: 0.15 hours[509]

505 The Commission further believes that 1 of the 19 Legacy Filers is operated by a broker-dealer that also operates an NMS Stock ATS, and therefore, the broker-dealer currently has access to and files through EDGAR.

506 Compliance Manager at 0.15 hours = 0.15 burden hours. See FR Doc. 2019-04008, 84 FR 8126 (March 6, 2019) (Submission for OMB Review, Extension: Form ID; SEC File No. 270-291; OMB Control No. 3235-0328).

507 Compliance Manager at 0.15 hours x 1 bank-operated Currently Exempted Government Securities ATS = 0.15 burden hours.

508 See supra note 506.

509 Compliance Manager at 0.15 hours x 1 new entity that has not previously registered as a broker-dealer, a government securities broker, or a government securities dealer or that does not otherwise already have access to EDGAR = 0.15 burden hours.

v. Public Posting on Covered ATS's Website

Proposed Rule 304(b)(3)(i) would require each Government Securities ATS to make public via posting on the ATS's website a direct URL hyperlink to the Commission's website that contains the documents enumerated in proposed Rule 304(b)(2).[510] Proposed Rule 304(b)(3)(ii) would require each Covered ATS to make public via posting on its website the most recently disseminated Covered Form. The Commission estimates that Government Securities ATSs and NMS Stock ATSs would incur the following initial and annual burdens to comply with the proposed requirements to program and configure their websites to post the required direct URL hyperlink and the most recently disseminated Covered Form pursuant to proposed Rule 304(b)(3):

Burden	Initial Burden	Annual Burden
Public posting of hyperlink to the Commission's website on Government Securities ATS's website	*Per ATS*: 2 hours *Industry*: 52 hours[511]	N/A
Public posting of the most recently disseminated	*Per ATS*: 4 hours *Industry*: 240 hours[512]	*Per ATS*: 12 hours *Industry*: 720 hours[513]

510 NMS Stock ATSs are already required to comply with Rule 304(b)(3)(i).

511 Sr. Systems Analyst at 2 hours x 26 Government Securities ATSs = 52 burden hours. The Commission estimates that this initial, one-time burden would be 2 hours, in part because many broker-dealer operators currently maintain a website for their Government Securities ATSs.

512 The Commission estimates that Covered ATSs would each incur an initial burden of 4 hours to post its Covered Form on its website. The initial burden would be: Sr. Systems Analyst at 4 hours x (26 Government Securities ATSs + 34 NMS Stock ATSs) = 240 burden hours.

513 The Commission estimates that the ongoing burden would be 4 hours for each amendment to Covered Form and that Covered ATSs would each file 3 amendments to Covered Form per year. See supra Section IX.D.2.b.ii.(b). See also NMS Stock ATS Adopting Release, supra note 1, at 38881. Therefore, the annual burden would be: Sr.

Covered Form on Covered ATS's website		

vi. Recordkeeping Requirements

Rule 303(a)(2)(ii) requires an ATS to preserve copies of reports filed pursuant to Rule 301(b)(2) or 304, which includes all Form ATS filings, and, as proposed, all Form ATS-G filings, for the life of the enterprise and any successor enterprise. Because Legacy Filers that trade only government securities or repos would file Form ATS-G in lieu of Form ATS under this proposal, the Commission believes that Rule 303(a)(2)(ii) would not result in any burden for those ATSs that is not already accounted for under the baseline burden estimate for Rule 303.[514] For the 17 Legacy Filers that trade, or have indicated that they expect to trade in Exhibit B to their Form ATS, government securities or repos and securities other than government securities or repos, the Commission estimates that the annual burden above the baseline estimate for preserving records relating to compliance with Rule 303(a)(2)(ii) would be the following:

Burden	**Annual Burden**
Record preservation requirement under Rule 303(a)(2)(ii)	*Per ATS*: 3 hours *Industry*: 51 hours[515]

3. Proposed Amendments to Rule 301(b)(5) of Regulation ATS

Systems Analyst at 4 hours x 3 amendments x (26 Government Securities ATSs + 34 NMS Stock ATSs) = 720 burden hours.

514 To comply with all of the record preservation requirements of Rule 303, the Commission currently estimates that ATSs spend approximately 1,380 hours per year. See supra note 436, 78 FR 43943. At an average cost per burden hour of $104.20, the resultant total related cost of compliance is $143,796 per year (1,380 burden hours x $104.20/hour). See id.

515 Compliance Clerk at 3 hours x 17 Legacy Filers = 51 aggregate burden hours.

The Commission recognizes that applying the Fair Access Rule to the trading of U.S. Treasury Securities and Agency Securities would impose certain burdens upon the respondents. Currently, Rule 301(b)(5) only applies to the trading of NMS stocks, equity securities that are not NMS stocks and for which transactions are reported to an SRO, municipal securities, and corporate debt securities, and therefore, it currently imposes no burden on Government Securities ATSs.[516] The Commission estimates that 3 Government Securities ATSs would meet the volume thresholds that trigger fair access obligations for U.S. Treasury Securities and Agency Securities, and that the average compliance burden of establishing written fair access standards for each entity would be 10 hours. As a result of the proposed amendments to Rule 301(b)(5), certain Government Securities ATSs would incur the following annual burden:[517]

Burden	**Annual Burden**
Establishing written standards for granting access under Rule 301(b)(5)	*Per ATS*: 10 hours *Industry*: 30 hours[518]
Making and keeping records of grants and denials of access under Rule 301(b)(5)	*Per ATS*: 10 hours *Industry*: 30 hours[519]
Total – Rule 301(b)(5)	*Per ATS*: 20 hours *Industry*: 60 hours

4. Proposed Amendments to Rule 301(b)(2), Form ATS, and Form ATS-R

516 17 CFR 242.301(b)(5).

517 These estimated burdens are the same as the Commission's currently approved estimates for compliance with Rule 301(b)(5) because the requirements of the Fair Access Rule would be identical for Government Securities ATSs and ATSs that are currently subject to Rule 301(b)(5). See Rule 301 OMB Update, supra note 419, at 3238.

518 Attorney at 10 hours x 3 responses = 30 burden hours.

519 Attorney at 10 hours x 3 responses = 30 burden hours.

The Commission believes that the proposed amendments to Rule 301(b)(2), Form ATS, and Form ATS-R would impose the following initial and annual burden to applicable respondents described further below:[520]

Burden	Initial Burden	Annual Burden
Electronic filing (access to EDGAR)	*Per ATS*: 0.15 hours *Industry*: 0.15 hours	N/A
Initial operation report on Form ATS		
Current approved burden for initial Form ATS	*Per ATS*: 20 hours *Industry:* 1,020 hours	N/A
Changes to Part I on Form ATS	*Per ATS*: 0.5 hours *Industry:* 25.5 hours	N/A
Total for initial Form ATS, as proposed to be amended	*Per ATS:* 20.5 hours *Industry:* 1,045.5 hours	N/A
Amendment on Form ATS		
Current approved burden for Form ATS amendment	N/A	*Per ATS:* 12 hours *Industry:* 612 hours
Changes to Part I on Form ATS	N/A	*Per ATS*: 1 hour *Industry*: 51 hours
Total for amendment to Form ATS, as proposed to be amended	N/A	*Per ATS:* 13 hours *Industry:* 663 hours
Form ATS-R		
Current approved burden for Form ATS-R (4 per year)	N/A	*Per ATS*: 16 hours *Industry*: 1,504 hours
Changes to Part I on Form ATS-R	N/A	*Per ATS*: 2 hours *Industry*: 188 hours
Indicating the type of filing and whether the ATS is subject to the fair access requirements on Form ATS-R	N/A	*Per ATS*: 0.4 hours *Industry*: 37.6 hours
Providing additional detail (e.g., trading volume and types of securities/options) on Form ATS-R	N/A	*Per ATS:* 0.6 hours *Industry*: 36 hours

520 The Commission notes that it is proposing changes to Form ATS-N to delete a question related to legacy status, and to include a checkbox asking if the registered broker-dealer is authorized by a national securities association to operate an ATS. See supra Section V.D. The Commission believes that because this information should be readily available to a filer and requires only marking a checkbox, this will have no impact on the estimated burden of Form ATS-N.

Total burden for filing Form ATS-R, as proposed to be amended	N/A	*Per ATS*: 19 hours *Industry*: 1,766 hours

The Commission is proposing that Form ATS and Form ATS-R would be filed electronically. However, the Commission believes that electronic submission of Form ATS and Form ATS-R would impose no additional burden on existing ATSs. All ATSs that file a Form ATS or Form ATS-R are registered broker-dealers and therefore do not need to submit a Form ID to access EDGAR.

The Commission estimates that the burden associated with receiving access to EDGAR by submitting a Form ID is 0.15 burden hours per response. Based on the number of initial filings and cessation of operations reports on current Form ATS for by existing ATSs, the Commission estimates that 4 new entities would file a new Form ATS in each of the next three years. The Commission estimates that among these new entities, 1 new entity per year will be operated by an entity that has not previously registered as a broker-dealer, a government securities broker, or a government securities dealer or that does not otherwise already have access to EDGAR. The total estimated hourly burden and aggregate initial burden for new ATSs gaining access to EDGAR is therefore 0.15 hours.[521]

The Commission is also proposing changes to Part I of Form ATS and Form ATS-R. As stated above, Legacy Filers are subject to a baseline burden of 20 hours for filing Form ATS, a baseline burden of 6 hours for amending Form ATS per filing, and a baseline burden of 4 hours per quarter for filing Form ATS-R. The proposed changes contain substantially the same information as current Form ATS and Form ATS-R. However, the proposed changes would not

[521] Compliance Manager at 0.15 hours x 1 ATS = 0.15 burden hours.

include several information requests that appear on the current forms, and would include additional information requests, such as the website of the ATS, the MPID of the ATS, and information related to the national securities association of the broker-dealer operator. The Commission estimates that the changes to Part I on Form ATS-R and Form ATS will add an additional burden of 0.5 hours above the baseline burden[522] and an aggregate burden of 25.5 additional initial burden hours for ATSs filing Form ATS,[523] 51 additional annual burden hours for amending Form ATS,[524] and 188 additional annual burden hours for ATSs filing Form ATS-R.[525]

In addition, the Commission is proposing that ATSs provide additional detail on Form ATS-R. The Commission is proposing that ATSs differentiate trading volume in U.S. Treasury Securities and Agency Securities on Form ATS-R. The Commission believes that ATSs will be aware which of the securities they trade are U.S. Treasury Securities and which are Agency Securities, and that this requirement will impose no additional burden on Government Securities ATSs, but rather eliminate the need for ATSs to combine all of its trading in government securities in a single category. The Commission is also proposing that ATSs provide total dollar volume in transactions in repos. In the Commission's experience, ATSs currently provide this detail on Form ATS-R, but the Commission would include a new item requiring this disclosure.

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522 The Commission notes that the additional disclosures are substantially similar to those on Form ATS-N and the additional burden is the same as estimated in the NMS Stock ATS Adopting Release. See NMS Stock ATS Adopting Release, supra note 1, at 38869.

523 Compliance Clerk at 0.5 hours x 51 ATSs filing Form ATS = 25.5 burden hours.

524 Compliance Clerk at 0.5 hours x 2 average amendments filed on Form ATS per year x 51 ATSs filing Form ATS = 51 burden hours.

525 Compliance Clerk at 0.5 hours x 4 filings annually x 94 ATSs filing Form ATS-R = 188 burden hours.

The Commission would require ATSs to provide a list of the types of securities subject to such repurchase and reverse repurchase agreements, as well as to provide a list of the types of listed options they trade. The Commission believes that ATSs are aware of this information and that this should impose very little burden on the ATSs. The Commission estimates that checking these boxes would impose an additional burden of 0.15 hours for an aggregate additional annual burden of 36 hours.[526]

The Commission is also proposing changes to Form ATS-R to require an ATS to indicate the type of the filing (and if applicable the date of cessation) and whether the ATS is subject to fair access obligations.[527] The ATS would be aware of the type of filing it is making and whether it is subject to the fair access requirements, so this requirement will impose very little additional burden. The Commission estimates that checking these boxes would impose an additional burden of 0.1 hours for an aggregate additional annual burden of 37.6 hours.[528]

The Commission is also proposing changes to Form ATS to specify the type of amendment that the ATS is filing. The Commission believes this will create no additional burden as ATSs currently have to check what type of filing they are submitting. This proposed change would merely change which box the ATS would have to check. In the case of a cessation of operations filing, the Commission is proposing that the ATS would need to provide the date of cessation. The Commission believes that providing this information would impose minimal

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526 Compliance Manager at 0.15 hours x 4 filings annually x 60 non-NMS Stock ATSs that file Form ATS-R = 36 burden hours.

527 See supra Section V.C.

528 Compliance Manager at 0.1 hours x 4 filings annually x 94 ATSs that file Form ATS-R = 37.6 burden hours.

burden because this is information of which the ATS will be aware and will take little time to input on Form ATS.

5. Proposed Amendments to Regulation SCI

Currently, Regulation SCI imposes no burden on Government Securities ATSs. The Commission believes that the approved paperwork burden estimates per entity under Regulation SCI generally would be applicable to these Government Securities ATSs, because they would be subject to the same requirements and burdens as other SCI entities.[529] At the same time, the Commission believes that the burden estimates also should take into account the extent to which Government Securities ATSs may already be SCI entities or may be affiliated with SCI entities that already comply with the requirements of Regulation SCI. The Commission estimates that proposed amendments to Regulation SCI would impose the following initial and annual burdens to certain (1) Government Securities ATSs that are existing SCI entities or affiliated with SCI entities and (2) Government Securities ATSs that are not currently SCI entities or affiliated with existing SCI entities:

Burden	**Initial Burden**	**Annual Burden**
Compliance with Regulation SCI (existing SCI entities)	*Per ATS*: 1,017.15 hours *Industry*: 1,017.15 hours	*Per ATS*: 2,458.65 hours *Industry*: 2,458.65 hours
Compliance with Regulation SCI (not existing SCI entities)	*Per ATS*: 2,034.3 hours *Industry*: 4,068.6 hours	*Per ATS*: 2,458.65 hours *Industry*: 4,917.3 hours

[529] See Proposed Collection; Comment Request; Extension: Regulation SCI, Form SCI; SEC File No. 270-653, OMB Control No. 3235-0703, 83 FR 34179 ("2018 SCI PRA Extension").

Total – compliance with Regulation SCI	*Industry*: 5,085.75 hours[530]	*Industry*: 7,375.95 hours[531]

The Commission estimates that 3 Government Securities ATSs would be subject to these requirements, including 1 Government Securities ATS that is an existing SCI entity. In particular, the Commission believes that the 2 entities that are not currently SCI entities would have the same estimated initial paperwork burdens as those estimated for new SCI entities and the same ongoing paperwork burdens as all other SCI entities.[532] The Commission also believes that because 1 of these ATSs is an existing SCI entity or affiliated with an SCI entity that is already required to implement the requirements of Regulation SCI, this entity would not have initial burdens equivalent to those estimated for new SCI entities. At the same time, because this entity would be trading securities in a different segment of the securities market and is likely to have new or distinct SCI systems for government securities, the Commission believes that this ATS would have some initial burden that would be a percentage of that which entirely new SCI

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530 (1,017.15 initial burden hours for compliance with Regulation SCI x 1 Government Securities ATS affiliated with a current SCI entity) + (2,034.3 initial burden hours for compliance with Regulation SCI x 2 Government Securities ATSs not affiliated with current SCI entities) = 5,085.75 burden hours. In the Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Regulation SCI, the Commission estimated that the total one-time initial burden for an SCI entity that is not an SRO or a plan processor to comply with Regulation SCI would be 2,034.3 hours. See Extension Without Change of a Currently Approved Collection: Regulation SCI and Form SCI; ICR Reference No. 201807-3235-001; OMB Control No. 3235-0703 (September 26, 2018) available at: https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201807-3235-001 ("2018 SCI PRA Supporting Statement").

531 2,458.65 ongoing burden hours for compliance with Regulation SCI x 3 Government Securities ATSs = 7,375.95 burden hours. In the Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Regulation SCI, the Commission estimated that the total ongoing annual burden for an SCI entity that is not an SRO or a plan processor to comply with Regulation SCI would be 2458.65 hours. See 2018 SCI PRA Supporting Statement, supra note 530.

532 See 2018 SCI PRA Extension, supra note 529.

entities have. In particular, the Commission estimates that the initial burdens for a Government Securities ATS that is currently an SCI entity or affiliated with an SCI entity would be 50 percent of the estimated initial burdens for entirely new SCI entities. For example, the Commission believes that such ATS would need to develop and draft the policies and procedures required by Rule 1001(a) for new SCI systems utilized for the trading of government securities, but unlike completely new SCI entities, this entity would already have Rule 1001(a) policies and procedures in place for other types of SCI systems that it could utilize as a model and modify as needed for new SCI systems.[533] The Commission also believes that the estimated ongoing paperwork burden estimates for all SCI entities would be applicable to this entity as well.[534]

A. Collection of Information is Mandatory

All collections of information pursuant to the proposed rules would be mandatory for entities that meet the definition of ATS.

B. Confidentiality of Responses to Collection of Information

With respect to the proposed amendments to Rules 301(b)(2)(viii) and 304 of Regulation ATS, including proposed Form ATS-G, the Commission would make publicly available on its website all effective Forms ATS-G, all properly filed Form ATS-G amendments to effective Forms ATS-G, and notices of cessation on Forms ATS-G.[535] The Commission would not make

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533 As an example, the estimate of an initial recordkeeping burden was 694 hours per new respondent to comply with the policies and procedures requirement of Rule 1001(a). Id. at 34180. The Commission estimates that, for a Government Securities ATS that is already an SCI entity or affiliated with an SCI entity, the initial burden for Rule 1001(a) would be 50 percent of this estimated amount, or 347 hours.

534 The ongoing paperwork burden estimates in the 2018 SCI PRA Extension do not distinguish among different categories of SCI entities, but rather provide an average for all SCI entities.

535 See supra Section II.G.

publicly available on its website Forms ATS-G that the Commission has declared ineffective, but these forms would be available for examination by the Commission and its staff, state securities authorities, and SRO(s) of which the Government Securities ATS's broker-dealer operator is a member. The other collections of information required by the proposed application of Rules 301(b) to Currently Exempted Government Securities ATSs and the proposed amendments to Rule 301(b)(2), Form ATS, Form ATS-R, the Fair Access Rule, and Regulation SCI would not be made public, but would be used for regulatory purposes by the Commission and the SRO(s) of which the ATS's broker-dealer operator is a member. In Part III, Item 24 of proposed Form ATS-G, however, Government Securities ATSs subject to the Fair Access Rule would be required to describe the written standards for granting access to trading on the ATS pursuant to Rule 301(b)(5)(ii)(A). To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential, subject to the provisions of applicable law.

C. Retention Period for Recordkeeping Requirements

All reports required to be made under Rules 301(b)(2)(viii), 301(b)(9), and 304 of Regulation ATS, including proposed Form ATS-G, will be required to be preserved during the life of the enterprise and any successor enterprise. As proposed, Currently Exempted Government Securities ATSs would also be required to preserve a copy of their written safeguards and written procedures to protect subscribers' confidential trading information under Rule 301(b)(10) of Regulation ATS for not less than three years, the first two years in an easily accessible place, pursuant to Rule 303(a)(1)(v) of Regulation ATS.[536] Currently Exempted

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[536] Legacy Filers are currently subject to the recordkeeping requirements of Rule 301(b)(10). See supra Section IX.A.

Government Securities ATSs would be required to preserve for not less than three years, the first two years in an easily accessible place, a copy of all records required to be made pursuant to Rule 302, all notices provided by such ATSs to subscribers generally, and at least one copy of its standards for access to trading, all documents relevant to its decision to grant, deny, or limit access to any person, and all other documents made or received in the course of complying with Rule 301(b)(5).[537] An SCI entity must keep all documents relating to compliance with Regulation SCI for a period of not less than five years, the first two years in a place that is readily accessible by the Commission or its representatives for inspection and examination.[538]

D. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

167. Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information shall have practical utility;
168. Evaluate the accuracy of the Commission's estimates of the burden of the proposed collection of information;
169. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
170. Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

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537 See supra Section II.C.

538 See 17 CFR 242.1005(b)(2).

171. Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090, with reference to File Number S7-12-20. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number S7-12-20 and be submitted to the Securities and Exchange Commission, Office of FOIA/PA Services, 100 F Street NE, Washington, DC 20549-2736. As OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

X. Economic Analysis

The Commission is sensitive to the economic consequences and effects, including the costs and benefits, of its rules. The following economic analysis identifies and considers the costs and benefits—including the effects on efficiency, competition, and capital formation—that may result from, among other things, (i) the proposed amendments to Regulation ATS to require Government Securities ATSs to publicly disclose on Form ATS-G their manner of operations and the ATS-related activities of the broker-dealer operator and its affiliates, (ii) the proposed amendments to Regulation ATS to apply the Fair Access Rule to Government Securities ATSs that meet certain volume thresholds in U.S. Treasury Securities or Agency Securities, and (iii)

the proposal to amend Regulation SCI to apply its requirements to ATSs that meet certain volume thresholds in U.S. Treasury Securities or Agency Securities.[539]

This discussion of the economic effects of the proposed amendments to Regulation ATS and Regulation SCI (collectively referred to as "proposed amendments") begins with a baseline analysis of the market for government securities and the current regulations that apply to ATSs that trade government securities or repos. The economic analysis then discusses the likely economic effects of the proposed amendments, including the costs and benefits as well as their effects on efficiency, competition, and capital formation. The economic analysis also includes a discussion of the potential costs and benefits of reasonable alternatives to the proposed amendments. The Commission requests comment on all aspects of the economic effects of the proposed amendments and of reasonable alternatives.

A. Introduction

Government Securities ATSs have grown to levels of sophistication similar to those of NMS Stock ATSs, but Regulation ATS currently only applies in a limited manner—if at all—to Government Securities ATSs.[540] The Commission believes that removing the exemption for Currently Exempted Government Securities ATSs and amending Regulation ATS for Government Securities ATSs would: (1) extend the investor protections of Regulation ATS to

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539 Exchange Act Section 3(f) requires the Commission, when it is engaged in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). In addition, Exchange Act Section 23(a)(2) requires the Commission, when making rules pursuant to the Exchange Act, to consider among other matters the impact that any such rule would have on competition and not to adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. See 15 U.S.C. 78w(a)(2).

540 See supra Section I.B for a discussion of the current regulatory framework for Government Securities ATSs.

subscribers of Currently Exempted Government Securities ATSs; (2) enhance the regulatory oversight of Government Securities ATSs and allow the Commission to better monitor trading and their role in the government securities and repo market; (3) enhance the operational transparency of Government Securities ATSs through public disclosures on Form ATS-G and; and (4) help ensure the fair treatment of potential and current subscribers to Government Securities ATSs with significant volume in U.S. Treasury Securities and Agency Securities.

The Commission believes that the proposed amendments to Regulation SCI for Government Securities ATSs would help address technological vulnerabilities and reduce the chance of a system issue disrupting trading on a significant government securities platform.[541] The proposed amendments would also help improve system up-time and would reduce the frequency, severity, and duration of systems issues that directly inhibit execution facilities or order matching, which could help prevent interruptions in the price discovery process and liquidity flows and, thus may help prevent periods with pricing inefficiencies from occurring.

The Commission believes that the proposed amendments would enhance the operational transparency and the Commission's oversight of ATSs that trade U.S. Treasury Securities. As described in the October 15 Staff Report, on July 13, 2015, the market for U.S. Treasury securities and futures experienced an unprecedented round-trip in prices between 9:33 a.m. and 9:45 a.m., resulting in a 37 basis point trading range for the day.[542] The market continued to function with high volatility and trading volumes, but liquidity conditions became significantly strained. After this event, the Treasury Department issued a Request for Information on the

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541 See infra Section X.C.1.b.

542 See October 15 Staff Report, supra note 14.

evolution of the U.S. Treasury market structure.[543] In response to the Treasury Request for Information, many entities called for greater transparency and public access to data regarding the functioning of U.S. Treasury markets.[544] Enhancing operational transparency and public disclosures is expected to improve market efficiency, which should help address concerns raised by the "flash rally." Enhancing the Commission's ability to monitor transactions volume at a detailed level would permit more focused surveillance to address potential concerns about market function.

The Commission recognizes that Government Securities ATSs would incur implementation and ongoing compliance costs as a result of the proposed amendments, which require Government Securities ATSs to establish and update policies and procedures, gather information for new disclosures, update systems to comply with recordkeeping requirements, and make other adjustments to comply with the requirements of the proposed amendments.[545] The Commission recognizes that the proposed amendments could have effects on competition for order flow in the market for government securities and repo execution services, the efficiency with which market participants achieve their trading objectives, and capital formation.[546] The Commission believes that the enhancement in operational transparency of Government Securities

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543 See Treasury Request for Information, supra note 10.

544 See Press Release, U.S. Securities and Exchange Commission, Statement on Trade Reporting in the U.S. Treasury Market (May 16, 2016), available at https://www.sec.gov/news/pressrelease/2016-90.html. See also Michael J. Fleming, *Advent of Trade Reporting for U.S. Treasury Securities* (January 17, 2017), Federal Reserve Bank of New York, Liberty Street Economics, available at https://libertystreeteconomics.newyorkfed.org/2017/01/advent-of-trade-reporting-for-us-treasury-securities.html.

545 See infra Section X.C.2.

546 See infra Section X.C.3.

ATSs could promote competition for order flow and incentivize Government Securities ATSs to innovate.[547] The Commission also believes that the proposed amendments could lower search costs and increase trading venue options for market participants resulting in lower trading costs and better efficiency with which they achieve their trading objectives.[548] Furthermore, the Commission believes that extending Regulation SCI to include Government Securities ATSs with significant volume in U.S. Treasury Securities and Agency Securities would reduce the frequency, severity, and duration of such effects resulting from systems issues, thereby enhancing price efficiency of government securities and promoting capital formation.[549]

B. Baseline

The baseline against which economic costs and benefits, as well as the impact of the proposed amendments on efficiency, competition, and capital formation, are measured is the current market and regulatory framework for the market for government securities and repo execution services. The baseline describes how ATSs play an important role in the current state of competition in the market for trading government securities. Competition among ATSs is influenced by current reporting requirements for Government Securities ATSs, including operational and transaction reporting requirements, which creates a potentially uneven competitive landscape. Similarly, the limited public information about Government Securities

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547 See supra note 546.

548 See id.

549 See infra Section X.C.3.c for a discussion about the price discovery and price efficiency of U.S. Treasury Securities, risk-free rate benchmarks, pricing of risky securities, and capital formation. See also October 15 Staff Report, supra note 14, for a discussion about price discovery being especially important in the secondary market for on-the-run U.S. Treasury Securities because the transaction prices are used as risk-free rate benchmarks to price other securities transactions.

ATSs' operations results in information asymmetries. Current regulation of Government Securities ATSs' treatment of subscriber confidential trading information could lead to potential abuse of such information.

The Fair Access Rule of Regulation ATS does not currently apply to ATSs that trade government securities, and there is no mechanism to prevent Government Securities ATSs from unreasonably denying or limiting subscribers' access to an ATS that is a significant market for government securities, which could increase their trading costs.[550] Furthermore, Regulation SCI does not currently apply to the government securities activities of an ATS. The Commission believes that, without appropriate safeguards in place for these Government Securities ATSs, technological vulnerabilities could lead to the potential for failures, disruptions, delays, and intrusions, which could place government securities market participants at risk, harm price discovery, and reduce price efficiency.[551] In Section X.B.7, we discuss the current regulatory framework and competition for order flow in the market for government securities and their implications on market efficiency.

The economic analysis that follows is based only on transactions reported to TRACE.[552] Due to the lack of data on activities of ATSs operated by non-FINRA members, the quantitative analysis of transactional activity does not include ATSs that are not FINRA members.[553]

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550 See supra Sections I.B and II.D discussing the Fair Access Rule requirements. See infra Section X.B.5 discussing why market forces alone may not be sufficient to prevent a Government Securities ATS from unreasonably denying access to some market participants.

551 See supra Section VI.

552 Transaction data is based on available information that is currently reported to FINRA.

553 See infra Section X.B.2.b.

Furthermore, the economic analysis does not include repo transactions and activities of options on government securities because there is a lack of available data.[554]

The parties that would be affected by the proposed amendments include: existing Government Securities ATSs, which comprise Legacy Filers and Currently Exempted Government Securities ATSs; potential new Government Securities ATSs; broker-dealers that operate or are affiliated with Government Securities ATSs; non-ATS trading venues that compete for order flow in the electronic market with Government Securities ATSs and the broker-dealers that operate these non-ATS trading venues. The proposed amendments would also affect current and potential subscribers of Government Securities ATSs including: primary dealers in government securities, non-primary broker-dealers in government securities, PTFs that trade on Government Securities ATSs, and institutional investors that directly trade in the electronic market for government securities; and institutional investors that transact in the dealer-to-customer market.[555]

1. Current State of Competition in the Market for Trading Government Securities

Government Securities ATSs play a significant competitive role in the market for government securities execution services as Government Securities ATSs account for approximately 43 percent and 13 percent of overall trading volume in the U.S. Treasury and Agency Securities market, respectively.[556] Government Securities ATSs compete on fees and

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554 Based on information provided to the Commission on Form ATS filings as of July 1, 2020, three ATSs have noticed their intention to trade repos on government securities while no ATS has noticed its intention to trade options on government securities.

555 PTFs refers to principal trading firms. See supra Section I.A.

556 Based on the regulatory version of TRACE for U.S. Treasury and Agency Securities from 7/1/2019 to 12/31/2019.

technological features for subscribers and, ultimately, customer order flow through interdealer transactions. Government Securities ATSs account for 57 percent of overall trading volume in the on-the-run U.S. Treasury Securities market.[557] In the off-the-run Treasury Securities market, Government Securities ATSs account for 20 percent of trading volume.[558]

Government securities represent a large proportion of the entire U.S. fixed income market in terms of outstanding debt and daily trading volume.[559] According to the United States Treasury, as of the end of 2019, the total amount outstanding of marketable Treasury Securities is approximately $17 trillion.[560] Furthermore, the Financial Accounts of the United States Z.1 released by the Federal Reserve Board show that the amount outstanding of Agency- and GSE-Backed Securities is about $9.4 trillion, collectively accounting for approximately 60 percent of the $47.386 trillion U.S. fixed income market.[561] According to data published by SIFMA, over the last six months of 2019, the average daily trading volume in government securities was about $835 billion, or roughly 95 percent of all fixed income trading volume in the U.S.[562]

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557 On-the-run Treasury Securities have much more trading activity than off-the-run Treasury Securities. See supra note 10.

558 Based on the regulatory version of TRACE for U.S. Treasury Securities from 7/1/2019 to 12/31/2019.

559 See supra note 6.

560 See Monthly Statement of the Public Debt of the United States, dated December 31, 2019, available at https://www.treasurydirect.gov/govt/reports/pd/mspd/2019/opds122019.pdf.

561 See Federal Reserve Board L.208 Debt Securities, available at https://www.federalreserve.gov/releases/z1/20200611/html/l208.htm.

562 See SIFMA Fixed Income Trading Volume, available at https://www.sifma.org/resources/research/us-fixed-income-trading-volume/. The stated figures include Treasury Securities, Agency MBS, and Federal Agency Securities. The six-month average is the mean of the average daily trading volume for these instruments over the period from July to December 2019.

The most actively traded government securities are U.S. Treasury Securities. U.S. Treasury Securities serve many important roles, including as a means of financing the U.S. federal government, as instruments for monetary policy implementation, as hedging and collateral instruments, as a liquid asset used to satisfy regulatory requirements, and as risk-free benchmarks for pricing other financial instruments. In December 2019, the average daily trading in U.S. government securities totaled $754.3 billion, which is further broken down as follows: $523.2 billion in U.S. Treasury Securities; $227.1 billion in Agency Mortgage-Backed Securities (MBSs); and $4.0 billion in other Agency Securities.[563]

Overall, trading in the market for government securities is characterized by many competing trading venues with various trading functionalities, order types, and trading venue fees. However, the Commission believes that lack of public disclosure about the operations and potential conflicts of interest of Government Securities ATSs could hinder competition among these ATSs and between the Government Securities ATSs and non-ATS trading venues in the market for government securities and repo execution services. Although the Commission recognizes that non-ATS trading venues compete with Government Securities ATSs in the market for government securities and repo execution services, non-ATS trading venues, unlike ATSs, cannot offer certain execution protocols, such as crossing mechanisms, auctions, and central limit order books, which generally meet the definition of an exchange.[564]

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563 Based on the regulatory version of TRACE for U.S. Treasury Securities and TRACE for Agency Securities. Trading volume is reported as par volume in dollars. Par volume is the volume measured in the face value ($100) of bond in dollars. See also FINRA TRACE Fact Book, available at https://www.finra.org/filing-reporting/trace/trace-fact-book.

564 See supra Section I.B. ATS and non-ATS trading venues both offer execution services. Orders matched on non-ATS trading venues generally result from a broker-dealer exercising discretionary activity while an ATS, which is an exchange, matches the orders of multiple buyers and sellers in securities using established non-discretionary methods.

Government Securities ATSs compete with other Government Securities ATSs, non-ATS interdealer broker trading platforms, and dealers that operate various trading protocols for order flow in the market for government securities and repo execution services. Trading of government securities occurs on a diverse set of trading venues—such as ATSs and non-ATS interdealer brokers—and directly between market participants, including bilateral dealer-to-dealer (interdealer) and dealer-to-customer transactions. Participants in the government securities market include dealers, PTFs, hedge funds, and large institutional investors. In the dealer-to-dealer market, trading platforms offer a variety of trading protocols, for example, central limit order books, quote streaming, and request for quotes.

Government Securities ATSs play an important role in the U.S. Treasury Securities market.[565] Government Securities ATSs facilitate significant liquidity provision for U.S. Treasury and Agency Securities markets, particularly those that operate in the secondary interdealer markets for on-the-run U.S. Treasury Securities.[566] The majority of trading in on-the-run markets occurs on Government Securities ATSs.[567] Although Government Securities ATSs trade a significant share of volume in off-the-run U.S. Treasury Securities, their share of trading volume in the off-the-run U.S. Treasury Securities is smaller than their share of on-the-run U.S. Treasury Securities trading.[568] Traditionally, participation in the interdealer trading market is

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565 See infra Section X.B.1.a for a discussion of the on-the-run U.S. Treasury Securities market and infra Section X.B.1.b for a discussion of the off-the-run U.S. Treasury Securities market. See supra notes 9 and 10 for the definition of the on-the-run and the off-the-run U.S. Treasury Securities, respectively.

566 See supra Section I.B.

567 See infra Section X.B.1.a for a discussion of the on-the-run U.S. Treasury Securities market.

568 See infra Section X.B.1.b for a discussion of the off-the-run U.S. Treasury Securities market.

open to only bank- and non-bank dealers; however, the interdealer trading market now includes non-dealer participants, most notably PTFs in the on-the-run U.S. Treasury Securities market.[569]

In the dealer-to-customer market, customers (e.g., investment companies, pension funds, insurance companies, corporations, or retail investors)[570] trade with dealers either through traditional voice-assisted brokers or through electronic systems.[571] Customers submit orders either over the phone via an electronic voice system or on trading platforms that facilitate matching buy and sell orders through single or multi-dealer electronic systems, such as RFQ platforms.[572] The Commission understands that in the dealer-to-customer market for government securities, dealers do not usually redirect customer order flow to Government Securities ATSs.[573] Instead, the dealers cross or fill the orders internally and they trade on ATSs to manage their inventory levels. Due to a lack of available data, the extent to which dealers internalize customer orders is unclear.

