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April 18, 2022

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

**Re: Amendments to Exchange Act Rule 3b-16 Regarding the Definition of “Exchange”;
Regulation ATS for ATSS That Trade U.S. Government Securities, NMS Stocks,
and Other Securities; Regulation SCI for ATSS That Trade U.S. Treasury Securities
and Agency Securities, RIN 3235-AM45, File No. S7-02-22, 87 Fed. Reg. 15496
(Mar. 18, 2022)**

Dear Ms. Countryman:

Tradeweb Markets Inc. (“**Tradeweb**”), which operates regulated electronic trading platforms globally in both the fixed income and equity markets, appreciates this opportunity to provide the Securities and Exchange Commission (the “**Commission**” or the “**SEC**”) with comments in response to the above-captioned release (the “**Proposal**”).¹ The Proposal includes amendments to (i) Exchange Act Rule 3b-16 (“**Rule 3b-16**”), which defines certain terms used in the statutory definition of “exchange” under Section 3(a)(1) of the Securities Exchange Act of 1934 (the “**Exchange Act**”), (ii) Regulation ATS for alternative trading systems (“**ATSS**”) that trade government securities as defined under Section 3(a)(42) or repurchase and reverse repurchase agreements on government securities (such securities collectively, “**Government Securities**”; such ATSS collectively, “**Government Securities ATSS**”), (iii) the Regulation ATS fair access rule, (iv) Regulation Systems Compliance and Integrity (“**Regulation SCI**”) and (v) Form ATS-N.

Tradeweb is a leading global operator of electronic marketplaces for rates, credit, equities, and money markets. Founded in 1996, Tradeweb provides access to markets, data and analytics, electronic trading, straight-through-processing and reporting for more than 40 products to clients in the institutional, wholesale and retail markets. Advanced technologies developed by Tradeweb enhance price discovery, order execution and trade workflows while allowing for

¹ The Proposal re-proposes certain amendments described in the Commission’s related September 2020 proposal and accompanying concept release (together, the “**2020 Proposal**”). Tradeweb submitted a comment letter, dated March 1, 2021, in response to the 2020 Proposal (the “**2021 Comment Letter**”).

greater scale and helping to reduce risks in client trading operations. Tradeweb operates three registered ATSS through its broker-dealer subsidiaries: Tradeweb Direct LLC, Dealerweb Inc. and Execution Access, LLC. In addition, Tradeweb LLC, another registered broker-dealer, offers a request-for-quote (“**RFQ**”) electronic platform which was, but is no longer, registered as an ATS. All three broker-dealer subsidiaries offer the ability for institutional buyers and sellers of Government Securities and other fixed income, equity, and derivative instruments to transact on their electronic trading platforms. As an innovator in electronic trading and one of the only organizations that operates and offers platforms to institutional accounts that serve the full spectrum of the market (retail, institutional, and wholesale), Tradeweb is uniquely positioned to provide valuable perspective on the impact of regulation on fixed income ATSS and, more specifically, Government Securities ATSS.

I. Summary of Comments

Tradeweb supports the Commission’s efforts to level the regulatory playing field for trading systems and platforms that perform similar functions. Such an approach would promote competitive equality, reduce opportunities for regulatory arbitrage, and support innovation. To achieve these objectives, the Commission must carefully tailor its rulemaking to take into account the different functionalities that various systems and platforms offer and the resulting differences in terms of systemic and market integrity risks they present, in particular the differences between RFQ systems and traditional exchange or anonymous central limit order book (“**CLOB**”) systems. RFQ is a well-established trading protocol whose adoption by the over-the-counter (“**OTC**”) fixed income markets has facilitated the migration of markets from traditional OTC telephone execution to electronic trading platforms. RFQ delivers clear benefits to market participants in the areas of price transparency and discovery, operational efficiency, and increased quality of execution. Tailoring the Proposal is necessary to preserve market participants’ ability to choose among a variety of platforms with different functionalities, which ultimately promotes liquidity, fair competition, and efficiency.

