

SEC Proposes Rules to Extend Regulations ATS and SCI to Treasuries and Other Government Securities Markets

Proposed Rules Would Enhance Operational Transparency and System Integrity for Government Securities Alternative Trading Systems; Agency Also Issues a Concept Release on Electronic Fixed Income Trading Platforms

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Washington D.C., Sept. 28, 2020 —The Securities and Exchange Commission today announced 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) and issued a concept release soliciting public comment on the regulatory framework for electronic platforms that trade corporate debt and municipal securities.

“Today’s proposal is another fine example of the commitment of the Commission and the SEC staff to ensuring that the implementation of our time-tested regulatory framework keeps pace with market developments,” said Chairman Jay Clayton. “Government Securities ATSs have become important to the functioning of our U.S. Treasury markets and this proposal, which benefited from input from the Treasury Department, would extend our transparency- and systems integrity-enhancing rules—Regulations ATS and SCI—to those markets. I specifically want to thank Treasury staff and the many past and present senior Treasury officials for their insightful input and support for this effort. The related concept release, which grew out of a recommendation by the SEC’s Fixed Income Market Structure Advisory Committee, will also enhance our understanding of the fixed income electronic trading space, including informing future modernization efforts.”

The U.S. government securities markets are among the most liquid and significant securities markets in the world. Government securities, including U.S. Treasury securities and agency securities, make up more than half of the outstanding debt issuances in the U.S. bond market 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 approximately \$835 billion.

Over the years, ATSs have become increasingly important to government securities trading. Under the proposal, all Government Securities ATSs would be required to comply with Regulation ATS. The proposal would apply the investor protections Regulation ATS provides to such entities, 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. The proposal would also require an ATS with significant market share for U.S. Treasury securities or agency securities to provide fair access to trading on such ATS.

The proposal is also designed to increase transparency in the government securities markets by requiring Government Securities ATSs to file comprehensive public disclosures on new Form ATS-G. Among other things, Form ATS-G would inform market participants about potential conflicts of interests arising from trading activity of the ATS’s broker-dealer operator or its affiliates, and the ATS’s manner of operations, such as order types, use of market data offered and used by the ATS, and fees. The Commission would review Form ATS-G filings and have the ability to, after notice and opportunity for hearing, declare a Government Securities ATS’s Form ATS-G ineffective.

The Commission is also proposing to amend Regulation SCI to apply its provisions to ATSS that meet certain trading volume thresholds in U.S. Treasury securities or agency securities. Regulation SCI requires SCI entities to have policies and procedures that are reasonably designed to ensure that their automated systems have adequate levels of security, including regular reviews and testing of systems to identify vulnerabilities. The proposed amendments are intended to help to address technological vulnerabilities, and improve the Commission's oversight of the core technology of key entities in the markets for government securities.

In addition, the Commission is issuing a concept release arising out of the recent work of the Fixed Income Market Structure Advisory Committee. The concept release focuses on the regulatory framework for electronic platforms that trade corporate debt and municipal securities, and the Commission is soliciting public comment to obtain information about fixed income electronic trading platforms, including their operations, services, fees, market data, and participants.

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FACT SHEET
Regulation of Government Securities ATSS:
Proposed Amendments to Regulation ATS and Regulation SCI
September 28, 2020

Current Regulatory Framework

Alternative trading systems (ATSS) are trading systems for securities that meet the definition of "exchange" under federal securities laws but are not required to register with the Commission as national securities exchanges if the ATSS comply with the conditions to an exemption provided under Regulation ATS. Today, ATSS that trade only U.S. government securities as defined under Section 3(a)(42) of the Exchange Act (government securities) and register as broker-dealers or are banks are exempt from exchange registration and are not required to comply with Regulation ATS. 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 under Rule 304 and the fair access requirements under Rule 301(b)(5) (Fair Access Rule), and are not subject to Regulation Systems Compliance and Integrity (Regulation SCI).

Regulation ATS Proposed Amendments for Government Securities ATSS

The proposed amendments to Regulation ATS are designed to enhance operational transparency and protections for investors for ATSS that trade government securities or repurchase and reverse repurchase agreements on government securities (Government Securities ATSS).