Competition among dealers for customer order flow happens in multiple ways. One of the clearest ways that dealers compete with each other is via their quotes. One comment letter submitted in response to the Treasury Request for Information said that dealers in the U.S.

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569 See infra Section X.B.1.a for a discussion about PTF participation in the on-the-run U.S. Treasury Securities market.

570 See Treasury Request for Information, supra note 10, at 3928.

571 See October 15 Staff Report, supra note 14, at 11, 55.

572 See id. at 36, n.31; Treasury Request for Information, supra note 10, at 3928.

573 In Tables X.2, X.3, and X.4, dealer transactions on Government Securities ATSs represent a significant portion of overall Government Securities ATS trading volume, whereas customer transactions account for a small portion of overall Government Securities ATS trading volume. The Commission understands that some portion of dealer transactions on Government Securities ATSs represents customer orders because dealers may fill customer orders internally and trade on ATSs to manage their inventory levels.

Treasury Securities market also compete along other dimensions such as by offering: better customer service, better allocations on the issuance of other securities, access to research, and favorable financing terms.[574]

Some Government Securities ATSs are operated by, or affiliated with, multi-service broker-dealers that also fill customer orders for dealer-to-customer trades. These broker-dealer operators or their affiliates may compete for customer order flow along with subscribers to their own Government Securities ATSs.

Competition among Government Securities ATSs and between Government Securities ATSs and non-ATS trading venues could affect market participants' trading costs in the government securities market. Trading costs may include bid-ask spreads,[575] search costs in the selection of trading venues, and trading venue fees. When deciding which trading venue most suits their trading purposes, market participants may consider various ATS operational facets,

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574 See Letter from Jim Greco, CEO, Direct Match, to David R. Pearl, Office of the Executive Secretary, U.S. Department of the Treasury, dated April 22, 2016, at 5, available at https://www.treasurydirect.gov/instit/statreg/gsareg/RFIcommentletterDirectMatch.pdf ("Direct Match Letter").

575 The estimated average daily relative quoted spread for interdealer transactions for on-the-run U.S. Treasury Securities is small, approximately 0.8 bps for 2-year Treasury Securities and 2.4 bps for 10-year Treasury Securities. The estimated average daily relative quoted spread for interdealer transactions for off-the-run U.S. Treasury Securities, approximately 1.7 bps for 2-year Treasury Securities and 5.4 bps for 10-year Treasury Securities, is larger compared to that of on-the-run Treasury Securities. Though, spreads have narrowed in the past couple of years with a change to a smaller minimum trading increment of 1/8 of 1/32 of $1. The average daily relative quoted spread is computed as the daily average of the difference between the intraday offer and bid prices divided by the corresponding price mid-quote. See also Paolo Pasquariello & Clara Vega, *The On-the-Run Liquidity Phenomenon*, 92 J. FIN. ECON. 1 (2009); Tobias Adria, Michael Fleming, & Or Shachar, *Market Liquidity after the Financial Crisis* (June, 28, 2017), Federal Reserve Bank of New York, Liberty Street Economics, available at https://libertystreeteconomics.newyorkfed.org/2017/06/market-liquidity-after-the-financial-crisis.html.

such as order handling, order types, order segmentation, trading functionalities, and any potential conflicts of interest that may arise from the ATS-related activities of the broker-dealer operator or its affiliates. Trading venue fees could be a primary factor for market participants in deciding to which trading venue to send their orders.[576] The Commission recognizes that the fee structures of ATSs can vary and may depend on, among other things, the types of subscribers and services.[577] In the selection of trading venues, market participants may consider which ATS fee structure offers the best pricing according to order flow and market participant characteristics.[578]

	Treasury Securities	Agency Securities	Num. of unique ATSs
Num. of Gov. Sec. ATS	19	6	19
Gov. Sec. ATS volume share	43.1%	13.1%	-
Above 10% Market Share:			
Num. of Gov. Sec. ATS	1	1	2
Gov. Sec. ATS volume share	24.1%	12.7%	-
Above 5% Market Share:			
Num. of Gov. Sec. ATS	3	1	3
Gov. Sec. ATS volume share	35.0%	12.7%	-
Above 4% Market Share:			
Num. of Gov. Sec. ATS	3	1	3
Gov. Sec. ATS volume share	35.0%	12.7%	-
Above 3% Market Share:			
Num. of Gov. Sec. ATS	4	1	4
Gov. Sec. ATS volume share	38.1%	12.7%	-
Above 2% Market Share:			
Num. of Gov. Sec. ATS	5	1	5
Gov. Sec. ATS volume share	40.5%	12.7%	-

Table X.1: ATS Market Share Analysis
Each panel reports the volume share (%) for Government Securities ATSs and the number of Government Securities ATSs above the specified market share level. Treasury Securities

576 See supra Section III.C.19.

577 See id.

578 See id.

include nominal bonds, TIPS and STRIPS. Agency Securities include Agency Debentures, Agency Collateralized Mortgage Obligations, and Agency Pass-Through Mortgage Backed Securities.[579] Trading volume is measured in dollar volume in par value. Data is based on the regulatory version of TRACE for U.S. Treasury Securities and TRACE for Agency Securities from July 1, 2019 to December 31, 2019.

The Commission estimates that 19 Legacy Filers[580] and 7 Currently Exempted Government Securities ATSs[581] would be subject to the proposed amendments to Regulation ATS. However, only 19 of these 26 Government Securities ATSs reported transactions on government securities to TRACE over the six-month period between July and December 2019.

Of the 19 Government Securities ATSs that report transactions to TRACE, the volume is concentrated in only a few ATSs, and predominantly in one ATS. Table X.1 reports the number of Government Securities ATSs and the trading volume share of Government Securities ATSs for multiple volume share levels, using government securities transactions reported to TRACE during the six-month period between July and December 2019. Over the six-month period in 2019, 19 Government Securities ATSs accounted for approximately 43 percent of overall U.S. Treasury Securities trading volume. In the market for U.S. Treasury Securities, 3 Government Securities ATSs each have at least five percent of overall U.S. Treasury Securities trading volume. The Government Securities ATS with the largest market volume in U.S. Treasury Securities has approximately 24 percent of total U.S. Treasury Securities trading volume,

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579 Agency Pass-through Mortgage Backed Securities include those traded in specified pool transactions and those to be announced.

580 Based on data compiled from Form ATS filed with the Commission as of July 1, 2020, the Commission has 19 Form ATSs on file from Legacy Filers.

581 The Commission believes that 7 Currently Exempted Government Securities ATSs transact exclusively in government securities or repos, and are not required to file a Form ATS. See also supra Section IX.C for the estimated number or respondents to the "collection of information" requirements.

whereas each of the Government Securities ATSs with the second and third largest market volume has a trading volume that is slightly above five percent of total U.S. Treasury Securities. In the market for Agency Securities, 6 Government Securities ATSs accounted for 13 percent of overall Agency Securities trading volume. One Government Securities ATS has at least five percent of overall Agency Securities trading volume.

In the subsections below, Section X.B.1.a and Section X.B.1.b discuss competition among trading venues and market participants in the on-the-run and off-the-run U.S. Treasury Securities market, respectively. Section X.B.1.c discusses competition among trading venues and market participants in the Agency Securities market.

a. On-the-Run U.S. Treasury Securities

In the on-the-run U.S. Treasury Securities market, Government Securities ATSs compete with other Government Securities ATSs and non-ATS trading venues for PTF, dealer, and ultimately, customer order flows.[582] While there are multiple avenues to trade on-the-run government securities, the majority of trading goes through Government Securities ATSs. Table X.2 reports the trading volume shares for Government Securities ATSs, non-ATS interdealer brokers, and bilateral secondary market transactions over the six month period between July and December 2019. As shown in Table X.2, 19 Government Securities ATSs and 24 non-ATS interdealer brokers reported on-the-run U.S. Treasury Securities transactions to TRACE during the six month period in 2019. Government Securities ATSs accounted for approximately 57

[582] In Table X.2, the reported trading volume share of Government Securities ATSs in the secondary market trading for on-the-run U.S. Treasury Securities is small. Government Securities ATSs compete for customer order flow through interdealer transactions on ATSs. The Commission understands that dealers fill customer trades internally and trade on Government Securities ATSs to manage their inventory levels. See supra note 9.

percent of total trading volume and approximately 67 percent of total interdealer trading volume in the on-the-run U.S. Treasury Securities market over the six month period in 2019.[583] A substantial amount of trading is concentrated on the largest Government Securities ATS in terms of trading volume, accounting for approximately 64 percent of the total Government Securities ATS trading volume and approximately 37 percent of the total trading volume for on-the-run U.S. Treasury Securities. This largest Government Securities ATS in terms of trading volume serves as the primary location for price discovery in the cash market for on-the-run U.S. Treasury Securities. This ATS's transaction prices, along with prices in the U.S. Treasury Securities futures market, are used by many market participants to determine risk-free benchmarks for pricing other financial products.[584]

On-the-Run U.S. Treasury Securities Trading Volume			
	Num. of Venues	Volume	Volume Share (%)
ATSs	19	995,669	57.4
Customer trades	12	74,094	4.3
Dealer trades	18	377,166	21.7
PTF trades	13	544,409	31.4
Non-ATS Interdealer Brokers	24	72,963	4.2
Customer trades	22	31,389	1.8
Dealer trades	23	41,574	2.4
Bilateral dealer-to-dealer trades	422	145,734	8.4
Bilateral dealer-to-customer trades	348	520,818	30.0

Table X.2: On-the-run U.S. Treasury Securities Trading Volume
This table reports trading volume and volume share for ATSs, Non-ATS interdealer brokers, bilateral dealer-to-dealer transactions, and bilateral dealer-to-customer transactions for on-the-run U.S. Treasury Securities. On-the-run U.S. Treasury Securities are the most recently issued nominal coupon securities. Nominal coupon securities pay a fixed semi-annual coupon and are currently issued at original maturities of 2, 3, 5, 7, 10, 20, and 30 years. Treasury Bills and

583 (ATS dealer volume / (dealer volume from ATS + dealer volume from non-ATS interdealer brokers + bilateral dealer-to-dealer volume) x 100) = ATS share of dealer volume (%).

584 See October 15 Staff Report, supra note 14, at 15, 17-18, 45.

Floating Rate Notes are excluded. For bilateral transactions, the number of venues denotes the number of distinct MPIDs.[585] *Volume* is the average weekly dollar volume in par value (in millions of dollars) over the 6-month period, from July 1, 2019 to December 31, 2019.[586] *Number of Venues* is the number of different trading venues in each category and the number of MPIDs for bilateral transactions. *Market Share (%)* is the measure of the dollar volume as a percent of total dollar volume.[587] The volume of ATSs and non-ATS interdealer brokers are broken out by *Customer trades, Dealer trades,* and *PTF trades* within each group.[588] Data is based on the regulatory version of TRACE for U.S. Treasury Securities from July 1, 2019 to December 31, 2019.

In addition to competing for subscribers through the fees they charge, Government Securities ATSs also compete with each other via the technological features and order options they offer to subscribers. As highlighted in the October 15 Staff Report,[589] Government Securities ATSs in the secondary electronic cash market for on-the-run U.S. Treasury Securities have evolved such that they operate with a complexity in terms of automation and speed of trading that is similar to that observed on NMS Stock ATSs. Four Government Securities ATSs operate as anonymous central limit order book systems and offer features to allow participants to interact with specific counterparty groups on the ATS, such as low latency and high-speed

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585 Dealers are counted using the number of distinct MPIDs. See also supra Section III.A.2.

586 FINRA reports volume as par volume, where par volume is the volume measured by the face value of the bond, in dollars. See also FINRA TRACE Fact Book, available at https://www.finra.org/filing-reporting/trace/trace-fact-book.

587 Total dollar volume (in par value) is calculated as the sum of dollar volume for ATSs, non-ATS interdealer brokers, bilateral dealer-to-dealer transactions, and bilateral dealer-to-customer transactions.

588 We identify ATS trades and non-ATS interdealer broker trades using MPID in the regulatory version of TRACE for U.S. Treasury Securities. The regulatory version of TRACE for U.S. Treasury Securities includes an identifier for customer and interdealer trades. Furthermore, we use MPID for non-FINRA member subscriber counterparties in the regulatory version of TRACE for U.S. Treasury Securities to identify PTF trades on ATSs.

589 See October 15 Staff Report, supra note 14, at 35-36.

connectivity via direct market data feeds and co-location services, a variety of order types and algorithms to pursue aggressive and passive trading strategies, and order flow segmentation. Unlike NMS Stock ATSs, whose broker-dealer operators connect to national securities exchanges to route orders, broker-dealer operators of Government Securities ATSs usually do not offer to route subscribers' orders to other trading venues.

Historically, Government Securities ATSs in the market for on-the-run U.S. Treasury Securities only allowed bank and non-bank dealers to trade. Dealers had primarily traded directly with customers in the dealer-to-customer market and traded with other broker-dealers on Government Securities ATSs as a source of orders and trading interest or to balance their inventory risk. However, beginning in 2003, Government Securities ATSs started allowing firms that were neither banks nor dealers, such as hedge funds, insurance companies and PTFs to trade directly in interdealer transactions on Government Securities ATSs.[590] This change has allowed some traders who were previously restricted to the dealer-to-customer trading venues to access Government Securities ATSs, where they can trade anonymously.

With the growth of high-speed electronic trading, the presence of PTFs has greatly increased in the secondary cash market for on-the-run U.S. Treasury Securities. In 2008, PTFs accounted for 25 percent of the trading volume on ATSs.[591] Based on Table X.2, over the six month period in 2019, PTFs traded on 13 Government Securities ATSs accounting for

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590 See Direct Match Letter, supra note574, at 6-7.

591 See Alexandra Scaggs & Susanne Barton, *Treasuries Wilder Than Ever as Ultrafast Bond Traders Rise Up*, BLOOMBERG, October 12, 2015, https://www.bloomberg.com/news/articles/2015-10-12/treasuries-wilder-than-ever-as-ultra-fast-bond-traders-rise-up (citing the Tabb Group Report).

approximately 55 percent[592] of total Government Securities ATS trading volume. PTFs have also become the primary liquidity providers.[593] As of the end of 2019, there are over 100 PTFs operating on ATSs that trade U.S. Treasury Securities, primarily on four Government Securities ATSs.[594] Similar to HFTs in the equity markets, PTFs trading on the electronic market for U.S. Treasury Securities often employ automated algorithmic trading strategies that rely on speed and allow the PTFs to quickly execute trades, or cancel or modify quotes in response to perceived market events.[595] Furthermore, most PTFs trading U.S. Treasury Securities on electronic trading venues also restrict their activities to principal trading and do not hold positions long term.[596]

In the secondary markets for on-the-run U.S. Treasury Securities, dealer transactions account for a significant portion of overall Government Securities ATS trading volume. In Table X.2, dealers account for approximately 38 percent[597] of overall Government Securities ATS trading volume. The Commission understands that some portion of dealer transactions on Government Securities ATSs represents customer orders because dealers may fill customer trades internally and trade on Government Securities ATSs to manage their inventory levels.

b. Off-the-Run U.S. Treasury Securities

Government Securities ATSs play a significant role in secondary market trading for off-the-run U.S. Treasury Securities.[598] Government Securities ATSs account for approximately 51

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592 (ATS PTF volume / ATS volume) x 100 = PTF share of ATS volume (%).

593 TRACE for Treasury data. See also October 15 Staff Report, supra note 14, at 21, 23, 38-39.

594 FINRA PTF participant list as of 12/31/2019.

595 See October 15 Staff Report, supra note 14, at 32, 35-36, 39.

596 See id. at 38.

597 (ATS dealer volume / ATS volume) x 100 = dealer volume share of ATS volume (%).

598 See supra note 10.

percent[599] and 20 percent of the total interdealer trading volume and the total trading volume, respectively, in the off-the-run U.S. Treasury Securities market. However, Government Securities ATSs' share of trading volume in the off-the-run U.S. Treasury Securities market is smaller than that of Government Securities ATSs in the on-the-run U.S. Treasury Securities market. As U.S. Treasury Securities transition from on-the-run status to off-the-run, their trading activity shifts away from electronic venues, such as Government Securities ATSs, and toward the bilateral secondary trading market.

In the off-the-run U.S. Treasury Securities market, Government Securities ATSs compete with other Government Securities ATSs and non-ATS trading venues for PTF, dealer, and ultimately, customer order flows.[600] Table X.3 reports the trading volume shares for Government Securities ATSs, non-ATS interdealer brokers, and bilateral secondary market transactions in the off-the-run Treasury Securities market over the six month period between July and December 2019. Based on Table X.3, 19 Government Securities ATSs and 24 non-ATS interdealer brokers reported off-the-run U.S. Treasury Securities transactions to TRACE during the six month period in 2019. Although Government Securities ATSs' share of trading volume in the off-the-run U.S. Treasury Securities market is smaller than that of Government Securities ATSs in the on-the-run U.S. Treasury Securities market, Government Securities ATSs still play a significant role in the trading of off-the-run U.S. Treasury Securities, accounting for

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599 (ATS dealer volume / (dealer volume from ATS + dealer volume from non-ATS interdealer brokers + bilateral dealer-to-dealer volume) x 100) = ATS share of dealer volume (%).

600 In Table X.3, the reported trading volume share of Government Securities ATSs in the secondary market trading for off-the-run U.S. Treasury Securities is small. See also supra note 582.

approximately 20 percent of the overall trading volume and 51 percent[601] of overall interdealer trading volume. Furthermore, in the secondary trading market for off-the-run U.S. Treasury Securities, dealers account for approximately 80 percent[602] of Government Securities ATS trading volume whereas PTFs account for approximately 7 percent[603] of Government Securities ATS trading volume. The Commission understands that some portion of dealer transactions on Government Securities ATSs represents customer orders because dealers may fill customer trades internally and trade on Government Securities ATSs to manage their inventory levels.

Off-the-Run U.S. Treasury Securities Trading Volume			
	Num. of Venues	Volume	Volume Share (%)
ATSs	19	121,601	20.2
Customer trades	11	15,813	2.6
Dealer trades	16	96,994	16.1
PTF trades	11	8,794	1.5
Non-ATS Interdealer Brokers	24	35,932	6.0
Customer trades	22	7,160	1.2
Dealer trades	23	28,773	4.8
Bilateral dealer-to-dealer trades	684	62,899	10.5
Bilateral dealer-to-customer trades	628	381,009	63.3

Table X.3: Off-the-Run U.S. Treasury Securities Trading Volume
This table reports trading volume and volume share for ATSs, Non-ATS interdealer brokers, bilateral dealer-to-dealer transactions, and bilateral dealer-to-customer transactions for off-the-run U.S. Treasury Securities. Off-the-run or "seasoned" U.S. Treasury Securities include TIPS, STRIPS, and nominal coupon securities issues that preceded the current on-the-run nominal coupon securities. *Number of Venues* is the number of different trading venues in each category and the number of MPIDs for bilateral transactions.[604] *Volume* is the average weekly dollar volume in par value (in millions of dollars) over the 6-month period, from July

601 (ATS dealer volume / (dealer volume from ATS + dealer volume from non-ATS interdealer brokers + bilateral dealer-to-dealer volume) x 100) = ATS share of dealer volume (%).

602 (ATS dealer volume / ATS volume) x 100 = dealer volume share of ATS volume (%).

603 (ATS PTF volume / ATS volume) x 100 = PTF share of ATS volume (%).

604 See supra note 585.

1, 2019 to December 31, 2019.[605] *Market Share (%)* is the measure of the dollar volume as a percent of the total dollar volume.[606] The volume of ATSs and non-ATS interdealer brokers are broken out by *Customer trades, Dealer trades,* and *PTF trades* within each group.[607] Data is based on the regulatory version of TRACE for U.S. Treasury Securities from July 1, 2019 to December 31, 2019.

c. Agency Securities

Government Securities ATSs play a significant role in secondary market trading for Agency Securities.[608] However, Government Securities ATSs' share of trading volume in Agency Securities market is smaller than that of Government Securities ATSs in the U.S. Treasury Securities market. Government Securities ATSs account for approximately 45 percent[609] and 13 percent of the total interdealer trading volume and the total trading volume, respectively, in the Agency Securities market.

In the Agency Securities market, Government Securities ATSs compete with other Government Securities ATSs and non-ATS trading venues for dealer and ultimately, customer

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605 See supra note 586.

606 See supra note 587.

607 We identify ATS trades and non-ATS interdealer broker trades using MPID in the regulatory version of TRACE for U.S. Treasury Securities. The regulatory version of TRACE for U.S. Treasury Securities includes an identifier for customer and interdealer trades. Furthermore, we use MPID for non-FINRA member subscriber counterparties in the regulatory version of TRACE for U.S. Treasury Securities to identify PTF trades on ATSs.

608 Agency Securities are those issued by U.S. Government sponsored enterprises ("GSEs") such as Federal Home Loan Banks ("FHLBs"), the Federal National Mortgage Association ("Fannie Mae"), and the Federal Home Loan Mortgage Corporation ("Freddie Mac"). See supra Section I.A.

609 (ATS dealer volume / (dealer volume from ATS + dealer volume from non-ATS interdealer brokers + bilateral dealer-to-dealer volume) x 100) = ATS share of dealer volume (%).

order flows.[610] Table X.4 reports the trading volume shares for Government Securities ATSs, non-ATS interdealer brokers, and bilateral secondary market transactions in the Agency Securities market over the six month period between July and December 2019. As shown in Table X.4, 6 Government Securities ATSs and 10 non-ATS interdealer brokers reported Agency Securities transactions to TRACE during the six month period in 2019. Although Government Securities ATSs' share of trading volume in the Agency Securities market is smaller than that of Government Securities ATSs in the U.S. Treasury Securities market, Government Securities ATSs still play a significant role in trading of Agency Securities, accounting for approximately 13 percent of the overall trading volume and 45 percent[611] of overall interdealer trading volume. In the secondary market trading of Agency Securities, dealers account for approximately 87 percent[612] of overall Government Securities ATS trading volume. The Commission understands that some portion of dealer transactions on Government Securities ATSs represents customer orders because dealers may fill customer trades internally and trade on Government Securities ATSs to manage their inventory levels.

Agency Securities Trading Volume			
	Num. of Venues	Volume	Volume Share (%)
ATSs	6	35,063	13.1
Customer trades	5	4,462	1.7
Dealer trades	6	30,601	11.4
Non-ATS Interdealer Brokers	10	10,967	4.1
Customer trades	9	1,169	0.4
Dealer trades	10	9,798	3.7

610 The trading volume share of Government Securities ATSs in the secondary market trading for Agency Securities is small. See infra Table X.4. See also supra note 582.

611 (ATS dealer volume / (dealer volume from ATS + dealer volume from non-ATS interdealer brokers + bilateral dealer-to-dealer volume) x 100) = ATS share of dealer volume (%).

612 (ATS dealer volume / ATS volume) x 100 = dealer volume share of ATS volume (%).

Bilateral dealer-to-dealer trades	552	27,229	10.2
Bilateral dealer-to-customer trades	551	194,143	72.6

Table X.4: Agency Securities Trading Volume
This table reports trading volume and volume share for ATSs, Non-ATS interdealer brokers, bilateral dealer-to-dealer transactions, and bilateral dealer-to-customer transactions for U.S. Agency Securities. Agency Securities include Agency Debentures, Agency Collateralized Mortgage Obligations, and Agency Pass-Through Mortgage Backed Securities.[613] *Number of Venues* is the number of different trading venues in each category and the number of MPIDs for bilateral transactions.[614] *Volume* is the average daily dollar volume in par value (in millions of dollars) over the 6-month period, from July 1, 2019 to December 31, 2019.[615] *Market Share (%)* is the measure of the dollar volume as a percent of the total dollar volume.[616] The volume of ATSs and non-ATS interdealer brokers are broken out by *Customer trades* and *Dealer trades* within each group.[617] Data is based on the regulatory version of TRACE for Agency Securities from July 1, 2019 to December 31, 2019.

2. Reporting Requirements for Government Securities ATSs

a. Operational Reporting Requirements

All 19 Legacy Filers are subject to the requirements of Regulation ATS, whereas the seven Currently Exempted Government Securities ATSs are not. These differences in reporting requirements can lead to an uneven competitive landscape for Government Securities ATSs. For instance, Currently Exempted Government Securities ATSs are not required to file Form ATS or Form ATS-R with the Commission or comply with certain recordkeeping requirements.[618] In contrast, ATSs that trade government securities or repos as well as non-government securities—

613 See supra note 579.

614 See supra note 585.

615 See supra note 586.

616 See supra note 587.

617 We identify ATS trades and non-ATS interdealer broker trades using MPID in the regulatory version of TRACE for Agency Securities. The regulatory version of TRACE for Agency Securities includes an identifier for customer and interdealer trades.

618 See supra Section I.B (discussing regulatory framework for Government Securities ATSs).

such as corporate or municipal fixed income securities—must either register as a national securities exchange or comply with Regulation ATS pursuant to the exemption provided under Exchange Act Rule 3a1-1(a)(2).[619] These Legacy Filers must also comply with certain reporting requirements, such as updating the Form ATS pursuant to Rule 301(b)(2) of Regulation ATS, and recordkeeping requirements pursuant to Rule 301(b)(8).[620]

The Commission recognizes that all of the 19 Legacy Filers currently incur reporting costs to comply with Regulation ATS.[621] These costs include filing Form ATS as both an initial operation report and, whenever there is a material change in operations, as a confidential filing with the Commission. The Commission may use this information in monitoring, examinations and enforcement. These reporting requirements for Legacy Filers (which do not apply to the Currently Exempted Government Securities ATSs) may contribute to an uneven competitive landscape. Furthermore, all but one of the Currently Exempted Government Securities ATSs and all of the Legacy Filers are registered broker-dealers that incur costs of registering with the Commission as well as SRO membership and face operational regulatory reporting requirements. The Commission estimates that one of the Currently Exempted Government Securities ATSs is bank-operated.[622] This bank-operated Currently Exempted Government Securities ATS is not required to register as a broker-dealer with the Commission and thus, does not have to file Form BD with the Commission or be subject to FINRA rules. As a result, the bank-operated Currently Exempted Government Securities ATS incurs different regulatory compliance costs, which may contribute to the uneven competitive landscape.

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619 See id. NMS Stock ATSs also must file Form ATS-N. See also supra Section V.D.

620 See id.

621 See supra Sections IX.C and IX.D.1.b.

622 See supra Section IX.C.

b. Transaction Reporting Requirements

Currently Exempted Government Securities ATSs are not required to report their transaction volume in government securities to the Commission on a quarterly basis via Form ATS-R. However, Legacy Filers are required to confidentially report their transaction dollar volume in government securities to the Commission on a quarterly basis via Form ATS-R within 30 days after the end of each calendar quarter. Trading volume on Currently Exempted Government Securities ATSs is not reported to the Commission. However, all transactions in government securities by ATSs operated by FINRA-members are reported to TRACE.[623]

However, the transaction reporting requirements to TRACE do not apply to transactions executed by non-FINRA members, such as some primary dealer banks, and the information on those U.S. Treasury Securities transactions is not disseminated publicly via TRACE. The estimated one bank-operated Currently Exempted Government Securities ATS does not currently report government securities transactions to TRACE. Nevertheless, starting in March 2020, FINRA has published aggregated market volume in U.S. Treasury Securities on a weekly basis.[624] Monthly volume reports for other TRACE-Eligible Securities, including Agency Securities, are also available from FINRA since 2013.[625] These two publicly available aggregate market statistics for trading in U.S. Treasury Securities and Agency Securities, respectively, can

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623 See supra notes 50-51 and accompanying text discussing TRACE reporting requirements for Government Securities ATSs.

624 The weekly TRACE Treasury aggregate trading statistics are available at https://www.finra.org/filing-reporting/trace/data/trace-treasury-aggregates.

625 These reports are available at https://www.finra.org/filing-reporting/trace/content-licensing/volume-reports. FINRA also publishes more detailed breakdowns of trading volume in MBSs into agency and non-agency categories. These reports are available at http://tps.finra.org/idc-index.html.

provide a common source of information to determine the market share of Government Securities ATSs in the relevant market.

In addition to TRACE reporting, which applies to broker-dealers who are FINRA members, government securities primary dealers are required to report their positions and cumulative transaction volumes in government securities to the Federal Reserve Bank of New York on a weekly basis via Form FR2004.[626] Based on comment letters received in response to the Treasury Request for Information, certain Government Securities ATSs also make real-time U.S. Treasury Securities transactions data on their platforms available to subscribers and to other market participants through subscriptions to third party data vendors.[627]

3. Information Asymmetries due to Limited Public Information about Operations of Government Securities ATSs

Market participants do not receive a complete snapshot of the operations and activities of all ATSs that trade government securities because a Currently Exempted Government Securities ATS is not required to file a Form ATS or Form ATS-G and a Legacy Filer is not required to publicly disclose its Form ATS or to file a publicly available Form ATS-G.[628] This disparity in requirements could lead to information asymmetries amongst different classes of subscribers.

Certain Government Securities ATSs may make voluntary disclosures regarding their operations, creating disparate levels of transparency. For example, subscribers to a particular Government Securities ATS may have greater access to information about the ATS, including the ATS's subscriber manual and other subscriber quotes, than other market participants. There

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626 The data is aggregated and published weekly in the Federal Reserve Bank of New York's press release, "Weekly Release of Primary Dealer Transactions."

627 See BrokerTec/ICAP Letter, supra note 238, at 7.

628 See 17 CFR 242.301(b)(2)(vii).

could also be differences in the information available to different classes of subscribers to a Government Securities ATS. Because there is no required disclosure of order execution statistics for government securities trading, different classes of subscribers to a Government Securities ATS could receive differing levels of information regarding execution quality on the ATS. This could lead to potential inefficiencies as market participants with limited access to information struggle to compete with those who have greater access to information, and this could also be the case with respect to other information about the operations of Government Securities ATSs. In all cases, subscribers who have greater access to information offered by the Government Securities ATS may be able to make better choices about their trading decisions relative to subscribers who have limited access to information about the operations of the ATS.

4. Government Securities ATSs Treatment of Subscriber Confidential Trading Information

Because Currently Exempted Government Securities ATSs are not required to comply with Regulation ATS, they are not subject to Rule 301(b)(10) and Rule 303(a)(1), which means that they are not required to establish written safeguards and written procedures to protect subscribers' confidential trading information pursuant to Regulation ATS.[629] To the extent that a Currently Exempted Government Securities ATS does not have these procedures, or has them but such procedures are not adequate, the integrity of a subscriber's confidential trading information could be at risk of unauthorized disclosure and subject to potential misuse. ATSs are not required to file their written safeguards and written procedures with the Commission. Therefore, absent an examination by the Commission staff regarding the adequacy of the written safeguards and written procedures, the Commission is not able to determine the specific

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[629] In contrast, Legacy Filers are currently subject to Rule 301(b)(10) and Rule 303(a)(1) of Regulation ATS. See supra Section IX.A.

Government Securities ATSs that currently have adequate written safeguards and written procedures to protect subscribers' confidential trading information. At the same time, based on the experience of the Commission, the Commission believes that some Government Securities ATSs currently have, and maintain in writing, safeguards and procedures to protect subscribers' confidential trading information, as well as the oversight procedures to ensure such safeguards and procedures are followed.

5. Fair Access Rule

The Fair Access Rule of Regulation ATS does not currently apply to ATSs that trade government securities because government securities are not a category of securities covered under the rule. As a result, there is no legal mechanism to prevent Government Securities ATSs from unreasonably denying or limiting subscribers' access to an ATS that is a significant market for government securities.[630] Access to a Government Securities ATS may not be critical when market participants are able to substitute the execution services of one ATS with those of another. However, when a Government Securities ATS has a significant share of trading volume in government securities, unfairly discriminatory actions may hurt investors lacking access to the system because viable alternatives to trading on such a system may be limited. Furthermore, market forces alone may not be sufficient to prevent a Government Securities ATS from unreasonably denying access to some market participants. In the absence of the Fair Access Rule, for example, a Government Securities ATS with a significant volume in government securities may only allow certain types of market participants to access the ATS and exclude

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630 See supra Sections I.B and II.D discussing the Fair Access Rule requirements.

others without establishing reasonable written standards.[631] In this case, the ATS may cater to the preferences of subscribers that favor the exclusion, while failing to internalize the negative externality that this may impose on the excluded market participants who could have more limited trading venue options, resulting in higher trading costs and the reduction in efficiency with which they achieve trading objectives. This failure to internalize an externality could lead to market failure.

6. Regulation SCI

The provisions of Regulation SCI and Rule 301(b)(6) of Regulation ATS do not apply to the government securities activities of an ATS and therefore Currently Exempted Government Securities ATSs and Legacy Filers are not subject to either.[632] Among the three ATSs that trade government securities and satisfy the proposed volume thresholds for government securities that would trigger application of Regulation SCI, one Government Securities ATS is operated by a broker-dealer that also operates an NMS Stock ATS that is an SCI entity because the NMS Stock ATS meets Regulation SCI volume thresholds for NMS stocks. As an existing SCI entity, this NMS Stock ATS has the policies and procedures in place for systems related to trading of NMS stocks as required by Regulation SCI. The Commission believes that the broker-dealer operator for the Government Securities ATS of the existing SCI entity could have already capitalized on operational synergies from operating both an NMS Stock ATS and a Government Securities ATS, and could have implemented some of the same policies and procedures of the NMS Stock

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631 An ATS subject to the Fair Access Rule could not offer a service or level of service to only one subscriber or class of subscribers unless the ATS has established written standards that do not unreasonably prohibit or limit access of permissioned subscribers to the service or level of service.

632 See supra Section I.B discussing Rule 301(b)(6) and its current application to ATSs.

ATS required by Regulation SCI, modified as needed for systems related to trading of government securities and repos.

More generally, although most Government Securities ATSs are not subject to the requirements of Regulation SCI with respect to their government securities activities, a comment letter received in response to the Treasury Request for Information stated that many Government Securities ATSs adopted system testing and control procedures that followed the recommended best practices of the Treasury Market Practices Group.[633] The Treasury Market Practices Group promotes a robust control environment for government securities trading, using internal controls and risk management.[634] However, these best practices are meant only as useful operational guideposts rather than binding rules, and each trading venue can choose if it wants to comply and how to comply, which could provide weak safeguards to protect against the risks of system failures. In contrast, Regulation SCI establishes a formalized regulatory framework to ensure more effective Commission oversight.

While the Commission recognizes that Government Securities ATSs have some incentives to maintain robust systems in order to remain competitive, the Commission believes that market forces alone are insufficient to significantly reduce systems issues in the market for trading and execution services in government securities. In particular, the Commission believes that Government Securities ATSs do not fully internalize the costs associated with systems

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633 See Letter from Mike Zolik, Nate Kalich, and Larry Magargal, Ronin Capital LLC, to David R. Pearl, Office of the Executive Secretary, U.S. Department of the Treasury, dated March 19, 2016, at 31-33, available at https://www.treasurydirect.gov/instit/statreg/gsareg/RoninCapital.pdf.

634 See Treasury Market Practices Group, *Best Practices For Treasury, Agency Debt, and Agency Mortgage-Backed Securities Markets* (July 2019), available at https://www.newyorkfed.org/medialibrary/Microsites/tmpg/files/TMPG_BestPractices_071119.pdf.

issues, because systems issues pose significant negative externalities on the market. That is, systems issues have ramifications on the market for government securities beyond the impact on the Government Securities ATS responsible for the systems issues. If a trading system of a Government Securities ATS with significant trading volume fails, this failure not only forces the ATS to forgo revenue but also can diminish trading in government securities during the disruption. In particular, the failure of such trading system can increase trading costs of market participants that have optimized their trading strategy under the assumption that all Government Securities ATSs with significant volume are fully operational.

