

PAPERWORK REDUCTION ACT SUBMISSION

Rule 302

Supporting Statement

A. Justification

1. Necessity for Information Collection.

The Securities Exchange Act of 1934, as amended (“Act”)<sup>1</sup>, sets forth a scheme of self-regulation in which national securities exchanges have primary responsibility for regulating their members and enforcing compliance by members and their associated persons with the Act, the rules thereunder and exchange rules. Under the Act, the Commission is charged with the responsibility for supervising and assuring that exchanges comply with and advance the policies of the Act.

In the 1975 Amendments to the Act,<sup>2</sup> Congress specifically endorsed the development of a national market system (“NMS”) and sought to clarify and strengthen the Commission’s authority to promote the achievement of such a system. The growing use of technology has made it possible for commercial entities to centralize trading without the use of a floor, members or a non-profit structure.

The growing significance of alternative trading systems had far outstripped the Commission’s ability to effectively oversee such systems through existing broker-dealer regulation. Regulation ATS provides a regulatory structure that directly addresses issues related to alternative trading systems’ role in the marketplace. Regulation ATS allows alternative trading systems to choose between two regulatory structures. Alternative trading systems have the choice between registering as broker-dealers and complying with Regulation ATS or registering as national securities exchanges. Regulation ATS provides the regulatory framework for those alternative trading systems that choose to be regulated as broker-dealers.

Regulation ATS is composed of Rules 300, 301, 302 and 303. Rule 300 defines terms that provide the basis for alternative trading system regulation. Rule 301 sets forth the conditions that an alternative trading system must meet in order to be regulated as a broker-dealer. Rule 301 contains certain notice and reporting requirements, as well as additional obligations that only apply to alternative trading systems with significant volume. Rule 302 establishes a set of records relating to trading activity that the alternative trading system must make. Rule 303 establishes requirements for the preservation of certain records that alternative trading systems must make.

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<sup>1</sup> 15 U.S.C. 78a et seq.

<sup>2</sup> Pub. L. No. 29, 89 Stat. 97 (1975).

2. Purposes of, and Consequences of Not Requiring, the Information Collection

Rule 302 describes the recordkeeping requirements for alternative trading systems that are not national securities exchanges. Under Rule 302, alternative trading systems are required to make a record of subscribers to the alternative trading system, daily summaries of trading in the alternative trading system and time-sequenced records of order information in the alternative trading system.

The information contained in the records required to be preserved by the Rule is used by examiners and other representatives of the Commission, state securities regulatory authorities, and the self-regulatory organizations (“SROs”) to ensure that alternative trading systems are in compliance with Regulation ATS as well as other rules and regulations of the Commission and the SROs. In sum, without the data required by the Rule, the Commission would be limited in its ability to comply with its statutory obligations, provide for the protection of investors and promote the maintenance of fair and orderly markets.

3. Role of Improved Information Technology and Obstacles to Reducing Burden

The Commission believes that improvements in telecommunications and data processing technology may reduce any burdens that result from the Rule. The Commission is not aware of any technical or legal obstacles to reducing the burden through the use of improved information technology.

4. Efforts to Identify Duplication

Most of the records required to be made under the Rule reflect practices that prudent alternative trading systems would establish. Because most alternative trading systems would maintain much of the information required by the Rule, no duplication occurs with respect to such information. To the extent that the Rule establishes new collections of information, there is no similar information available that could replace the required information.

5. Effect on Small Entities

Rule 302 is a rule of general applicability that does not depend on the size of the system. Fair access reporting requirements only apply to alternative trading systems that have significant volume. The filing requirements on Forms ATS and ATS-R, however, apply to all alternative trading systems regardless of size under Regulation ATS. Therefore, the Rule could apply to small businesses. Pursuant to 17 CFR 240.0-10(c), the term “small business” or “small organization” when used in reference to a broker-dealer means a broker-dealer that has total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a-5(d) or, if not required to file such statements, a broker-dealer that had total capital of less than \$500,000 on the last business day of the preceding fiscal

year (or in the time that it has been in business); and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in 17 CFR 240.0-10. The Commission staff estimates that 5 alternative trading systems that would register as broker-dealers are small entities as currently defined by the Act.