Relatedly, any final rule should be accompanied by conforming changes to other rules that apply to ATSS. The Proposal marks a fundamental change in the regulation of fixed income markets and the scope of the Commission’s ATS regulatory regime. However, many of the rules applicable to ATSS were designed on the assumption that an ATS operates a traditional matching or other anonymous CLOB platform falling within the current, narrower “exchange” definition. For example, and as discussed in detail below, Regulation SCI would apply in full to covered ATSS, triggering expensive and ongoing systems development and maintenance for platforms and systems that have categorically different technological infrastructures and roles in the market than those for which Regulation SCI was originally designed. If the Commission does not make conforming changes to these rules, ATSS would be required to divert substantial resources toward complying with rules that yield minimal benefits to their clients, the markets or the Commission. Conforming changes are therefore necessary so that the additional trading systems and platforms that are captured by expanding the “exchange” definition are not forced to restructure their operations or exit the market altogether due to inadvertent and ultimately unnecessary application of those other rules whose costs will exceed their benefits.

In light of these considerations, we encourage the Commission to:

- ensure that platforms and systems providing substantially similar functions would be treated equally under the revised definition of “exchange,” regardless of what technology they employ, so as to avoid the regulatory arbitrage, reduced competition and stifled innovation that could result from disparate treatment;
- eliminate the exemption for Government Securities ATs and require these ATs to register as broker-dealers or Government Securities broker-dealers, which would support efficiency, resilience and transparency of the Government Securities market;
- carefully tailor application of the Fair Access Rule to account for differences in protocols and business models, especially the diversity of protocols and business models in the fixed income markets, and to ensure that the Proposal does not undermine ATs’ flexibility to innovate and provide different protocols and business models to meet the needs of their participants;
- if the Commission decides to apply Regulation SCI to Government Securities ATs at all, carefully tailor the application of Regulation SCI to take account of the lower systemic and operational risk profiles of such platforms relative to equities trading platforms and market infrastructure;
- require Government Securities ATs to file Forms ATS-N, but limit the requirement to disclose commercially sensitive information to subscribers, potential subscribers and the Commission so as to mitigate the negative effects on competition and innovation that would result from public disclosure;
- make conforming changes to rules triggered by ATS registration, such as SEC Rule 15c3-5, Trade Reporting and Compliance Engine (“TRACE”) reporting, Consolidated Audit Trail (“CAT”) reporting and Regulation NMS’s trade-through prohibition so as to avoid the inadvertent application of unnecessary obligations on newly regulated platforms that function in a different manner from the anonymous matching platforms normally subject to these rules; and
- extend the transition periods under the Proposal to ensure that platforms and systems have sufficient time to properly analyze and address these new requirements.

II. Comments on the Scope of Regulation ATS

The Commission adopted Regulation ATS in 1998 in order to address the perceived imbalanced regulatory treatment of electronic trading systems regulated solely as broker-dealers, as compared to national securities exchanges, which were (and are) subject to

more extensive regulation.² As a result of, and pursuant to, Regulation ATS, additional platforms and systems that meet the definition of “exchange” in Rule 3b-16 and thus engage in similar market activities to, and share the same fundamental business objectives of, national securities exchanges were subject to greater SEC regulation. Accordingly, Regulation ATS improved competitive balance between platforms and systems that provide fundamentally similar services, reduced the potential for regulatory arbitrage by other market participants, and extended investor protections to like securities marketplaces. Regulation ATS, however, did not cover all platforms and systems providing these types of services—most notably, Government Securities ATSS are currently exempt from Regulation ATS, and certain other platforms fall outside of Rule 3b-16 altogether.³