The Commission also believes that some Government Securities ATSs that trade a large volume of government securities play a significant role in the government securities market, particularly those that trade on-the-run U.S. Treasury Securities, because the prices from these transactions serve as risk-free rate benchmarks for pricing other financial products. Without appropriate safeguards in place for Government Securities ATSs, technological vulnerabilities continue to exist and could lead to the potential for costly failures, disruptions, delays, intrusions, and the reduction in systems up-time, which could harm the price discovery process and price efficiency of government securities.[635]

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[635] See infra Section X.C.3.c. On January 11, 2019, the largest trading platform in on-the-run U.S. Treasury Securities, experienced a system outage approximately from 2pm to 3:30pm ET. While the outage resulted in a modest reduction in market volume, had it occurred at a time other than late on a Friday afternoon when trading activity is normally already low, the outage could have resulted in more adverse consequences on the overall market. See also Elizabeth Stanton, Nick Baker, & Matthew Leising, *Treasuries Hit by One-Hour Outage on Biggest Electronic Platform*, BLOOMBERG, January 13, 2019, https://www.bloomberg.com/news/articles/2019-01-11/brokertec-inter-dealer-treasury-broker-suffers-outage.

Furthermore, based on the staff's experience receiving reports of systems issues concerning NMS Stock SCI ATSs, the Commission believes that the frequency and the duration of systems issues have decreased and systems up-time has improved over time since the adoption of Regulation SCI. Because Government Securities ATSs operate with similar complexity as NMS Stock SCI ATSs,[636] the Commission believes that extending Regulation SCI to Government Securities ATSs with significant volume would also help reduce the frequency and the duration of systems issues and improve systems up-time for those Government Securities ATSs.[637]

7. Implications for Efficiency

The intensity of competition among trading venues, the availability of information regarding Government Securities ATS operational facets, the number of trading venue options available to market participants, and the risk of potential market disruptions due to systems issues could affect market participants' trading costs and the efficiency with which market participants achieve their trading or investment objectives. The Commission believes that there is currently limited publicly available information regarding the operations of Government Securities ATSs and that some subscribers to these ATSs may be privy to more detailed information about how their orders are executed, sent, and/or prioritized compared to other subscribers.[638] Market participants in the government securities market with limited information regarding ATS operational facets, such as order handling, fee structure, and any potential

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636 See supra Section VI.

637 See infra Section X.C.1.b discussing the benefits of the proposed amendments to Regulation SCI. Infra Section X.C.2.b discusses the costs of these proposed amendments, while infra Section X.C.3 discusses the effects of these amendments on efficiency, competition, and capital formation.

638 See supra Section X.B.3.

conflicts of interest that may arise from the ATS-related activities of the broker-dealer operator or its affiliates, could face difficulty in comparing Government Securities ATSs when deciding which venue most suits their trading purposes and could incur higher search costs in the selection of trading venues. This would result in higher trading costs for market participants and reduce the efficiency with which market participants achieve their trading objectives.

Government Securities ATSs and non-ATS trading venues compete for order flows in the government securities market.[639] The Commission believes that the limited publicly available information regarding Government Securities ATS operational characteristics, such as fee structure, order types, and trading functionalities, reduces the incentives of ATSs and non-ATS trading venues to compete more vigorously, innovate systems technology, improve execution quality, and lower fees. This could also reduce the efficiency with which market participants achieve their trading objectives. Currently, government securities are not subject to the Fair Access Rule.[640] To the extent that there are market participants who are unreasonably denied access to an ATS with a significant volume in U.S. Treasury Securities or Agency Securities, this could limit trading venue options for these market participants, resulting in higher trading costs and the reduction in efficiency with which they achieve their trading objectives.

The provisions of Regulation SCI do not apply to systems related to the trading of government securities.[641] Market disruptions due to systems issues at an ATS with a significant volume in U.S. Treasury Securities or Agency Securities could interrupt the price discovery

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639 See supra Sections X.B.1.a, X.B.1.b, and X.B.1.c for discussion on competition in the on-the-run U.S. Treasury Securities, off-the-run U.S. Treasury Securities, and Agency Securities, respectively.

640 See supra Section X.B.5 for a discussion about the Fair Access Rule.

641 See supra Section X.B.6 for a discussion about Regulation SCI practices.

process and liquidity flows in the market for government securities, which would result in periods of pricing inefficiencies for government securities and risky securities. Diminished price discovery in the secondary market for on-the-run U.S. Treasury Securities could also reduce price efficiency of risky securities because the transaction prices of on-the-run U.S. Treasury Securities are used as risk-free rate benchmarks to price risky securities transactions.[642] Price efficiency of risky securities is important because prices that accurately convey information about fundamental value improve the efficiency with which capital is allocated across projects and entities.

C. Economic Effects and Effects on Efficiency, Competition, and Capital Formation

The Commission has considered the economic effects of the proposed amendments to extend Regulation ATS and Regulation SCI to include Government Securities ATSs.[643] The Commission believes these proposed amendments would (i) help prevent the potential for abuse of ATS subscriber confidential trading information;[644] (ii) improve the ability of the Commission or an SRO to detect and investigate potential irregularities that might occur in the market for

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642 As noted in the October 15 Staff Report, supra note 14, price discovery is especially important in the secondary market for on-the-run U.S. Treasury Securities because the transaction prices are used as risk-free rate benchmarks to price other securities transactions.

643 Government Securities ATSs account for significant portion of interdealer and overall volume in the government securities market. See supra Section X.B.1 for Tables X.1, X.2, X.3, and X.4. See also supra Section X.A for a discussion about the need for greater transparency and public data availability regarding the functioning of U.S. Treasury markets.

644 See infra Section X.C.1.a.i. See also supra Section X.A for a discussion about the need for greater transparency and public data availability regarding the functioning of U.S. Treasury markets.

government securities and repo execution services;[645] (iii) increase the Commission's knowledge regarding the operations of and potential conflicts of interest on Government Securities ATSs and help identify whether they operate in a manner consistent with the federal securities laws;[646] (iv) help market participants make better-informed decisions about where to send their orders in order to achieve their trading or investment objectives, which could lower trading costs and enhance order execution quality;[647] (v) allow some market participants to access and increase options in the selection of trading venues, which could lower their trading costs;[648] and (vi) help reduce market disruptions due to systems issues[649] and prevent interruptions in the price discovery process and liquidity flows.[650]

Government Securities ATSs would incur implementation and ongoing compliance costs to comply with the proposed Regulation ATS and Regulation SCI amendments. Market participants in the government securities and repo market could face higher trading costs (e.g., higher fees) from Government Securities ATSs to the extent that compliance costs of Regulation ATS and SCI amendments are passed on to them.

The compliance costs of the proposed amendments include, among other things, costs associated with establishing and updating policies and procedures to protect subscriber confidential information, updating systems to comply with recordkeeping requirements,

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645 See supra note 644.

646 See infra Section X.C.1.a.ii. See also supra Section X.A for a discussion about the need for greater transparency and public data availability regarding the functioning of U.S. Treasury markets.

647 See supra note 644.

648 See infra Section X.C.1.a.iii.

649 See infra Section X.C.1.b.

650 See infra Sections X.C.1.b and X.C.3.c.

gathering information for new disclosures, filing Form ATS-G, and establishing fair access standards.[651] The Commission also believes that Currently Exempted Government Securities ATSs would incur costs to comply with Regulation ATS in addition to those incurred by Legacy Filers.[652] Government Securities ATSs that meet the specified volume thresholds would also incur compliance costs as SCI entities,[653] such as costs associated with documentation, mandatory reporting and dissemination of SCI events, reporting of material systems changes, recordkeeping, and implementing the policies and procedures related to systems capacity, integrity, resiliency, availability, security, and compliance. Regulation SCI also imposes some indirect requirements on other market participants interacting with SCI entities (e.g., third-party vendors providing SCI systems to SCI entities and members of SCI entities participating in testing of business continuity and disaster recovery plans).[654]

In addition to compliance costs, some market participants could incur indirect costs from the proposed amendments. A Government Securities ATS could incur indirect costs if its competitive position in the market were adversely affected as a result of the public disclosure requirement of Form ATS-G. However, such costs to one ATS would constitute transfers to other ATSs rather than a net social cost, and the Commission believes that the risk of such transfers is likely to be low.[655] Furthermore, as discussed in Section X.C.2.a.ii, some subscribers

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651 See infra Section X.C.2.a for a discussion of compliance costs associated with the proposed amendments to Regulation ATS.

652 See infra Section X.C.2.a.i for a discussion of compliance costs for Currently Exempted Government Securities ATSs.

653 See infra Section X.C.2.b for a discussion of compliance costs associated with the proposed amendments to Regulation SCI.

654 See supra note 653.

655 See infra Section X.C.2.a.ii for a discussion about transfer cost and why the Commission believes the risk of incurring such transfer cost is likely to be low.

of a Government Securities ATS could incur indirect costs if the subscribers were to lose their informational advantage regarding the operational facets of the ATS over other subscribers as a result of the public disclosure requirement of Form ATS-G.

The Commission believes that the amendments could foster competition for order flow in the market for government securities and repo execution services, help market participants make better informed decisions about where to send their orders to achieve their trading or investment objectives, enhance execution quality, and improve efficiency and capital allocation. Moreover, the Commission believes that the risk of the proposed amendments adversely affecting competition in the market for government securities and repo execution services, the incentive for Government Securities ATSs to innovate, and the efficiency with which market participants achieve trading objectives, is likely to be low.[656]

In addition to the economic effects discussed below, the proposed amendment to Exchange Act Rule 3a1-1(b) would require a Government Securities ATS to register as a national securities exchange if the ATS meets certain volume thresholds and the Commission finds that the exemption would not be necessary or appropriate in the public interest or consistent with the protection of investors.[657] The Commission believes that the proposed amendment to Exchange Act Rule 3a1-1(b) would enhance the Commission's ability to regulate certain large volume ATSs upon registration as a national securities exchange, which would improve the

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656 See infra Section X.C.3.

657 The Commission estimates that currently, there is no Government Securities ATS that meets the volume thresholds specified in the provisions of Exchange Act Rule 3a1-1(b). See supra Section II.A.

Commission's market surveillance and help protect investors.[658] A Government Securities ATS that the Commission required to register as a national securities exchange would incur costs corresponding with a registered national securities exchange, including costs related to the requirement to be so organized to, and have the capacity to carry out the purposes of the Exchange Act including its own ability to enforce member compliance with securities laws.[659]

The Commission has attempted, where possible, to quantify the benefits and costs anticipated to result from the proposed amendments to Regulation ATS and Regulation SCI. However, as explained in more detail below, because the Commission does not have, and in certain cases does not believe it can reasonably obtain data that may inform the Commission on certain economic effects, the Commission is unable to quantify certain economic effects. Further, even in cases where the Commission has some data, it may not be practicable to perform a quantitative analysis due to the number and type of assumptions necessary to quantify certain economic effects, which likely would render any such quantification unreliable. Therefore, certain parts of the discussion below are qualitative in nature and focus on the direction of the various effects of the proposed amendments. The inability to quantify certain benefits and costs, however, does not mean that the overall benefits and costs of the final rules are insignificant.

1. Benefits

The Commission assessed the anticipated economic benefits from the various components of the proposed amendments to Regulation ATS and SCI. The Commission believes that the proposed amendments to Regulation ATS would help improve the oversight of

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658 See Regulation ATS Adopting Release, supra note 35, at 70903-07 for a discussion of benefits and costs for registering as a national securities exchange.

659 See supra note 658.

Government Securities ATSs[660] by the Commission and SROs. The extension of Regulation ATS to include Currently Exempted Government Securities ATSs would help protect investors and help the Commission better oversee these ATSs. In addition, the public disclosure of operational facets of Government Securities ATSs via Form ATS-G under Rule 304 of Regulation ATS could lower search costs in the selection of trading venues and result in lower trading costs for market participants. Requiring Form ATS-G to be filed on EDGAR in a structured format would improve the usability, accessibility, and reliability of Form ATS-G disclosures for market participants and for the Commission and SROs; EDGAR filing requirements for Forms ATS and ATS-R, along with other amendments related to Forms ATS, ATS-R, and ATS-N, would similarly enhance Commission and SRO oversight of Form ATS, ATS-R, and ATS-N filers, thereby protecting investors and helping ensure the adequacy and reliability of information on the market. To the extent that there are market participants excluded from trading on Government Securities ATSs, the Commission believes that the extension of the Fair Access Rule for government securities could increase trading venue options and lower trading costs for those market participants. Finally, the Commission believes the proposed amendments to Regulation SCI would help prevent interruptions in the price discovery process and liquidity flows, and thus would help prevent periods with pricing inefficiencies from occurring.[661]

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660 Government Securities ATSs account for significant portion of interdealer and overall volume in the government securities market. See supra note 641.

661 See infra Section X.C.1.b. See also supra Section X.B.6.

a. Extension of Regulation ATS to Currently Exempted Government Securities ATSs and Amendment to Regulation ATS for all Government Securities ATSs

The proposed extension of Regulation ATS would extend Regulation ATS to include Currently Exempted Government Securities ATSs; extend Rule 304 of Regulation ATS to include all Government Securities ATSs and amend Rule 304; and apply the Fair Access Rule. Each of these changes would produce a number of benefits.

i. Extension of Regulation ATS to Include Currently Exempted Government Securities ATSs

The Commission believes that the proposed amendments to require Currently Exempted Government Securities ATSs to comply with certain provisions of Regulation ATS would help protect investors and enhance the oversight of Currently Exempted Government Securities ATSs by the Commission and SROs.

The Commission believes that requiring Currently Exempted Government Securities ATSs to adopt written safeguards and written procedures to protect subscribers' confidential trading information and to separate ATS functions from other broker-dealer functions would help prevent the potential for abuse of subscriber confidential trading information. The trading information of subscribers to Currently Exempted Government Securities ATSs could be subject to the same potential abuse as at other ATSs, such as sharing confidential subscriber trading information with other customers or the operator of the ATS using the confidential trading information of other subscribers to advantage its own trading on the ATS. The Commission, however, lacks information on the extent to which the confidential trading information of subscribers to Currently Exempted Government Securities ATSs is currently being abused.[662]

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[662] Although the Commission currently lacks this information, we describe above a potential scenario where the confidential trading information of a subscriber could be

Nonetheless, the Commission believes that the establishment of written safeguards and written procedures to separate Currently Exempted Government Securities ATS system functions from other broker-dealer functions, including principal trading, and to limit access to subscribers' confidential trading information to those employees of the ATS who are operating the system or are responsible for its compliance with applicable rules would help protect investors by reducing the chance that a subscriber's confidential information is accessed or shared inappropriately.

The Commission believes that requiring Currently Exempted Government Securities ATSs to comply with the recordkeeping and reporting requirements of Regulation ATS would improve the Commission's ability to monitor Currently Exempted Government Securities ATSs and improve its oversight of the market for government securities execution services. Each quarter, a Currently Exempted Government Securities ATS would be required to file a confidential Form ATS-R with the Commission, which would include transaction volume statistics, the identity of participants on the ATS, and the securities traded on the ATS. This information would allow the Commission to better monitor the types of investors that trade on these ATSs and the role they play in the government securities and repo market.[663]

The requirement for a Currently Exempted Government Securities ATS to keep and preserve records of subscribers to the ATS, daily summaries of trading in the ATS, and time-sequenced records of order information in the ATS would help create a meaningful audit trail of activities on the ATS. The preserved records of customer orders and transactions are expected to

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impermissibly shared with the personnel of the broker-dealer operator or any of its affiliates, and the broker-dealer operator, in turn, could potentially abuse that relationship to provide itself or its affiliates with a direct competitive advantage over that subscriber. See supra Section III.B.6.

[663] See supra Section X.A for a discussion about the need for greater transparency and public data availability regarding the functioning of U.S. Treasury markets.

improve the ability of the Commission or an SRO to detect and investigate potential irregularities that might occur in the market for government securities and repos, which would help promote a fair and orderly market for government securities.

The Commission believes that the extension of Regulation ATS to include bank-operated Currently Exempted Government Securities ATSs would improve transaction transparency, which would enhance the Commission's or SRO's market surveillance and help protect investors.[664] In addition, the improvement in transaction transparency could facilitate price discovery and price formation. Under the proposal, bank-operated Currently Exempted Government Securities ATSs would be required to register as broker-dealers and become members of an SRO and report transactions in government securities to TRACE,[665] which FINRA would publicly disseminate. This would result in the transaction reporting and public dissemination of government securities transactions executed by bank-operated Currently Exempted Government Securities ATSs, which are currently not reported to TRACE. The Commission believes that the improvement in transaction transparency could facilitate market surveillance by the Commission and FINRA and help protect investors and enhance price discovery and price formation.[666] The Commission believes that the magnitude of benefits from the increase in transaction transparency depends on the portion of transactions executed by the bank-operated Currently Exempted Government Securities ATSs, which are currently not reported to TRACE.[667] However, the Commission is unable to estimate the magnitude of this benefit because the Commission does not have transaction data executed by the estimated one

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664 See supra note 662.

665 See supra note 50.

666 See supra note 662.

667 See supra Section IX.D.1.

bank-operated Currently Exempted Government Securities ATS that exists, which would not be subject to transaction reporting obligations.

ii. Extension of Rule 304 of Regulation ATS to Include All Government Securities ATSs and Amendments to Rule 304

The Commission believes that the proposed extension of Rule 304 to Currently Exempted Government Securities ATSs and Legacy Filers would enhance the regulatory oversight of and the operational transparency of Government Securities ATSs, which account for significant trading volume of government securities,[668] and also could lower search costs, reduce trading costs, and improve the quality of order execution for market participants. Furthermore, the Commission believes that requiring Covered ATSs[669] to post their Forms ATS-N and Forms ATS-G on their websites would help facilitate public access to the forms for market participants who may use Form ATS-N or Form ATS-G to obtain information regarding operational facets of an ATS or to compare ATSs in the selection of trading venues.[670]

First, the Commission believes that the information disclosed in Form ATS-G, and the ability of the Commission to declare Form ATS-G ineffective, would improve the quality of information the Commission receives and significantly enhance the Commission's knowledge of the operations of Government Securities ATSs, the activities of its broker-dealer operator and its affiliates, and its safeguards and procedures to protect the confidential trading information of subscribers. Based in part on the Commission's experience with Form ATS-N for NMS Stock

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668 See supra note 643.

669 Covered ATSs as defined in the proposed rule currently would include 26 Government Securities ATSs and 34 NMS Stock ATSs if the proposed rule were in effect today. See supra note 95. See also supra Section II.B.

670 See Rule 304(b)(3)(ii).

ATSs, the Commission believes that extending Rule 304 to include all Government Securities ATSs would result in better regulatory oversight of these ATSs and help protect investors.[671] Second, the Commission believes that the proposed public disclosure of Form ATS-G would enhance the operational transparency of all Government Securities ATSs.[672] Similar to Form ATS-N for NMS Stock ATSs, the Commission believes that Form ATS-G would provide market participants in the government securities markets with more uniform information regarding how orders are handled and any potential conflicts of interest that may arise from the ATS-related activities of the broker-dealer operator or its affiliates. The Commission believes that there is currently limited publicly available information regarding the operations of Government Securities ATSs and that some subscribers of a Government Securities ATS may be privy to more detailed information about how their orders are executed, sent and/or prioritized than other subscribers. The Commission believes that the proposed public disclosure of Form ATS-G would help equalize information distribution among market participants, lower search costs, and assist market participants in selecting a Government Securities ATSs for their orders, which could lower their trading costs and improve the quality of their order execution.

The Commission believes that the increase in amount, and the improvement in quality, of information regarding Government Securities ATSs via Form ATS-G filings would help improve the regulatory oversight of the ATSs and help protect investors. Form ATS-G would improve the amount and quality of information the Commission receives regarding Government Securities ATSs because Form ATS-G would require Government Securities ATSs to disclose more detailed information regarding their operations than Form ATS does for Legacy Filers. For

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671 See supra note 663.

672 See id.

Currently Exempted Government Securities ATSs, the Commission would receive this detailed information about how those systems operate for the first time. For example, compared to Form ATS, Form ATS-G requires detailed information regarding the types of orders offered, how they interact and match, and how customer order flow is segmented. Form ATS-G would require Government Securities ATSs to report on the activities of the broker-dealer operator and its affiliates in connection with the ATS, which Form ATS does not require. The Commission's recent experience with Form ATS-N informs this belief. Since February 2019, the Commission has reviewed initial Form ATS-N filings and amendments thereto and engaged in direct conversation with all NMS Stock ATSs about their Form ATS-N filings. When new NMS Stock ATSs seek to begin operations, the initial Form ATS-N provides the Commission with detailed information about how the ATS will operate. With this knowledge, the Commission is better able to oversee compliance and evaluate how NMS Stock ATSs as a group are evolving. The Commission believes that similar information disclosed in proposed Form ATS-G would also help make the examination process of Government Securities ATSs more effective and efficient, improving the ability of the Commission and the ATS's SRO to examine for compliance with the federal securities laws.

The Commission believes that the Commission's process to declare Form ATS-G ineffective that is set forth in the proposed amendments would help ensure the quality of information disclosed in Form ATS-G, which would improve the efficiency in the regulatory oversight of Government Securities ATS, with attendant benefits to market participants who utilize Form ATS-G. The Commission's review of Form ATS-G would not be merit-based;

instead, it would focus on the completeness and comprehensibility of the disclosures.[673] The proposed amendments would provide a process for the Commission to declare a Form ATS-G ineffective if the form contained material deficiencies with respect to, among other things, its accuracy, currency, or completeness.[674] The Commission believes that the process would incentivize Government Securities ATSs to file accurate, current, and complete public disclosures about their operations and accordingly would improve the quality of information disclosed by the ATSs as compared to the information currently filed on Form ATS by Legacy Filers. In the Commission's experience, working with NMS Stock ATSs on their Form ATS-N filings has helped ensure that such disclosures are complete and comprehensible. Many NMS Stock ATSs have opted to seek the Commission staff's input about pending material amendments prior to filing, which has contributed to clearer and more effective disclosures.

The Commission believes that the public disclosure of Form ATS-G could lower search costs, reduce trading costs, and improve the quality of order execution for market participants.[675] Specifically, the Commission believes that requiring detailed public disclosures about the

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673 See supra note 166. To emphasize that the Commission is not conducting a merit-based review of Form ATS-G disclosures filed with the Commission, the Commission is proposing to include a legend on the Form ATS-G cover page stating that the Commission has not passed upon the merits or accuracy of the disclosures in the filing. See supra Section III.A.1.

674 A Government Securities ATS would not qualify for the exemption from the definition of "exchange" unless its Form ATS-G becomes effective.

675 The proposed Rule 304(b)(3)(i) would require Government Securities ATSs to make Form ATS-G public via posting on their websites a direct URL hyperlink to the Commission's website that contains their Form ATS-G filing. The proposed Rule 304(b)(3)(ii) would require all Covered ATSs (26 Government Securities ATSs and 34 NMS Stock ATSs) to make the most recently disseminated Covered Forms (Form ATS-G and Form ATS-N) public via posting the forms on their websites. See supra Section II.B for the definition of the terms "Covered ATS" and "Covered Form." See also supra note 95.

operations of Government Securities ATSs would, among other things, better standardize the type of information market participants receive about those operations including how orders are handled, fee structures, or any potential conflicts of interest that may arise from the activities of the broker-dealer operator or its affiliates. Based on the Commission's experience with its review of initial Form ATS-N filings, the Commission believes that Form ATS-G would result in more standardized public information about Government Securities ATSs. As a result, search costs for market participants could be lower, as consistent disclosure requirements for all Government Securities ATSs as part of the proposed amendments to Regulation ATS should facilitate market participants' comparison of Government Securities ATSs when deciding which venue best suits their trading purposes. The Commission believes the enhanced operational transparency resulting from the public disclosures of Form ATS-G would aid market participants when evaluating potential trading venues, which could lower their trading costs and improve the quality of their order execution. Furthermore, based on the Commission's experience, fees can be a primary factor for market participants in deciding where to send their orders.[676] Fee disclosures on proposed Form ATS-G would help market participants compare and analyze the fee structures across Government Securities ATSs in an expedited manner and decide which ATS offers them the best pricing according to the characteristics of their order flow and the type of participant they are, which would lower their search costs and trading costs.

However, the Commission is unable to quantify these benefits to market participants because the Commission lacks data on the amount of information that is currently available to different market participants regarding Government Securities ATS operations and the activities of its broker-dealer operators and their affiliates. The magnitude of the anticipated benefits

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[676] See supra Section III.C.19.

discussed above would also depend on a number of factors, including the extent to which market participants would change their behavior as a result of receiving the public disclosure of more comprehensive and uniform information of this type in Form ATS-G. It is inherently difficult to predict how different market participants will use the information contained in Form ATS-G in evaluating and choosing the Government Securities ATSs that best serve their trading objectives.

With respect to the filing location and format of Form ATS-G, the Commission believes requiring all Government Securities ATSs to file Form ATS-G on the EDGAR system in a structured, machine-readable custom eXtensible Markup Language ("custom XML") format would benefit market participants by improving the usability, accessibility, and reliability of the Form ATS-G disclosures.[677] By requiring a structured format and a publicly accessible filing location for Form ATS-G, the Commission would enable market participants to download the disclosed information directly into their databases and analyze the information using various tools and applications. This would make it easier for market participants to aggregate the information and compare multiple Government Securities ATSs to help select the venue that best suits their trading purposes, thereby potentially avoiding the cost of paying a third party data vendor to extract and structure the disclosed information on their behalf.

The Commission also believes requiring all Government Securities ATSs to submit Form ATS-G in a custom XML format would facilitate more effective and thorough review and analysis of Government Securities ATSs by the Commission, which should yield greater insights into the operations of Government Securities ATSs and the activities of their operators and affiliates. Additionally, Commission staff would be better able to assemble and review a larger

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677 See supra Section IV. The custom XML format requirement would be specified in the EDGAR Filer Manual and in the Instructions to Form ATS-G. See Instruction A.5 to proposed Form ATS-G.

pool of data regarding Government Securities ATSs. The Commission believes that both of these outcomes would benefit market participants by facilitating the Commission's examination process and thus would help protect investors and ensure the sufficiency of information in the market related to Government Securities ATSs.

Requiring all Government Securities ATSs to file Form ATS-G on EDGAR would benefit market participants by ensuring that the Form ATS-G disclosures are in a centralized, publicly accessible filing location with validation capabilities. Providing a centralized filing location would prevent market participants from incurring additional costs to locate and retrieve different Forms ATS-G from different filing locations. Similarly, because EDGAR is a publicly accessible system, an EDGAR requirement would prevent market participants from incurring additional costs that would arise if an operator or other party were to place any barriers to access Form ATS-G (such as a website registration requirement). Because EDGAR provides basic validation capabilities, an EDGAR requirement would reduce the incidence of non-discretionary errors on Forms ATS-G, thereby improving the quality of Form ATS-G disclosures.

iii. Application of Fair Access Rule to Government Securities ATSs

The Commission believes that the proposed application of the Fair Access Rule could increase trading venue options available to market participants who are currently excluded, which could lower their trading costs, to the extent that there are market participants currently excluded from trading on Government Securities ATSs that meet the specified volume thresholds. The Commission believes that requiring Government Securities ATSs that meet the volume thresholds to establish and objectively apply fair access standards could help prevent certain market participants from being denied access to an ATS that trades a significant portion of the market for U.S. Treasury Securities and Agency Securities, to the extent there are any such

market participants. Denials of access are of particular concern when an ATS captures a significant percentage of trading volume in a particular type of securities. The Commission also believes that Form ATS-R information regarding fair access grants, denials, and limitations of access to Government Securities ATSs would improve the Commission's ability to oversee those ATSs to evaluate for compliance with the Fair Access Rule.

Under the proposal, if a Government Securities ATS meets the fair access volume thresholds, the ATS would be required to apply the same access standards to all persons in a subscriber group. As a result, for example, there would be a mechanism to prevent a Government Securities ATS that met the volume threshold from unreasonably denying access to one hedge fund while granting access to another similar hedge fund. The Commission believes that to the extent there are any market participants currently excluded from trading on Government Securities ATSs, the proposed change would address any unreasonable exclusion practices by Government Securities ATSs that have a significant market share, which would increase trading platform options and lower trading costs for previously excluded market participants.

b. Extension of Regulation SCI to Government Securities ATSs

The Commission believes the proposed amendments to Regulation SCI would promote the establishment of more robust systems that are less likely to experience a system disruption by requiring Government Securities ATSs that meet the definition of SCI entity to establish and enforce written policies and procedures to ensure that their SCI systems have adequate levels of capacity, integrity, resiliency, availability, and security to maintain the SCI entity's operational

capability.[678] The Commission believes that the proposed extension of Regulation SCI could help strengthen the infrastructure and improve the resiliency of the automated systems of Government Securities ATSs that are important to the government securities markets. The Commission expects requiring Government Securities ATSs that meet certain volume thresholds to comply with Regulation SCI could help prevent system issues from occurring and reduce the severity and duration of any effects when such issues do occur. The Commission believes that this would help facilitate the price discovery process and liquidity flows in government securities market. Price discovery in the secondary market for on-the-run U.S. Treasury Securities is important because the transaction prices of on-the-run U.S. Treasury Securities are used as risk-free rate benchmarks to price other securities transactions.[679]

The Commission also believes that the requirement for a Government Securities ATS that would be an SCI ATS to establish procedures to disseminate information about SCI events to responsible SCI personnel, ATS participants, and the Commission would help reduce the duration and severity of any system distributions that do occur.[680] The procedures would improve the ability of such an ATS to quickly provide the affected parties with critical information in the event that it experiences a system disruption. This could allow the affected parties to respond more quickly and appropriately to the incident, which could help shorten the duration and reduce the effects of a system event. Additionally, the Commission believes that the requirement for a Government Securities ATS that meets the definition of SCI ATS to

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678 See supra Section VI.

679 As noted in the October 15 Staff Report, supra note 14, price discovery is especially important in the secondary market for on-the-run U.S. Treasury Securities because the transaction prices are used as risk-free rate benchmarks to price other securities transactions.

680 See supra note 678.

conduct testing of its business continuity and disaster recovery plans with its designated participants and other industry SCI entities would help detect and improve the coordination of responses to system issues that could affect multiple trading venues and participants in the government securities and repo market.[681] This testing should help prevent these system disruptions from occurring and help reduce the severity of their effects, if they do occur.

As discussed in Section X.B.6, one Government Securities ATS operated by a broker-dealer operator of an NMS Stock ATS that is a SCI entity could already have utilized some of the policies and procedures of the NMS Stock ATS required by Regulation SCI and modified them as needed for systems related to trading of U.S. Treasury Securities and Agency Securities.[682] However, the Commission believes that imposing the requirements of Regulation SCI on systems related to trading of U.S. Treasury Securities and Agency Securities could further strengthen these policies and procedures, which would help improve the robustness of SCI systems and SCI indirect systems.

c. Amendments to Rule 301(b)(2), Form ATS, Form ATS-R, and Form ATS-N

The Commission believes that the proposed amendments to modernize Form ATS and Form ATS-R would enhance the efficiency of the Commission in overseeing ATSs as well as the efficiency of filing Forms ATS and ATS-R for ATSs. Such amendments would apply to all ATSs that file Form ATS and/or Form ATS-R. Requiring an ATS to specify the type of amendment on Form ATS and to provide the cessation date, which is not currently required,

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681 See id.

682 See supra Section X.B.6 for a discussion of Government Securities ATSs of existing SCI entities.

would better enable the Commission to determine whether an ATS is in compliance with Regulation ATS.

The Commission believes that the proposed amendments to Form ATS-R would help facilitate the Commission's review and provide the Commission with more specificity for all categories of securities that ATSs trade. The Commission believes that requiring the ATS to indicate whether it was subject to the Fair Access Rule during any portion of the period covered by the report would facilitate the Commission's review of Form ATS-R submissions. The Commission believes that this change would help the Commission facilitate compliance with the trading volume-based thresholds for the Fair Access Rule and Regulation SCI.[683] The Commission believes that updating the descriptions of certain categories of securities for which volume is required to be reported on Form ATS-R by an ATS would reduce potential confusion for an ATS when completing Form ATS-R and would enable an ATS to reflect more accurately its trading activities during the applicable reporting period.[684] Furthermore, adding new Item 4K of Form ATS-R would result in consistent reporting of the total dollar volume of transactions in repurchase or reverse repurchase agreements that ATSs trade. New Item 5C of Form ATS-R would provide the Commission with information regarding the types of securities subject to repurchase or reverse repurchase agreements reported in Item 4K of Form ATS-R. The Commission believes that adding new Item 5D would provide the Commission with more

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683 See supra Sections II.D and VI.

684 See supra Section V.C for a discussion of the proposal to replace the names of the securities categories, "Nasdaq National Market Securities" and "Nasdaq SmallCap Market Securities," reported in Items 4 and 6 of Form ATS-R, with "Nasdaq Global Market Securities" and "Nasdaq Capital Market Securities," respectively.

specific information about the types of options (equity options and options on government securities) that each ATS trades, which would help enhance the regulatory oversight of ATSs.

The Commission is also proposing to require Forms ATS and ATS-R, which are currently required to be sent to the Commission in paper form, to be filed on EDGAR.[685] All ATSs subject to Regulation ATS are required to file a Form ATS-R, and, as proposed, all ATSs that do not trade NMS stocks or government securities would file a Form ATS. As discussed above, requiring forms to be filed on EDGAR would provide a centralized filing location with validation capabilities for submitted filings.[686] The Commission believes that an EDGAR requirement would also increase filing efficiencies for ATSs by removing the need to print and mail paper versions of Forms ATS and ATS-R.

The Commission is also proposing several revisions to Form ATS-N, including: deletion of a checkbox requiring NMS Stock ATSs to indicate whether they currently operate pursuant to a Form ATS; addition of a requirement to indicate whether the registered broker-dealer has been authorized by its national securities association to operate an ATS; deletion of signature block language that refers to the signatory as "duly sworn"; and changes to the Form's definitions of "Person" (to reflect the Exchange Act definition, not the Advisers Act definition) and "NMS Stock ATS" (to reflect the proposed changes to Rule 300).[687] Certain of these proposed changes represent technical clarifications that are unlikely to materially impact the disclosures on Form ATS-N, but would facilitate the preparation and filing of Form ATS-N. With respect to the proposed requirement for Form ATS-N filers to indicate whether the registered broker-dealer has

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685 See supra note 308.

686 See supra Section X.C.1.a.ii.

687 See supra Section V.D.

been authorized by its SRO to operate an ATS, the Commission believes this would benefit market participants by facilitating the Commission's oversight of an NMS Stock ATS operator's compliance with SRO rules (including the need to obtain approval to operate an ATS), thereby likely decreasing the incidence of non-compliance with those rules.

2. Costs

Government Securities ATSs would incur both initial implementation and ongoing compliance costs due to the proposed amendments to Regulation ATS and Regulation SCI. In addition, market participants in the government securities and repo market could face higher trading costs (e.g., higher fees) from Government Securities ATSs, to the extent that compliance costs from Regulation ATS and Regulation SCI amendments are passed on to market participants. The Commission estimates that Government Securities ATSs would incur the following approximate aggregate PRA compliance costs and FINRA membership related costs associated with the proposed amendments to Regulation ATS.[688]

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688 The Commission is unable to estimate costs associated with FINRA rules, such as FINRA examination and surveillance, trade reporting obligations, and certain investor protection rules, for the bank-operated Currently Exempted Government Securities ATS. See infra Section X.C.2.a.i for a discussion about compliance costs associated with FINRA rules for the bank-operated Currently Exempted Government Securities ATS. Furthermore, to comply with the Fair Access Rule, the Commission recognizes that Government Securities ATSs could incur non-PRA compliance costs (e.g., costs associated with changing fee structures and adapting the operating model to grant access to market participants), for which the Commission is unable to provide cost estimates. See infra Section X.C.2.a.iii for a discussion about non-PRA compliance costs associated with the Fair Access Rule for Government Securities ATSs.

