



Summary

SEC Proposal to Extend Regulations ATS and SCI to Treasuries and Other Government Securities Markets/Concept Release on Electronic Corporate Bond and Municipal Securities Market

October 28, 2020

I. Overview

The Securities and Exchange Commission has issued a proposal to enhance the operational transparency, system integrity, and regulatory oversight for alternative trading systems (“ATSs”) that trade government securities as well as repurchase and reverse repurchase agreements on government securities (“Government Securities ATSs”). At the same time, the SEC issued a concept release soliciting public comment on the regulatory framework for electronic platforms that trade corporate debt and municipal securities.

The Commission notes that ATSs have become a significant source of orders and trading interest for government securities and 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”). The Commission adds that 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, currently ATSs that trade only U.S. government securities and register as broker-dealers or are banks are exempt from exchange registration and are not required to comply with Regulation ATS. In addition, 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 heightened disclosure requirements and the fair access requirements, and are not subject to Regulation SCI.

II. Proposed Amendments to Regulation ATS for Government Securities ATSs

To address the Commission’s concerns noted above, the proposed amendments would eliminate the exemption for Government Securities ATSs from compliance with Regulation ATS. Significantly, as discussed further below, the proposal would:

- Apply the investor protections Regulation ATS provides, such as the requirement to adopt written safeguards and written procedures to protect confidential subscriber information, and enable Commission oversight, including surveillance and examination, of these ATSs.
- Require an ATS with significant market share for U.S. Treasury securities or agency securities to provide fair access to trading on such ATS.
- Increase transparency in the government securities markets by requiring Government Securities ATSs to file comprehensive public disclosures on new Form ATS-G.
- Amend Regulation SCI to apply its provisions to ATSs that meet certain trading volume thresholds in U.S. Treasury securities or agency securities.

A. Application of Regulation ATS Investor Protections

As a result of the proposal, 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 Commission states that it believes it is important to apply the conditions of the exemption to exchange registration 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, among other things:

- Permit the examination and inspection of its premises, systems, and records, and cooperate with the examination, inspection, or investigation of subscribers, whether the examination is being conducted by the Commission or by an SRO of which such subscriber is a member. 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 market in a security, it is important that these ATSS cooperate in all inspections, examinations, and investigations.
- Make and keep certain records and preserve records. 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.
- 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. Such information 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.
- 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, which the Commission believes will help prevent the potential for abuse of subscriber confidential trading information.

B. Application of Fair Access to Government Securities ATSS

The proposal notes that 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. 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 could hurt investors lacking access to that ATS.

Currently, the Fair Access Rule 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. 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.

The Commission stated that it believes that today, the principles underlying the Fair Access Rule are equally relevant to a Government Securities ATS and that 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.

Under the proposed amendments, 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.

The Commission notes that 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. 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. The Commission states that the proposed five percent volume thresholds are appropriately designed to capture those ATSS that are significant liquidity venues for U.S. Treasury Securities or Agency Securities but requests comment on whether these proposed volume thresholds should be set higher or lower for ATSS trading government securities.

C. Proposed Form ATS-G for Government Securities ATSS

The Commission notes that 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 proposal therefore is designed to increase transparency in the government securities markets by requiring Government Securities ATSS to file public disclosures on new Form ATS-G.

Form ATS-G would require a Government Securities ATS to publicly disclose information about its manner of operations (such as order types, use of market data offered and used by the ATS, and fees) and the ATS-related activities of the registered broker-dealer or government securities broker or dealer that operates the ATS and its affiliates.

The Commission believes that proposed Form ATS-G's public disclosures would provide important information to market participants that would help them better understand the operational facets of Government Securities ATSS. 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. In addition, the Commission 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.¹

The proposed rules would provide a process for the Commission to review Form ATS-G filings and, after notice and opportunity for a hearing, declare Form ATS-G filings ineffective. The Commission would make public a Government Securities ATS's Form ATS-G when it becomes effective, as well as amendments to an effective Form ATS-G. A Government Securities ATS would be required to file amendments, including material amendments, to its Form ATS-G; as proposed, material amendments must be filed 30 calendar days prior to the implementation of the change and are made public upon the expiration of the 30 calendar day Commission review period, although a brief summary of the change will be made public upon filing. In addition, each Government Securities ATS would be required to post

¹ 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.

on its website the most recently disseminated Form ATS-G, except for any amendment that the Commission has declared ineffective or that has been withdrawn.