Technological advances and competition in the space since the initial adoption of Regulation ATS have yielded innovative methods and systems to connect participants in the securities markets. In some cases, these systems perform similar market functions to ATSS and registered exchanges, but are not currently subject to the same federal securities laws and regulations because they do not fall within the definition of “exchange” or are otherwise exempt. The Proposal rightfully acknowledges that this current regulatory scheme has not kept up with changes in the market.⁴

The Proposal therefore seeks to update the Commission’s regulations by, among other measures, expanding the definition of “exchange” in Rule 3b-16 to include systems that offer protocols and the use of non-firm trading interest to bring together buyers and sellers of securities (“**Communication Protocol Systems**”). We consider it appropriate for the Commission to revisit the “exchange” definition, but believe the Commission should ensure that the revised definition applies to platforms and systems on the basis of the services they provide, rather than the particular technologies or methods used to provide those services.

Also, the Proposal would eliminate the exemption from Regulation ATS for Government Securities ATSS, thereby requiring Government Securities ATSS (including Communication Protocol Systems for Government Securities) to either register as national securities exchanges or comply with Regulation ATS.⁵ We generally support this aspect of the Proposal, subject to the Commission further tailoring the ATS regulatory framework as discussed later in this letter.

² See Regulation of Exchanges and Alternative Trading Systems, 63 Fed. Reg. 70844, 70845 (Dec. 22, 1998).

³ See Proposal at 15497-98.

⁴ See Proposal at 15502.

⁵ Proposal at 15517-18.

- a. In expanding the definition of “exchange,” the Commission should ensure that platforms and systems providing substantially similar functions would be treated equally under the revised definition.

We support the Commission’s goal to bring more balance to the competitive and regulatory landscape by ensuring that platforms and systems providing similar services are subject to similar regulatory and compliance obligations. However, revising the scope of entities covered by Regulation ATS, if not undertaken carefully by ensuring that entities providing substantially similar functions are subject to the same regulatory regime, could generate opportunities for regulatory arbitrage, reduce competition and stifle innovation.

As proposed, the scope of what would count as an “exchange” could be interpreted quite expansively; the fact that the Commission found it necessary to clarify that utilities (*i.e.*, telephone companies) or general-purpose electronic web chat providers would not be covered exemplifies the potentially expansive universe of firms that could be captured by the rule.⁶ We agree that the definition of “exchange” should not be so expansive so as to capture these types of functions or ordinary brokerage activities, such as routing to other venues or dealers for execution. Such activities do not constitute bringing together buyers and sellers of securities, are not the types of activities historically covered by Regulation ATS and, therefore, should not be covered by the Proposal. The Commission should also give due consideration to how its revision of the definition to capture an organization that “makes available” methods, including communication protocols, for the interaction of buyers and sellers might affect various forms of software tools widely used in the securities industry.

On the other hand, the revised definition of “exchange” should not be so narrow as to exclude persons offering protocols or systems that provide substantially similar services to platforms and systems that are certain to be covered by the Proposal, such as electronic RFQ platforms, as doing so would allow for regulatory arbitrage and ultimately harm markets and market participants. Simply put, the Commission should not impede or discourage technological innovation by subjecting electronic platforms to greater regulatory burdens than platforms that operate through voice or other more manual execution methods. So although we agree that a broker who exercises discretion and judgment over the routing of a customer’s orders should not need to register as an exchange or ATS,⁷ we also think that a voice broker who performs the same (or substantially similar) market functions as an electronic RFQ platform should not fall outside the scope of important investor protections such as safeguarding of confidential information, transparency to the Commission and the public via Form ATS-N, and fair access requirements. Similarly, systems and platforms which provide their participants access to aggregated or competitive sources of liquidity should fall within the scope of the “exchange” definition.

⁶ The Proposal also clarifies that certain passive systems, such as bulletin boards, would also not be captured by the definition. Proposal at 15507.

⁷ See Proposal at 15506-07.