Table X.5: Regulation ATS

Regulation ATS	Aggregate Initial Costs	Aggregate Annual Costs
i. Regulation ATS for Currently Exempted Government Securities ATSs[689]	*$344,000*[690]	*$156,000*[691]
ii. Rule 304 for all Government Securities ATSs[692]	*$1,194,000*[693]	*$514,000*[694]

689 The Commission estimates 7 Currently Exempted Government Securities ATSs would be subject to the proposed amendments to Regulation ATS. See also supra Section IX.C.

690 This cost includes the approximate initial cost of $275,000 for registering as a broker-dealer with the Commission and becoming a FINRA member for 1 estimated bank-operated Currently Exempted Government Securities ATS to comply with Rule 301(b)(1). See also infra Section X.C.2.a.i for a discussion of the initial cost of registering as a broker-dealer with the Commission via Form BD and becoming a FINRA member for a bank-operated Currently Exempted Government Securities ATS to comply with Rule 301(b)(1).

691 This cost includes the approximate ongoing annual cost of $50,000 for registering as a broker-dealer with the Commission and maintaining FINRA membership for 1 estimated bank-operated Currently Exempted Government Securities ATS to comply with Rule 301(b)(1). See also infra Section X.C.2.a.i for a discussion of the ongoing annual cost of registering as a broker-dealer with the Commission via Form BD and becoming a FINRA member for a bank-operated Currently Exempted Government Securities ATS to comply with Rule 301(b)(1).

692 The Commission estimates 26 Government Securities ATSs would be subject to the proposed amendments to Regulation ATS. See also supra Section IX.C.

693 This cost does not include the aggregate initial PRA costs associated with Rule 304(b)(3)(ii) for 34 NMS Stock ATSs. See infra Section X.C.2.a.ii for a discussion about the aggregate initial PRA costs to comply with the proposed amendments to Rule 304 of Regulation ATS. See also infra notes 726 and 728.

694 This cost does not include the aggregate ongoing annual PRA costs associated with Rule 304(b)(3)(ii) for 34 NMS Stock ATSs. See infra Section X.C.2.a.ii for a discussion about the aggregate ongoing annual PRA costs to comply with the proposed amendments to Rule 304 of Regulation ATS. See also infra notes 727 and 729.

iii. Rule 301(b)(2) and Forms ATS and ATS-R[695]	*$1,800*[696]	*$46,000*[697]
iv. Fair Access Rule[698]	-	*$25,000*[699]

The Commission also believes that Government Securities ATSs with significant volume in U.S. Treasury Securities or Agency Securities would incur the following approximate aggregate PRA and non-PRA compliance costs associated with Regulation SCI:

Table X.6: Regulation SCI

Regulation SCI[700]	Aggregate Initial Costs	Aggregate Annual Costs

695 The Commission estimates 1 bank-operated Currently Exempted Government Securities ATS would initially be required to file a Form ID to gain access to EDGAR as a result of the proposed amendments. See also supra Section IX.D.2.b.iv. In addition, the Commission notes that it is proposing changes to Form ATS-N to delete a question related to legacy status, and to include a checkbox asking if the registered broker-dealer is authorized by a national securities association to operate an ATS; the Commission believes that because this information should be readily available to a filer and requires only marking a checkbox, this would not impose additional monetary costs above the baseline for Form ATS-N filers. See also supra note 520.

696 See infra Section X.C.2.c for a discussion about the aggregate initial PRA costs to comply with the proposed amendments to Rule 301(b)(2), Form ATS, and Form ATS-R.

697 See infra Section X.C.2.c for a discussion about the aggregate ongoing annual PRA costs to comply with the proposed amendments to Rule 301(b)(2), Form ATS, and Form ATS-R.

698 The Commission estimates 3 Government Securities ATSs would be subject to the Fair Access Rule. See also supra Section IX.D.3.

699 See infra Section X.C.2.a.iii for a discussion about the aggregate ongoing annual PRA costs to comply with the Fair Access Rule.

700 The Commission estimates 3 Government Securities ATSs would be subject to Regulation SCI. See also supra Section IX.D.5. The costs tabulated in this table do not include costs for market participants interacting with SCI entities (e.g., third-party vendors providing SCI systems and/or indirect SCI systems to SCI entities, members or participants of SCI entities participating in testing of business continuity and disaster recovery plans). See also infra Section X.C.2.b.

PRA costs[701]	*$1,631,000*	*$2,413,000*
Non-PRA costs[702]	*$960,000 ~ $7.2 million*	*$640,800 ~ $4.8 million*

In addition to compliance costs, some market participants could experience indirect costs from the proposal. For example, a Government Securities ATS could incur indirect costs if its competitive position in the market were adversely affected as a result of the public disclosure requirement of Form ATS-G. However, such costs to one ATS would constitute transfers to other ATSs rather than a net social cost, and the Commission believes that the risk of such transfers is likely to be low.[703]

a. Extension of Regulation ATS to Currently Exempted Government Securities ATSs and Amendment to Regulation ATS for All Government Securities ATSs

The proposed extension of Regulation ATS would generate a number of costs for Currently Exempted Government Securities ATSs and Legacy Filers associated with extending Regulation ATS to include Currently Exempted Government Securities ATSs; extending Rule 304 of Regulation ATS to include all Government Securities ATSs and amending Rule 304; and applying the Fair Access Rule.[704]

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701 These cost estimates are based on the 2018 SCI PRA Extension. See 2018 SCI PRA Extension, supra note 529. See also supra Section IX.D.5 discussing PRA burden estimates related to compliance with Regulation SCI.

702 See infra note 767. See also infra Section X.2.b and Regulation SCI Adopting Release, supra note 2, at 72416.

703 See infra Section X.C.2.a.ii for a discussion about transfer costs and why the Commission believes the risk of incurring such transfer costs is likely to be low.

704 See supra Section X.C.2 for a discussion and table regarding the summary of PRA compliance costs associated with the proposed amendments to Regulations ATS.

i. Extension of Regulation ATS to Include Currently Exempted Government Securities ATSs

The Commission estimates that, together, 7 Currently Exempted Government Securities ATSs would incur the aggregate initial PRA costs of approximately $27,000[705] and the aggregate ongoing annual PRA costs of approximately $77,000[706] to comply with the applicable rules of Regulation ATS (other than the costs to comply with Rule 304, which are discussed below).[707] In addition, the Commission estimates that 1 bank-operated Currently Exempted Government

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705 $27,146 (estimated aggregate initial cost of compliance with Rule 301(b)(10) for 7 Currently Exempted Government Securities ATSs). See infra note 719. The Commission estimates the wage rate associated with these burden hours based on salary information for the securities industry compiled by SIFMA. The estimated wage figure for attorneys, for example, is based on published rates for attorneys, modified to account for a 1,800 hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead yielding an effective hourly rate for 2013 of $380 for attorneys. See Securities Industry and Financial Markets Association, Management & Professional Earnings in the Securities Industry—2013, available at https:// www.sifma.org/resources/research/managementand-professional-earnings-in-the-securitiesindustry-2013/. These estimates are adjusted for an inflation rate of 11.34 percent based on the Bureau of Labor Statistics data on CPI–U between October 2013 and May 2020. Therefore, the current inflation adjusted effective hourly wage rates for attorneys are estimated at $423 ($380 × 1.1134). We discuss other costs of compliance with the proposed rules below.

706 $22,365 (estimated aggregate ongoing cost of compliance with Rule 302 for 7 Currently Exempted Government Securities ATSs) + $7,455 (estimated aggregate ongoing cost of compliance with Rule 303 for 7 Currently Exempted Government Securities ATSs) + $40,719 (estimated aggregate ongoing cost of compliance with Rule 301(b)(9) for 7 Currently Exempted Government Securities ATSs) + $6,916 (estimated aggregate ongoing cost of compliance with Rule 301(b)(10) for 7 Currently Exempted Government Securities ATSs) = $77,455. For an explanation of each of these costs, see infra notes713, 715, 717, and 721. Costs of compliance with Rule 301(b)(5), as applicable, are discussed below. See infra note 757.

707 These aggregated compliance costs associated with the PRA include the costs to comply with Rule 301(b)(1), Rule 301(b)(2), Rule 301(b)(9), Rule 301(b)(10), Rule 302, and Rule 303(a)(1)(v). These aggregated compliance costs associated with the PRA do not include the compliance costs associated with Rule 301(b)(2)(viii), Rule 304 of Regulation ATS, the Fair Access Rule, and Regulation SCI.

Securities ATS would incur the additional initial costs of approximately $275,000[708] and the ongoing annual costs of approximately $50,000[709] to register as a broker-dealer with the Commission via Form BD and become a member of FINRA under the proposed Rule 301(b)(1).[710]

Currently Exempted Government Securities ATSs would incur ongoing annual PRA costs to comply with recordkeeping requirements of Rules 302 and 303 of Regulation ATS.[711] Currently Exempted Government Securities ATSs would also incur ongoing annual PRA costs associated with filing information required by Form ATS-R with the Commission each quarter to comply with Rule 301(b)(9). The requirements to establish written safeguards and procedures to protect the confidential trading information of ATS subscribers under Rules 301(b)(10) and 303(a)(1)(v) would impose one-time initial PRA costs on Currently Exempted Government

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708 The Commission estimates that 1 bank-operated Currently Exempted Government Securities ATS would incur the aggregate initial cost for registering as a broker-dealer with the Commission via Form BD and becoming a FINRA member under Rule 301(b)(1) of approximately $275,000. See also infra note 724.

709 The Commission estimates that 1 bank-operated Currently Exempted Government Securities ATS would incur the aggregate ongoing cost associated with Form BD and maintaining FINRA membership under Rule 301(b)(1) of approximately $50,000. See also infra note 725.

710 See supra note 429 and accompanying text for hourly burden. The initial PRA costs would be: Compliance Manager at $315 x 2.75 hours x 1 estimated bank-operated Currently Exempted Government Securities ATS = $866.25. See supra note 430. The ongoing annual PRA costs would be: (Compliance Manager at $315 x 0.33 hours) x 3 amendments x 1 estimated bank-operated Currently Exempted Government Securities ATS = $311.85. See supra note 432.

711 Rule 301(b)(8) would require Currently Exempted Government Securities ATSs to comply with the requirements of Rules 302 and 303 of Regulation ATS. Legacy Filers already comply with Rules 302 and 303 of Regulation ATS. See also supra Section IX.D.1.b.

Securities ATSs. In addition, Currently Exempted Government Securities ATSs would incur ongoing annual PRA costs to update and preserve the written safeguards.

Table X.7 tabulates initial and ongoing annual PRA costs associated with Rules 302, 303, 301(b)(9), 301(b)(10), and 303(a)(1)(v):

Burden	**Initial PRA Costs**	**Annual PRA Costs**
Recordkeeping under Rule 302	N/A	*Per ATS*: $3,195[712] *Industry*: $22,365[713]
Recordkeeping under Rule 303	N/A	*Per ATS*: $1,065[714] *Industry*: $7,455[715]
Filing Form ATS-R under Rule 301(b)(9)	N/A	*Per ATS*: $5,817[716] *Industry*: $40,719[717]
Written safeguards and procedures under Rules 301(b)(10) and 303(a)(1)(v)	*Per ATS*: $3,878[718] *Industry*: $27,146[719]	*Per ATS*: $988[720] *Industry*: $6,916[721]

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712 Compliance Clerk at $71 x 45 hours = $3,195. See supra note 434. This burden is equal to the Commission's estimate of the annual costs that a Legacy Filer currently bears for fulfilling the requirements of Rule 302.

713 $3,195 x 7 Currently Exempted Government Securities ATSs = $22,365.

714 Compliance Clerk at $71 x 15 hours = $1,065. See supra note 436. This burden is equal to the Commission's estimate of the annual costs that a Legacy Filer currently bears for fulfilling the requirements of Rule 303.

715 $1,065 x 7 Currently Exempted Government Securities ATSs = $7,455.

716 (Attorney at $423 x 12 hours) + (Compliance Manager at $315 x 1 hour) + (Compliance Clerk at $71 x 6 hours) = $5,817. See supra note 438. This burden is equal to the burden that Legacy Filers bear for complying with Rule 301(b)(9). See supra Section IX.D.1.c.

717 $5,817 x 7 Currently Exempted Government Securities ATSs = $40,719.

718 (Attorney at $423 x 9 hours) + (Compliance Clerk at $71 x 1 hour) = $3,878. See supra note 443.

719 $3,878 x 7 Currently Exempted Government Securities ATSs = $27,146.

720 (Attorney at $423 x 2 hours) + (Compliance Clerk at $71 x 2 hours) = $988. See supra note 445. This burden is equal to the Commission's estimate of the annual costs that a Legacy Filer currently bears to comply with the rule under the proposal.

721 $988 x 7 Currently Exempted Government Securities ATSs = $6,916.

The Commission believes that Currently Exempted Government Securities ATSs that are banks (i.e., bank-operated Currently Exempted Government Securities ATSs) would incur additional compliance costs related to registering with the Commission as broker-dealers, which entails becoming members of an SRO, such as FINRA, compared to those not operated by banks. In addition, as members of FINRA, bank-operated Currently Exempted Government Securities ATSs would incur costs related to FINRA examination and surveillance, trade reporting obligations, and certain investor protection rules.[722] It is the Commission's understanding that bank-operated Currently Exempted Government Securities ATSs may adopt a structure where the ATS is operated by a bank affiliate that is a registered broker-dealer, rather than by the bank itself.[723] In this case, the bank affiliates operating ATSs would be required to register as broker-dealers with the Commission via Form BD and become members of an SRO under the proposed Rule 301(b)(1). The Commission estimates that 1 bank-operated Currently Exempted Government Securities ATS would register as a broker-dealer with the Commission via Form BD and become a member of an SRO under the proposed Rule 301(b)(1).

The Commission estimates an initial cost of approximately $275,000 to register as a broker-dealer with the Commission via Form BD and become a member of FINRA.[724]

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722 See supra notes 108-110.

723 See supra Section II.C for a discussion of bank-operated Currently Exempted Government Securities ATS. Because a bank-operated Government Securities ATS could comply with the proposed requirements by, for example, restructuring so that an existing affiliate operates the ATS, the Commission does not consider costs that would be associated with creating a new bank-affiliated entity to be part of the incremental costs of the proposal.

724 See Exchange Act Release No. 33-9974 (October 30, 2015), 80 FR 71388, 71509 (November 16, 2015) ("Regulation Crowdfunding Adopting Release"). In addition to the initial costs to become a member of FINRA, this cost includes the paperwork related

Additionally, the Commission estimates an ongoing annual cost of approximately $50,000 to maintain the broker-dealer registration with the Commission and FINRA membership.[725] The Commission believes that these costs related to broker-dealer registration and FINRA membership are relevant primarily to bank-operated Currently Exempted Government Securities ATSs. However, these estimates are uncertain because the Commission does not have information on the estimated 1 bank-operated Currently Exempted Government Securities ATS, such as the number of registering persons, profitability, the degree of reliance on outside legal or consulting costs necessary for effectively completing the application to be a member of FINRA, and the current sample size of one may be too small to be a reliable indicator of industry costs. For example, the initial registration costs for FINRA membership is higher for entities with a larger number of associated persons being registered. The ongoing costs to remain a FINRA member vary based on the profitability and the size (i.e., the number of registered persons and the number of branch offices) of the entity. Furthermore, the Commission is unable to provide estimated costs related to FINRA examination and surveillance, trade reporting obligations, and certain investor protection rules because these costs are based on compliance with FINRA rules. The costs associated with FINRA examination and surveillance, trade reporting obligations, and certain investor protection rules may depend on various factors, such as the costs of updating systems for trade reporting requirements and the costs of complying with FINRA rules (including drafting policies and procedures as may be required for the bank-operated Currently

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initial costs of $866.25 for filing Form BD with the Commission. See also supra note 708.

725 In addition to the ongoing annual costs to maintain a membership with FINRA, this cost includes the costs of paperwork related ongoing annual costs of $311.85 to amend Form BD with the Commission. See supra note 709. See also Regulation Crowdfunding Adopting Release, supra note 724, at 71509.

Exempted Government Securities ATS), for which the Commission does not have information. The Commission invites comments on costs that a bank-operated Government Securities ATS could incur in relation to FINRA membership, FINRA examination and surveillance, trade reporting, and certain investor protection rules.

ii. Extension of Rule 304 of Regulation ATS to Include All Government Securities ATSs and Amendments to Rule 304

The Commission estimates that all 26 Government Securities ATSs would incur the aggregate initial PRA costs of approximately $1,143,000[726] to complete Form ATS-G and to make Form ATS-G public. The Commission estimates that all 26 Government Securities ATSs would incur the aggregate ongoing annual PRA costs of approximately $331,000[727] to amend their Forms ATS-G. In addition, the Commission estimates that some Legacy Filers would incur PRA costs associated with amending Form ATS and filing Form ATS-R. As discussed below, the Commission estimates that 17 Legacy Filers would incur the aggregated initial PRA costs of

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[726] $1,097,773 (estimated aggregate initial cost associated with completing Form ATS-G required by Rule 301(b)(2)(viii) and Rule 304 for 26 Government Securities ATSs) + $15,028 (estimated aggregate initial cost associated with making public posting on ATS's website of direct URL hyperlink to the Commission's website that contains Form ATS-G, as required by Rule 304(b)(3)(i) for 26 Government Securities ATSs) + $30,056 (estimated aggregate initial cost associated with making public posting on ATS's website of the most recently disseminated Form ATS-G, as required by Rule 304(b)(3)(ii) for 26 Government Securities ATSs) = $1,142,857. See also infra notes 733, 747, and 749.

[727] $241,129 (estimated aggregate ongoing cost associated with amending Form ATS-G required by Rule 301(b)(2)(viii) and Rule 304 for 26 Government Securities ATSs) + $90,168 (estimated aggregate ongoing cost associated with making public posting on ATS's website of the most recently disseminated Form ATS-G, as required by Rule 304(b)(3)(ii) for 26 Government Securities ATSs) = $331,297. See also infra notes 735 and 749.

approximately $51,000[728] for amending Form ATS and the aggregated ongoing annual PRA costs of approximately $183,000[729] for amending Form ATS and Form ATS-R. Furthermore, the Commission estimates that 34 NMS Stock ATSs would incur the aggregated initial and ongoing annual PRA costs of approximately $39,000[730] and $118,000,[731] respectively, to make the most recently disseminated Forms ATS-N public via posting on the ATSs' websites. The Commission also believes that some subscribers of Government Securities ATSs could incur indirect costs resulting from the public disclosure requirement of Form ATS-G.

The proposed amendments to Regulation ATS would impose PRA costs on all Government Securities ATSs in that they would require Government Securities ATSs to adhere to heightened disclosure and reporting requirements regarding their operations. The Commission expects the PRA costs of the proposed amendments to be incremental relative to the PRA costs associated with the existing requirements. Specifically, the Commission believes that the incremental PRA costs would consist largely of providing new disclosures and updating records and retention policies necessary to comply with the proposed amendments. The Commission estimates that all 26 Government Securities ATSs would need to comply with the proposed

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728 $50,966 (estimated aggregate initial cost associated with amending Form ATS, as required by Rule 301(b)(2)(viii) for 17 Legacy Filers). See also infra note 742.

729 $69,547 (estimated aggregate ongoing cost associated with amending Form ATS required by Rule 301(b)(2)(viii) for 17 Legacy Filers) + $113,271 (estimated aggregate ongoing cost associated with amending Form ATS-R, as required by Rule 301(b)(9) for 17 Legacy Filers) = $182,818. See also infra notes 733 and 744.

730 $39,304 (estimated aggregate initial cost associated with making public posting on ATS's website of the most recently disseminated Form ATS-N, as required by Rule 304(b)(3)(ii) for 34 NMS Stock ATSs). See also infra note 749.

731 $117,912 (estimated aggregate ongoing cost associated with making public posting on ATS's website of the most recently disseminated Form ATS-N, as required by Rule 304(b)(3)(ii) for 34 NMS Stock ATSs). See also infra note 749.

amendments to Regulation ATS relating to Rules 301(b)(2)(viii) and 304, which require the filing of proposed Form ATS-G. Some of the information requests on Form ATS-G would be applicable to only Government Securities ATSs that meet the applicable volume thresholds.[732] This would result in the aggregate initial PRA cost of $1,097,773 for all Government Securities ATSs to complete Form ATS-G and comply with proposed Rules 301(b)(2)(viii) and 304 of Regulation ATS.[733]

In addition to the initial PRA costs mentioned above, Government Securities ATSs would also incur ongoing PRA costs to comply with the proposed amendments to Rule 3a1-1(a) and Regulation ATS. For instance, Government Securities ATSs would incur ongoing PRA costs associated with amending their Form ATS-G prior to material changes in their operations, or to correct any information that has become inaccurate. Regardless of the reason for filing a Form ATS-G amendment, the Commission estimates that a Government Securities ATS would incur

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732 See supra Section IX.D.2.b.i.

733 Aggregate costs to complete Part I of Form ATS-G: (Compliance Clerk at $71 x 0.75 hours) x 26 Government Securities ATSs = $1,384.50 (see supra note 473). Aggregate costs to complete Part II of Form ATS-G: ((Attorney at $423 x 18.5 hours) + (Compliance Manager at $315 x 9.5 hours) + (Sr. Systems Analyst at $289 x 1 hour) + (Sr. Marketing Manager at $311 x 2 hours)) x 26 Government Securities ATSs = $304,954 (see supra note 475). Aggregate costs to complete Part III items applicable to all respondents: ((Attorney at $423 x 19.5 hours) + (Compliance Manager at $315 x 26.2 hours) + (Sr. Systems Analyst at $289 x 26.55 hours) x 26 Government Securities ATSs = $628,535 (see supra note 477). Aggregate costs to complete Part III, Item 24(a): ((Attorney at $423 x 2 hours) + (Compliance Manager at $315 x 1 hour) + (Sr. Systems Analyst at $289 x 2 hours)) x 3 ATSs subject to the requirement = $5,217. Aggregate costs to complete Part III, Item 24(b): (Attorney at $423 x 2 hours) + (Compliance Manager at $315 x 1 hour) + (Sr. Systems Analyst at $289 x 2 hours)) x 1 ATS subject to the requirement = $1,739. ($1,385 (Part I) + $304,954 (Part II) + $628,535 (Part III items applicable to all filers) + $5,217 (Part III, Item 24(a)) + $1,739 (Part III, Item 24(b)) + $155,896 (baseline) + $47 (access to EDGAR) = $1,097,773 total aggregate costs.

approximately $9,274 to prepare and file its Form ATS-G amendments.[734] This would result in the aggregate ongoing annual PRA cost of $241,129 for all Government Securities ATSs to amend their Forms ATS-G and comply with proposed Rules 301(b)(2)(viii) and 304 of Regulation ATS.[735]

Requiring Form ATS-G to be filed on EDGAR would impose only a minimal cost, at most, on Government Securities ATSs. The Commission believes requiring proposed Form ATS-G to be filed on EDGAR would impose the aggregate initial PRA cost of approximately $47 for 1 bank-operated Currently Exempted Government Securities ATS,[736] and the aggregate ongoing annual PRA costs of approximately $47 for 1 new Government Securities ATS per year that may be operated by an entity without prior access to EDGAR.[737] Because all Legacy Filers are operated by registered broker-dealers, there would be no burden associated with gaining access to EDGAR for Legacy Filers.[738] The Commission estimates that 1 Currently Exempted Government Securities ATS is operated by a bank, not a registered broker-dealer; as such, there

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[734] See supra note 483. (Attorney at $423 x 16.5 hours) + (Compliance Manager at $315 x 6 hours) + (Compliance Clerk at $71 x 5.7 hours) = $9,274.2.

[735] 28.2 total hours (see supra note 484) x 26 Government Securities ATSs = 733.2 hours. $9,274.20 x 26 Government Securities ATSs = $241,129.

[736] (Compliance Manager at $315 x 0.15 hours) x 1 bank-operated Currently Exempted Government Securities ATS = $47.25. See supra note 509. This cost is reflected in the aggregate initial costs discussed earlier in this section.

[737] (Compliance Manager at $315 x 0.15 hours) x 1 new Government Securities ATS = $47.25. See supra note 509. This cost is reflected in the aggregate ongoing annual costs discussed earlier in this section.

[738] See supra Section IX.C.

would be a total cost of approximately $47 associated with gaining access to EDGAR (assuming the bank operator is not subject to other EDGAR filing requirements).[739]

Requiring Form ATS-G to be filed in a custom XML format would not impose any incremental costs on filers as compared to an unstructured format such as HTML. All Government Securities ATSs would be given the option of filing Form ATS-G using a web-fillable form that will render into XML in EDGAR, or to file directly in XML using the custom XML schema for ATSs as published on the Commission's website.[740] Given the availability of the web-fillable form, the XML requirement would not impose upon any Government Securities ATS the need to license XML-based filing preparation software or establish XML-based filing processes.

Some existing broker-dealers that operate ATSs that transact in securities other than government securities or repos in addition to operating the Government Securities ATSs might incur additional costs to comply with the proposed amendments. Pursuant to the proposed amendments to Regulation ATS, a Government Securities ATS could not trade securities other than government securities or repos.[741] Accordingly, broker-dealers that operate an ATS that currently trades government securities and repos and securities other than government securities or repos, would incur additional PRA costs compared to a Currently Exempted Government Securities ATS, which only trades government securities or repos, because the former would be required to file both an initial Form ATS-G and amend their Form ATS. The Commission

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739 (Compliance Manager at $315 x 0.15 hours) x 1 bank-operated Currently Exempted Government Securities ATS = $47.25. See supra notes 515 and 516.

740 See supra Section IV. This reflects the current filing methods for Form ATS-N.

741 See proposed Rule 300(l).

estimates that 17 Legacy Filers would need to file an initial Form ATS-G in regard to their trading activity in government securities or repos and an amendment to a Form ATS to remove references to government securities or repos and that the aggregate initial PRA cost for those ATSs to file would be $823,288[742] and that the aggregate ongoing annual PRA cost to file an amendment to Form ATS and initial Form ATS-G would be $227,208.[743] Furthermore, the broker-dealers operating these Government Securities ATSs would also be required to file a pair of Forms ATS-R four times annually. The Commission estimates that the aggregate ongoing annual PRA cost of filing two Forms ATS-R for broker-dealers that operate one ATS that trades government securities or repos and a second ATS that trades securities other than government securities and repos would be $113,271.[744]

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742 The Commission estimates that the total hourly burden for a broker-dealer to separately file an amended Form ATS for the non-Government Securities ATS and initial Form ATS-G for the Government Securities ATS would be 10 burden hours to amend its initial operation report on Form ATS for its trading activity related to securities other than NMS stock and government securities or repos, and approximately 134 burden hours to file its initial Form ATS-G. See also supra notes 497 and 501. ((Attorney at $423 x 61.5 hours) + (Compliance Manager at $315 x 37.7 hours) + (Sr. Systems Analyst at $289 x 31.55 hours) + (Sr. Marketing Manager at $311 x 2 hours) + (Compliance Clerk at $71 x 11.25 hours)) x 17 Legacy Filers that would continue to file a Form ATS = $823,288. Of $823,288, the cost of $50,966 is attributable to the aggregate initial costs for amending Form ATS to remove references to government securities or repos for 17 Legacy Filers.

743 The Commission estimates that a broker-dealer operator that operates an ATS that currently trades government securities or repos and securities other than government securities or repos would face an annual burden of 13 hours to file amendments to Form ATS and 28.2 hours to file amendments to Form ATS-G. See also supra notes 498 and 499. ((Attorney at $423 x 25.5 hours) + (Compliance Manager at $315 x 6 hours) + (Compliance Clerk at $71 x 9.7 hours)) x 17 Legacy Filers that would continue to file a Form ATS = $227,208. Of $227,208, the cost of $69,547 is attributable to the aggregate ongoing costs to amend Form ATS for 17 Legacy Filers.

744 The Commission estimates that a broker-dealer would face a total burden of 5.25 hours to prepare two Form ATS-Rs. See supra note 500. ((Attorney at $423 x 14 hours) + (Compliance Manager at $315 x 1 hour) + (Compliance Clerk at $71 x 6 hours)) x 17 Legacy Filers that would continue to file a Form ATS = $113,271.

A Government Securities ATS would incur costs associated with programming and website configuration to make Form ATS-G public via posting on its website a direct URL hyperlink to the Commission's website that contains its Form ATS-G filing, as required by Rule 304(b)(3)(i).[745] The Commission estimates that the initial one-time PRA cost would be approximately $578[746] per Government Securities ATS and the aggregate PRA cost for all Government Securities ATSs would be approximately $15,028.[747] Furthermore, all Covered ATSs (26 Government Securities ATSs and 34 NMS Stock ATSs) would incur costs associated with programming and website configuration to make the most recently disseminated Forms ATS-G and Forms ATS-N public via posting on their websites, as required by Rule 304(b)(3)(ii).[748] The Commission estimates that the initial PRA cost would be $1,156 per Covered ATS and $69,360 for all Covered ATSs and that the ongoing annual PRA cost would be $3,468 per Covered ATS and $208,080 for all Covered ATSs.[749]

Under the proposal, when a Government Securities ATS ceases operations, it would be required to file a cessation of operations on Form ATS-G. Currently Exempted Government

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745 NMS Stock ATSs are already required to comply with Rule 304(b)(3)(i). See supra Section IX.D.2.b.v.

746 See supra Section IX.D.2.b.v.

747 (Sr. Systems Analyst at $289 x 2 hours) x 26 Government Securities ATSs = $15,028.

748 See supra Section IX.D.2.b.v.

749 For all Covered ATSs, the aggregate initial cost would be: (Sr. Systems Analyst at $289 x 4 hours) x (26 Government Securities ATSs + 34 NMS Stock ATSs) = $30,056 (estimated aggregate initial costs for 26 Government Securities ATSs) + $39,304 (estimated aggregate initial costs for 34 NMS Stock ATSs) = $69,360. See supra note 512. For all Covered ATSs, the aggregate ongoing cost would be: (Sr. Systems Analyst at $289 x 12 hours) x (26 Government Securities ATSs + 34 NMS Stock ATSs) = $90,168 (estimated aggregate ongoing costs for 26 Government Securities ATSs) + $117,912 (estimated aggregate ongoing costs for 34 NMS Stock ATSs) = $208,080. See supra note 513.

Securities ATSs are not required to notify the Commission when they cease operations. If a Currently Exempted Government Securities ATS were to cease operations, the Commission estimates that each Currently Exempted Government Securities ATS would incur a one-time PRA cost of $670 to prepare and file a cessation of operations on Form ATS-G with the Commission.[750] The Commission also estimates that one new Government Securities ATS would file a Form ATS-G per year[751] and make the Form ATS-G public by posting a direct URL hyperlink on its website to the Commission's website,[752] resulting in the PRA cost of $47,264.[753]

Regardless of their size and transaction volume, all Government Securities ATSs would need to ensure that their disclosures meet the requirements of proposed Form ATS-G and that they correctly file their Form ATS-G. Government Securities ATSs may develop internal processes to ensure correct and complete reporting on Form ATS-G, which would result in a fixed setup PRA cost. These PRA costs may fall disproportionately on smaller Government Securities ATSs in terms of PRA costs relative to transaction volume (as opposed to larger Government Securities ATSs in terms of PRA costs relative to transaction volume), because all Government Securities ATSs would be likely to incur these fixed PRA costs. However, smaller Government Securities ATSs that are not operated by multi-service broker-dealer operators and that generally do not engage in other brokerage or dealing activities in addition to their ATSs

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750 Currently Exempted Government Securities ATSs are currently not required to notify the Commission when they cease operations. (Attorney at $423 x 1.5 hours) + (Compliance Clerk at $71 x 0.5 hours) = $670. See supra note 490.

751 See supra Section IX.C.

752 See supra Section IX.D.2.b.v.

753 (Attorney at $423 x 55 hours) + (Compliance Manager at $315 x 39.85 hours) + (Sr. Systems Analyst at $289 x 35.55 hours) + (Sr. Marketing Manager at $311 x 2 hours) + (Compliance Clerk at $71 x 7.75 hours) = $47,264.

would likely incur lower PRA costs because certain sections of proposed Form ATS-G would not be applicable to these Government Securities ATSs.

The PRA costs could also vary across Government Securities ATSs depending on the complexity of the ATS and the services that it offers. For example, some Government Securities ATSs may not segment subscriber order flow or offer counter-party selection protocols. These ATSs would not be required to complete Part III, Items 13 and 14 of proposed Form ATS-G. As a result, such Government Securities ATSs could incur lower PRA costs because these ATSs would apply lesser burden hours to complete their Form ATS-G.

In addition to the PRA compliance costs discussed above, the Commission believes that the proposed ability for the Commission to be able to declare a Form ATS-G or Form ATS-G amendment ineffective would generate direct costs for Government Securities ATSs.[754] If the Commission declares a Government Securities ATS's Form ATS-G or Form ATS-G amendment ineffective, then the ATS might have to cease operations, roll back a change in operations, or delay the start of operations until it is able to address the deficiencies in the previously filed form by filing a new Form ATS-G or Form ATS-G amendment. An ineffective Form ATS-G filing could also impose indirect costs on the overall market for government securities execution services resulting from a potential reduction in competition or the removal of a sole provider of a niche service within the market.[755]

However, the Commission believes that there would not be a substantial burden imposed in connection with resubmitting Form ATS-G or a Form ATS-G amendment for these entities or

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754 See Rule 304(a)(1)(iv)(B).

755 See infra Section X.C.3.a.i.b for a discussion about the impact of a declaration of ineffectiveness on competition in the market for government securities and repo execution services.

from an ineffective declaration in general. Because Government Securities ATSs and market participants would not incur these costs unless the Commission declares a Form ATS-G or amendment ineffective, Government Securities ATSs would be incentivized to comply with the requirements of Form ATS-G, as well as federal securities laws, including the other requirements of Regulation ATS, to avoid an ineffectiveness declaration. The Commission believes that these incentives would encourage Government Securities ATSs to initially submit a more accurate and complete Form ATS-G and amendments, which would reduce the likelihood that they are declared ineffective.

Additionally, currently operating Government Securities ATSs would not have to bear the costs of immediately ceasing operations under the proposal without having an effective Form ATS-G on file with the Commission because Legacy Filers would be able to continue operations pursuant to a previously filed initial operation report on Form ATS and Currently Exempted Government Securities ATSs would also be able to continue operations pending the Commission's review of its initial Form ATS-G. However, if after notice and opportunity for hearing, the Commission declares an initial Form ATS-G filed by a Legacy Filer or Currently Exempted Government Securities ATS ineffective, the ATS would be required to cease operations. The Government Securities ATS would then have the opportunity to address deficiencies in the previously filed form by filing a new initial Form ATS-G.

The proposed amendments could generate indirect costs for some subscribers by causing Government Securities ATSs to stop sharing information that they might currently offer to only some subscribers, but the Commission believes that this risk could be low because ATSs could have a commercial incentive to continue disclosing it. Form ATS-G would require Government Securities ATSs to publicly disclose any platform-wide order execution metrics that they share

with any subscriber. In order to avoid publicly disclosing this information, an ATS could stop sharing the information with subscribers. The trading costs of subscribers that currently use this information to help make trading decisions could increase if the information is no longer available to them. The Commission believes that the risk of ATSs disclosing less information than they currently do depends on several factors, such as the commercial purpose for releasing such information. If the subscribers that receive such information demand the information as a condition of subscribing, ATSs would have a commercial incentive to continue disclosing it.

