
SEC Proposes Amendments to Regulation ATS for Government Securities ATSS

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The Securities and Exchange Commission (SEC) proposed to amend Regulation ATS under the Securities Exchange Act of 1934 (Exchange Act) for alternative trading systems (ATSS) that trade government securities or repurchase and reverse repurchase agreements on government securities (Government Securities ATSS).¹ After considering the significant role of Government Securities ATSS in today's government securities market structure, the complexity of Government Securities ATSS operations, and prior comments it received relating to Government Securities ATSS, the SEC proposed to eliminate the exemption from compliance with Regulation ATS for Government Securities ATSS, and to require such ATSS, among other things, to

- Disclose information about their manner of operations and the ATSS-related activities of the registered broker-dealer or government securities broker or government securities dealer that operates the ATSS and its affiliates on new Form ATSS-G;
- Comply with the Fair Access Rule under Rule 301(b)(5) of Regulation ATS if the ATSS meets certain volume thresholds in US Treasury Securities or in a debt security issued or guaranteed by a US executive agency or a government-sponsored enterprise (Agency Securities); and
- Comply with Regulation Systems Compliance and Integrity (Reg SCI) if the ATSS meets certain volume thresholds in US Treasury Securities or Agency Securities.

The SEC also issued a concept release on the regulatory framework for electronic platforms that trade corporate debt and municipal securities. The SEC requested comment on the proposed amendments to Regulation ATS and the concept release within 60 days after publication of the proposal in the Federal Register.

I. Elimination of the Exemption from Regulation ATS for Government Securities ATSS

At present, an ATSS that solely trades government securities or repurchase and reverse repurchase agreements on government securities that is operated by a registered broker-dealer or a bank is exempt from the definition of an "exchange" under Section 3(a)(1) of the Exchange Act via the application of Rule 3a1-1(a)(3) of the Exchange Act and Rule 301(a)(4) of Regulation ATS. The SEC proposed to amend Regulation ATS to eliminate the exemption under Rule 301(a)(4) for ATSS that solely trade government securities or repurchase and reverse repurchase agreements on

¹ [Securities Exchange Act Release No. 90019 \(Sept. 28, 2020\)](#)

government securities. As a result, 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.

The SEC also proposed 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, to allow an ATS to register either as a broker-dealer under Section 15 of the Exchange Act or a government securities broker or government securities dealer under Section 15C(a)(1)(A) of the Exchange Act. The proposed amendment to Regulation ATS, however, would not permit a bank or other financial institution to satisfy the broker-dealer registration requirements by registering as a government securities broker or government securities dealer under Section 15C(a)(1)(B) of the Exchange Act. Unlike broker-dealers registered under Section 15, and government securities brokers or government securities dealers registered under Section 15C(a)(1)(A), a bank or other financial institution that registers as a government securities broker or dealer under Section 15C(a)(1)(B) would not be required to be a member of a self-regulatory organization (SRO). The SEC stated that it believes it is important for an ATS to be a member of an SRO. 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. The SEC noted, however, that a bank that operates an ATS that trades only government securities could rely on an affiliate of a bank that is a registered broker-dealer to operate the ATS.

II. Regulation ATS and Government Securities ATSs

If a Government Securities ATS determines to operate pursuant to the exemption set forth in Regulation ATS, it would be required to comply with the applicable requirements of Regulation ATS. For example, as discussed below in more detail, pursuant to the proposed revisions to Regulation ATS, a Government Securities ATS would not be permitted to trade securities other than government securities or repurchase or reverse repurchase agreements on government securities. In addition, a Government Securities ATS would be required to file a Form ATS-G. Furthermore, a Government Securities ATS that meets certain volume thresholds would be required to comply with the Fair Access Rule with respect to trading in US Treasury Securities and Agency Securities. A Government Securities ATS would not, however, be subject to the order display and execution access provisions under Rule 301(b)(3) or the fee provisions of Rule 301(b)(4) that are applicable to NMS Stock ATSs.