1. 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 and that 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 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.

Broker-Dealer Operator and its Affiliate Trading Activities on the Government Securities ATS - Part II, Items 1 and 2 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 such persons are able to trade on the 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, and the operator 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. The Commission believes this disclosure would be important to subscribers given the conflicts of interest that may arise.

Order Interaction with Broker-Dealer Operator; Affiliates - Part II, Item 3 would request information about the interaction of orders and trading interest between unaffiliated subscribers to the Government Securities ATS. For example, this Item would require disclosure whether a subscriber can opt out of interacting with orders and trading interest of the broker-dealer operator in the ATS or an affiliate of the broker-dealer operator in the ATS, and whether the terms and conditions of the opt-out processes are the same for all subscribers. The Commission believes that such disclosure would be important to unaffiliated market participants trading on an ATS because, given the potential for informational advantages by the broker-dealer operator or its affiliates, some unaffiliated subscribers may not wish to interact with the order flow of the broker-dealer operator or its affiliates.

Arrangements with Other Trading Venues - Part II, Item 4 is designed to provide for the disclosure of formal or informal arrangements (e.g., mutual, reciprocal, or preferential access arrangements) 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) to access the Government Securities ATS services. 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.

Other Products and Services - Part II, Item 5 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 are the same for all subscribers and the broker-dealer operator. The

Commission believes subscribers want to know this information because such products or services may impact the subscribers' access to, or trading on, the ATS and in some cases, this may result in the subscribers receiving more favorable terms from the broker-dealer operator with respect to their use of the ATS such as fee discounts or access to a faster connection line to the Government Securities ATS.²

Activities of Service Providers - Part II, Item 6 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 and would provide disclosures relating to any entity, other than the broker-dealer operator, that supports the services or functionalities of the Government Securities ATS. The Commission believes that such disclosures would help market participants evaluate circumstances when there is the potential for information leakage. Item 6 also would require the Government Securities ATS to disclose whether any service providers or their affiliates use the services of the ATS and, 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. The Commission states that, depending on the role and responsibilities of the third-party service provider, market participants may wish to consider evaluating the robustness of the Government Securities ATS's safeguards and procedures to protect confidential subscriber information.

Protection of Confidential Trading Information - Part II, Item 7 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 are implemented and followed. The Commission believes that such disclosures 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 also would 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. Finally, the Commission is proposing 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. The Government Securities ATS would initially need to describe what it considers to be confidential trading information, *e.g.*, 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. In addition, to explain the basis for the access, the Government Securities ATS would need to provide the basis for a person to have access to the confidential trading information and any limitations placed on that person's access.

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

Part III of proposed Form ATS-G provides a long list of items 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 current Form ATS-N. Information required to be disclosed include:

² To alleviate any concerns regarding the potential disclosure of commercially sensitive information, 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.

