

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 232, 240, 242, 249, and 275**

**[Release Nos. 34-94868; IA-6018; File Nos. S7-02-22; S7-03-22]**

**RIN 3235-AN07; 3235-AM45**

**Reopening of Comment Periods for “Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews” and “Amendments Regarding the Definition of ‘Exchange’ and Alternative Trading Systems (ATs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities”**

**AGENCY:** Securities and Exchange Commission

**ACTION:** Proposed rules; reopening of comment periods.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is reopening the comment period for a release proposing new rules and amendments to an existing rule under the Investment Advisers Act of 1940 (“Advisers Act”) that would affect private fund advisers and proposing amendments to the Advisers Act compliance rule, which would affect all registered investment advisers (“Advisers Act Proposing Release”). The Commission is also reopening the comment period for a release proposing amendments to its rules under the Securities Exchange Act of 1934 (“Exchange Act”) that would amend a rule under the Exchange Act, which defines certain terms used in the statutory definition of “exchange” under the Exchange Act, re-propose amendments to Regulation ATS for ATs that trade government securities as defined under the Exchange Act or repurchase and reverse repurchase agreements on government securities (“Government Securities ATs”), re-propose amendments to Regulation SCI to apply to ATs that meet certain volume thresholds in U.S. Treasury Securities or in a debt security issued or guaranteed by a U.S. executive agency or government-sponsored enterprise (“Agency Securities”), amend the fair access rule for ATs, and amend Form ATS-N, Form ATS-R, and

Form ATS (“Exchange Act Proposing Release”). These actions will allow interested persons additional time to analyze the issues and prepare their comments, which would benefit the Commission in its consideration of final rules.

**DATES:** The comment periods for the proposed rules published in the *Federal Register* on March 24, 2022, at 87 FR 16886, and March 18, 2022, at 87 FR 15496 are reopened. Comments should be received on or before June 13, 2022.

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

Electronic comments:

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/submitcomments.htm>).
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-03-22 for the Advisers Act Proposing Release and File Number S7-02-22 for the Exchange Act Proposing Release 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 the file number for the specific action being commented upon. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission’s website (<https://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. Operating conditions

may limit access to the Commission's Public Reference Room. 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 such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at [www.sec.gov](http://www.sec.gov) to receive notifications by email.

**FOR FURTHER INFORMATION CONTACT:** For questions about File Number S7-03-22 (Advisers Act Proposing Release), contact Robert Holowka, Attorney-Adviser; Thomas Strumpf, Senior Counsel; Melissa Rovers Harke, Senior Special Counsel; Christine Schleppegrell, Acting Branch Chief; Michael C. Neus, Private Funds Attorney Fellow, Investment Adviser Regulation Office; or Marc Mehrespand, Branch Chief, Chief Counsel's Office, at (202) 551-6787 or [IArules@sec.gov](mailto:IArules@sec.gov), Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-8549.

For questions about File Number S7-02-22 (Exchange Act Proposing Release), contact, for 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; Amir Katz, Special Counsel, at (202) 551-7653; and Joanne Kim, Attorney Advisor, 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**

### **I. Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews**

The Commission has requested comment on the Advisers Act Proposing Release<sup>1</sup>, which proposes new rules and amendments to existing rules under the Advisers Act. The proposed rules would require registered investment advisers to private funds to provide transparency to their investors regarding the full cost of investing in private funds and the performance of such private funds. The proposed rules also would require a registered private fund adviser to obtain an annual financial statement audit of each private fund it advises and, in connection with an adviser-led secondary transaction, a fairness opinion from an independent opinion provider. In addition, the proposed rules would prohibit all private fund advisers, including those that are not registered with the Commission, from engaging in certain sales practices, conflicts of interest, and compensation schemes that are contrary to the public interest and the protection of investors. All private fund advisers would also be prohibited from providing preferential treatment to certain investors in a private fund, unless the adviser discloses such treatment to other current and prospective investors. The proposed rules include corresponding amendments to the Advisers Act books and records rule to facilitate compliance with these proposed new rules and assist our examination staff. Finally, the proposed rules would amend the Advisers Act compliance rule, which would affect all registered investment advisers, to better enable our staff

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<sup>1</sup> See Advisers Act Release No. 5955 (February 9, 2022), 87 FR 16886 (March 24, 2022).

to conduct examinations. The original comment period for the Advisers Act Proposing Release ended on April 25, 2022.

## **II. Amendments Regarding the Definition of ‘Exchange’ and Alternative Trading Systems (ATs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities**

The Commission has requested comment on the Exchange Act Proposing Release<sup>2</sup>, which proposes amendments to its rules under the Exchange Act that would amend 17 CFR 240.3b-16 under the Exchange Act, which defines certain terms used in the statutory definition of “exchange” under Section 3(a)(1) of the Exchange Act to include systems that offer the use of non-firm trading interest and communication protocols to bring together buyers and sellers of securities. In addition, the Exchange Act Proposing Release is re-proposing amendments to the Commission’s regulations under the Exchange Act that were initially proposed in September 2020 for ATs to take into consideration systems that may fall within the definition of exchange because of the proposed amendments in the Exchange Act Proposing Release and operate as an AT. In the Exchange Act Proposing Release, the Commission is also re-proposing, with certain revisions, amendments to its regulations for Government Securities ATs. In the Exchange Act Proposing Release, the Commission is proposing to amend Form ATS-N for NMS Stock ATs, which would require existing NMS Stock ATs to amend their existing disclosures. In addition, in the Exchange Act Proposing Release the Commission is proposing to amend the fair access rule for ATs. The Commission is also proposing to require electronic filing of and to modernize Form ATS-R and Form ATS, which would require existing Form ATS filers to amend their

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<sup>2</sup> See Securities Exchange Act Release No. 94062 (January 26, 2022), 87 FR 15496 (March 18, 2022).

existing disclosures. Further, in the Exchange Act Proposing Release the Commission is re-proposing amendments to its regulations regarding systems compliance and integrity to apply to ATSS that meet certain volume thresholds in U.S. Treasury Securities or in Agency Securities. The original comment period for the Exchange Act Proposing Release ended on April 18, 2022.

### **III. Reopening of Comment Periods**

The Commission believes that providing the public additional time to consider and comment on the matters addressed in the Advisers Act Proposing Release and the Exchange Act Proposing Release would benefit the Commission in its consideration of final rules. Therefore, the Commission is reopening the comment periods for Release No. IA-5955 “Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews” and Release No. 34-94062 “Amendments Regarding the Definition of ‘Exchange’ and Alternative Trading Systems (ATSS) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities” until June 13, 2022.

By the Commission.

Dated: May 9, 2022

J. Matthew DeLesDernier,  
Assistant Secretary