Ultimately, as proposed, the redefinition of “exchange” is potentially overbroad and under-inclusive and could be interpreted to allow certain platforms and systems providing substantially similar services to electronic RFQ platforms not to be covered by the definition. The resulting uncertainty could result in distorted incentives and an imbalanced competitive playing field. We respectfully submit that in revising the definition of an “exchange”, the Commission must follow the principle that protocols or systems that provide substantially similar services should be subject to the same regulatory requirements, regardless of their particular use of technology in providing those services. Any deviations from this principle would open the door to regulatory arbitrage, diverting market participants’ attention and resources away from enhancing the quality of services offered to the market toward seeking technical exemptions from the ATS regulatory framework instead. This dynamic would also discourage technological innovation, which would harm investors by increasing costs and decreasing competition. Ensuring that protocols or systems that provide effectively the same services are subject to the same regulations, by contrast, would enhance competition and utility of markets, and diminish any incentives towards regulatory evasion or arbitrage.

- b. We support eliminating the exemption for Government Securities ATSS and requiring such ATSS to register as broker-dealers or Government Securities broker-dealers.

As noted in the Proposal, Government Securities play a critical role in the U.S. and global economies, and Government Securities ATSS have become a significant location of trading interest for Government Securities.⁸ However, Government Securities ATSS are currently exempted from registering as national securities exchanges or complying with Regulation ATS. In order to support the efficiency, resilience, and transparency of the Government Securities market, we continue to support the proposal to eliminate this exemption and require that Government Securities ATSS register as broker-dealers or Government Securities broker-dealers.

III. Comments on Tailoring the ATS Regulatory Framework

To the extent the Proposal scopes in additional systems and protocols as “exchanges,” the Commission should apply an appropriately tailored regulatory regime that takes into account different trading functionalities, including in particular the level of discretion retained by transacting parties. The different structures and functionalities of different trading venues are beneficial to the markets in which they operate, because they, among other things, provide market participants with flexibility in how and to whom they disseminate their trading interest and seek out liquidity. We respectfully submit that the regulatory regime must recognize those differences and not take a one-size-fits-all approach, which would harm competition and innovation.

For example, as noted in our 2021 Comment Letter, certain Communication Protocol Systems, such as RFQ platforms that merely facilitate fully disclosed negotiation

⁸ See Proposal at 15512-13.

between potential counterparties,⁹ operate in a different manner from fully automated CLOBs or other similar trading platforms because: (1) trading does not typically occur at speeds that exceed the capacity of manual detection and intervention or otherwise pose challenges for traditional risk management procedures; (2) trading does not pose the same possibility for technological error as fully automated protocols, where algorithms can malfunction or be tampered with in ways that cannot occur with bilateral negotiations;¹⁰ and (3) in the event the platform facilitating fully disclosed bilateral negotiations is unavailable, the parties can, if less efficiently, continue to negotiate and execute transactions bilaterally away from the platform. It would be inappropriate to regulate all ATSs identically regardless of the differences in their risk profiles.

For these reasons, below we have set out recommendations for how to tailor Rule 301(b)(5) of Regulation ATS (the “**Fair Access Rule**”), Regulation SCI, and Form ATS-N to address differences in the functionalities and competitive dynamics for the different platforms and asset classes that would be captured by the Proposal.

- a. We support tailored application of the Fair Access Rule to significant venues for aggregated trading in U.S. Treasury and Agency securities.

The Fair Access Rule was designed to ensure that qualified market participants have fair access to significant sources of liquidity in the U.S. securities markets.¹¹ As amended by the Proposal, the Fair Access Rule would require an ATS, including a Government Securities ATS, with a significant percentage of overall trading volume¹² to, among other things, (i) establish and apply reasonable written standards for granting access on its systems that meet certain minimum criteria and (ii) not unreasonably prohibit or limit any person in respect to access to services offered by the ATS by applying the established written standards in an unfair or discriminatory manner.¹³ As noted in our 2021 Comment Letter, adequate tailoring of the Fair Access Rule should take into account the fact that trading protocols, business models, and execution methods are far more diverse in the U.S. Treasury and Agency securities market than

⁹ While the discussion that follows focuses on fully disclosed RFQ protocols, the differences addressed below apply more broadly to any fully disclosed Communication Protocol System that does not rely on automatic matching functions (*i.e.*, where the transacting parties choose whether to execute against contra-side trading interest).