1. Types of ATS Subscribers: Information about the type of order flow in the Government Securities ATS based on the types of subscribers that use the ATS's services and any types of participants whose trading interest may reach the ATS, *i.e.*, 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.
2. Eligibility for ATS Services: Information about whether the Government Securities ATS requires subscribers to be registered broker-dealers or enter a written agreement to use the ATS services, whether there are any other conditions that the ATS requires a person to satisfy before accessing the ATS services and, if yes, list and provide a "summary" of those conditions.
3. Exclusion from ATS Services: Conditions that would exclude a subscriber from using the Government Securities ATS as a result of, for example, subscriber non-compliance with rules while participating in the ATS.
4. Hours of Operations: 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.
5. Means of Entry: Means that can be used to directly enter orders and trading interest into the Government Securities ATS (direct market access platform, FIX Protocol connection), any other means for entering orders and trading interest into the ATS (smart order router, algorithm, order management system, sales desk, or aggregation functionality), and a summary of the conditions for entering orders or trading interest into the ATS through these means.
6. Connectivity and Co-location: Whether the Government Securities ATS offers co-location and related services, and if so, a summary of the terms and conditions for such services, including the speed and connection (e.g., fiber, copper) options offered. Also, whether the ATS provides any other means besides co-location and related services to increase or reduce the speed of communication with the ATS.
7. Order Types and Attributes: Description of the order types available on the Government Securities ATS, their characteristics, operations, and how they are handled, which can help market participants understand how their orders and trading interest will be handled and executed on the ATS, how to use order types to achieve their trading objectives, as well as understand how order types used by other market participants could affect their trading interest.
8. Order Sizes: Information about requirements related to the permissible size of trading interest (minimum or maximum size, odd-lot, mixed-lot, trading increments) to provide a market participant with information regarding how its trading interest would be handled vis-à-vis other market participants.
9. Indications of Interest: Information about whether the Government Securities ATS sends or receives any messages indicating trading interest, and if so, 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, and the conditions under which the messages might result in an execution in the ATS.
10. Opening and Reopening: 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.
11. Trading Services, Facilities and Rules: A summary of the structure of the ATS marketplace and explanation of 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 (crossing system, auction market, limit order matching book, voice), pricing methodologies used for each type of security traded by the ATS, and various terms and conditions under which orders interact and match. (price-time priority, midpoint-only matching with time priority).
12. Liquidity Providers: 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 Commission believes this information 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).

13. Segmentation: Information about the categories of order flow or types of market participants with which market participants may interact to 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 (e.g., standards for categorizing HFT firms).
14. Counter-Party Selection: Information about whether orders or trading interest can be designated to interact or not interact with certain orders or trading interest in the ATS, e.g., 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 HFT firms.
15. Display: Information 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 this information as such information could result in other market participants trading ahead of their positions, and therefore in inferior execution prices.
16. Interaction with Related Markets: Information about any functionality or procedure to facilitate trading on, or source pricing for, the Government Securities ATS that is offered by the broker-dealer operator or its affiliates and used in conjunction with markets for financial instruments related to government securities (so-called "Related Markets"). Such activities 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.
17. Closing: 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.
18. Trading Outside of Regular Trading Hours: Information about procedures for trading outside regular trading hours.
19. Fees: Information on any fees or charges for use of the ATS's services, including any fees or charges 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.
20. Suspension of Trading: 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.
21. Trade Reporting: Information on any procedures and material arrangements for reporting transactions on the ATS to an SRO.
22. Clearance and Settlement: Information on any procedures and material arrangements undertaken to facilitate the clearance and settlement of transactions on the Government Securities ATS.
23. Market Data: 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.
24. Fair Access: Information around the 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.
25. Aggregate Platform-Wide Data; Trading Statistics: 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.

Among the requests for comment on these disclosures, the Commission asks (1) whether there is other information that market participants might find relevant or useful regarding the operations of Government Securities ATSs; (2) whether the disclosures help market participants better evaluate trading opportunities and decide where to send orders to reach their trading objectives; (3) whether there are ways to obtain the same information as would be required from Government Securities ATSs other than through disclosure on proposed Form ATS-G; and (4) could the proposed requirement to disclose the information impact innovation on Government Securities ATSs.

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

The Commission is proposing changes to correct and modernize Regulation ATS, Form ATS, Form ATS-N, and Form ATS-R. Significantly, the Commission is proposing certain amendments to Regulation ATS to: (1) require that Form ATS and Form ATS-R be filed with the SEC electronically through EDGAR and modernize both forms; (2) eliminate confidential treatment of the types of securities that an ATS trades as disclosed on the ATS's Form ATS and Form ATS-R; (3) update and correct Form ATS-N; (4) require NMS Stock ATSs to post on their websites the most recently disseminated Form ATS-N; and (5) remove the exclusion from compliance with the Fair Access Rule and Rule 301(b)(6) under Regulation ATS for an ATS that matches non-displayed customer orders using prices disseminated by an effective transaction reporting plan.

E. Proposed Amendments to Regulation SCI for Government Securities ATS

Regulation SCI, among other things, requires 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. Regulation SCI 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.

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, the Commission states that it preliminarily believes that it would be appropriate to apply the requirements of Regulation SCI to Government Securities ATSs that meet certain volume thresholds.