The Commission also believes that the public disclosure of Form ATS-G could generate indirect costs, in the form of transfers, for some subscribers to Government Securities ATSs that might currently have more information regarding some ATS features, such as order priority and matching procedures, than other subscribers. The public disclosure of these features might reduce informed subscribers' information advantage over other subscribers on the Government Securities ATS and increase their trading costs. In this regard, the Commission recognizes that the benefit of the proposal enjoyed by some subscribers in receiving the proposed information may be seen as a cost by those subscribers who currently receive such information.

Some Government Securities ATSs could experience indirect costs from the public disclosure of Form ATS-G though the Commission believes these costs actually amount to transfers. To the extent that a Government Securities ATS in part relies on certain operational characteristics (e.g., order types, trading functionalities) to attract customer order flow and generate trading revenues, it is possible that the public disclosure of these characteristics in Form ATS-G could make it easier for other trading venues to adopt the operational characteristics, which could lower trading volume and reduce revenue of the disclosing ATS. Such costs to the disclosing ATS would constitute transfers to competing ATSs rather than a net social cost.

However, the Commission believes that the risk of such transfers may be low because it is not likely the responsive information to the proposed Form ATS-G would include information regarding operational facets such that the public disclosure of the information would adversely affect the competitive position of the disclosing ATS in the market for government securities and repo execution services.[756]

iii. Application of Fair Access Rule to Government Securities ATSs

The Commission estimates that three Government Securities ATSs would incur the aggregate ongoing annual PRA costs of approximately $25,000[757] to comply with the proposed Fair Access Rule. In addition, the Commission believes that the proposed application of the Fair Access Rule to U.S. Treasury Securities and Agency Securities could impose non-PRA compliance costs on Government Securities ATSs and market participants could incur indirect costs resulting from Government Securities ATSs being subject to the Fair Access Rule.[758]

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[756] See supra note 196 and accompanying text.

[757] ((Attorney at $423 x 10 hours) x 3 Government Securities ATSs) + ((Attorney at $423 x 10 hours) x 3 Government Securities ATSs) = $25,380. See supra notes 518 and 519.

[758] In addition to the costs discussed here and in the following section about the extension of Regulation SCI to Government Securities ATSs, ATSs may incur costs to subscribe to, and program their internal systems to process, TRACE trade reports for Agency Securities. FINRA currently publishes the weekly aggregate volume data for U.S. Treasury Securities on which ATSs would base their fair access calculations for U.S. Treasury Securities. See supra Section II.D. But ATSs would need to subscribe to TRACE to obtain the trade reports necessary to calculate the threshold for Agency Securities. See id. The Commission believes that the vast majority—and likely, all—broker-dealer operators of Government Securities ATSs that trade Agency Securities currently subscribe to TRACE, however, the Commission is requesting comment on the extent to which Government Securities ATSs (both Currently Exempted Government Securities ATSs and those subject to current Regulation ATS) have access to TRACE trade reports for Agency Securities. See supra note 146.

Government Securities ATSs that meet certain volume thresholds for U.S. Treasury Securities, Agency Securities, or both would incur costs to establish written standards for granting access to their systems.[759] The Commission estimates that three Government Securities ATSs would meet the volume thresholds that trigger the Fair Access Rule and that the average ongoing annual PRA cost of establishing written fair access standards for each entity would be $4,230.[760] Accordingly, the Commission estimates that the aggregate ongoing annual PRA cost for Government Securities ATSs to establish written fair access standards would be approximately $12,690.[761]

Government Securities ATSs that meet the fair access volume thresholds would incur costs to make and keep records of (1) all grants of access including, for all subscribers, the reasons for granting such access; and (2) all denials or limitations of access and reasons, for each applicant, for denying or limiting access. They would also incur costs to disclose on Exhibit C of Form ATS-R a list of all persons granted, denied, or granted limited access to the system during the relevant period.[762] The Commission estimates that the average ongoing annual reporting PRA cost for each Government Securities ATS that is subject to these requirements

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759 See supra Section IX.D.3 for a discussion of this proposal.

760 Attorney at $423 x 10 hours = $4,230. See supra note 518. This cost is equal to the Commission's estimate for compliance with Rule 301(b)(5) because the requirements of the Fair Access Rule would be identical for Government Securities ATSs and ATSs that are currently subject to Rule 301(b)(5). See Rule 301 OMB Update, supra note 419, at 3238.

761 $4,230 x 3 Government Securities ATSs = $12,690.

762 The burdens associated with filing Form ATS-R are discussed above in Section IX.D.3.

would be $4,230.[763] Thus, the Commission estimates that the aggregate ongoing annual PRA cost for three Government Securities ATSs to keep these records would be $12,690.[764]

The Commission believes the proposed extension of the Fair Access Rule to U.S. Treasury Securities and Agency Securities could impose non-PRA compliance costs on Government Securities ATSs. Under the proposal, Government Securities ATSs that meet the specified volume thresholds could no longer treat subscribers differently with respect to access to the services of the ATS without a reasonable basis. For example, a Government Securities ATS could not offer one class of subscriber a service (e.g., an order interaction procedure, order type, or connectivity method) without offering the service to all subscribers unless the Government Securities ATS had a reasonable basis for the differential treatment. In addition, a Government Securities ATS could not charge fees that may unreasonably prohibit certain market participants from accessing the services of the ATS. To the extent that Government Securities ATSs must change fee structures or access and adapt their operating model due to the Fair Access Rule, those Government Securities ATSs would incur costs related to changing business operations.

The Commission, however, is unable to quantify the potential non-PRA compliance costs discussed above. In particular, the Commission lacks data on the extent to which Government Securities ATSs that meet the fair access volume thresholds currently grant access to the ATS services to all subscribers on the same terms, and on the specific types of services and subscribers in question. In addition, the Commission lacks similar data for other trading venues in the market for government securities that may offer differential access to services. Thus, the Commission is not able to estimate the costs associated with changing fee structures and

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763 Attorney at $423 x 10 hours = $4,230. See supra note 519.

764 3 responses x 10 hours = 30 hours. $4,230 x 3 Government Securities ATSs = $12,690.

adapting operating models. In turn, the Commission is not able to estimate the loss of revenues that Government Securities ATSs that meet the fair access volume thresholds could incur as a result of the proposed extension of the Fair Access Rule.

The Commission believes that market participants could incur indirect costs related to Government Securities ATSs being subject to the Fair Access Rule. Government Securities ATSs that are close to satisfying the volume thresholds for certain government securities could limit the trading in those government securities on their ATSs over some period to stay below the volume thresholds and avoid being subject to the Fair Access Rule. The order flow that was being executed on those Government Securities ATSs might be absorbed and redistributed amongst other Government Securities ATSs. If a Government Securities ATS that is the sole provider of a niche service limits the trading in certain government securities to avoid being subject to the Fair Access Rule, it could require some market participants to seek execution on other trading venues, which could result in higher trading costs.

b. Extension of Regulation SCI to Government Securities ATSs

The Commission estimates that three Government Securities ATSs (two Currently Exempted Government Securities ATSs and one Legacy Filer) that meet the specified volume thresholds would incur both PRA and non-PRA direct and indirect compliance costs as SCI entities. The Commission estimates that two Currently Exempted Government Securities ATSs would incur the aggregate initial PRA costs of approximately $1,305,000 and the aggregate ongoing annual PRA costs of approximately $1,609,000 to comply with Regulation SCI.[765]

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[765] These cost estimates are based on the 2018 SCI PRA Extension. See 2018 SCI PRA Extension, supra note 529. See also supra Section IX.D.5 discussing PRA burden estimates related to compliance with Regulation SCI.

Furthermore, the Commission estimates that one Legacy Filer would incur the initial PRA costs of approximately $326,000 and the ongoing annual PRA costs of approximately $804,000 to comply with Regulation SCI.[766] The Commission also estimates that three Government Securities ATSs would incur the aggregate initial non-PRA costs of between approximately $960,000 and $7.2 million, and the aggregate ongoing annual non-PRA costs of between approximately $640,800 and $4.8 million to comply with Regulation SCI.[767] In addition, as discussed below, the Commission believes that the proposed amendments to Regulation SCI would impose indirect compliance costs on market participants interacting with SCI entities.

Under the proposal, the definition of SCI ATSs would be expanded to include Government Securities ATSs that meet certain volume thresholds for U.S. Treasury Securities and/or Agency Securities would be subject to the requirements of Regulation SCI. Because Regulation SCI imposes some indirect requirements on other market participants interacting with SCI entities (e.g., third-party vendors providing SCI systems and/or indirect SCI systems[768] to SCI entities, members or participants of SCI entities participating in testing of business continuity and disaster recovery plans), those market participants would also incur indirect costs

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766 See supra note 765.

767 Based on the Regulation SCI Adopting Release in 2014, the Commission estimates that a Government Securities ATS would incur an initial cost of between approximately $320,000 and $2.4 million. Thus, 3 Government Securities ATSs would incur the aggregate initial cost of between approximately $960,000 and $7.2 million. Additionally, a Government Securities ATS would incur an ongoing annual cost of between approximately $213,600 and $1.6 million. Thus, three Government Securities ATSs would incur the aggregate ongoing annual cost of between approximately $640,800 and $4.8 million. See also Regulation SCI Adopting Release, supra note 2, at 72416.

768 The term "indirect SCI systems" is defined to mean "any systems of, or operated by or on behalf of, an SCI entity that, if breached, would be reasonably likely to pose a security threat to SCI systems." See Regulation SCI Adopting Release, supra note 2.

from Government Securities ATSs being defined as SCI entities. Also, market participants (including broker-dealers and institutional investors who use Government Securities ATSs) in the government securities and repo market may face increased trading costs (in the form of higher fees) from SCI entities, to the extent that increased compliance costs are passed on to market participants.

The Commission believes that the 2018 estimates of initial PRA burdens for new SCI entities and ongoing PRA burdens for all SCI entities under Regulation SCI are largely applicable to Government Securities ATSs.[769] The Commission believes that Government Securities ATSs could be divided into two groups[770]: Government Securities ATSs that are existing SCI entities; and Government Securities ATSs that are entirely new SCI entities currently not subject to Regulation SCI. For the first group (Government Securities ATSs that are existing SCI entities), the Commission believes that such entities would incur approximately 50 percent of the Commission's initial PRA burden estimates for an entirely new SCI entities. Furthermore, for the second group (Government Securities ATSs that are new SCI entities currently not subject to Regulation SCI), the Commission believes that such entities would incur the same estimated initial PRA burdens as those estimated for new SCI entities in the 2018 SCI PRA Extension. The Commission also believes that the same ongoing PRA burdens for all SCI entities estimated in the 2018 SCI PRA Extension are applicable to Government Securities ATSs in both the first and the second group.

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769 See 2018 SCI PRA Extension, supra note 529.

770 We divide Government Securities ATSs into two groups in discussing PRA costs because Government Securities ATSs operated by a broker-dealer operator of an NMS Stock ATS that is a SCI entity would have lower initial PRA costs. See also 2018 SCI PRA Extension, supra note 529.

Among the three Government Securities ATSs that satisfy the volume thresholds, the Commission believes that one Government Securities ATS (referred as the first group above) would incur approximately 50 percent of initial PRA burden estimates for an entirely new SCI entity included in the 2018 SCI PRA Extension, and two Government Securities ATSs (referred as the second group above) would incur the same estimated initial PRA burdens as those estimated for new SCI entities included in the 2018 PRA Extension. In addition, the Commission believes that all three Government Securities ATSs would incur the same ongoing PRA burdens as all other SCI entities included in the 2018 SCI PRA Extension.

Government Securities ATSs would also incur non-PRA direct compliance costs as SCI entities. The Regulation SCI Adopting Release in 2014 estimated that an SCI entity would incur an initial cost of between approximately $320,000 and $2.4 million. Additionally, an SCI entity would incur an ongoing annual cost of between approximately $213,600 and $1.6 million. The Commission believes that these non-PRA costs are largely applicable to Government Securities ATSs. However, the Commission is uncertain about the actual level of costs Government Securities ATSs would incur because these costs may differ from the types of SCI entities considered in the Regulation SCI Adopting Release, which did not include fixed income ATSs.[771] The Commission is also uncertain about the actual level of costs Government Securities ATSs would incur because the actual costs could differ based on various factors, such as complexity of SCI entities' systems and the degree to which SCI entities employ third-party systems. The Commission believes that Government Securities ATSs with relatively simpler

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[771] See Regulation SCI Adopting Release, supra note 2. In the Regulation SCI Adopting Release, fixed income ATSs are excluded from the regulation.

systems would incur lower compliance costs compared to those with more complex systems.[772] Also, any SCI systems operated by a third-party on behalf of an SCI entity would be subject to the requirements of Regulation SCI. The Commission believes that Government Securities ATSs with higher dependency on SCI systems operated by third-party vendors could incur higher compliance costs compared to those with lower dependency on third-party systems.[773]

Additionally, the Commission believes that some Government Securities ATSs' participants required to participate in the testing of business continuity and disaster recovery plans would incur Regulation SCI-related connectivity costs of approximately $10,000 apiece.[774] To the extent that larger members or participants of SCI Government Securities ATSs already maintain connections to backup facilities including for testing purposes, the compliance costs associated with the business continuity and disaster recovery plans testing requirements in Rule 1004 for those larger member or participants could be limited.

The Commission believes that market participants could incur indirect costs related to compliance requirements for Government Securities ATSs as SCI entities. Government Securities ATSs that are close to satisfying the volume thresholds for certain government securities could limit the trading in those government securities on their ATSs over some period to stay below the volume thresholds and avoid being subject to Regulation SCI. The order flow

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772 See id. The Regulation SCI Adopting Release explains that compliance costs would depend on the complexity of SCI entities' systems and they would be higher for SCI entities with more complex systems.

773 See id. The Regulation SCI Adopting Release discusses that compliance costs could in part depend on the extent to which an SCI entity utilize third-party systems because ensuring compliance of systems operated by a third-party with Regulation SCI may be more costly than ensuring compliance of internal systems with Regulation SCI.

774 See id. The Regulation SCI Adopting Release estimated connectivity costs as part of business continuity and disaster recovery plans to be approximately $10,000 per SCI entity member or participant.

that was being executed on those Government Securities ATSs might be absorbed and redistributed amongst other Government Securities ATSs. If a Government Securities ATS that is the sole provider of a niche service limits the trading in certain government securities to avoid being subject to Regulation SCI, it could require some market participants to seek execution on other trading venues, which could result in higher trading costs.

The Commission believes that the costs to comply with Regulation SCI discussed above would also fall on third-party vendors employed by Government Securities ATSs to provide services used in their SCI systems. The costs for third-party vendors imposed by Regulation SCI could depend on the extent to which Government Securities ATSs use third-party systems that fall under the definition of SCI systems and the portion of third-party vendors operating SCI systems on behalf of larger Government Securities ATSs already comply with the requirements of Regulation SCI. It is possible that some third-party vendors operating SCI systems on behalf of larger Government Securities ATSs that already complies with the requirements of Regulation SCI because they also operate the SCI systems for other SCI (e.g., SCI ATSs, SCI SROs). The additional compliance costs from the proposed amendments of Regulation SCI for these third-party vendors would be minimal. However, at this time, it is difficult to estimate the cost for third-party vendors because the Commission does not know the extent to which Government Securities ATSs use third-party systems that fall under the definition of SCI systems.

c. Amendments to Rule 301(b)(2), Form ATS, Form ATS-R, and Form ATS-N

The proposal to amend Rule 301(b)(2) and Forms ATS and ATS-R would impose initial and ongoing annual PRA costs on all ATSs including Government Securities ATSs.[775] For the

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[775] See supra Section IX.D. The estimated aggregate ongoing annual PRA cost associated with filing Form ATS-R for 7 Currently Exempted Government Securities ATSs is

proposed amendments to Part I of Form ATS, the Commission estimates that Form ATS filers would incur aggregate PRA costs of approximately $1,800 for initial Form ATS filings, as well as aggregate annual PRA costs of approximately $3,600 for Form ATS amendments.[776] In addition, the proposed Form ATS-R amendment that would require filers to indicate the type of filing (and if applicable the date of cessation) and whether the ATS is subject to fair access obligations would impose aggregate annual PRA costs of approximately $11,800.[777] Furthermore, the proposed Form ATS-R amendment that would require additional details on Form ATS-R, such as total dollar volume in transactions in repos, would impose aggregate annual PRA costs of approximately $11,300.[778]

The proposal to require Forms ATS and ATS-R to be filed on EDGAR is not expected to impose any incremental costs on any Government Securities ATS. As discussed above, because all ATSs that are currently subject to Form ATS and ATS-R filing requirements (including Legacy Filers) are operated by registered broker-dealers, those ATSs would not incur any burden to gain access to EDGAR. Any new ATS entities that are not operated by a registered broker-dealer (including bank-operated Currently Exempted Government Securities ATSs) and do not otherwise have access to EDGAR would need to submit a Form ID and thus incur the estimated 0.15 hour burden in order to file Form ATS-G, and would consequently already have access to

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reflected in the cost associated with Rule 301(b)(9) in supra note 706. The estimated aggregate ongoing annual PRA cost associated with filing Form ATS and Form ATS-R for 17 Legacy Filers is reflected in the cost associated with Rule 301(b)(2)(viii) and Rule 301(b)(9) in supra note 729. See also supra Section V.C.

776 See supra notes 522 and 523. Compliance Clerk at $71 x 25.5 hours = $1810.50; Compliance Clerk at $71 x 51 hours = $3,621.

777 See supra note 531. Compliance Manager at $315 x 37.6 hours = $11,844.

778 See supra note 529. Compliance Manager at $315 x 36 hours = $11,340.

EDGAR when filing a Form ATS-R.[779] Beyond the cost of gaining access to EDGAR, the Commission does not expect that the EDGAR filing requirement would impose any incremental costs on any Form ATS and ATS-R filer (including Government Securities ATSs) with respect to ongoing filing requirements (such as quarterly reports on Form ATS-R or amendments to a Form ATS).

The proposed changes to Form ATS-N include a new requirement for NMS Stock ATSs to indicate via checkbox whether the broker-dealer operator of the NMS Stock ATS is authorized by a national securities association to operate an ATS. The Commission believes that because this information should be readily available to a filer and requires only marking a checkbox, the requirement would not impose any material additional costs relative to the current baseline.[780]

3. Efficiency, Competition, and Capital Formation

The Commission considered the effects of the amendments on efficiency, competition, and capital formation. The Commission believes that the amendments could foster competition for order flow in the market for government securities and repo execution services, enhance the efficiency with which market participants achieve their trading objectives or investment objectives, and promote price efficiency and capital formation.

The Commission believes that the proposed amendments to Regulation ATS could promote competition in the markets for government securities and repo execution services. The Commission believes that the proposal to extend Regulation ATS to include Currently Exempted Government Securities ATSs would enable ATSs wishing to effect transactions in government securities or repos to compete for order flow on a more level competitive landscape with the

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779 See supra Sections IX.D.4 and X.C.2.a.ii.

780 See supra Section V.D and note 520.

same regulatory requirements.[781] The Commission also believes that the public disclosure of Form ATS-G could promote competition for order flow in the market for government securities and repo execution services via lowering fees and improving order handling procedures. Furthermore, greater competition for order flow could in turn incentivize Government Securities ATSs to innovate, including, in particular, in technology related to execution services to compete on execution services to attract more subscribers and order flow.

The Commission believes that the proposed amendments to Regulation ATS could enhance the efficiency with which market participants achieve their trading objectives. The Commission believes the proposed amendments to Regulation ATS would increase transparency regarding the operations of Government Securities ATSs and the activities of its broker-dealer operator and its affiliates and lower search costs for market participants in the selection of trading venues in the market for government securities and repos. Furthermore, the fair access requirements could increase trading venue options for market participants resulting in lower trading costs and better efficiency with which they achieve their trading objectives.

The Commission believes that extending Regulation SCI to include Government Securities ATSs with significant volume could promote price efficiency and capital formation. Extending Regulation SCI to include Government Securities ATSs could reduce the frequency, severity, and duration of such effects resulting from systems issues, thereby facilitating price discovery process in government securities and promote capital formation.[782]

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781 See supra Section X.B.2 for discussion about the current regulatory requirements for bank-operated Currently Exempted Government Securities ATSs, Currently Exempted Government Securities ATSs, and Legacy Filers.

782 See infra Section X.C.3.c for a discussion about the price discovery and price efficiency of U.S. Treasury Securities, risk-free rate benchmarks, pricing of risky securities, and capital formation. See also October 15 Staff Report, supra note 14, for a discussion about

As discussed in more detail below, the Commission believes that the risk of the proposed amendments adversely affecting competition in the market for government securities and repo execution services, the incentive for Government Securities ATSs to innovate, and the efficiency with which market participants achieve trading objectives, is likely to be low.

a. Competition

The Commission believes that the proposed amendments of Regulation ATS and Regulation SCI could affect competition for order flow and the decision of ATSs to enter or exit the market for government securities and repo execution services.[783]

i. Regulation ATS

The Commission believes that the proposed amendments to Regulation ATS could foster competition for order flow in the market for government securities and repo execution services. The proposed extension of Regulation ATS to include Currently Exempted Government Securities ATSs would enable ATSs wishing to effect transactions in government securities or repos to compete for order flow on a more level competitive landscape. The Commission believes that the public disclosure of Form ATS-G could promote competition and incentivize Government Securities ATSs to innovate. Furthermore, the Commission does not believe that allowing the Commission to declare Form ATS-G ineffective and PRA compliance costs imposed on Government Securities ATSs would result in significant adverse impact on competition in the market for government securities and repo execution services.

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price discovery being especially important in the secondary market for on-the-run U.S. Treasury Securities because the transaction prices are used as risk-free rate benchmarks to price other securities transactions.

783 See supra Section X.C.1.a for a discussion about benefits from the requirements of Regulation ATS and Section X.C.2.a for a discussion about costs of the requirements of Regulation ATS.

a) Competitive Landscape

The Commission believes that the proposed extension of Regulation ATS to include Currently Exempted Government Securities ATSs would help eliminate a Government Securities ATS's competitive advantage or competitive disadvantage that may arise due to uneven regulatory requirements in the market for government securities and repo execution services. For example, Legacy Filers could be at a competitive disadvantage to Currently Exempted Government Securities ATSs, which do not currently incur compliance costs associated with the requirements of Regulation ATS.[784] Furthermore, due to reporting requirements of Regulation ATSs, it could be more difficult or costly for a Legacy Filer to implement significant operational changes to compete with Currently Exempted Government Securities ATSs if the Legacy Filer's competitive advantage is driven by operational facets that would be reported on Form ATS. The proposed extension of Regulation ATS would subject Currently Exempted Government Securities ATSs, bank-operated Currently Exempted Government Securities ATSs, and Legacy Filers to the same regulatory requirements.

b) Declaration of Ineffectiveness

The proposal to allow the Commission to declare Form ATS-G and amendments to Form ATS-G ineffective could lead some Currently Exempted Government Securities ATSs and Legacy Filers to exit the market for government securities and repo execution services.

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[784] Presently, Currently Exempted Government Securities ATSs, bank-operated Currently Exempted Government Securities ATSs, and Legacy Filers compete for order flow in the market for government securities and repo execution services on an uneven competitive landscape with different regulatory requirements. See supra Section X.B.2 for a discussion about the differences in regulatory requirements between Legacy Filers and Currently Exempted Government Securities ATSs under the current regulatory framework. See also supra Section I.B.

However, based on the Commission's experience with NMS Stock ATSs that filed an initial Form ATS-N, the Commission believes this would be an unlikely result.[785] If the Commission declares an initial Form ATS-G or amendment ineffective, the Government Securities ATS would either have to cease operations[786] or, in the case of an amendment, roll back any changes it made and operate pursuant to its previous Form ATS-G that is effective until it is able to address the deficiencies and file a new Form ATS-G that becomes effective.[787] Some broker-dealer operators of Legacy Filers may find that the costs of addressing deficiencies in Form ATS-G outweigh the benefits of continuing to operate the ATS, particularly if the ATS does not constitute a significant source of profit for a broker-dealer operator. The ability of the Commission to declare Form ATS-G ineffective could also raise barriers to entry for new Government Securities ATSs, as it could create uncertainty as to whether the Commission would declare its initial Form ATS-G effective or ineffective and as to the cost of avoiding an ineffective declaration. If a new Government Securities ATS's initial Form ATS-G is declared ineffective, it would require time and additional expenditures to address the deficiencies delaying the commencing of operations, which may deter some potential ATSs from operating in this space.

c) Public Disclosure

The increase in transparency due to the public disclosure of Form ATS-G could foster greater competition for order flow in the market for government securities and repo execution

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785 Unlike the current rules applicable to NMS Stock ATSs under Rule 304 of Regulation ATS with respect to ineffectiveness, the Commission does not have a process to declare a Form ATS ineffective because of the quality of the disclosures and cause the ATS cease operating pursuant the exemption. See Rule 304(a)(1)(iv)(B).

786 See Rule 304(a)(1)(iv)(B).

787 See id.

services. The increase in competition could lower trading venue fees, improve the efficiency of order handling procedures, and promote innovation. For instance, because the public disclosure of Form ATS-G would make it easier for market participants to compare fees across Government Securities ATSs, market participants could choose to send their orders to ATSs that offer lower fees, and Government Securities ATSs may lower their fees to attract subscribers and compete for order flow. If non-ATS trading venues compete with Government Securities ATSs for trade execution services, the increased operational transparency of Government Securities ATSs could also incentivize non-ATS trading venues to reduce their fees to compete with Government Securities ATSs for order flow.

Because the public disclosure of Form ATS-G would make it easier for market participants to compare order handling procedures and execution statistics—if they are made available—across trading platforms,[788] market participants may be more likely to send their orders to ATSs that offer better execution services. Greater competition for order flow could in turn incentivize Government Securities ATSs to innovate, including, in particular, technology related to execution services to improve the quality of trade execution services and to compete on execution services to attract more subscribers and order flow.

The public disclosure of a Government Securities ATS's previously non-public information regarding innovative operational facets could adversely impact competition for order flow in the market for government securities and repo execution services and could also lower the incentives for Government Securities ATSs to innovate. However, the Commission believes that the risk of this is likely to be low. If the competitive advantage of a Government Securities

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[788] See supra Section X.C.1.a.ii for a discussion about benefits from public disclosure via Form ATS-G.

ATS in the market is driven by certain operational innovations, the disclosure of this information could result in other competing Government Securities ATSs with similar operational platforms implementing similar methodologies, which could cause market participants to direct more order flow to those other Government Securities ATSs. This could potentially reduce the incentives for Government Securities ATSs to innovate if publicly disclosing new innovations results in the disclosing ATS earning less revenue from new innovations it develops. Furthermore, some Government Securities ATSs may choose to exit the market if their profitability declines. Fewer opportunities to profit from innovation could also raise barriers to entry for new Government Securities ATSs. However, the Commission believes that the risk of this may be low because it is not likely the responsive information to the proposed Form ATS-G would include information regarding operational facets such that the public disclosure of the information would adversely affect the competitive position of the disclosing Government Securities ATS in the market for government securities and repo execution services.[789]

d) Compliance Costs

The Commission believes that the direct compliance costs associated with the amendments to Regulation ATS are generally represented by PRA costs.[790] The Commission does not believe that initial and ongoing PRA compliance costs associated with the amendments to Regulation ATS would have a significant adverse impact on competition in the market for

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789 See supra note 196 and accompanying text.

790 See supra Section X.C.2 for a discussion about compliance costs associated with the amendments to Regulation ATS. The effect of compliance costs associated with the extension of Regulation ATS to include the Currently Exempted Government Securities ATSs on competition is discussed in Section X.C.3.a.i.a. The effect of indirect costs associated with the declaration of ineffectiveness for Form ATS-G and the public disclosure of Form ATS-G on competition is discussed in Section X.C.3.a.i.b and X.C.3.a.i.c, respectively.

government securities and repo execution services. If Government Securities ATSs find that PRA costs outweigh the benefits of operating a Government Securities ATS, these costs could act as a deterrent or a barrier to entry for potential ATSs wishing to effect transactions in government securities or could cause some Government Securities ATSs to exit the market for government securities or repo execution services. However, the Commission does not believe that the PRA costs imposed by the proposed amendments to Regulation ATS would be significant enough to make this a likely possibility.[791]

The Commission believes that the PRA compliance costs could have different effects on the rates at which small and large Government Securities ATSs may exit the market. The Commission believes that most of the estimated PRA costs are fixed costs, which all Government Securities ATSs may incur, regardless of the amount of trading activity that takes place on them. The PRA costs would represent a larger fraction of revenue generated for a small Government Securities ATS relative to that for a large Government Securities ATS.[792] This could adversely affect small Government Securities ATSs in competing against larger Government Securities ATSs and could lead to small ATSs exiting the market for government securities and repo execution services. However, smaller Government Securities ATSs that are not operated by multi-service broker-dealer operators are likely to incur lower PRA costs because certain sections of proposed Form ATS-G would not be applicable to these Government Securities ATSs.[793] The PRA costs could also vary across Government Securities ATSs

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[791] See supra Sections X.C.2.a and X.C.2.c for discussions on the PRA costs associated with the amendments to Regulation ATS.

[792] See supra Section X.C.2.a.ii for a discussion about the impact of PRA costs for small Government Securities ATSs.

[793] See supra note 792.

depending on the complexity of the ATS and the services that it offers.[794] For example, some Government Securities ATSs may not segment subscriber order flow or offer counter-party selection protocols. These ATSs would not be required to complete Part III, Items 13 and 14 of proposed Form ATS-G. As a result, such Government Securities ATSs could incur lower PRA costs because these ATSs would complete their Form ATS-G with fewer burden hours. To the extent that small Government Securities ATSs engage in providing simpler services, these small Government Securities ATSs are likely to incur lower compliance costs. Furthermore, to the extent that the Government Securities ATSs that decide to cease operating as ATSs due to this fixed PRA compliance cost only transact small dollar volume, the Commission does not believe that there would be a significant impact on the overall competitive structure for the remaining Government Securities ATSs. The order flow that was being executed on those small Government Securities ATSs may be absorbed and redistributed amongst those larger remaining Government Securities ATSs. On the other hand, if the PRA costs cause a small Government Securities ATS that is the sole provider of a niche service to cease operating as an ATS, it could require some market participants to seek execution on other trading venues that may not minimize their trading costs to the same extent.

ii. Regulation SCI

The Commission does not believe that the requirements imposed by Regulation SCI would have significant adverse effect on competition for order flow in the market for government securities and repo execution services and the efficiency with which market participants achieve their trading objectives.

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[794] See supra Section X.C.2.a.ii for a discussion about PRA costs and the complexity of the ATS and the services that it offers.

The Commission does not believe that the compliance costs imposed by the proposed amendments of Regulation SCI would have significant adverse effect on competition among SCI Government Securities ATSs, non-SCI Government Securities ATSs, and non-ATS trading venues due to mitigating factors. The compliance costs imposed by the proposed amendments of Regulation SCI could have some impact on competition in the market for government securities and repo execution services. Specifically, because non-SCI Government Securities ATSs do not have to incur the compliance costs associated with Regulation SCI, non-SCI Government Securities ATSs and non-ATS trading venues may gain a competitive advantage in the market for government securities and repo execution services over SCI Government Securities ATSs with which they compete. To the extent that SCI Government Securities ATSs pass on the compliance costs to their subscribers in the form of higher fees, SCI Government Securities ATSs could lose order flow or their subscribers to other non-SCI Government Securities ATSs and non-ATS trading venues with lower fees. The Commission believes that the adverse competitive effect, however, would be mitigated to some extent because an SCI Government Securities ATS likely would have more robust systems, fewer disruptive systems issues, and better up-time compared to non-SCI Government Securities ATSs.[795] Furthermore, any adverse competitive effect could be minor to the extent that an SCI Government Securities ATS is large and has a more stable and established subscriber base than other ATSs and non-ATS trading venues. Although non-ATS trading venues may compete with SCI Government Securities ATSs in the market for government securities and repo execution services, non-ATS trading venues

[795] See supra Section X.B.6.

cannot offer the same services as ATSs without becoming ATSs, regardless of whether Regulation SCI applies to the ATS.[796]

The costs imposed by the amendments to Regulation SCI could also affect barriers to entry for new Government Securities ATSs and thus could adversely affect competition. Specifically, the Commission acknowledges that Regulation SCI would increase the costs for those that meet the volume thresholds. This would increase the expected compliance costs of market entrants who expect to eventually be SCI Government Securities ATSs. To the extent that an increase in these costs reduces the number of potential new entrants, the potential competition from new entrants would be lower.

The compliance costs associated with participating in business continuity and disaster recovery plan testing may affect competition among subscribers of SCI Government Securities ATSs and also could raise barriers to entry for new subscribers. Because some subscribers would incur compliance costs associated with Rule 1004 and others would not, it could adversely impact the ability for those subscribers of SCI Government Securities ATSs to compete. However, it is difficult to gauge the extent of impact on competition because the Commission does not have sufficient information, for example, on whether certain subscribers of SCI Government Securities ATSs currently maintain connections to backup facilities including for testing purposes. If larger subscribers of SCI Government Securities ATSs already maintain connections to backup facilities including for testing purposes, the adverse impact on competition would be mitigated to some extent because the compliance costs associated with the business continuity and disaster recovery plans testing requirements in Rule 1004 would be

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[796] See supra Section X.B.1 for a discussion about the differences in execution services between ATSs and non-ATS trading venues. See also supra note 564.

limited for those larger subscribers. The Commission believes that new subscribers are less likely to be designated immediately to participate in business continuity and disaster recovery plan testing than are existing larger subscribers because new subscribers may not initially satisfy the ATS's designation standards as they establish their businesses.

As discussed in Section X.C.2.b, it is difficult to estimate the costs of the proposed amendments of Regulation SCI for third-party vendors that operate SCI systems or indirect SCI systems[797] on behalf of SCI Government Securities ATSs. To the extent that the proposed amendments of Regulation SCI impose compliance costs on third-party vendors that operate SCI systems or indirect SCI systems on behalf of SCI Government Securities ATSs, the compliance costs could affect the competition among third-party vendors in the market for SCI systems or indirect SCI systems. To the extent that the costs associated with Regulation SCI for third-party vendors outweigh the benefits of continuing to operate SCI systems or indirect SCI systems on behalf of SCI Government Securities ATSs, these third-party vendors could exit the market for SCI systems or indirect systems. In this respect, Regulation SCI could adversely impact such vendors and reduce the ability for some third-party vendors to compete in the market for SCI systems and indirect SCI systems, with attendant costs to SCI Government Securities ATSs. To the extent that this happens, SCI Government Securities ATSs would incur costs from having to find a new vendor, form a new business relationship, and adapt their systems to those of the new vendor. SCI Government Securities ATSs may also elect to perform the relevant functions internally. To the extent that the current third-party vendors are the most efficient means of performing certain functions for SCI Government Securities ATSs, and to the extent that any

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[797] See supra note 767 and accompanying text for the definition of indirect SCI systems.

third-party vendor exits the market, finding new vendors or performing the functions internally would represent a reduction in efficiency for SCI Government Securities ATSs.

b. Market Participants' Trading Efficiency

The Commission believes that the proposed amendments of Regulation ATS including the Fair Access Rule and Regulation SCI could affect the efficiency with which market participants achieve trading objectives, and in the subsections below, we discuss both positive and potential negative effects.

i. Positive Effects on Market Participants' Trading Efficiency

The enhancement in Government Securities ATS operational transparency via public disclosure of Form ATS-G would help market participants select the trading venue that best meets their trading needs (e.g., order types, trading functionalities) and lower search costs in the selection of trading venues, which would help market participants achieve their trading objectives more efficiently. Market participants may consider various factors, such as order types, trading functionalities, and fees, in deciding where to send their orders to achieve their trading objectives. The public disclosure of Form ATS-G would enable market participants to compare Government Securities ATSs in an expedited manner and find an ATS that would help them achieve their trading objectives more efficiently.