¹⁰ See Joint Staff Report: The U.S. Treasury Market on October 15, 2014 at p. 54-55 (July 13, 2015), available at <https://home.treasury.gov/system/files/276/joint-staff-report-the-us-treasury-market-on-10-15-2014.pdf>.

¹¹ See Proposal at 15521.

¹² The Proposal would apply the Fair Access Rule to Government Securities ATS if the Government Securities ATS had: (1) with respect to U.S. Treasury Securities, three percent or more of the average weekly dollar volume traded in the United States 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 United States as provided by the SRO to which such transactions are reported. Proposal at 15522.

¹³ Proposal at 15521, 15574-76.

in the equity markets. Different participant types interact with these markets in different ways, and it is sensible for there to be a recognition of different types of participants, for example liquidity providers and liquidity takers. Consequently, even across significant venues for U.S. Treasury and Agency securities, fair treatment by such venues of potential and current subscribers and transparency to the market may need to be accomplished in various ways for different types of platforms.

The Fair Access Rule should be carefully tailored to avoid stifling competition and innovation. Competition among trading platforms and Communication Protocol Systems has generated a variety of business models and execution methods in the U.S. Treasury and Agency Securities markets, which promotes liquidity in the fixed income markets and benefits market participants. This variety affords each market participant the ability to select a platform with the most desirable blend of pricing, options and services each time that participant considers executing a transaction. The Fair Access Rule should, therefore, allow ATSs the flexibility to customize access based on a participant's role in the market (for example, as a dealer versus investor), or to assess differing fees based on objective criteria regarding method of connectivity and access, trading volume, and other market activity.

The Proposal also notes that, for fixed income platforms where each participant has discretion over which other participants they want to trade with, the Commission would view the ATS as adopting the participant's decisions as ATS standards.¹⁴ We respectfully submit that imputing participants' decisions and discretion to the ATS itself is inappropriate—the Fair Access Rule should rightfully apply to an ATS's standards for granting access on its systems and what services it offers to its participants, but an ATS cannot (and should not) control its participants' trading decisions. Market participants view the ability to exercise discretion over these decisions as a key benefit of many trading platforms, consistent with maintaining their overall dealer-customer relationships. Extending the Fair Access Rule to mere participants in a platform, as opposed to the platform itself, and thereby impeding participants' exercise of control over the disclosure of their trading interest, would inappropriately force the platform to intermediate the participants' dealer-customer relationship with each other.

In particular, the Proposal should not restrict participants of a fully disclosed RFQ or other disclosed Communication Protocol System from exercising discretion over which other market participants a subscriber is willing to communicate with, and whether and when their interactions with each other result in a trade. In RFQ systems and other disclosed Communication Protocol Systems, participants exercise this discretion to ensure that they only disclose their trading interest or provide quotes to trusted counterparties, taking into account their overall relationships with these counterparties, appropriate "Know Your Customer" and other documentation (including settlement instructions, existence of sufficient counterparty credit, etc.), and avoiding undue information leakage or disclosure to the marketplace, to competitors or others who might take advantage of them. Imputing such discretion to the platform and thereby subjecting participants to the Fair Access Rule would substantially undermine the reasons participants use RFQ platforms and potentially cause platforms to limit or eliminate RFQ

¹⁴ Proposal at 15574.

functionality. In this way, expanding the Fair Access Rule would push participants to less efficient and competitive bilateral execution methods such as phone or chat, which would significantly reduce liquidity, harm price discovery and limit the utility of these markets for participants.