The Commission therefore would amend Regulation SCI to expand the definition of "SCI alternative trading system" to include Government Securities ATSs that, during at least four of the preceding six calendar months, had: (1) with respect to U.S. Treasury securities, five percent or more of the average weekly dollar volume traded in the U.S. as provided by the SRO to which such transactions are reported or (2) with respect to Agency Securities, five percent or more of the average daily dollar volume traded in the U.S. as provided by the SRO to which such transactions are reported. 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.³

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.⁴

³ 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. The Commission notes that 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 Regulation SCI. 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.

⁴ 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. 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 but is requesting comment on this preliminary assessment and whether the Commission

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

The Commission is issuing a concept release, arising out of the work of the Fixed Income Market Structure Advisory Committee. In 2018, FIMSAC made a recommendation to the Commission concerning the regulation of corporate and municipal debt trading platforms. The FIMSAC's core concern was the lack of regulatory harmonization among fixed income electronic trading platforms, recognizing that some firms were regulated as ATs, while some were regulated as broker-dealers or not at all. 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.

The Commission is soliciting public comment on a wide variety of issues about fixed income electronic trading platforms, including their operations, services, fees, market data, and participants.⁵ A full list of questions can be found in the Appendix. Among the more significant questions the Commission requests comment on are the following:

- 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?
- Does the current regulatory structure for national securities exchanges, broker-dealers, and ATs cover the full range of fixed income electronic trading platforms operating today?
- 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?
- What do commenters believe are the key regulatory standards that should apply to fixed income electronic trading platforms?
- What do commenters believe are the key inconsistencies in the regulation of fixed income electronic trading platforms?
- 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?
- 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?
- 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? Should such systems be subject to the same operational transparency requirements for broker-dealers, national securities exchanges, or ATs? 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?

should amend Regulation SCI to require Government Securities ATs that trade repos, including repos on U.S. Treasury Securities and Agency Securities, to be subject to the requirements of Regulation SCI.

⁵ While the 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.

- 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?

Note that in a recent speech, SEC Commissioner Roisman raised several other issues that can be addressed in the Concept Release and ATS proposal. Specifically, Commissioner Roisman stated that while the ATS proposal is an important step in strengthening the oversight of certain Treasury trading venues, this oversight framework may not extend to all trading venues that utilize RFQ or streaming quote protocols and that “this is obviously a gap.” He added that most principal trading firms (“PTFs”) which are large players in the cash Treasury market are not SEC-registered dealers and that this may be appropriate, for example, when other regulators oversee such entities, but disparate treatment exposes a market to potential risk and can lead to unfair burdens on competition. He added that the same concerns motivating the ATS proposal (operational transparency, system resiliency, and fair access) also apply to RFQ and streaming quote venues and that “it seems prudent to have transparency into these venues’ operations and for them to maintain reasonable safeguards regarding cybersecurity and system resiliency, while accounting for the diversity of trading venues operating in the Treasury market.”

Commissioner Roisman also noted that the market conditions in March raise the question of “whether we should consider broadening the universe of cash Treasury trades that are subject to central clearing.” He noted that as the percentage of Treasury trades executed by registered broker-dealers has decreased, there has been a corresponding decrease in the percentage of trades that are centrally cleared and since almost all trades in the dealer-to-client segment are cleared bilaterally, the vast majority of cash Treasury trades do not benefit from central clearing. He also questioned whether expanding access to central clearing could also have positive effects on market breadth and depth and whether it is optimal for ATS operators to assume counterparty credit risk arising from the trading activity of their participants.

Appendix

Requests for Comment - Concept Release on Electronic Corporate Bond and Municipal Securities Market

- 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, please explain any gaps in the regulatory structure and to which platforms it does not apply.
- 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?
- 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?
- 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?
- 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?

- 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 inconsistencies create burdens on competition among market participants, and if so, how?
- 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?
- 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?
- 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?
- 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?
- 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?
- 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?
- 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?

- 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?
- 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?
- 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?
- 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. 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 ATSS?

- 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?
- 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 commenters think that increasing operational transparency for these broker-dealers would benefit competition in the market?
- 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?
- 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?