A. Definition of Government Securities ATS

The SEC proposed to amend Rule 300 of Regulation ATS to define “Government Securities ATS” to mean an ATS that trades government securities, as defined in Section 3(a)(42) of the Exchange Act,² or repurchase and reverse repurchase agreements on government securities. The SEC also proposed that a Government Securities ATS may not trade securities other than government securities or repurchase and reverse repurchase agreements on government securities and that trading of securities other than such securities would require the separate filing of either a Form ATS or a Form ATS-N, depending on the types of securities traded.

² The definition of a 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. In its proposal, the SEC requested comment on whether the range of securities encompassed by that definition (e.g., certain options on government securities) should be considered government securities for purposes of the proposed regulation.

B. Form ATS-G for Government Securities ATSS

The SEC proposed 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. Almost all the requests for information on proposed Form ATS-G are similar to or derived from Form ATS-N applicable to NMS Stock ATSS, although certain requests have been tailored for Government Securities ATSS. The SEC proposed to require Form ATS-G to be filed electronically in a structured format through EDGAR.

Part I of proposed Form ATS-G would require the ATS to provide certain identifying information about the Government Securities ATS and the broker-dealer operator of the Government Securities ATS. Part II of proposed Form ATS-G is designed to provide subscribers and market participants with information 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. 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 IV of proposed Form ATS-G requires information about the ATS's point of contact, consent to service of any civil action brought by, or any notice of any proceeding before, the SEC or an SRO in connection with the ATS's activities, and a signature indicating that the information in the Form ATS-G is current, true and complete.

The SEC proposed a process for the SEC to review disclosures on Form ATS-G and declare a Form ATS-G ineffective if the SEC finds, after notice and 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 designed to address material deficiencies with respect to the accuracy, currency and completeness of disclosures on Form ATS-G.³

The SEC also proposed to clarify how the proposed rules would apply to Government Securities ATSS that are currently operating ("Legacy Government Securities ATSS"), ATSS that limit their securities activities to government securities or repurchase and reverse repurchase agreements on government securities, and register as a broker-dealer or is a bank ("Currently Exempted Government Securities ATSS") and new Government Securities ATSS. The SEC proposed that a Legacy Government Securities ATS that is operating pursuant to a Form ATS as of the date 120 calendar days after the date of publication of the final rule in the Federal Register ("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 provide the rules for filing of Form ATS-G. The SEC also proposed 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 SEC proposed 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, these rules are identical to the existing rules that were applied to Legacy NMS Stock ATSS operating during the SEC review period for Form ATS-

³ The proposed effectiveness process is the same effectiveness process that is currently applicable to NMS Stock ATSS.

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

C. Application of Fair Access Rule to Government Securities ATSS

The Fair Access Rule, Rule 301(b)(5) of Regulation ATS, currently 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 the trading of government securities. 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. These requirements are designed to ensure that qualified market participants have fair access to the nation's securities markets. The SEC proposed to apply the Fair Access Rule to the trading of US Treasury Securities and Agency Securities.

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 US Treasury Securities, five percent or more of the average weekly dollar volume traded in the US as provided by the SRO to which such transactions are reported, and (2) with respect to Agency Securities, five percent or more of the average daily volume traded in the US as provided by the SRO to which such transactions are reported. Because weekly dollar volume data about transactions in US Treasury Securities and daily dollar volume data 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.

D. Public Disclosure of Form ATS-G

The SEC proposed greater public disclosure of the operations of Government Securities ATSS through the publication of Form ATS-G and related filings on the SEC's website. The SEC proposed to make public via posting on the SEC'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). The SEC also proposed to require each Government Securities ATS that has a website to post a direct URL hyperlink to the SEC's website that contains the Government Securities ATS's Form ATS-G filings. In addition, the SEC proposed to require each Government Securities ATS to post on its website the most recently disseminated Form ATS-G (excluding Part IV, which is non-public information) within one business day after publication on the SEC's website, except for any amendment that the SEC has declared ineffective or that has been withdrawn.