The Commission believes that the public disclosure of Form ATS-G that contains the information related to operational characteristics of Government Securities ATSs could foster greater competition for order flow in the market for government securities and repo execution services and result in lower trading costs and better execution quality for market participants, which would help achieve their trading objectives more efficiently. For example, because the public disclosure of Form ATS-G would make it easier for market participants to compare fees

and order handling procedures and execution statistics—if they are made available—across Government Securities ATSs,[798] market participants would be more likely to send their orders to ATSs that offer lower fees or better execution services. To the extent that non-ATS trading venues compete with Government Securities ATSs for trade execution services, the increased operational transparency of these ATSs could also incentivize non-ATS trading venues to reduce their fees or improve the efficiency of order handling procedures to compete with Government Securities ATSs for order flow. This would lower market participants' trading costs and enhance order execution quality, which would help achieve their trading objectives more efficiently.

The Commission believes that the proposed application of Fair Access Rule could help market participants achieve their trading objectives more efficiently. Market participants who may have been denied access to a Government Securities ATS that would now be subject to the Fair Access Rule may be able to access the ATS as a result of the proposal because the previous reasons for denial of access by the ATS no longer comport with the reasonable standards under the Fair Access Rule. To the extent that there are market participants excluded from trading on Government Securities ATSs, this could increase trading venue options for those market participants and result in lower trading costs or better execution for their orders, which would help achieve their trading objectives more efficiently.

ii. Negative Effects on Market Participants' Trading Efficiency

The Commission does not believe that the compliance costs imposed by the proposed amendments of Regulation SCI would have a significant adverse effect on the efficiency with which market participants achieve their trading objectives. It is possible that SCI Government

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[798] See supra Section X.C.1.a.ii for a discussion about benefits from public disclosure via Form ATS-G.

Securities ATSs would pass on the compliance costs to their subscribers in the form of higher venue fees. However, the adverse effect of higher fees on the efficiency with which market participants achieve their trading objectives could be mitigated to some extent because an SCI Government Securities ATS likely would have more robust systems, fewer disruptive systems issues, and better up-time compared to non-SCI Government Securities ATSs.

Through exits and entries, the number of ATSs competing in the market for government securities and repos could change and this could impact market participants' trading costs and thus the efficiency with which market participants achieve their trading objectives. The Commission does not believe that requirements and costs imposed by the proposed amendments to Regulation ATS and Regulation SCI would result in Government Securities ATSs exiting and adversely impact the efficiency with which market participants achieve their trading objectives.[799] The Commission recognizes that the public disclosure of Form ATS-G required by Regulation ATS and the costs associated with Regulation SCI could dissuade potential entrants from entering the market.[800] To the extent that these effects reduce the number of potential new entrants, the potential competition from new entrants would be lower and this could adversely affect market participants' trading costs and thus the efficiency with which market participants achieve their trading objectives.

The Commission believes that the proposed amendments of the Fair Access Rule and Regulation SCI could adversely affect the efficiency with which market participants achieve their trading objectives. Government Securities ATSs that are close to satisfying the volume threshold for certain government securities could limit the trading in those securities over some

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799 See supra Section X.C.3.a.

800 See supra Sections X.C.3.a.i.c and X.C.3.a.ii.

period to stay below the volume thresholds and avoid being subject to the Fair Access Rule and Regulation SCI. The order flow that was being executed on those Government Securities ATSs might be absorbed and redistributed amongst other Government Securities ATSs. If a Government Securities ATS that is the sole provider of a niche service limits the trading in certain government securities to avoid being subject to the Fair Access Rule and Regulation SCI, it could require some market participants to seek execution on other trading venues, which could result in higher trading costs and reduce the efficiency with which they achieve their trading objectives.

c. Price Efficiency and Capital Formation

The Commission believes that the proposed extension of Regulation SCI to include systems that trade government securities and repos could promote price efficiency and capital formation by reducing the potential for systems disruptions on ATSs that capture a significant portion of the trading volume in the market for U.S. Treasury or Agency Securities. Although the Commission acknowledges that extending Regulation SCI to Government Securities ATSs would not eliminate all systems issues,[801] the Commission believes that extending Regulation SCI would help prevent market disruptions due to systems issues, which could help prevent interruptions in the price discovery process and liquidity flows and thus could help prevent periods with pricing inefficiencies from occurring in the government securities market. Specifically, the Commission believes that extending Regulation SCI would help improve systems up-time[802] for SCI Government Securities ATSs and would also promote more robust

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801 See supra Section X.B.6 for a discussion about market disruption and system up-time.

802 Systems up-time is a measure of the time that a computer system is running and available.

systems that directly support execution facilities, order matching, and the dissemination of market data.[803] This would help facilitate the price discovery process and liquidity flows in the secondary market for on-the-run U.S. Treasury Securities and could also enhance price efficiency of risky securities because the transaction prices of on-the-run U.S. Treasury Securities are used as risk-free rate benchmarks to price risky securities transactions.[804] Price efficiency of risky securities is important because prices that accurately convey information about fundamental value improve the efficiency in allocating capital across projects and entities, which helps promote capital formation.

On the other hand, the Commission believes that the proposed amendments of the Fair Access Rule and Regulation SCI could adversely affect capital formation. Government Securities ATSs that are close to satisfying the volume threshold for certain government securities could limit the trading in those securities over some period to stay below the volume thresholds and avoid being subject to the Fair Access Rule and Regulation SCI. To the extent that Government Securities ATSs limit the trading in certain government securities to avoid being subject to the Fair Access Rule and Regulation SCI, this could limit or reduce liquidity provision and liquidity flows in those government securities, which would adversely affect the price discovery process and price efficiency in those government securities harming capital formation.[805]

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803 Based on the Commission's understanding, Government Securities ATSs disseminate their Treasury trades via private feeds and third-party vendors. These prices also serve as benchmarks for pricing other financial products.

804 See October 15 Staff Report, supra note 14.

805 See id.

D. Reasonable Alternatives

The Commission considered several alternatives to the proposal: (1) require Currently Exempted Government Securities ATSs to file Form ATS, but not publicly disclose Form ATS; (2) require Government Securities ATSs to file proposed Form ATS-G, but treat the information as confidential; (3) require differing levels of public disclosure by Government Securities ATSs depending on their trading volume; (4) extend the transparency requirements of Regulation ATS to all non-ATS trading government securities; (5) alter the volume thresholds for the Fair Access Rule and Regulation SCI; (6) apply Rule 301(b)(6) of Regulation ATS to Government Securities ATSs; (7) require Forms ATS-G, ATS, and ATS-R to be submitted in the Inline XBRL format; and (8) require Forms ATS-G, ATS, and ATS-R to be filed on EFFS/SRTS or on individual ATS websites.

1. Require Currently Exempted Government Securities ATSs to File a Non-Public Form ATS

One alternative could require Currently Exempted Government Securities ATSs to file Form ATS and subsequent amendments with the Commission, instead of filing Form ATS-G. This alternative would allow Legacy Filers to continue to file current Form ATS. However, Form ATS would be deemed confidential for all Government Securities ATSs and would not have to be publicly disclosed. Under this alternative, compliance costs would be lower because Legacy Filers would not bear the additional costs of preparing and amending Form ATS-G. Furthermore, Currently Exempted Government Securities ATSs would not incur additional costs associated with amending Form ATS-G to address any deficiencies to avoid an ineffectiveness determination because Rule 304 of Regulation ATS does not apply to Form ATS filings. However, this alternative would reduce regulators' insight into Government Securities ATSs compared to the proposal because Form ATS would require the disclosure of less information

about the operations of Government Securities ATSs and the activities of their broker-dealer operators and their affiliates, as compared to Form ATS-G.

The lack of public disclosure of Form ATS under the alternative could result in market participants making less informed decisions regarding where to send their orders and thus result in lower execution quality than they would obtain under the proposal. Additionally, this alternative could result in higher search costs for subscribers to identify potential trading venues for their orders. Because Government Securities ATSs would not have to publicly disclose their fees or details about their operations, there would be less competition among Government Securities ATSs and between Government Securities ATSs and non-ATS trading venues compared to the proposal. To the extent that there is less competition for order flow in the market for government securities and repo execution services, there could be less incentive to innovate for Government Securities ATSs.

2. Require Proposed Form ATS-G be Filed but Treat the Information as Confidential

Another alternative approach the Commission could take would be to require Government Securities ATSs to file the proposed Form ATS-G with the Commission, but not make Form ATS-G public. The proposed Form ATS-G would include detailed disclosures about the operational facet of a Government Securities ATS and the activities of its broker-dealer operator and its affiliates, and the Commission would have the ability to declare Form ATS-G filings ineffective. Although this alternative would allow the Commission to review the disclosures of Government Securities ATSs, this alternative would make Government Securities ATSs' operations less transparent for market participants, which could result in market participants making less informed decisions regarding where to send their orders and thus result in lower execution quality than they would obtain under the proposal. Because Form ATS-G

would not be publicly disclosed under this alternative, there would be less competition among Government Securities ATSs and between Government Securities ATSs and non-ATS trading venues, as compared to the proposal. To the extent that a Government Securities ATS's competitive advantage in attracting order flow and generating trading revenues is in part driven by certain operational characteristics, the confidentiality of Form ATS-G could help maintain that Government Securities ATS's competitive advantage in the market for government securities and repo execution services compared to the proposal. However, the Commission believes that it is not likely the responsive information to the proposed Form ATS-G would include information regarding operational facets such that the public disclosure of the information would adversely affect the competitive position of the disclosing Government Securities ATS in the market for government securities and repo execution services.[806]

3. Initiate Differing Levels of Public Disclosure Depending on Government Securities ATS Dollar Volume

The Commission could require different levels of disclosure among Government Securities ATSs based on dollar volume in government securities. In particular, this alternative would subject Government Securities ATSs with lower dollar volumes to lower levels of disclosure on the proposed Form ATS-G. This alternative could provide smaller Government Securities ATSs with a competitive advantage over larger ones because smaller Government Securities ATSs would incur lower compliance costs relative to the proposal, which could translate into lower entry barriers relative to such barriers under the proposal. Because these small Government Securities ATSs would not have to disclose as much information pertaining to their operational facets to their competitors, they would have a competitive advantage over more

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806 See supra note 789 and accompanying text. See also supra note 196 and accompanying text.

established Government Securities ATSs and non-ATS government securities trading venues. This approach therefore would promote competition in the market. It also would promote innovation because these small Government Securities ATSs would not be deterred from innovating by the possibility of having to disclose certain operational facets. This approach could also benefit market participants who execute on these ATSs by improving the execution quality of their trades. However, this alternative could incentivize small Government Securities ATSs to limit the trading in government securities on their ATSs to stay small and not trigger additional disclosure requirements. To the extent that this happens, it could limit market participants' options for trading venues, which could result in higher trading costs or worse execution quality. Lower execution quality or higher trading costs for market participants would reduce the efficiency with which they achieve their trading objectives as compared to the proposal.

4. Extend the Transparency Requirements of Regulation ATS to All Non-ATS Trading Venues for Government Securities

As another alternative, the Commission could extend the transparency requirements (i.e., filing Form ATS-G) of Regulation ATS to non-ATS trading venues for government securities. Under this alternative, investors would receive information about the operations and the activities of the broker-dealer operators and affiliates of all non-ATS trading venues for government securities. While the disclosure requirements of individual venues would be similar to what is required under the proposal, investors would be able to access detailed information on non-ATS trading venues that use a variety of protocols.[807] This could help market participants make better-informed decisions about where to send their orders to achieve their trading or

[807] See supra Section X.B.1.

investment objectives as compared to under the proposal. However, non-ATS trading venues, unlike ATSs, cannot offer certain execution protocols, such as crossing mechanisms, auctions, and central limit order books, which generally meet the definition of an exchange.[808] Thus, non-ATS trading venues may not be as technologically advanced and may not have the same level of automation, speed, and complexity as ATSs that would be required to comply with Regulation ATS under the proposal. Thus, the public disclosure of information from such non-ATS trading venues concerning their trading protocols could be less valuable to market participants.

Under this alternative, non-ATS trading venues effecting transactions in government securities would incur the compliance costs discussed in Section X.C.2.a to comply with Regulation ATS. Additionally, the public disclosure of details regarding the operational facets of non-ATS trading venues could adversely impact competition for order flow and raise barriers to entry in the market for government securities and repo execution services, and could also lower the incentives for non-ATS trading venues to innovate. However, the Commission believes that the risk of this is likely to be low.[809]

5. Alter the Volume Thresholds for the Fair Access Rule and Regulation SCI

Another alternative for the Commission is to alter the volume thresholds for the Fair Access Rule and Regulation SCI.[810] A higher volume threshold for the Fair Access Rule would

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808 See supra Section X.B.1 for a discussion about the differences in execution services between ATSs and non-ATS trading venues. See also supra note 564.

809 See supra Section X.C.3.a.i.c for a discussion about the risk that the responsive information to the proposed Form ATS-G would include information regarding operational facets such that the public disclosure of the information would adversely affect the competitive position of the disclosing ATS and why the Commission believes that this risk likely to be low. See also supra note 196 and accompanying text.

810 The Commission estimates that 3 ATSs trading U.S. Treasury Securities and 1 ATS trading Agency Securities would be subject to the Fair Access Rule under the proposal.

result in a smaller number of Government Securities ATSs that are subject to the Fair Access Rule than under the proposal.[811] With fewer Government Securities ATSs subject to the Fair Access Rule, some market participants may not be able to trade on as many Government Securities ATSs as they could have under the proposal. This could result in higher trading costs or worse execution quality for those market participants than under the proposal. With a higher volume threshold for the Fair Access Rule, fewer Government Securities ATSs would incur compliance costs discussed in Section X.C.2.a.iii to comply with the Fair Access Rule than under the proposal. This could lower barriers to entry in the market for government securities execution services and increase competition compared to the proposal, resulting in lower trading costs or better execution quality for investors.

A lower volume threshold for the Fair Access Rule would allow market participants to access a greater number of Government Securities ATSs and provide them with more options in the selection of trading venues than under the proposal.[812] Thus, compared to the proposal, investors could better access the trading venue that best meets their trading objectives resulting in lower trading costs or better execution for their orders, which would help achieve their trading

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Furthermore, the Commission estimates that 3 Government Securities ATSs would meet the volume thresholds for Regulation SCI under the proposal. See also supra Sections II.D and IX.C.

811 If the proposed volume thresholds were 10 percent, the Commission estimates only 1 ATS trading U.S. Treasury Securities and 1 ATS trading Agency Securities would be subject to the Fair Access Rule. See Table X.1 in supra Section X.B.1. See also supra Section II.D.

812 If the proposed volume thresholds were three percent, the Commission estimates 4 ATSs trading U.S. Treasury Securities and 1 ATS trading Agency Securities would be subject to the Fair Access Rule. See also supra Section II.D. Furthermore, if the proposed volume thresholds were two percent, the Commission estimates 5 ATSs trading U.S. Treasury Securities and 1 ATS trading Agency Securities would be subject to the Fair Access Rule. See Table X.1 in supra Section X.B.1.

objectives more efficiently. With a lower volume threshold for the Fair Access Rule, ATSs would incur greater compliance costs discussed in Section X.C.2.a.iii to comply with the Fair Access Rule than under the proposal. The Commission also believes that there would be a greater likelihood of small Government Securities ATSs exiting the market and thus decreasing competition for government securities execution services, which could adversely affect trading costs and execution quality.

A lower volume threshold would include a greater number of small Government Securities ATSs to be subject to the Fair Access Rule compared to the proposal. To avoid being subject to the Fair Access Rule, small Government Securities ATSs that are close to satisfying the volume threshold for certain government securities could limit the trading in those government securities on their ATSs over some period to stay below the volume threshold. The order flow that was being executed on those small Government Securities ATSs might be absorbed and redistributed amongst other Government Securities ATSs. If a Government Securities ATS that is the sole provider of a niche service limits the trading in certain government securities to avoid being subject to the Fair Access Rule, it could require some market participants to seek execution on other trading venues, which could result in higher trading costs. A lower volume threshold for the Fair Access Rule could cause a greater number of small ATSs to exit the market for government securities and repo execution services resulting in a lower number of ATSs and less competition compared to the proposal. If there are fewer options in the selection of trading venues, investors could face higher trading costs or lower execution quality for their orders compared to the proposal.

A higher volume threshold for Regulation SCI would result in a smaller number of Government Securities ATSs that are subject to Regulation SCI than under the proposal.[813] Compared to the proposal, a higher volume threshold for Regulation SCI could exclude Government Securities ATSs that play a significant role (i.e., capture a significant portion of trading volume) in the market for government securities execution services and have the potential to impact investors, the overall market, and the trading of government securities should an SCI event occur. With a higher volume threshold for Regulation SCI, the Commission believes that a smaller number of Government Securities ATSs would incur compliance costs discussed in Section X.C.2.b to comply with Regulation SCI requirements than under the proposal. This could lower barriers to entry in the market for government securities execution services and increase competition compared to the proposal, resulting in lower trading costs or better execution quality for investors.

A lower volume threshold for Regulation SCI likely would promote the establishment of more robust systems, help reduce the duration and severity of any system distributions, and help prevent system issues from occurring on small Government Securities ATSs that met the volume thresholds, which could help prevent interruptions in the price discovery process and liquidity flows and thus may help prevent periods with pricing inefficiencies from occurring compared to the proposal.[814] With a lower volume threshold for Regulation SCI, more Government

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[813] If the proposed volume thresholds were 10 percent, the Commission estimates 2 Government Securities ATSs would be subject to Regulation SCI, whereas under the proposed volume threshold of five percent, the Commission estimates 3 Government Securities ATSs would be subject to Regulation SCI. See Table X.1 in supra Section X.B.1.

[814] If the proposed volume thresholds were three percent, the Commission estimates 4 Government Securities ATSs would be subject to Regulation SCI. If the proposed volume thresholds were two percent, the Commission estimates 5 Government Securities ATSs would be subject to Regulation SCI. See Table X.1 in supra Section X.B.1.

Securities ATSs would incur compliance costs discussed in Section X.C.2.b to comply with Regulation SCI requirements than under the proposal. A greater number of small Government Securities ATSs could exit the market for government securities and repos and hence decrease competition resulting in higher trading costs or worse execution quality for investors compared to the proposal. A lower volume threshold would cause a greater number of small Government Securities ATSs to be subject to Regulation SCI requirements compared to the proposal. To avoid being subject to Regulation SCI, small Government Securities ATSs that are close to satisfying the volume threshold for certain government securities could limit the trading in those government securities on their ATSs over some period to stay below the volume threshold. The order flow that was being executed on those small Government Securities ATSs might be absorbed and redistributed amongst other Government Securities ATSs. If a Government Securities ATS that is the sole provider of a niche service limits the trading in certain government securities to avoid being subject to Regulation SCI, it could require some market participants to seek execution on other trading venues, which could result in higher trading costs. The Commission believes that compliance costs associated with Regulation SCI could cause a greater number of small ATSs to exit the market for government securities execution services resulting in a lower number of ATSs and less competition compared to the proposal. To the extent that there are fewer options in the selection of trading venues, investors could face higher trading costs and/or lower execution quality for their orders compared to the proposal.

6. Apply Rule 301(b)(6) of Regulation ATS to Government Securities ATSs

Another alternative for the Commission is to apply Rule 301(b)(6)[815] of Regulation ATS to Government Securities ATSs instead of extending Regulation SCI.[816] The Commission believes that the application of the Capacity, Integrity, and Security Rule to certain Government Securities ATSs could help enhance the price discovery process and price efficiency of government securities by reducing disruptions in trading due to failures or capacity issues with respect to automated systems that support order entry, order routing, order execution, transaction reporting, and trade comparison of the ATSs. Under this alternative, Government Securities ATSs would be subject to the Capacity, Integrity, and Security Rule in Rule 301(b)(6). The scope and requirements of the Capacity, Integrity, and Security Rule would be narrower than those of Regulation SCI. For example, Rule 301(b)(6) of Regulation ATS would apply to narrower set of systems, as compared to Regulation SCI. Rule 301(b)(6) of Regulation ATS applies only to systems that support order entry, order routing, order execution, transaction reporting, and trade comparison, which is narrower than the definition of SCI system. Thus, the Commission believes that this alternative would reduce the potential benefits discussed in Sections X.C.1.b and X.C.3.c, as compared to the proposal. Furthermore, the Commission believes that compliance costs associated with the Capacity, Integrity, and Security Rule would be significantly less than those under the proposal because the scope and requirements of the Capacity, Integrity, and Security Rule would be narrower than those of Regulation SCI. For example, the Capacity, Integrity, and Security Rule would not require Government Securities

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815 As also explained above, Rule 301(b)(6) addresses the capacity, integrity, and security requirements of automated systems for ATSs that meet certain volume thresholds. See supra note 355.

816 Applying the dollar volume threshold of 20 percent or more of the average daily volume traded in the United States during at least four of the preceding six calendar months, the Commission estimates one Government Securities ATS would be subject to Rule 301(b)(6) of Regulation ATS. See supra note 57.

ATSs to maintain a backup facility to comply with the requirements of Regulation SCI related to business continuity and disaster recovery plans. As compared to the proposal, the significantly lower compliance costs of this alternative could result in lower trading costs for market participants to the extent that Government Securities ATSs pass on these compliance costs to their subscribers. Furthermore, the lower compliance costs of this alternative could lower barriers to entry in the market for government securities execution services and increase competition compared to the proposal, resulting in lower trading costs or better execution quality for investors.

As another alternative, the Commission could apply the Capacity, Integrity, and Security Rule in Rule 301(b)(6) to smaller Government Securities ATSs and extend Regulation SCI to larger Government Securities ATSs as proposed. For example, the Commission could require a Government Securities ATS that falls within a volume range for U.S. Treasury Securities of 5 percent and 10 percent to comply with Rule 301(b)(6) of Regulation ATS and a Government Securities ATS that exceeds a 10 percent volume threshold for U.S. Treasury Securities to be subject to Regulation SCI.[817] Under this alternative, the Commission believes that smaller Government Securities ATSs subject to Rule 301(b)(6) would incur additional compliance costs, as compared to the proposal where these smaller Government Securities ATSs would be subject to neither Regulation SCI or Rule 301(b)(6). Smaller Government Securities ATSs subject to Rule 301(b)(6) would incur compliance costs associated with, among other things, upgrading

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[817] If the proposed U.S. Treasury Security volume threshold range for Rule 301(b)(6) were set to be greater than 5 percent and less than or equal to 10 percent, the Commission estimates 2 Government Securities ATSs would be subject to Rule 301(b)(6) of Regulation ATS. If the proposed U.S. Treasury Security volume threshold range for Regulation SCI were set to be greater than 10 percent, the Commission estimates 1 Government Securities ATS would be subject to Regulation SCI.

systems to an adequate capacity level, the independent review of their systems on an annual basis, recordkeeping requirements, and notification requirements.[818] The application of Rule 301(b)(6) to smaller Government Securities ATSs could result in higher trading costs (e.g., in the form of higher fees) to the extent that the Government Securities ATSs pass on the additional compliance costs associated with Rule 301(b)(6) to their subscribers. However, the Commission believes that the requirements of Rule 301(b)(6) would not impose significant costs and thus would not result in a significant increase in trading costs for market participants, as compared to the proposal.

7. Require Forms ATS-G, ATS, and ATS-R to be Submitted in the Inline XBRL Format

The proposal would require Form ATS-G to be submitted in a custom XML format. Alternatively, the Commission could require these forms to be submitted in the Inline eXtensible Business Reporting Language ("Inline XBRL") format, a derivation of XML that is designed for business reporting information and is both machine-readable and human-readable.[819] This alternative could include numerical detail tagging of quantitative disclosures (e.g., platform-wide statistics) and text block tagging for narrative disclosures (e.g., trade reporting arrangements).[820] Compared to the proposal, the Inline XBRL alternative for Forms ATS-G, ATS, and ATS-R

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818 See Regulation ATS Adopting Release, supra note 35, at 70907 for a discussion of costs associated with the Capacity, Integrity, and Security Rule.

819 Such a requirement would be implemented by revising Regulation S-T (17 CFR 232) and including an Instruction to Forms ATS-G, ATS, and ATS-R which cites to Regulation S-T. In conjunction with the EDGAR Filer Manual, Regulation S-T governs the electronic submission of documents filed with the Commission. Modifying a structured format requirement for a Commission filing or series of filings can generally be accomplished through changes to Regulation S-T, and would not require dispersed changes to the various rules and forms that would be impacted by the format modification.

820 See supra Sections III.C.25.a and III.C.21.

would provide more sophisticated validation, presentation, and reference features for filers and data users. However, the Inline XBRL alternative would also impose initial implementation costs (e.g., training staff to prepare filings in Inline XBRL, licensing Inline XBRL filing preparation software) upon filers that do not have prior experience structuring data in the Inline XBRL format. By contrast, because the proposal would allow filers to submit Form ATS-G using a web-fillable Form, filers that lack experience structuring data in XML would not incur implementation costs.

8. Require Forms ATS-G, ATS, and ATS-R to be Filed on EFFS or on Individual ATS Websites

The proposal would require Forms ATS-G, ATS, and ATS-R to be filed on the EDGAR system. Alternatively, the Commission could require a different filing location for these forms, such as the Commission's Electronic Form Filing System (EFFS) or the individual ATSs' websites. Because SCI entities use EFFS to file Form SCI, any Government Securities ATS that is an SCI entity or affiliate thereof will have experience using EFFS and could benefit from such familiarity in filing Form ATS-G.[821] However, to the extent any such Government Securities ATSs are operated by a broker-dealer that files its annual reports on EDGAR or that operates an NMS Stock ATS and files Form ATS-N on EDGAR, there would be no familiarity benefit under an EFFS alternative relative to the proposed EDGAR requirement.[822] In addition, for Government Securities ATSs that are not SCI entities or affiliates thereof and do not have prior

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821 See General Instructions A and E to Form SCI. The Commission believes there is one Government Securities ATS that is operated by a broker-dealer that operates an NMS Stock ATS that is an SCI entity, and would therefore have experience using both EFFS (Form SCI) and EDGAR (Form ATS-N). See supra Section X.B.6.

822 See 17 CFR 240.17a-5(d)(6) and the Commission's guidance at https://www.sec.gov/divisions/marketreg/electronic-filing-broker-dealer-annual-reports-instructions.htm. See also Instruction A.5 to Form ATS-N.

EFFS experience, this alternative would impose the burden of submitting an External Account User Application to request access to EFFS.[823] Unlike EDGAR, EFFS does not support the open-source XML format, instead relying on a proprietary XML implementation (XFDL) that requires a data user to license a commercial proprietary viewer. The EFFS alternative would therefore impose additional costs on data users compared to the proposal.

Similarly, requiring Forms ATS-G, ATS, and ATS-R to be posted on the individual ATSs' websites rather than EDGAR would impose additional direct costs on data users, who would need to navigate to and manually retrieve data from different ATSs' websites to aggregate, compare, and analyze the data. In addition, individual websites would not provide the validation capabilities that an EDGAR requirement would enable, and would thus impose on data users the indirect costs associated with lower reliability of the data. An individual website requirement would provide a small benefit to bank-operated Government Securities ATSs relative to the proposal's EDGAR requirement, as those entities would not be required to incur the 0.15 hour burden of submitting a Form ID in order to begin making EDGAR filings.[824]

E. Request for Comments

The Commission is sensitive to the potential economic effects, including costs and benefits, of the proposed amendments to Regulation ATS and Regulation SCI. The Commission has identified certain costs and benefits associated with the proposal and requests comment on all aspects of its preliminary economic analysis, including with respect to the specific questions

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[823] In 2015, the Commission calculated this burden as 0.15 hours per individual requesting access on the ATS's behalf. See NMS Stock ATS Proposing Release, supra note 62, at 81106.

[824] The Commission believes that one Currently Exempted Government Securities ATS is operated by a bank. See supra Section IX.D.2.b.iv.

below. The Commission encourages commenters to identify, discuss, analyze, and supply relevant data, information, or statistics regarding any such costs or benefits.

172. Does the baseline accurately reflect the current state of the market and reporting? Please provide any information necessary to correct the baseline.

173. Is the assessment of the current state of competition in the market for trading government securities reasonable? Why or why not?

174. Can commenters provide any additional information on trading activities of non-FINRA-member ATSs?

175. Is subscribers' confidential trading information at risk because Currently Exempted Government Securities ATSs are not required to comply with Regulation ATS, they are not subject to Rule 201(b)(10) and Rule 303(a)(1)?

176. Have commenters encountered any problems with the current operational reporting requirements or the required method of intake?

177. The provisions of Regulation SCI and Rule 301(b)(6) of Regulation ATS do not apply to the government securities activities of an ATS. Therefore, a Currently Exempted Government Securities ATS would not be subject to the rules and procedures of Regulation SCI, and a Legacy Filer would only be subject to them if its transaction volume in non-government securities exceeded the thresholds. Although most Government Securities ATSs are not subject to these requirements with respect to their government securities activities, a comment letter received in response to the Treasury Request for Information stated that many Government Securities ATSs adopted system testing and control procedures that followed the recommended best practices of the

Treasury Market Practices Group. Is voluntary adoption of best practices sufficient to mitigate systemic risks?

178. Do differences in operational transparency around Government Securities ATSs impede market participants' ability to evaluate whether submitting order flow to a particular Government Securities ATS aligns with its business interests and objectives?

179. Are there any costs and benefits of the proposed rules that are not discussed in the economic analysis? If so, please describe the types of costs and benefits and provide a dollar estimate of these costs and benefits.

180. Would removing the exemption for Currently Exempted Government Securities ATS and proposing amendments to Regulation ATS for Government Securities ATSs enhance the Commission's oversight of these ATSs and ability to monitor trading and their role in the government securities and repo market?

181. Would removing the exemption for Currently Exempted Government Securities ATS and proposing amendments to Regulation ATS for Government Securities ATSs enhance investor protection?

182. Would removing the exemption for Currently Exempted Government Securities ATS result in enhancements to operational transparency regarding the manner of operations and the ATS-related activities of Currently Exempted Government Securities ATS by way of public disclosures on Form ATS-G? Would the proposed enhancements improve market participants' ability to evaluate a Government Securities ATS as a destination for its orders?

183. Would requiring Forms ATS-G, ATS, and ATS-R to be filed in a custom XML format yield the benefits described above, such as improving the usability of the disclosures

through facilitation of automated analyses? Do commenters believe the custom XML format requirement for these forms would not impose incremental costs on filers, given the availability of a web-fillable form into which filers can input their disclosures? If not, how would the costs be more accurately characterized? How would the costs and benefits of other format requirements, such as an Inline XBRL requirement, compare to those associated with the proposed custom XML format requirement?

184. Would requiring Forms ATS-G, ATS, and ATS-R to be filed on EDGAR yield the benefits described above, such as the availability of the disclosures in a centralized filing location that is publicly accessible (for Form ATS-G) and provides validation capabilities (for all three forms)? Would the EDGAR requirement impose, at most, a minimal cost on filers? How would the costs and benefits of other location requirements, such as EFFS or the individual ATSs' websites, compare to those associated with the proposed EDGAR requirement?

185. Would removing the exemption for Currently Exempted Government Securities ATS and proposing amendment to Regulation ATS for Government Securities ATSs help ensure the fair treatment of potential and current subscribers to a Currently Exempted Government Securities ATS that consist of a large percentage of trading volume in U.S. Treasury Securities and Agency Securities?

186. Could requiring Government Securities ATSs that meet the volume thresholds to establish and objectively apply the fair access standards help prevent certain market participants from being unfairly denied access to an ATS that trades a significant portion of the market for U.S. Treasury Securities and Agency Securities? Are any market participants currently being denied fair access?

187. Would information from Form ATS-R regarding fair access grants, denials, and limitations of access to Government Securities ATSs improve the Commission's ability to oversee those ATSs to evaluate for compliance with the Fair Access Rule?

188. Would the proposed amendments to extend Regulation SCI to include ATSs that trade a significant volume of U.S. Treasury Securities or Agency Securities help reduce market disruptions due to systems issues and help improve system up-time, which would help prevent interruptions in the price discovery process and liquidity flows and thus, may help prevent periods with pricing inefficiencies from occurring?

189. Would the proposed extension of Regulation SCI strengthen the infrastructure and improve the resiliency of the automated systems of Government Securities ATSs that are important to the U.S. securities markets?

190. Would the proposed amendments to Regulation SCI promote the establishment of more robust systems that are less likely to experience a system disruption? If so, do commenters believe that this could lower trading costs and enhance liquidity and price discovery?

191. Would the requirement for a Government Securities ATS that would be an SCI ATS to establish procedures to disseminate information about SCI events to responsible SCI personnel, ATS participants, and the Commission help reduce the duration and severity of any system distributions that do occur?

192. Would the requirement for a Government Securities ATS that meets the definition of SCI ATS to conduct testing of its business continuity and disaster recovery plans with its designated participants and other industry SCI entities help detect and improve the coordination of responses to system issues that could affect multiple trading venues and

participants in the government securities and repo market? What would the cost to designated participants be?

193. Are the Commission's cost estimates, in general, reasonable?

194. What are commenters' views on costs related to a bank-operated Currently Exempted Government Securities ATS complying with the broker-dealer registration requirements under Rule 301(b)(1), as proposed? Is the estimated initial cost of approximately $275,000 to register as a broker-dealer with the commission via Form BD and become a member of FINRA reasonable?

195. Is the estimated ongoing annual cost of approximately $50,000 to maintain the broker-dealer registration with the Commission and FINRA reasonable?

196. What are the costs a bank-operated Currently Exempted Government Securities ATS would incur for effectively completing the application to be a member of FINRA? What other costs related to FINRA examination and surveillance, trade reporting obligations, and investor protection rules may be incurred by a bank-operated Currently Exempted Government Securities ATS? Please provide a description of these costs and cost estimates or a range of potential costs.

197. Would there be a substantial burden imposed on Government Securities ATSs in connection with resubmitting Form ATS-G or a Form ATS-G amendment? Please provide estimates if available.

198. Could the public disclosure of Form ATS-G generate indirect costs for some subscribers to Government Securities ATSs that might currently have more information regarding some ATS features, such as order priority and matching procedures, than other subscribers or market participants?

199. Are the 2018 estimates (the 2018 SCI PRA Extension) of initial paperwork burdens for new SCI entities and ongoing paperwork burdens for all SCI entities under Regulation SCI largely applicable to Government Securities ATSs?

200. Would Government Securities ATSs also incur non-paperwork related direct compliance costs as SCI entities? The Regulation SCI Adopting Release in 2014 estimated that an SCI entity would incur an initial cost of between approximately $320,000 and $2.4 million. Additionally, an SCI entity would incur an ongoing annual cost of between approximately $213,600 and $1.6 million. Are these estimated costs applicable to Government Securities ATSs? How might the actual level of costs Government Securities ATSs would incur differ from the estimates in the Regulation SCI Adopting Release because they differ from existing SCI entities? How might other factors, such as the complexity of SCI entities' systems and the degree to which SCI entities employ third-party systems, affect the estimated costs? Please provide cost estimates or a range for cost estimates, if possible.

201. Could the increase in ATS operational transparency from the proposed amendments to Regulation ATS lower the trading costs and improve the execution quality of market participants, which would enhance the efficiency with which they achieve their trading objectives?

202. Could the increase in ATS operational transparency from the proposed amendments to Regulation ATS increase competition among trading venues in the market for government securities execution services by causing them to decrease their trading fees in order to attract order flow?