Because the risks that the Commission monitors in the operation of an alternative trading system can occur in a business of any size, the Commission has determined that the Rule must apply in the same manner to small as well as large entities. Hence, the Rule does not contain an exemption for small entities. However, the Commission notes that alternative trading systems that transact significant volume, and thus are subject to the recordkeeping requirements of fair access and systems capacity, integrity and security, are not likely to be small entities as defined by the Act.

6. Consequences of Less Frequent Collection

The information required to be collected under the Rule should increase the abilities of the Commission, state securities regulatory authorities, and the SROs to ensure that alternative trading systems are in compliance with Regulation ATS as well as other rules and regulations of the Commission and the SROs. If the information is not collected or is collected less frequently, the Commission would be limited in its ability to comply with its statutory obligations, provide for the protection of investors and promote the maintenance of fair and orderly markets.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

The collection is not inconsistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

Not applicable.

9. Payment or Gift to Respondents

The respondents receive no payments or gifts.

10. Assurance of Confidentiality

The records required by the amendments are available only for the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 522 ("FOIA"), and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

11. Sensitive Questions

Not applicable. No information of a sensitive nature is required under the rule.

12. Estimate of Respondent Reporting Burden

Alternative trading systems that choose to register as broker-dealers and comply with Regulation ATS are required to comply with recordkeeping requirements under Rule 302. The Commission estimates that the average burden for each respondent to comply with the recordkeeping requirements under the Rule is approximately 36 hours with an average total cost of approximately \$3,115.44. This estimated cost is derived from 36 hours at \$86.54 per hour. The Commission estimates that an employee of a broker-dealer charged to ensure compliance with Commission regulations receives annual compensation of \$180,000. This compensation is the equivalent of \$86.54 per hour (\$180,000 divided by 2,080 payroll hours per year).

The Commission estimates the total recordkeeping and preservation burden is approximately 40 hours, divided into 36 hours for recordkeeping and 4 hours for record preservation.<sup>3</sup> These proportions are drawn from prior Commission experience with broker-dealer recordkeeping and record preservation under Rules 17a-3 and 17a-4.

13. Estimates of Total Annualized Cost Burden

The Commission estimates that currently there are approximately 65 alternative trading systems registered as broker-dealers that have filed initial operation reports in compliance with Regulation ATS. The Commission estimates that the aggregate burden to comply with Rule 302 is \$202,504.00 (65 alternative trading systems at \$3,115.44 per alternative trading system). The Commission estimates the average aggregate burden to comply with Rule 302 is 2,340 hours (65 alternative trading systems at 36 hours per alternative trading system).

14. Estimate of Cost to the Federal Government

The government does not experience significant costs based on the recordkeeping required pursuant to Rule 302. The information collected by the respondents would only be reviewed as part of an investigation of a respondent. As a matter of routine, however, the Commission does not review the records kept by the respondents.

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<sup>3</sup> The four hours of record preservation are required by Rule 303 of Regulation ATS. These are discussed in a separate request for an extension of a collection of information.

15. Explanation of Changes in Burden

The increase in reporting burden is due to the increase in the number of ATs.

16. Information Collection Planned for Statistical Purposes

Not applicable. The information is not published for statistical use.

17. Explanation as to Why Expiration Date Will Not Be Displayed

Not applicable. The Commission is not seeking approval to not display the expiration date for OMB approval.

18. Exceptions to Certification

Not applicable. The Commission is not seeking an exception to the certification statement.

B. Collection of Information Employing Statistical Methods

Not applicable. The collection of information will not employ statistical methods.