- *Application of Regulation ATS to all Government Securities ATSS*

The proposed amendments would eliminate the exemption from compliance with Regulation ATS for an ATSS 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. As a result of the proposal, the following conditions of the Regulation ATS exemption would apply to all Government Securities ATSS:

Relevant Conditions to the ATS Exemption	Requirements for Government Securities ATSS
Rule 301(b)(1)	Register 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).
Rule 301(b)(5)	Comply with the Fair Access Rule under Rule 301(b)(5) if it meets a given threshold of trading 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), as discussed in further detail below.
Rule 301(b)(7)	Cooperate with the Commission's or an SRO's inspection, examination, or investigation of the ATSS or any of the ATSS's subscribers.

Rules 301(b)(8), 302, and 303	Make, keep current, and preserve certain records in accordance with Rules 302 and 303.
Rule 301(b)(9)	Periodically report certain information about trading activities on Form ATS-R.
Rule 301(b)(10)	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.
Rule 301(b)(11)	Not use in its name the word “exchange” or derivations of the word “exchange.”
Rule 304	File and maintain public Form ATS-G, as discussed in further detail below.

- *Form ATS-G Disclosures and Commission Oversight*

Form ATS-G would require a Government Securities ATS to publicly disclose on Form ATS-G information about its manner of operations and the ATS-related activities of the registered broker-dealer or government securities broker or dealer that operates the ATS (broker-dealer operator) and its affiliates, and is designed to allow market participants to assess conflict of interest and understand how their orders will interact, match, and execute in the ATS.

Specifically, Form ATS-G would require a Government Securities ATS to disclose information regarding:

- Its broker-dealer operator, including identifying information and ownership.
- ATS-related activities of its broker-dealer operator, and the broker-dealer operator’s affiliates, including:
 - the trading activities of the broker-dealer operator and its affiliates on the ATS;
 - whether subscribers to the ATS can opt out from interacting with orders and trading interest of the broker-dealer operator and its affiliates;
 - arrangements between the broker-dealer operator or its affiliates and other trading venues to access the ATS services;
 - products and services offered to ATS subscribers by the broker-dealer operator and its affiliates;
 - the activities of service providers to the broker-dealer operator and its affiliates; and
 - written safeguards and written procedures established to protect the confidential trading information of subscribers.
- The manner of operations of the Government Securities ATS, including:
 - types of subscribers, the criteria for eligibility for ATS services, and conditions for excluding subscribers from ATS services;
 - means of entry for orders and trading interest;
 - connectivity and co-location procedures;
 - order types, attributes, and order size requirements and procedures;
 - use of and conditions governing indications of interest;
 - hours of operations, opening, reopening, and closing processes, and procedures for trading outside of the ATS’s regular trading hours;
 - trading services, facilities, and rules of the ATS;
 - arrangements with any subscriber or the broker-dealer operator to provide liquidity;
 - segmentation of orders and trading interest and the provision of notice regarding segmentation;
 - counter-party selection;
 - display of orders and other trading interest;

- functionalities or procedures to facilitate trading on, or source pricing for, the ATS using markets for financial instruments related to government securities;
- fees;
- procedures for stopping or suspending trading;
- procedures regarding trade reporting, clearance, and settlement;
- sources and uses of market data; and
- aggregate platform-wide order flow and execution statistics provided by the ATS to one or more subscribers.

The proposed rules would also 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. The proposed process is the same as the Commission's process for the filing and review of Form ATS-N, with a modification to the circumstances under which the Commission could extend the review period for Form ATS-G and Form ATS-N.

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 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.

- *Fair Access Rule*

The Commission also proposed to amend Regulation ATS to apply the Fair Access Rule to 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 self-regulatory organization (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. The proposed amendment to the Fair Access Rule would help ensure the fair treatment of potential and current subscribers to Government Securities ATSs that consist of a large percentage of trading volume in government securities.

Proposed Regulation SCI Amendments for Government Securities ATSs

The Commission proposed to 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. The amendments to Regulation SCI 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.

Regulation ATS Amendments for NMS Stock ATSs and ATSs that Trade Other Securities

The Commission proposed to amend Regulation ATS to:

- Require that Form ATS and Form ATS-R be filed with the Commission electronically through EDGAR and modernize both forms;
- Eliminate confidential treatment of the types of securities that an ATS trades as disclosed on the ATS's Form ATS and Form ATS-R;
- Update and correct Form ATS-N;
- Require NMS Stock ATSs to post on their websites the most recently disseminated Form ATS-N, except for any amendment that the Commission has declared ineffective or that has been withdrawn; and

- 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.

What's Next?

The proposal will be published on the Commission's website and in the Federal Register. There will be a 60-day comment period following publication in the Federal Register.

The Commission will also consider comments on the concept release on the regulatory framework for electronic platforms that trade corporate bonds and municipal securities.

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