203. Could the proposed Regulation ATS and Regulation SCI amendments result in some existing Government Securities ATSs exiting the market for government securities execution services or raise the barriers to entry for new Government Securities ATSs? If so, what would be the effects on competition?

204. To the extent that amendments to Regulation ATS and Regulation SCI reduce the trading costs of U.S. Treasury Securities, would the reductions in trading costs be significant enough to decrease their yields, lowering the risk-free rate? As a result, would this decrease the cost of capital for firms and promote capital formation?

205. Would the alternative to require Currently Exempted Government Securities ATSs to file Form ATS, but not require Form ATS to be publicly disclosed make Government Securities ATSs' operations less transparent for market participants and result in larger the search costs for subscribers?

206. Do commenters agree with the Commission's analysis of the alternative to require proposed Form ATS-G be filed but treat the information as confidential?

207. Do commenters agree with the Commission's analysis of alternative to initiate differing levels of public disclosure expending on Government Securities ATS dollar volume?

208. Do commenters agree with the Commission's analysis of the alternative to extend the proposed transparency requirements of Regulation ATS to all non-ATSs trading venues for government securities?

209. Do commenters agree with the Commission's analysis of the alternative to alter the proposed volume thresholds for the Fair Access Rule and Regulation SCI?

210. Do commenters agree with the Commission's analysis of the alternatives to apply Rule 301(b)(6) of Regulation ATS to Government Securities ATSs?

211. Do commenters agree with the Commission's analysis of the alternative to require Form ATS-G to be filed in a filing location other than EDGAR, such as EFFS or individual ATS websites?

XI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[825] the Commission requests comment on the potential effect of the proposed amendments and Form ATS-G on the United States economy on an annual basis. The Commission also requests comment on any potential increases in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

XII. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980[826] ("RFA") requires the Commission to undertake an initial regulatory flexibility analysis of the impact of the proposed rule amendments on small entities unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[827] For purposes of Commission rulemaking in connection with the RFA,[828] a small entity includes a broker or dealer that: (1) had total capital (net worth plus subordinated liabilities) of less than

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825 5 U.S.C. 603.

826 5 U.S.C. 603(a).

827 5 U.S.C. 605(b).

828 Although Section 601(b) of the RFA defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term "small entity" for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0-10 under the Exchange Act, 17 CFR 240.0-10. See Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS-305).

$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a-5(d) under the Exchange Act,[829] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[830]

All Government Securities ATSs would be required to register as broker-dealers, including those that are currently exempt from such requirement.[831] The Commission examined recent FOCUS data for the 19 broker-dealers that currently operate ATSs that indicated on their Form ATS that they trade government securities and repos and concluded that 2 of the broker-dealer operators of these ATSs had total capital of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter).[832] The Commission notes that these broker-dealer operators have never reported any transaction volume in any

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829 17 CFR 240.17a-5(d).

830 See 17 CFR 240.0-10(c). See also 17 CFR 240.0-10(i) (providing that a broker or dealer is affiliated with another person if: such broker or dealer controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25 percent or more of the voting securities of such other person or is entitled to receive 25 percent or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person; or such broker or dealer introduces transactions in securities, other than registered investment company securities or interests or participations in insurance company separate accounts, to such other person, or introduces accounts of customers or other brokers or dealers, other than accounts that hold only registered investment company securities or interests or participations in insurance company separate accounts, to such other person that carries such accounts on a fully disclosed basis).

831 See supra Section II.C. See also 17 CFR 242.301(b)(1).

security, including a government security or repo, to the Commission on Form ATS-R. Given that these ATSs have never reported any transaction volume in government securities to the Commission, the Commission believes that these ATSs would likely not submit a Form ATS-G if the proposed amendments to Regulation ATS are adopted. The Commission has also recently examined recent FOCUS data for the 6 broker-dealers that are Currently Exempted Government Securities ATSs and concluded that none of the broker-dealer operators of ATSs that currently trade government securities had total capital of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter). Consequently, the Commission certifies that the proposed amendments to Regulation ATS would not, if adopted, have a significant economic impact on a substantial number of small entities.

The Commission encourages written comments regarding this certification. The Commission solicits comment as to whether the proposed amendments could have impacts on small entities that have not been considered. The Commission requests that commenters describe the nature of any impacts on small entities and provide empirical data to support the extent of such effect. Such comments will be placed in the same public file as comments on the proposed amendments to Regulation ATS. Persons wishing to submit written comments should refer to the instructions for submitting comments in the front of this release.

XIII. Statutory Authority and Text of Proposed Amendments

Pursuant to Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 3(b), 5, 6, 15, 15C, 17(a), 17(b), 19, 23(a), and 36 thereof (15 U.S.C. 78c(b), 78e, 78f, 78*o,* 78*o* -5, 78q(a), 78q(b), 78s, 78w(a), and 78mm), the Commission proposes amendments to Form ATS-G under the Exchange Act, Regulation ATS under the Exchange Act, and 17 CFR 232, 240, 242 and 249.

List of Subjects in 17 CFR Parts 232, 240, 242 and 249

Administrative practices and procedure, Incorporation by reference, Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

For the reasons stated in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed as follows:

PART 232–REGULATION S-T–GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend § 232.101 by adding paragraphs (a)(1)(xxii)-(xxiv):

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xxii) Form ATS (§ 249.637 of this chapter).

(xxiii) Form ATS-R (§ 249.638 of this chapter).

(xxiv) Form ATS-G (§ 249.642 of this chapter).

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PART 240–GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1934

3. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78*l,* 78m, 78n, 78n-1, 78*o,* 78*o*-4, 78*o*-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, secs. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

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4. Amend § 240.3a1-1 by adding paragraphs (b)(3)(viii) and (ix) to read as follows:

§ 240.3a1-1 Exemption from the definition of "Exchange" under Section 3(a)(1) of the Act.

(a) * * *

(b) * * *

(3) * * *

(viii) U.S. Treasury Securities, which shall have the same meaning as in § 242.300(p), and for which transactions are reported to a self-regulatory organization.

(ix) Agency Securities, which shall have the same meaning as in § 242.300(q), and for which transactions are reported to a self-regulatory organization.

PART 242–REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

5. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78*l,* 78m, 78n, 78*o*(b), 78*o*(c), 78*o*(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 78mm, 80a-23, 80a-29, and 80a-37.

* * * * *

6. Amend § 242.300 by:

a. Adding "An NMS Stock ATS shall not trade securities other than NMS stocks." at the end of paragraph (k); and

b. Adding paragraphs (l)-(q) to read as follows:

§ 242.300 Definitions.

* * * * *

(l) *Government Securities ATS* means an alternative trading system, as defined in paragraph (a) of this section, that trades government securities, as defined in section 3(a)(42) of the Act (15 U.S.C. 78c(a)(42)) or repurchase and reverse repurchase agreements on government securities. A Government Securities ATS shall not trade securities other than government securities or repurchase and reverse repurchase agreements on government securities.

(m) *Covered ATS* means an NMS Stock ATS or Government Securities ATS, as applicable.

(n) *Covered Form* means a filing on Form ATS-N or Form ATS-G, as applicable.

(o) *Legacy Government Securities ATS* means a Government Securities ATS operating as of [date 120 calendar days after the date of publication of the final rule in the Federal Register].

(p) *U.S. Treasury Security* means a security issued by the U.S. Department of the Treasury.

(q) *Agency Security* means a debt security issued or guaranteed by a U.S. executive agency, as defined in 5 U.S.C. 105, or government-sponsored enterprise, as defined in 2 U.S.C. 622(8).

7. Amend § 242.301 by:

a. Reserving paragraph (a)(4)(ii)(A);

b. Reserving paragraph (a)(4)(ii)(B);

c. Reserving paragraph (a)(4)(ii)(C);

d. In paragraph (b)(1), adding "or section 15C(a)(1)(A) of the Act (15 U.S.C. 78o-5(a)(1)(A))" after the phrase "section 15 of the Act, (15 U.S.C. 78o)";

e. In paragraph (b)(2)(vi) adding the words "and information filed pursuant to paragraph (b)(9)" after the words "pursuant to this paragraph (b)(2)".

f. Revising paragraph (b)(2)(vii) by deleting the sentence "The reports provided for in paragraph (b)(2) of this section shall be considered filed upon receipt by the Division of Trading and Markets, at the Commission's principal office in Washington, DC" and replacing it with "An ATS must file a Form ATS or Form ATS-R in accordance with the instructions therein. The reports provided for in paragraphs (b)(2) and (b)(9) of this section shall be filed on Form ATS or Form ATS-R, as applicable, and include all information as prescribed in Form ATS or Form ATS-R, as applicable, and the instructions thereto. Any such document shall be executed at, or prior to, the time Form ATS or Form ATS-R is filed and shall be retained by the ATS in accordance with §§ 242.303 and § 232.302 of this chapter, and the instructions in Form ATS or Form ATS-R, as applicable."; deleting the phrase "Duplicate originals" and replacing it with

"Duplicates"; and deleting the phrase "shall be deemed confidential when filed" and replacing it with "(except for types of securities traded provided on Form ATS and Form ATS-R) will be accorded confidential treatment subject to applicable law".

g. Revising paragraph (b)(2)(viii);

h. Revising paragraph (b)(5)(i) by adding the word "share" after the phrase "average daily" in paragraph (A); adding the word "share" after the phrase "average daily trading" in paragraph (B); adding the word "dollar" after the phrase "average daily" in paragraphs (C) and (D); adding the phrase "as provided by the self-regulatory organization to which such transactions are reported" after the phrase "in the United States" in paragraphs (C) and (D); deleting the word "or" after paragraph (C); revising "." with ";" after paragraph (D); and adding paragraphs (b)(5)(i)(E) and (b)(5)(i)(F).

i. In paragraph (b)(5)(ii), adding the word "reasonable" before the phrase "written standards" in paragraph (A);

j. Deleting paragraph (b)(5)(iii);

k. In paragraph (b)(6)(i), adding the word "dollar" after the phrase "average daily" in paragraphs (A) and (B);

l. Deleting paragraph (b)(6)(iii);

m. In paragraph (b)(9)(i), deleting the word "Separately" and the phrase "for transactions in NMS stocks, as defined in paragraph (g) of this section, and transactions in securities other than NMS stocks", and capitalizing the word "File";

n. In paragraph (b)(9)(ii), deleting the word "Separately" and the phrase "for transactions in NMS stocks and transactions in securities other than NMS stocks", and capitalizing the word "File".

The additions and revisions read as follows:

§ 242.301 Requirements for alternative trading systems.

* * * * *

(b) * * *

(2) * * *

(viii) A Legacy Government Securities ATS operating pursuant to an initial operation report on Form ATS on file with the Commission as of [date 120 calendar days after the date of publication of the final rule in the Federal Register] shall be subject to the requirements of paragraphs (b)(2)(i) through (vii) of this section until that ATS files an initial Form ATS-G with the Commission pursuant to § 242.304(a)(1)(iv)(A). Thereafter, the Legacy Government Securities ATS shall file reports pursuant to § 242.304 and shall not be subject to the requirements of paragraphs (b)(2)(i) through (vii) of this section. A Legacy Government Securities ATS that was formerly not required to comply with Regulation ATS (§ 242.300 through 242.304) pursuant to an exemption prior to [the effective date of the final rule], shall file reports pursuant to § 242.304 and shall not be subject to the requirements of paragraphs (b)(2)(i) through (vii) of this section. As of [date 120 calendar days after the date of publication of the final rule in the Federal Register], an entity seeking to operate as a Government Securities ATS shall not be subject to the requirements of paragraphs (b)(2)(i) through (vii) of this section and shall file reports pursuant to § 242.304. An NMS Stock ATS or entity seeking to operate as an NMS Stock ATS shall not be subject to the requirements of paragraphs (b)(2)(i) through (vii) of this section and shall file reports pursuant to § 242.304. An ATS that is not an NMS Stock ATS or Government Securities ATS shall be subject to paragraph

(b)(2) of this section. An NMS Stock ATS or a Government Securities ATS that is operated by a broker-dealer that is the registered broker-dealer for more than one ATS must independently comply with Regulation ATS, including the filing requirements of § 242.304 of this chapter.

* * * * *

(5) *Fair access*.

(i) * * *

(E) With respect to U.S. Treasury Securities, 5 percent or more of the average weekly dollar volume traded in the United States as provided by the self-regulatory organization to which such transactions are reported; or

(F) With respect to Agency Securities, 5 percent or more of the average daily dollar volume traded in the United States as provided by the self-regulatory organization to which such transactions are reported.

* * * * *

8. Amend § 242.304 by:

a. In § 242.304 (other than paragraphs (a)(1)(iv) and (a)(2)(i)(D)), revising each reference to "NMS Stock ATSs" with "Covered ATSs"; revising each reference to "the NMS Stock ATS" with "the Covered ATS"; revising each reference to "an NMS Stock ATS" with "a Covered ATS"; and revising each reference to "Form ATS-N" with "Covered Form";

b. In paragraph (a)(1)(i), adding "applicable" after the phrase "files with the Commission an" and adding the following sentence at the end of the paragraph: "Notwithstanding the foregoing, a Legacy Government Securities ATS that was formerly not required to comply with Regulation ATS (§ 242.300 through 242.304) pursuant to an exemption

prior to [the effective date of the final rule], may continue to operate pursuant to Regulation ATS until its initial Form ATS-G becomes effective."

c. In paragraph (a)(1)(ii)(A)(1), deleting the phrase "the Form ATS-N is unusually lengthy or raises novel or complex issues that require additional time for review" and replacing it with "the Commission determines that a longer period is appropriate";

d. In paragraph (a)(1)(iv), revising each reference to "Form ATS-N" with "Form ATS-G"; revising each reference to "Legacy NMS Stock ATS" with "Legacy Government Securities ATS"; adding the phrase "operating pursuant to an initial operation report on Form ATS on file with the Commission as of [date 120 calendar days after the date of publication of the final rule in the Federal Register]" immediately preceding the phrase "shall supersede and replace"; revising "January 7, 2019" with "[date 120 calendar days after the date of publication of the final rule in the Federal Register]"; and revising "February 8, 2019" with "[date 150 calendar days after the date of publication of the final rule in the Federal Register]";

e. In paragraph (a)(1)(iv)(B)(1), deleting the phrase "the initial Form ATS-N is unusually lengthy or raises novel or complex issues that require additional time for review" and replacing it with "the Commission determines that a longer period is appropriate";

f. Revising paragraph (a)(2)(i)(D) by adding "or Part III, Item 24 on Form ATS-G" immediately preceding the phrase "has become inaccurate or incomplete" and deleting the phrase "Order Display and Fair Access Amendment" and replacing it with "Contingent Amendment";

g. In paragraph (b)(2)(iii)(B) revising the phrase "Order Display and Fair Access" in both occurrences with the word "Contingent"; and

h. Revising paragraph (b)(3) by adding ":" after the phrase "on its website"; adding (i) before and revising "." with "; and" after the phrase "a direct URL hyperlink to the

Commission's website that contains the documents enumerated in paragraph (b)(2) of this section"; and adding the following at the end of the paragraph: "(ii) The most recently disseminated Covered Form (excluding Part IV) within one business day after publication on the Commission's website, except for any amendment that the Commission has declared ineffective or that has been withdrawn. The most recently disseminated Covered Form shall be maintained on the Covered ATS's website until: (A) the Covered ATS ceases operations; or (B) the exemption of the Covered ATS is revoked or suspended, in which cases, the Covered ATS shall remove the Covered Form from its website within one business day of such cessation, revocation or suspension, as applicable."

9. Amend § 242.1000 by:

a. Under the definition of "SCI alternative trading system or SCI ATS," at the end of paragraph (1)(ii), deleting the word "or"; redesignating paragraph (3) as paragraph (5), and in paragraph (5), revising the reference to "paragraphs (1) or (2)" with a reference to "paragraphs (1), (2), (3), or (4)"; and adding paragraphs (3) and (4); and

b. Adding the definitions of "U.S. Treasury Securities" and "Agency Securities" in alphabetical order.

The additions will read as follows:

§ 242.1000 Definitions.

* * * * *

SCI alternative trading system or *SCI ATS*

* * *

(1) * * *

(2) * * *

(3) Had with respect to U.S. Treasury Securities, five percent (5%) or more of the average weekly dollar volume traded in the United States as provided by the self-regulatory organization to which such transactions are reported; or

(4) Had with respect to Agency Securities, five percent (5%) or more of the average daily dollar volume traded in the United States as provided by the self-regulatory organization to which such transactions are reported.

* * * * *

U.S. Treasury Security has the meaning set forth in § 242.300(p).

Agency Security has the meaning set forth in § 242.300(q).

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

10. The general authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112-106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112-106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

11. Form ATS (referenced in § 249.637) is amended by:

a. In the General Instructions, under Item A.3, deleting the phrase "on page 1".

b. In the General Instructions, deleting the text under Item A.4 and replacing it with the following: "EDGAR FILING - Any report required to be submitted pursuant to Rule 301 of

Regulation ATS shall be prepared, formatted, and submitted in accordance with Regulation S-T and the EDGAR Filer Manual."

c. In the General Instructions, deleting the text under Item A.5 and replacing it with the following: "EDGAR ACCEPTANCE - A filing that is defective may be rejected and not be accepted by the EDGAR system. Any filing so rejected shall be deemed not to have been filed. See generally Regulation S-T (17 CFR part 232)."

d. In the General Instructions, under Item A.6, deleting "A copy of this Form ATS, as well as the forms filed with the SEC, must be retained by the alternative trading system and made available for inspection upon request of the SEC." and replacing it with the following: "A copy of this Form ATS must be retained by the ATS in accordance with the EDGAR Filer Manual and Rule 303 of Regulation ATS and must be made available for inspection upon a regulatory request."

e. In the General Instructions, under A.7, in the fifth bullet, revising "20" with "20.5" and revising "4" with "4.75".

f. In the General Instructions, under A.7, in the seventh bullet, deleting the phrase "are deemed confidential" and replacing it with "(except for types of securities traded provided on Form ATS and Form ATS-R) will be afforded confidential treatment".

g. At the top of page 1 of the form, deleting the text that states "INITIAL OPERATION REPORT", "AMENDMENT TO INITIAL OPERATION REPORT", "CESSATION OF OPERATIONS REPORT" and accompanying check boxes and replacing it with the following:

Type of Filing (select one):

☐ Initial operation report Rule 301(b)(2)(i)

☐ Material amendment Rule 301(b)(2)(ii)

☐ Periodic amendment Rule 301(b)(2)(iii)

☐ Correcting amendment Rule 301(b)(2)(iv)

☐ Cessation of operations report Rule 301(b)(2)(v)

- Date the ATS will cease to operate: mm/dd/yyyy

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h. In Item 1, deleting all text and replacing it with the following:

1. Provide the following identifying information:

A. Indicate the following:

i. Is the organization, association, Person, group of Persons, or system filing the Form ATS a broker-dealer registered with the Commission?

Yes☐ No☐

ii. Is the registered broker-dealer authorized by a national securities association to operate an ATS?

Yes☐ No☐

B. Full name of registered broker-dealer of the ATS ("Broker-Dealer Operator") as stated on Form BD:_____

C. Full name(s) of the ATS under which business is conducted, if different:_____

D. Provide the SEC file number and CRD number of the Broker-Dealer Operator:

i. SEC File No.:_____

ii. CRD No.:_____

E. Provide the full name of the national securities association of the Broker-Dealer Operator, the effective date of the Broker-Dealer Operator's membership with the national securities association, and Market Participant Identifier ("MPID") of the ATS:

i. National Securities Association: _____

ii. Effective Date of Membership: _____

iii. MPID of the ATS: _____

F. Provide, if any, the website URL of the ATS:_____

G. Provide the primary, and if any, secondary, physical street address(es) of the ATS matching system: _____

i. Deleting the text on page 1 of the form beginning "EXECUTION", the signature block below, the instruction that states "This page must always be completed in full with original, manual signature and notarization. Affix notary stamp or seal where applicable." and "DO NOT WRITE BELOW THIS LINE – FOR OFFICIAL USE ONLY" and replacing it with the following:

CONTACT INFORMATION, SIGNATURE BLOCK, AND CONSENT TO SERVICE

Provide the following information of the Person at {ATS} prepared to respond to questions for this submission:

First Name: Last Name:

Title:

Email: Telephone:

Primary Street Address of the ATS:

Mailing Address of the ATS (if different):

The {ATS} consents that service of any civil action brought by, or notice of any proceeding before, the SEC or a self-regulatory organization in connection with the alternative trading system's activities may be given by registered or certified mail to the contact employee at the primary street address or mailing address (if different) of the ATS, or via email, at the addresses provided on this Form ATS. The undersigned deposes and says that he/she has executed this form on behalf of, and with the authority of, said alternative trading system. The undersigned and {ATS} represent that the information and statements contained herein, including exhibits, schedules, or other documents attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true, and complete.

Date {auto fill} {ATS}

By: _____ Title_____

j. On page 2 of the form, deleting the following text:

Alternative trading system name:_____ CRD Number: _____

Filing date: _____	SEC File Number: 8-_____

* * * * *

Note: The text of Form ATS does not and this amendment will not appear in the Code of Federal Regulations.

12. Form ATS-R (referenced in § 249.638) is amended by:

a. In the General Instructions, deleting the phrase "on page 1" under Item A.3.

b. In the General Instructions, deleting Item A.4 and replacing it with the following: "EDGAR FILING - Any report required to be submitted pursuant to Rule 301 of Regulation ATS shall be prepared, formatted, and submitted in accordance with Regulation S-T and the EDGAR Filer Manual."

c. In the General Instructions, deleting Item A.5 and replacing it with the following: "EDGAR ACCEPTANCE - A filing that is defective may be rejected and not be accepted by the EDGAR system. Any filing so rejected shall be deemed not to have been filed. See generally Regulation S-T (17 CFR part 232)."

d. In the General Instructions, under Item A.6, deleting "- A copy of this Form ATS-R, as well as the forms filed with the SEC, must be retained by the alternative trading system and made available for inspection upon request of the SEC." and replacing it with the following: "A copy of this Form ATS-R must be retained by the ATS in accordance with the EDGAR Filer Manual and Rule 303 of Regulation ATS and must be made available for inspection upon a regulatory request."

e. In the General Instructions, under A.7, in the fifth bullet, revising "3.5" with "4.75".

f. In the General Instructions, under A.7, in the seventh bullet, deleting the phrase "are deemed confidential" and replacing it with "(except for types of securities traded provided on Form ATS and Form ATS-R) will be afforded confidential treatment".

g. In the Part B of the Form ATS-R Instructions, adding the following terms in alphabetical order:

U.S. TREASURY SECURITIES – Shall mean a security issued by the U.S. Department of the Treasury.

AGENCY SECURITIES – Shall mean a debt security issued or guaranteed by a U.S. executive agency, as defined in 5 U.S.C. 105, or government-sponsored enterprise, as defined in 2 U.S.C. 622(8).

h. On page 1 of the form, immediately before Section 1, adding the following:

Type of Filing (select one):

☐ Quarterly report Rule 301(b)(9)(i)

☐ Report for an ATS that has ceased to operate Rule 301(b)(9)(ii)

- Date the ATS ceased to operate: mm/dd/yyyy

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i. In Item 1, deleting the text and replacing it with the following:

1. Provide the following identifying information:

A. Full name of registered broker-dealer of the ATS ("Broker-Dealer Operator") as stated on Form BD:_____

B. Full name(s) of the ATS under which business is conducted, if different:_____

C. Provide the SEC file number and CRD number of the Broker-Dealer Operator:

i. SEC File No.:_____

ii. CRD No.:_____

D. Provide the full name of the national securities association of the Broker-Dealer Operator, the effective date of the Broker-Dealer Operator's membership with the national securities association, and Market Participant Identifier ("MPID") of the ATS:

i. National Securities Association: _____

ii. Effective Date of Membership: _____

iii. MPID of the ATS: _____

E. Provide, if any, the website URL of the ATS:_____

F. Provide the primary, and if any, secondary, physical street address(es) of the ATS matching system: _____

j. Deleting the text on page 1 of the form beginning "EXECUTION", the signature block below, and the instruction that states "This page must always be completed in full with original, manual signature and notarization. Affix notary stamp or seal where applicable." and replacing it with the following:

CONTACT INFORMATION, SIGNATURE BLOCK, AND CONSENT TO SERVICE

Provide the following information of the Person at {ATS} prepared to respond to questions for this submission:

First Name: Last Name:

Title:

Email: Telephone:

Primary Street Address of the ATS:

Mailing Address of the ATS (if different):

The {ATS} consents that service of any civil action brought by, or notice of any proceeding before, the SEC or a self-regulatory organization in connection with the alternative trading system's activities may be given by registered or certified mail to the contact employee at the primary street address or mailing address (if different) of the ATS, or via email, at the addresses

provided on this Form ATS-R. The undersigned deposes and says that he/she has executed this form on behalf of, and with the authority of, said alternative trading system. The undersigned and {ATS} represent that the information and statements contained herein, including exhibits, schedules, or other documents attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true, and complete.

Date {auto fill} {ATS}

By: _____ Title_____

k. On pages 2 and 3 of the form, deleting the following text:

DO NOT WRITE BELOW THIS LINE – FOR OFFICIAL USE ONLY

Alternative Trading System Name:_____	CRD Number: _____
Period covered by this report _____ to _____	SEC File Number: 8-_____

l. In Items 4.B of the form, revising the reference to "Nasdaq National Market Securities" with "Nasdaq Global Market Securities".

m. In Item 4.C of the form, revising the reference to "Nasdaq SmallCap Market Securities" with "Nasdaq Capital Market Securities".

n. In Item 4.J of the form, adding the following and inserting corresponding boxes under the related columns "Total Unit Volume of Transactions" and "Total Dollar Volume of Transactions":

i. U.S. Treasury Securities

ii. Agency Securities

o. Adding new Item 4.K of the form to read "Repurchase agreements and reverse repurchase agreements," inserting "N/A" under the related column "Total Unit Volume of Transactions", and inserting a corresponding box under the related column "Total Dollar Volume of Transactions".

p. Re-lettering current Items 4.K, 4.L, 4.M, and 4.N of the form to 4.L, 4.M, 4.N, and 4.O, respectively.

q. Adding new Item 5.C, which will read: "List the types of securities subject to repurchase and reverse repurchase agreements reported in Item 4K above: _____".

r. Adding new Item 5.D, which will read: "List the types of listed options reported in Item 4H above: _____".

s. In Item 6.B of the form, revising the reference to "Nasdaq National Market Securities" with "Nasdaq Global Market Securities".

t. In Item 6.C of the form, revising the reference to "Nasdaq SmallCap Market Securities" with "Nasdaq Capital Market Securities".

u. Adding, as new Item 8 of the form, adding the following:

8. Was the ATS subject to the fair access obligations under Rule 301(b)(5) during any portion of the period covered by the report?

☐ Yes ☐ No

* * * * *

Note: The text of Form ATS-R does not and this amendment will not appear in the Code of Federal Regulations.

13. Form ATS-N (referenced in § 249.640) is amended by:

a. On page 1 of the form, deleting the following:

- Does the NMS Stock ATS currently operate pursuant to a Form ATS?

  ☐Yes ☐No

b. On page 1 of the form, under Type of Filing, revising "Order Display and Fair Access Amendment" with "Contingent Amendment".

c. In Part I, Item 1 of the form, adding "Indicate the following" after "1.", adding "a." in a new line before the phrase "Is the organization, association, Person, group of Persons, or system filing the Form ATS-N a broker-dealer registered with the Commission?" and after such phrase, adding the following in a new line:

"b. Is the registered broker-dealer authorized by its national securities association to operate an ATS?"

☐ Yes ☐ No

d. In Part I, Item 10 of the form, deleting the word "Part" immediately before "III".

e. In Part II, Item 4.b of the form, deleting the phrase "If yes to Item 4(a)," and capitalizing the word "Are".

f. In Part II, Item 6.a of the form, adding "employee of" following the phrase "any employee of the Broker-Dealer Operator or".

g. In Part III, Item 1 of the form, deleting "NMS Stock ATSs" and the corresponding checkbox, and, following "Dealers," adding "Insurance companies", "Pension Funds", and "Corporations" and corresponding checkboxes.

h. In Part III, Item 4.a of the form, deleting the word "operation" and adding "operations" following the phrase "hours of" in both places it occurs and adding "its" before the phrase "regular trading hours".

i. In Part III, Item 6.b of the form, deleting "(" before and ")" after "6".

j. In Part III, Item 7.a of the form, deleting the word "it" and adding "the order type" following the phrase "price at which".

k. In Part III, Item 10.a, 10.c, and 10.d of the form, adding "its" before the phrase "regular trading hours" in all places it occurs.

l. In Part III, Item 10.e of the form, adding "the NMS Stock ATS's" after the phrase "stoppage of trading in a security during" and adding "its" after the phrase "and/or executions during".

m. In Part III, Item 13.a of the form, deleting "for" and adding "of" before the phrase "how orders and trading interest are segmented".

n. In Part III, Item 17.a of the form, adding "its" before the phrase "regular trading hours".

o. In Part III, Item 18.b and 18.c of the form, adding "its" before the phrase "regular trading hours".

p. In Part III, Item 19.a of the form, adding ", market data" after the phrase "e.g., subscription, connectivity" and immediately before the closing parenthesis.

q. In Part IV of the form, removing the phrase ", being first duly sworn," before the phrase "deposes and says that he/she has executed this form on behalf of, and with the authority of, said alternative trading system."

r. In the instructions to the form, under Instruction A.4, deleting the phrase "otherwise provided (*i.e.*, where" and ")" following the word "information".

s. In the instructions to the form, under Instruction A.6, deleting "If the NMS Stock ATS is operating pursuant to a previously filed initial operation report on Form ATS as of January 7, 2019, such NMS Stock ATS shall file with the Commission a Form ATS-N no earlier than January 7, 2019, and no later than February 8, 2019."

t. In the instructions to the form, under Instruction A.7.b, revising the reference to "an Order Display and Fair Access Amendment" with "a Contingent Amendment" and under Instruction A.7.e, revising the reference to "An Order Display and Fair Access Amendment" with "A Contingent Amendment".

u. In the instructions to the form, under Instruction A.7.g, deleting the word "change" after "subject of the" and replacing it with "change(s)" and deleting the word "changes" after "brief summary of the" and replacing it with "change(s)". In addition, deleting the word "changes" after "whether or not the" and replacing it with "change(s)".

v. In the Paperwork Reduction Act Disclosure under Instruction D, revising the reference to "Order Display and Fair Access Amendment" with "Contingent Amendment" and deleting "During the Commission review period of an initial Form ATS-N filing, an NMS Stock ATS that is operating as of January 7, 2019 shall amend its filed Form ATS-N pursuant to these requirements, and an NMS Stock ATS that was not operating as of January 7, 2019 shall amend its filed Form ATS-N pursuant to the requirements for Updating and Correcting Amendments."

w. In the instructions to the form, under the definition of "Person" in Instruction E, deleting the sentences "Shall mean a natural person or a company. 15 U.S.C. 80a-2(a)(28)." and replacing them with the following: "Shall mean a natural person, company, government, or political subdivision, agency, or instrumentality of a government. 15 U.S.C. 78c(a)(9)."

x. In the instructions to the form, in the definition of "NMS Stock ATS" in Instruction E, before "17 CFR 242.300(k)," adding the sentence "An NMS Stock ATS shall not trade securities other than NMS stocks."

* * * *

Note: The text of Form ATS-N does not and this amendment will not appear in the Code of Federal Regulations.

14. Add § 249.642 to subpart G to read as follows:

§ 249.642 Form ATS-G, information required of Government Securities ATSs pursuant to § 242.304(a) of this chapter.

This form shall be used by every Government Securities ATS to file required reports under § 242.304(a) of this chapter.

Note: The text of Form ATS-G will not appear in the Code of Federal Regulations.

THE SECURITIES AND EXCHANGE COMMISSION HAS NOT PASSED UPON THE MERITS OR ACCURACY OF THE DISCLOSURES IN THIS FILING.

United States Securities and Exchange Commission

Washington, DC

FORM ATS-G

Intentional Misstatements or Omissions of Facts May Constitute Criminal Violations

See 18 U.S.C.1001 and 15 U.S.C. 78ff(a)

File No:

{Government Securities ATS} is making this filing pursuant to the
Rule 304 under the Securities Exchange Act of 1934

- Was the Government Securities ATS operating (either pursuant to a Form ATS or to an exemption) as of [the date 120 calendar days after the date of publication of the final rule in the Federal Register]?

  Yes☐ No☐

Type of Filing (select one)

☐ Initial Form ATS-G	Rule 304(a)(1)(i)
☐ Material Amendment	Rule 304(a)(2)(i)(A)
☐ Updating Amendment	Rule 304(a)(2)(i)(B)
☐ Correcting Amendment	Rule 304(a)(2)(i)(C)
☐ Contingent Amendment	Rule 304(a)(2)(i)(D)

- Statement about the Form ATS-G Amendment pursuant to Instruction A.7(g) of this form:

- Provide the EDGAR accession number for the Form ATS-G filing to be amended:

☐ Notice of Cessation Rule 304(a)(3)

- Date the Government Securities ATS will cease to operate: mm/dd/yyyy

☐ Withdrawal of Form ATS-G filing

Provide the EDGAR accession number for the Form ATS-G filing to be withdrawn:

Part I: Identifying Information

1. Indicate the following:

   a. Is the organization, association, Person, group of Persons, or system filing the Form ATS-G a broker-dealer registered with the Commission?

   Yes☐ No☐

   b. Is the registered broker-dealer authorized by a national securities association to operate an ATS?

   Yes☐ No☐

2. Full name of registered broker-dealer, government securities broker, or government securities dealer of the Government Securities ATS ("Broker-Dealer Operator") as stated on Form BD:

3. Full name(s) of Government Securities ATS under which business is conducted, if different:

4. Provide the SEC file number and CRD number of the Broker-Dealer Operator:

   a. SEC File No.:
   b. CRD No.:

5. Please indicate the types of government securities that the ATS trades:

   ☐ U.S. Treasury Securities
   ☐ Agency Securities
   ☐ Repurchase or Reverse Repurchase Agreements on Government Securities ("repos")
   ☐ Other

   If other, identify the types of government securities that the ATS trades:

6. Provide the full name of the national securities association of the Broker-Dealer Operator, the effective date of the Broker-Dealer Operator's membership with the national securities association, and Market Participant Identifier ("MPID") of the Government Securities ATS:

   a. National Securities Association:
   b. Effective Date of Membership:
   c. MPID of the Government Securities ATS:

7. Provide, if any, the website URL of the Government Securities ATS:

8. Provide the primary, and if any, secondary, physical street address(es) of the Government Securities ATS matching system:

9. Attach as Exhibit 1, the most recently filed or amended Schedule A of Form BD for the Broker-Dealer Operator disclosing information related to direct owners and executive officers.

   ☐ Select if, in lieu of filing, {Government Securities ATS} certifies that the information requested under this Exhibit is available at the website above and is accurate as of the date of this filing.

10. Attach as Exhibit 2, the most recently filed or amended Schedule B of Form BD for the Broker-Dealer Operator disclosing information related to indirect owners.

    ☐ Select if, in lieu of filing, {Government Securities ATS} certifies that the information requested under this Exhibit is available at the website above and is accurate as of the date of this filing.

11. For filings made pursuant to Rule 304(a)(2)(i)(A) through (D) (i.e., Form ATS-G Amendments), attach as Exhibit 3 a document marked to indicate changes to "yes" or "no" answers or additions to or deletions from any Item in Part I, II, and III, as applicable. Do not include in Exhibit 3 Items that are not changing.