III. Application of Regulation SCI to Government Securities ATSS

The SEC proposed to apply Reg SCI⁴ to Government Securities ATSS that meet a specified volume threshold with respect to US Treasury Securities and/or Agency Securities.⁵ 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 US Treasury Securities, five percent (5%) or more of the average weekly dollar volume traded in the US as provided by the SRO to which such transactions are reported; or had, with respect to Agency Securities, five percent (5%) or more of the average daily dollar volume traded in the US as provided by the SRO to which such transactions are reported. The SEC believes that approximately three ATSS trading US Treasury Securities and one ATSS trading Agency Securities currently would be subject to Reg SCI under the proposed five percent volume thresholds.

IV. Treatment of Large Volume Government Securities ATSS

Under Rule 3a1-1(b) of the Exchange Act, the SEC can determine that certain dominant ATSS that trade NMS stocks, corporate debt, municipal securities and OTC equity securities should be registered as exchanges. The SEC proposed to amend this provision to include ATSS that trade US Treasury Securities or Agency Securities. As a result of the proposed change, the SEC could require a Government Securities ATSS, which otherwise meets the conditions to the Rule 3a1-1(a) exemption from exchange registration, to register as a national securities exchange if the ATSS meets specified volume levels in US Treasury Securities or Agency Securities and the SEC finds that the exemption would not be necessary or appropriate in the public interest or consistent with the protection of investors.⁶ The SEC would provide a Government Securities ATSS 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.

⁴ Reg SCI, among other things, requires SCI entities, including SCI ATSS, 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. Broadly speaking, Reg SCI also requires SCI entities to take appropriate corrective action when systems issues occur; provide certain notifications and reports to the SEC 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.

⁵ Because the SEC proposed to apply Reg SCI to certain Government Securities ATSS that trade US Treasury Securities and/or Agency Securities, the Capacity, Integrity, and Security Rule under Rule 301(b)(6) of Regulation ATS would not apply to the trading of government securities on ATSS.

⁶ The volume thresholds are met if during three of the preceding four calendar quarters, the ATSS had (1) 50% or more of the average daily dollar trading volume in any security and 5% or more of the average daily dollar trading volume in any class of securities; or (2) 40% or more of the average daily dollar trading volume in any class of securities.

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

The SEC also proposed a variety of additional amendments to Regulation ATS, Form ATS, Form ATS-R and Form ATS-N. These proposed changes include the following:

- Currently, an ATS is excluded from complying with the requirements of the Fair Access Rule (Rule 301(b)(5) of Regulation ATS) and the Capacity, Integrity and Security Rule (Rule 301(b)(6) of Regulation ATS) if the ATS: (1) matches customer orders for a security with other customer orders; (2) such customers' orders are not displayed to any person, other than employees of the ATS; and (3) such orders are executed at a price for such security disseminated by an effective transaction reporting plan, or derived from such prices. The SEC proposed to remove the exclusion for these so-called "passive systems" from compliance with the Fair Access Rule and the Capacity, Integrity and Security Rule.
- The SEC proposed to amend Rule 301(b)(2) of Regulation ATS to clarify that being "deemed confidential" means receiving confidential treatment under a relevant SEC regulation subject to applicable law and to eliminate confidential treatment for information about the type(s) of securities that the ATS trades as disclosed on Form ATS and Form ATS-R.
- The SEC proposed to amend Regulation ATS to require all Forms ATS and Forms ATS-R to be filed electronically via EDGAR.

VI. Concept Release: Electronic Platforms for Corporate Debt and Municipal Securities

In 2018, the SEC Fixed Income Market Structure Advisory Committee ("FIMSAC") made a recommendation to the SEC concerning the regulation of corporate and municipal debt trading platforms. The FIMSAC expressed concern regarding 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. In light of the FIMSAC's recommendation as well as other related comments, the SEC determined to review the regulatory framework for fixed income electronic trading platforms, including consideration of whether the SEC should propose amendments to Regulation ATS (and any other applicable rules) to account for operational and regulatory differences among fixed income electronic trading platforms. To that end, the SEC issued a concept release on the regulatory framework for electronic platforms that trade corporate debt and municipal securities. The SEC is seeking information about fixed income electronic trading platforms, including their operations, services, fees, market data and participants. The SEC stated that this information could help it evaluate potential regulatory gaps that may exist among these platforms with respect to access to markets, system integrity, surveillance and transparency.

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