Part II: Activities of the Broker-Dealer Operator and its Affiliates

Item 1: Broker-Dealer Operator Trading Activities on the ATS

a. Are business units of the Broker-Dealer Operator permitted to enter or direct the entry of orders and trading interest (*e.g.,* indications of interest) into the Government Securities ATS?

   Yes☐ No☐

   If yes, name and describe each type of business unit of the Broker-Dealer Operator that enters or directs the entry of orders and trading interest into the ATS (*e.g.*, Government Securities ATS, type of trading desks, market maker, sales or client desk) and, for each business unit, provide the applicable MPID and list the capacity of its orders and trading interest (*e.g.,* principal, agency, riskless principal).

b. If yes to Item 1(a), are the services that the Government Securities ATS offers and provides to the business units required to be identified in Item 1(a) the same for all Subscribers?

   Yes☐ No☐

   If no, explain any differences in response to the applicable Item number in Part III of this form, as required, and list the applicable Item number here. If there are differences that are not applicable to Part III, explain those differences here.

c. Are there any formal or informal arrangements with any of the business units required to be identified in Item 1(a) to provide orders or trading interest to the Government Securities ATS (*e.g.*, undertaking to buy or sell continuously, or to meet specified thresholds of trading or quoting activity)?

Yes☐ No☐

If yes, identify the business unit and respond to the request in Part III, Item 12 of this form.

d. Can orders and trading interest in the Government Securities ATS be sent to a trading venue operated or controlled by the Broker-Dealer Operator?

Yes☐ No☐

If yes, identify the trading venue and when and how orders or trading interest are sent from the Government Securities ATS to the trading venue.

Item 2: Affiliates Trading Activities on the ATS

a. Are Affiliates of the Broker-Dealer Operator permitted to enter or direct the entry of orders and trading interest into the Government Securities ATS?

Yes☐ No☐

If yes, name and describe each type of Affiliate that enters or directs the entry of orders and trading interest into the ATS (*e.g.*, broker-dealer, investment company, hedge fund, market maker, principal trading firm), and, for each Affiliate, provide the applicable MPID and list the capacity of its orders and trading interest (*e.g.,* principal, agency, riskless principal).

b. If yes, to Item 2(a), are the services that the Government Securities ATS offers and provides to the Affiliates required to be identified in Item 2(a) the same for all Subscribers?

Yes☐ No☐

If no, explain any differences in response to the applicable Item number in Part III of this form, as required, and list the applicable Item number here. If there are differences that are not applicable to Part III, explain those differences.

c. Are there any formal or informal arrangements with an Affiliate required to be identified in Item 2(a) to provide orders or trading interest to the Government Securities ATS (*e.g.*, undertaking to buy or sell continuously, or to meet specified thresholds of trading or quoting activity)?

Yes☐ No☐

If yes, identify the Affiliate and respond to the request in Part III, Item 12 of this form.

d. Can orders and trading interest in the Government Securities ATS be sent to a trading venue operated or controlled by an Affiliate of the Broker-Dealer Operator?

Yes☐ No☐

If yes, identify the trading venue and when and how orders and trading interest are sent from the Government Securities ATS to the trading venue.

Item 3: Order Interaction with Broker-Dealer Operator; Affiliates

a. Can any Subscriber opt out from interacting with orders and trading interest of the Broker-Dealer Operator in the Government Securities ATS?

   Yes☐ No☐

   If yes, explain the opt-out process.

b. Can any Subscriber opt out from interacting with the orders and trading interest of an Affiliate of the Broker-Dealer Operator in the Government Securities ATS?

   Yes☐ No☐

   If yes, explain the opt-out process.

c. If yes to Item 3(a) or 3(b), are the terms and conditions of the opt-out processes required to be identified in Item 3(a), 3(b), or both, the same for all Subscribers?

   Yes☐ No☐

   If no, identify and explain any differences.

Item 4: Arrangements with Other Trading Venues

a. Are there any formal or informal arrangements (*e.g.*, mutual, reciprocal, or preferential access arrangements) between the Broker-Dealer Operator and another trading venue (*e.g.*, ATS, OTC market maker, futures or options market) to access the Government Securities ATS services (*e.g.*, arrangements to effect transactions or to submit, disseminate, or display orders and trading interest in the ATS)?

   Yes☐ No☐

   If yes, identify the trading venue and the ATS services and provide a summary of the terms and conditions of the arrangement.

b. Are there any formal or informal arrangements between an Affiliate of the Broker-Dealer Operator and another trading venue to access the Government Securities ATS services?

   Yes☐ No☐

   If yes, identify the trading venue and ATS services and provide a summary of the terms and conditions of the arrangement.

Item 5: Other Products and Services

a. Does the Broker-Dealer Operator offer Subscribers any products or services for the purpose of effecting transactions or submitting, disseminating, or displaying orders and trading interest in the Government Securities ATS (*e.g.*, algorithmic trading products that send orders to the ATS, order management or order execution systems, data feeds regarding orders and trading interest in, or executions occurring on, the ATS, order hedging or aggregation functionality)?

Yes☐ No☐

If yes, identify the products or services offered, provide a summary of the terms and conditions for use, and list here the applicable Item number in Part III of this form where the use of the product or service is explained. If there is no applicable Item in Part III, explain the use of the product or service with the ATS here.

b. If yes to Item 5(a), are the terms and conditions of the services or products required to be identified in Item 5(a) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

c. Does any Affiliate of the Broker-Dealer Operator offer Subscribers, the Broker-Dealer Operator, or both, any products or services for the purpose of effecting transactions or submitting, disseminating, or displaying orders or trading interest in the Government Securities ATS?

Yes☐ No☐

If yes, identify the products or services offered, provide a summary of the terms and conditions for use, and list here the applicable Item number in Part III of this form where the use of the product or service is explained. If there is no applicable item in Part III, explain the use of the product or service with the ATS here.

d. If yes to Item 5(c), are the terms and conditions of the services or products required to be identified in Item 5(c) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 6: <u>Activities of Service Providers</u>

a. Does any employee of the Broker-Dealer Operator or employee of its Affiliate that services both the operations of the Government Securities ATS and any other business unit or any Affiliate of the Broker-Dealer Operator ("shared employee") have access to confidential trading information on the Government Securities ATS?

Yes☐ No☐

If yes, identify the business unit, Affiliate, or both that the shared employee services, and provide a summary of the role and responsibilities of the shared employee at the ATS and the business unit, Affiliate, or both that the shared employee services.

b. Does any entity, other than the Broker-Dealer Operator, support the services or functionalities of the Government Securities ATS ("service provider") that are required to be explained in Part III of this form?

Yes☐ No☐

If yes, both identify the service provider and provide a summary of the role and responsibilities of the service provider in response to the applicable Item number in Part III of this form, as required. List the applicable Item number here. If there are services or functionalities that are not applicable to Part III, identify the service provider, the services and functionalities, and also provide a summary of the role and responsibilities of the service provider here.

c. If yes to Item 6(b), does the service provider, or any of its Affiliates, use the Government Securities ATS services?

Yes☐ No☐

If yes, identify the service provider, or the Affiliate as applicable, and the ATS services that the service provider or its Affiliates use.

d. If yes to Item 6(c), are the services that the Government Securities ATS offers and provides to the entity required to be identified in Item 6(c) the same for all Subscribers?

Yes☐ No☐

If no, identify and explain any differences.

Item 7: <u>Protection of Confidential Trading Information</u>

a. Describe the written safeguards and written procedures to protect the confidential trading information of Subscribers to the Government Securities ATS, including:

   i. written standards controlling employees of the ATS that trade for employees' accounts; and
   ii. written oversight procedures to ensure that the safeguards and procedures described above are implemented and followed.

b. Can a Subscriber consent to the disclosure of its confidential trading information to any Person (not including those employees of the Government Securities ATS who are operating the system or responsible for its compliance with applicable rules)?

Yes☐ No☐

If yes, explain how and under what conditions.

c. If yes to Item 7(b), can a Subscriber withdraw consent to the disclosure of its confidential trading information to any Person (not including those employees of the Government Securities ATS who are operating the system or responsible for its compliance with applicable rules)?

Yes☐ No☐

If yes, explain how and under what conditions.

d. Provide a summary of the roles and responsibilities of any Persons that have access to confidential trading information, the confidential trading information that is accessible by them, and the basis for the access.

Part III: Manner of Operations

Item 1: Types of ATS Subscribers

Select the type(s) of Subscribers that can use the Government Securities ATS services:

☐ Investment Companies ☐ Retail Investors ☐ Brokers

☐ Asset Managers ☐ Principal Trading Firms ☐ Hedge Funds

☐ Market Makers ☐ Banks ☐ Dealers

☐ Insurance Companies ☐ Pension Funds ☐ Corporations

☐ Other

If other, identify the type(s) of subscriber.

Item 2: Eligibility for ATS Services

a. Does the Government Securities ATS require Subscribers to be registered broker-dealers?

Yes☐ No☐

b. Are there any other conditions that the Government Securities ATS requires a Person to satisfy before accessing the ATS services?

Yes☐ No☐

If yes, list and provide a summary of the conditions.

c. If yes to Item 2(b), are the conditions required to be identified in Item 2(b) the same for all Persons?

Yes☐ No☐

If no, identify and describe any differences.

d. Does the Government Securities ATS require Subscribers to enter a written agreement to use the ATS services?

Yes☐ No☐

Item 3: Exclusion from ATS Services

a. Can the Government Securities ATS exclude, in whole or in part, any Subscriber from the ATS services?

Yes☐ No☐

If yes, list and provide a summary of the conditions for excluding, in whole or in part, a Subscriber from the ATS services.

b. If yes to Item 3(a), are the conditions required to be identified in Item 3(a) the same for all Subscribers?

Yes☐ No☐

If no, identify and explain any differences.

Item 4: Hours of Operations

a. Provide the days and hours of operations of the Government Securities ATS, including the times when orders or trading interest can be entered on the ATS, and any hours of operations outside of its regular trading hours.

b. Are the hours of operations the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 5: Means of Entry

a. Does the Government Securities ATS permit orders and trading interest to be entered directly into the ATS (*e.g.*, via Financial Information eXchange ("FIX") protocol, Binary)?

Yes☐ No☐

If yes, explain the protocol that can be used to directly enter orders and trading interest into the ATS.

b. If yes to Item 5(a), are the protocols required to be identified in Item 5(a) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

c. Are there any other means for entering orders and trading interest into the Government Securities ATS (*e.g.*, smart order router, algorithm, order management system, sales desk, or aggregation functionality)?

Yes☐ No☐

If yes, identify and explain the other means for entering orders and trading interest, indicate whether the means are provided through the Broker-Dealer Operator, either by itself or through a third-party contracting with the Broker-Dealer Operator, or through an Affiliate of the Broker-Dealer Operator, and list and provide a summary of the terms and conditions for entering orders or trading interest into the ATS through these means.

d. If yes to Item 5(c), are the terms and conditions required to be identified in Item 5(c) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 6: Connectivity and Co-location

a. Does the Government Securities ATS offer co-location and related services (*e.g.,* cabinets and equipment, cross-connects)?

Yes☐ No☐

If yes, provide a summary of the terms and conditions for co-location and related services, including the speed and connection (*e.g.,* fiber, copper) options offered.

b. If yes to Item 6(a), are the terms and conditions required to be identified in Item 6(a) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

c. Does the Government Securities ATS offer any other means besides co-location and related services required to be explained in this Item 6(a) to increase the speed of communication with the ATS?

Yes☐ No☐

If yes, explain the means to increase the speed of communication with the ATS and provide a summary of the terms and conditions for its use.

d. If yes to Item 6(c), are the terms and conditions required to be identified in Item 6(c) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

e. Does the Government Securities ATS offer any means to reduce the speed of communication with the ATS (*e.g.*, speed bumps)?

Yes☐ No☐

If yes, explain the methods to reduce the speed of communication with the ATS and provide a summary of the terms and conditions for its use.

f. If yes to Item 6(e), are the terms and conditions required to be identified in Item 6(e) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 7: Order Types and Attributes

a. Identify and explain each order type offered by the Government Securities ATS. In your explanation, include the following:

   i. priority, including the order type's priority upon order entry and any subsequent change to priority (if applicable); whether and when the order type can receive a new time stamp; the order type's priority vis-à-vis other orders on the book due to changes a reference price; and any instance in which the order type could lose execution priority to a later arriving order at the same price;

   ii. conditions, including any price conditions (*e.g.*, how price conditions affect the rank and price at which the order type can be executed; conditions on the display or non-display of an order; or conditions on executability and routability);

   iii. order types designed not to remove liquidity (*e.g.*, post-only orders, store orders), including what occurs when such order is marketable against trading interest on the Government Securities ATS when received;

   iv. order types that adjust their price as changes to the order book occur (*e.g.,* price sliding orders or pegged orders) or have a discretionary range, including an order's rank and price upon order entry and whether such prices or rank may change based on market conditions when using such order type; when the order type is executable and at what price the execution would occur; whether the price at which the order type can be executed ever changes; and if the order type can operate in different ways, the default operation of the order type;

   v. the time-in-force instructions that can be used or not used with each order type;

   vi. the circumstances under which order types may be combined with another order type, modified, replaced, canceled, rejected, or removed from the Government Securities ATS; and

   vii. the availability of order types across all forms of connectivity to the Government Securities ATS and differences, if any, in the availability of an order type across those forms of connectivity.

b. Are the terms and conditions for each order type and attribute the same for all Subscribers and the Broker-Dealer Operator?

   Yes☐ No☐

   If no, identify and explain any differences.

Item 8: Order Sizes

a. Does the Government Securities ATS have any requirements related to the permissible size of trading interest (*e.g.*, minimum or maximum size, odd-lot, mixed-lot, trading increments)?

   Yes☐ No☐

If yes, specify any trading interest size requirements and any related handling procedures.

b. If yes to Item 8(a), are the requirements and procedures required to be identified in Item 8(a) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 9: Indications of Interest

a. Does the Government Securities ATS send or receive any messages indicating trading interest (*e.g.*, IOIs)?

Yes☐ No☐

If yes, identify and explain the use of the messages, including information contained in messages (*e.g.*, price or size minimums), how the message is transmitted (*e.g.*, order management system, FIX), when the message is transmitted (*e.g.*, automatically by the ATS, or upon the sender's request), the type of Persons that receive the message (*e.g.*, Subscribers, markets), responses to IOIs (*e.g.*, submission to firm-up), and the conditions under which the message might result in an execution in the ATS (*e.g.*, response time parameters, interaction, and matching).

b. If yes to Item 9(a), are the terms and conditions governing indications of interest the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 10: Opening and Reopening

a. Explain how the Government Securities ATS opens or re-opens for trading, including when and how orders and trading interest are priced, prioritized, matched, and executed, and identify any order types allowed prior to the start of its regular trading hours or following a stoppage of trading in a security during its regular trading hours.

b. Are the processes and procedures governing opening and re-opening the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

c. Explain how unexecuted orders and trading interest are handled at the time the Government Securities ATS begins regular trading at the start of its regular trading hours or following a stoppage of trading in a security during its regular trading hours.

d. Are the processes or procedures governing unexecuted orders and trading at the time the Government Securities ATS begins regular trading at the start of its regular trading hours,

or following a stoppage of trading in a security during its regular trading hours, the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

e. Are there any differences between pre-opening executions, executions following a stoppage of trading in a security during the Government Securities ATS's regular trading hours, and/or executions during its regular trading hours?

Yes☐ No☐

If yes, identify and explain the differences.

Item 11: Trading Services, Facilities and Rules

a. Provide a summary of the structure of the Government Securities ATS marketplace (*e.g.*, crossing system, auction market, limit order matching book, voice) and explain the means and facilities for bringing together the orders of multiple buyers and sellers on the Government Securities ATS.

b. Are the means and facilities required to be identified in Item 11(a) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

c. Explain the established, non-discretionary rules and procedures of the Government Securities ATS, including order interaction rules for the priority, pricing methodologies, allocation, matching, and execution of orders and trading interest, and other procedures governing trading, such as price improvement functionality, price protection mechanisms, short sales, protocols to work-up or negotiate matched orders or trading interest, functionality to adjust or hedge orders, locked-crossed markets, the handling of execution errors, and the time-stamping of orders and executions.

d. Are the established, non-discretionary rules and procedures required to be identified in Item 11(c) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 12: Liquidity Providers

Are there any formal or informal arrangements with any Subscriber or the Broker-Dealer Operator to provide orders or trading interest to the Government Securities ATS (*e.g.*, undertaking to buy or sell continuously, or to meet specified thresholds of trading or quoting activity)?

Yes☐ No☐

If yes, describe the arrangement, including the terms and conditions.

Item 13: Segmentation; Notice

a. Are orders and trading interest in the Government Securities ATS segmented into categories, classifications, tiers, or levels (*e.g.*, segmented by type of participant, order size, duration, source, or nature of trading activity)?

   Yes☐ No☐

   If yes, explain the segmentation procedures, including (i) a description of how orders and trading interest are segmented; (ii) identify and describe any categories, classification, tiers, or levels and the types of orders and trading interest that are included in each; (iii) provide a summary of the parameters for each segmented category and length of time each segmented category is in effect; (iv) any procedures for overriding a determination of segmented category; and (v) how segmentation can affect order interaction.

b. If yes to Item 13(a), is the segmentation of orders and trading interest the same for all Subscribers and the Broker-Dealer Operator?

   Yes☐ No☐

   If no, identify and explain any differences.

c. Does the Government Securities ATS identify orders or trading interest entered by a customer of a broker-dealer on the Government Securities ATS as a customer order?

   Yes☐ No☐

d. If yes to Item 13(a), does the Government Securities ATS disclose to any Person the designated segmented category, classification, tier, or level of orders and trading interest?

   Yes☐ No☐

   If yes, provide a summary of the content of the disclosure, when and how the disclosure is communicated, who receives it, and whether and how such designation can be contested.

e. If yes to Item 13(d), are the disclosures required to be identified in 13(d) the same for all Subscribers and the Broker-Dealer Operator?

   Yes☐ No☐

   If no, identify and explain any differences.

Item 14: Counter-Party Selection

a. Can orders or trading interest be designated to interact or not interact with certain orders or trading interest in the Government Securities ATS (*e.g.*, designated to execute against a specific Subscriber's orders or trading interest or prevent a Subscriber's order from executing against itself)?

   Yes☐ No☐

If yes, explain the counter-party selection procedures, including how counter-parties can be selected, and whether the designations affect the interaction and priority of trading interest in the ATS.

b. If yes to Item 14(a), are the procedures for counter-party selection required to be identified in Item 14(a) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 15: Display

a. Are Subscriber orders and trading interest bound for or resting in the Government Securities ATS displayed or made known to any Person (not including those employees of the Government Securities ATS who are operating the system) (*e.g.*, market data feeds)?

Yes☐ No☐

If yes, explain the display procedures, including how and when Subscriber orders and trading interest are displayed, how long orders and trading interest are displayed, what information about orders and trading interest is displayed, and the functionality of the Broker-Dealer Operator and types of market participants that receive the displayed information.

b. If yes to Item 15(a), are the display procedures required to be identified in Item 15(a) the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 16: Interaction with Related Markets

a. Does the Broker-Dealer Operator or any of its affiliates offer functionality or procedures to facilitate trading on, or source pricing for, the Government Securities ATS using markets for financial instruments related to government securities (e.g., futures, currencies, swap, fixed income markets), including offering order types to facilitate transactions on both markets, or procedures to allow subscribers to perform multi-leg transactions involving the identified market(s)?

Yes☐ No☐

If yes, (i) identify the functionality, procedures, and source of pricing and the related market; (ii) state whether the functionality, procedure, and source of pricing is provided or operated by the broker-dealer operator or an affiliate of the broker-dealer operator and whether the related market is provided or operated by the broker-dealer operator or its affiliate; and (iii) explain the use of the functionality, procedures, and source of pricing with regard to the related market and the Government Securities ATS, including how and when the functionality, procedures, and source of pricing can be used, by whom, and with what markets.

b. Are the functionality, procedures, and source pricing identified in Item 16 the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 17: Closing

a. Are there any differences between how orders and trading interest are treated on the Government Securities ATS during its closing session(s) and how orders and trading interest are treated during its regular trading hours?

Yes☐ No☐

If yes, identify and explain the differences as compared to the information provided in the relevant Part III Items of this form.

b. Is the treatment of orders and trading interest during the closing session(s) of the Government Securities ATS the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 18: Trading Outside of Regular Trading Hours

a. Does the Government Securities ATS conduct trading outside of its regular trading hours?

Yes☐ No☐

b. If yes to Item 18(a), are there any differences between trading outside of its regular trading hours and trading during its regular trading hours in the Government Securities ATS?

Yes☐ No☐

If yes, identify and explain the differences.

c. If yes to Item 18(a), is the treatment of orders and trading interest outside of its regular trading hours the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 19: Fees

a. Identify and describe any fees or charges for use of the Government Securities ATS services, including the type of fees (*e.g.*, subscription, connectivity, market data), the

structure of the fees (*e.g.*, fixed, volume-based, transaction-based), variables that impact the fees (*e.g.*, types of securities traded, block orders, form of connectivity to the ATS), differentiation among types of Subscribers (*e.g.*, broker-dealers, institutional investors, retail) and range of fees (*e.g.*, high and low).

b. Identify and describe any fees or charges for use of the Government Securities ATS services that are bundled with the Subscriber's use of non-ATS services or products offered by the Broker-Dealer Operator or its Affiliates, including a summary of the bundled services and products, the structure of the fee, variables that impact the fee, differentiation among types of Subscribers, and range of fees.

c. Identify and describe any rebate or discount of fees or charges required to be identified in Items 19(a) and 19(b), including the type of rebate or discount, structure of the rebate or discount, variables that impact the rebate or discount, differentiation among types of Subscribers, and range of rebate or discount.

Item 20: Suspension of Trading

a. Explain any procedures for suspending or stopping trading on the Government Securities ATS, including the suspension of trading in a U.S. Treasury Security or an Agency Security.

b. Are the procedures for suspending or stopping trading the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 21: Trade Reporting

a. Explain any procedures and material arrangements for reporting transactions on the Government Securities ATS, including where an ATS reports transactions and under what circumstances.

b. Are the procedures and material arrangements for reporting transactions on the Government Securities ATS the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 22: Clearance and Settlement

a. Describe any procedures and material arrangements undertaken to facilitate the clearance and settlement of transactions on the Government Securities ATS (*e.g.*, whether the ATS becomes a counterparty, whether it submits trades to a registered clearing agency or whether it requires Subscribers to have arrangements with a clearing firm).

b. Are the procedures and material arrangements undertaken to facilitate the clearance and settlement of transactions on the Government Securities ATS the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 23: Market Data

a. Identify the sources of market data in government securities and repos used by the Government Securities ATS (*e.g.*, feeds from trading venues), and how the ATS uses market data from these sources to provide the services that it offers, including how the ATS uses market data to determine the BBO, and display, price, prioritize, execute, and remove orders and trading interest on the ATS.

b. Are the sources of market data in government securities and repos, and how the Government Securities ATS uses market data for the services that it offers, the same for all Subscribers and the Broker-Dealer Operator?

Yes☐ No☐

If no, identify and explain any differences.

Item 24: Fair Access

a. Has the Government Securities ATS executed 5% or more of the average weekly trading volume in a U.S. Treasury Security as reported to and disseminated by a self-regulatory organization during four of the preceding six calendar months?

Yes☐ No☐

b. Has the Government Securities ATS executed 5% or more of average daily trading volume in an Agency Security as reported to and disseminated by a self-regulatory organization during four of the preceding six calendar months?

Yes☐ No☐

c. If yes to Item 24(a) or 24(b), is the Government Securities ATS required to comply with Rule 301(b)(5)(ii) of Regulation ATS?

Yes☐ No

If yes, describe the written standards for granting access to trading on the ATS pursuant to Rule 301(b)(5)(ii)(A) of Regulation ATS.

Item 25: Aggregate Platform Data

Does the Government Securities ATS publish or otherwise provide to one or more Subscribers aggregate platform-wide order flow and execution statistics of the ATS?

Yes☐ No☐

If yes,

i. Attach, as Exhibit 4, the most recent disclosure of aggregate platform-wide order flow and execution statistics of the ATS that the ATS provided to one or more Subscribers as of the end of each calendar quarter.

☐ Select if, in lieu of filing, {Government Securities ATS} certifies that the information requested under Exhibit 4 is available at the website provided in Part I, Item 7 of this form and is accurate as of the date of this filing.

ii. Attach, as Exhibit 5, a list and explanation of the categories or metrics for the aggregate platform-wide order flow and execution statistics provided as Exhibit 4 and explain the criteria or methodology used to calculate aggregate platform-wide order flow and execution statistics.

☐ Select if, in lieu of filing, {Government Securities ATS} certifies that the information requested under Exhibit 5 is available at the website provided in Part I, Item 7 of this form and is accurate as of the date of this filing.

Part IV: Contact Information, Signature Block, and Consent to Service

Provide the following information of the Person at {Government Securities ATS} prepared to respond to questions for this submission:

First Name: Last Name:

Title:

Email: Telephone:

Primary Street Address of the Government Securities ATS:

Mailing Address of the Government Securities ATS (if different):

The {Government Securities ATS} consents that service of any civil action brought by, or notice of any proceeding before, the SEC or a self-regulatory organization in connection with the alternative trading system's activities may be given by registered or certified mail to the contact employee at the primary street address or mailing address (if different) of the Government Securities ATS, or via email, at the addresses provided on this Form ATS-G. The undersigned deposes and says that he/she has executed this form on behalf of, and with the authority of, said alternative trading system. The undersigned and {Government Securities ATS} represent that the information and statements contained herein, including exhibits, schedules, or other documents attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true, and complete.

Date {auto fill} {Government Securities ATS}

By: _____ Title_____

FORM ATS-G INSTRUCTIONS

A. FILING FORM ATS-G:

1. Form ATS-G is a public reporting form that is designed to provide market participants and the Commission with information about the operations of the Government Securities ATS and the ATS-related activities of its Broker-Dealer Operator and its Affiliates. Among other things, a Government Securities ATS must file Form ATS-G to be exempt from the definition of "exchange" pursuant to Exchange Act Rule 3a1-1(a)(2).

2. A separate Form ATS-G is required for each Government Securities ATS operated by the same Broker-Dealer Operator.

3. A Government Securities ATS must provide all the information required by Form ATS-G, including responses to each Item, as applicable, and the Exhibits, and disclose information that is accurate, current, and complete.

4. A Government Securities ATS must respond to each request in detail unless the request indicates that the ATS is required to disclose "summary" information.

5. Any report required to be submitted pursuant to Rule 304 of Regulation ATS shall be prepared, formatted, and submitted in accordance with Regulation S-T and the EDGAR Filer Manual. Filers have the option of submitting the information to EDGAR using the most recent version of the XML schema for Rule 304 as specified by the EDGAR Filer Manual, or submitting the information using the web-fillable form for Rule 304 in EDGAR.

6. Initial Form ATS-G: Prior to commencing operations, a Government Securities ATS shall file an initial Form ATS-G and the initial Form ATS-G must become effective. If a Government Securities ATS is currently operating pursuant to a Form ATS it must indicate such on the Form ATS-G. If the Government Securities ATS is operating pursuant to a previously filed initial operation report on Form ATS as of [the date 120 calendar days after the date of publication of the final rule in the Federal Register], such Government Securities ATS shall file with the Commission a Form ATS-G no earlier than [the date 120 calendar days after the date of publication of the final rule in the Federal Register], and no later than [the date 150 calendar days after the date of publication of the final rule in the Federal Register].

7. Form ATS-G Amendment

    a. A Government Securities ATS shall amend a Form ATS-G in accordance with the conditions of Rule 304.

b. A Material Amendment, except as provided by Rule 304(a)(2)(i)(D) for a Contingent Amendment, must be filed at least 30 calendar days prior to the date of implementation of a material change to the operations of the Government Securities ATS or to the activities of the Broker-Dealer Operator or its Affiliates that are subject to disclosure on Form ATS-G.

c. An Updating Amendment must be filed no later than 30 calendar days after the end of each calendar quarter to correct any other information that has become inaccurate or incomplete for any reason and was not previously required to be reported to the Commission as a Form ATS-G Amendment pursuant to Rule 304(a)(2)(i)(A), Rule 304(a)(2)(i)(C), or Rule 304(a)(2)(i)(D).

d. A Correcting Amendment must be filed promptly to correct information in any previous disclosure on Form ATS-G, after discovery that any information previously filed on Form ATS-G was materially inaccurate or incomplete when filed.

e. A Contingent Amendment must be filed no later than seven calendar days after information required to be disclosed in Part III, Item 24 on Form ATS-G has become inaccurate or incomplete.

f. A Government Securities ATS must select only one "Type of Amendment" for each Form ATS-G Amendment filed with the Commission.

g. For each Amendment, indicate the Part and Item number of the Form ATS-G that is the subject of the change(s), provide a brief summary of the change(s), and state whether or not the change(s) apply to all Subscribers and the Broker-Dealer Operator.

h. For each Amendment, provide the EDGAR accession number for the filing that is being amended.

8. Notice of Cessation: A Government Securities ATS shall notice its cessation of operations on Form ATS-G at least 10 business days prior to the date the Government Securities ATS will cease to operate as a Government Securities ATS.

9. Withdrawal: If a Government Securities ATS determines to withdraw a filing, it must check the "Withdrawal of Form ATS-G filing" check box for the type of filing and provide the EDGAR accession number of the Form ATS-G filing that is being withdrawn. A Government Securities ATS may withdraw an initial Form ATS-G or an Amendment before the end of the applicable Commission review period. A Government Securities ATS may withdraw a notice of cessation of operations at any time before the date that the Government Securities ATS had indicated it intended to cease operating. A Legacy Government Securities ATS may not withdraw its initial Form ATS-G at any time.

10. A filing that is defective may be rejected and not be accepted by the EDGAR system. Any filing so rejected shall be deemed not to have been filed. See generally Regulation S-T (17 CFR part 232).

B. CONTACT INFORMATION

- The individual listed on the Government Securities ATS's response to Part IV of Form ATS-G as the contact representative must be authorized to receive all incoming communications and be responsible for disseminating that information, as necessary, within the Government Securities ATS. The contact information provided in Part IV of Form ATS-G will not be made public.

C. RECORDKEEPING

- A copy of this Form ATS-G must be retained by the Government Securities ATS in accordance with the EDGAR Filer Manual and Rule 303 of Regulation ATS and must be made available for inspection upon a regulatory request.

D. PAPERWORK REDUCTION ACT DISCLOSURE

- Form ATS-G requires a Government Securities ATS to provide the Commission with certain information regarding: (1) the operation of the Government Securities ATS and the ATS-related activities of the Broker-Dealer Operator and its Affiliates; (2) material and other changes to the operations and disclosures of the Government Securities ATS; and (3) notice upon ceasing operation of the Government Securities ATS. Form ATS-G is designed to provide the public with information to, among other things, help them make informed decisions about whether to participate on the Government Securities ATS. In addition, the Form ATS-G is designed to provide the Commission with information to permit it to carry out its market oversight and investor protection functions.

- The information provided on Form ATS-G will help the Commission to determine whether a Government Securities ATS is in compliance with the federal securities laws and the rules or regulations thereunder, including Regulation ATS. A Government Securities ATS must:

  - File an initial Form ATS-G prior to commencing operations.

  - File a Form ATS–G Amendment: (1) at least 30 calendar days prior to the date of implementation of a material change to the operations of the Government Securities ATS or to the activities of the Broker-Dealer Operator or its Affiliates that are subject to disclosure on Form ATS-G (Material Amendment); (2) no later than 30 calendar days after the end of each calendar quarter to correct any other information that has become inaccurate or incomplete for any reason and was not previously required to be reported to the Commission as a Form ATS-G amendment pursuant to Rule 304(a)(2)(i)(A), Rule 304(a)(2)(i)(C), or Rule 304(a)(2)(i)(D) (Updating Amendment); (3) promptly, to correct information in any previous disclosure on Form ATS-G, after discovery that any information previously filed on Form ATS-G was materially inaccurate or incomplete when filed (Correcting Amendment); or (4) no later than seven calendar days after information required to be disclosed in Part III,

Items 24 on Form ATS-G has become inaccurate or incomplete (Contingent Amendment). During the Commission review period of an initial Form ATS-G filing, a Government Securities ATS that is operating as of the date 120 days from publication of the final rule in the Federal Register shall amend its filed Form ATS-G pursuant to these requirements, and a Government Securities ATS that was not operating as of the date 120 days from publication of the final rule in the Federal Register shall amend its filed Form ATS-G pursuant to the requirements for Updating and Correcting Amendments. During the Commission review period of an initial Form ATS-G filing, a Government Securities ATS shall amend a filed Material Amendment pursuant to the requirements for Updating and Correcting Amendments.

- o Notice its cessation of operations at least 10 business days before the date the Government Securities ATS ceases to operate as a Government Securities ATS.

- This collection of information will be reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. 3507. An agency may not conduct or sponsor, and a Person is not required to respond to, a collection of information unless it displays a currently valid control number. We estimate that a Government Securities ATS will spend approximately 134 hours completing the Form ATS-G, approximately 9.4 hours preparing each amendment to Form ATS-G, and approximately 2 hours preparing a notice of cessation on Form ATS-G. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

E. EXPLANATION OF TERMS

The following terms are defined for purposes of Form ATS-G.

- **AFFILIATE**: Shall mean, with respect to a specified Person, any Person that, directly or indirectly, controls, is under common control with, or is controlled by, the specified Person.

- **AGENCY SECURITY:** Shall mean a debt security issued or guaranteed by a U.S. executive agency, as defined in 5 U.S.C. 105, or government-sponsored enterprise, as defined in 2 U.S.C. 622(8).

- **ALTERNATIVE TRADING SYSTEM**: Shall mean any organization, association, Person, group of Persons, or system: (1) that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of Rule 3b-16 under the Exchange Act; and (2) that does not (i) set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, Person, group of Persons, or system, or (ii) discipline subscribers other than by exclusion from trading. 17 CFR 242.300(a).

- **BROKER-DEALER OPERATOR**: Shall mean the registered broker-dealer or government securities broker or government securities dealer of the Government Securities ATS pursuant to 17 CFR 242.301(b)(1).

- **CONTROL**: Shall mean the power, directly or indirectly, to direct the management or policies of the broker-dealer of an alternative trading system, whether through ownership of securities, by contract, or otherwise. A Person is presumed to control the broker-dealer of an alternative trading system if that Person: (1) is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (2) directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the broker-dealer of the alternative trading system; or (3) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the broker-dealer of the alternative trading system. 17 CFR 242.300(f).

- **GOVERNMENT SECURITY**: Shall mean securities defined in section 3(a)(42) of the Exchange Act. 15 U.S.C. 78c(a)(42).

- **GOVERNMENT SECURITIES ATS**: Shall mean an alternative trading system that trades government securities or repurchase and reverse repurchase agreements on government securities. A Government Securities ATS shall not trade securities other than government securities or repurchase and reverse repurchase agreements on government securities.

- **ORDER**: Shall mean any firm indication of a willingness to buy or sell a security as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order. 17 CFR 242.300(e).

- **PERSON**: Shall mean a natural person, company, government, or political subdivision, agency, or instrumentality of a government. 15 U.S.C. 78c(a)(9).

- **SUBSCRIBER**: Shall mean any Person that has entered into a contractual agreement with an alternative trading system to access an alternative trading system for the purpose of effecting transactions in securities, or for submitting, disseminating or displaying orders on such alternative trading system, including a customer, member, user, or participant in an alternative trading system. A subscriber, however, shall not include a national securities exchange or association. 17 CFR 242.300(b).

- **U.S. TREASURY SECURITY**: Shall mean a security issued by the U.S. Department of the Treasury.

By the Commission.

Dated: September 28, 2020

Vanessa A. Countryman
Secretary