Consequently, the Commission should clarify that the Proposal would not prevent participants in a fully disclosed RFQ or other disclosed Communication Protocol System from exercising discretion around the parties with whom they request or share quotes or otherwise transact or otherwise impute participants' discretion around how they trade or use the ATS's services to the ATS for purposes of the Fair Access Rule.

- b. If the Commission decides to apply Regulation SCI to Government Securities ATSS, it should tailor such application to account for differences among platform functionalities and between fixed income and equity markets.

The Commission initially adopted Regulation SCI to strengthen the technology infrastructure of the U.S. equities markets, reduce the occurrence of systems issues in those markets, improve their resiliency when technological issues arise and implement an updated and formalized regulatory framework.¹⁵ Entities subject to Regulation SCI must, among other things, (i) maintain and enforce written policies and procedures designed to ensure their key automated systems are sufficiently resilient, secure and available, (ii) take appropriate corrective action when systems issues occur, (iii) provide certain notifications and reports to the Commission regarding system issues and changes, (iv) inform members and participants about systems issues, (v) conduct annual reviews and penetration testing of their automated systems and (vi) make and keep books and records.¹⁶

As noted in our 2021 Comment Letter, we believe that it is inappropriate to apply Regulation SCI to non-automated, fully disclosed fixed income trading platforms, given the lower operational and systemic risk profiles associated with such platforms as compared to equities trading platforms. However, if the Commission nonetheless believes that Regulation SCI should apply in this context, we respectfully submit that Regulation SCI should not be applied in full to Government Securities ATSS because the structure of the Government Securities market does not present the same types of risks as the equities market. In particular, the equities market is characterized by numerous platforms that connected to each other as required by regulation,¹⁷ which increases the risk that a system disruption or intrusion in one platform could spread to other platforms and cause a significant market impact across all equities trading venues.

¹⁵ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 Fed. Reg. 72252 (December 5, 2014).

¹⁶ See 17 C.F.R. §§ 242.1001-1007; See Proposal at 15525.

¹⁷ See 17 C.F.R. § 242.603.

The structure of the Government Securities market is fundamentally different because, among other things, the trading venues are not similarly interconnected. The Proposal acknowledges as much, noting that “the government securities market may not have the same type of linkages between trading venues as exists in the equities markets.”¹⁸ The Proposal does state, however, that a system outage at a significant Government Securities ATS could result in message traffic and trading activity shifting to other significant Government Securities ATSs, potentially exceeding their capacity and causing knock-on disruptions.¹⁹

Rather than applying Regulation SCI on a one-size-fits-all basis, the Commission should address the risks of these system malfunctions through a more tailored regulatory approach designed to address the particular risks of a trading system in Government Securities. In addition, more generally, the risks associated with a fully disclosed Communication Protocol System such as an RFQ, where subscribers (not the platform) exercise discretion around execution, are lesser than anonymous matching or crossing protocols. In the former, the transacting parties (rather than the platform) are often better positioned to fulfill certain regulatory requirements, there is lower risk of a technology malfunction by the platform resulting in inadvertent trade executions, and participants are better able to switch to other trading venues or transact bilaterally in the event of any disruption. Any application of Regulation SCI should take account of the differences in the operational risk profile of different trading platforms in order to appropriately balance the benefits of mitigating harm to market participants against the burdens to the platform of complying. Imposing disproportionate and unnecessary burdens on lower-risk platforms would inappropriately discourage competition and innovation.

Therefore, if the Commission decides to apply Regulation SCI to Government Securities ATSs, it should take a more targeted approach. In particular we believe that an alternative approach set forth in the preamble to the Proposal would be more appropriate. That approach would require Government Securities ATSs to maintain and apply written policies and procedures, make notifications of systems problems, and perform business continuity and disaster recovery testing and penetration testing.²⁰ However, the other components of Regulation SCI should not apply, such as quarterly reporting to the Commission regarding changes to its SCI systems, submission of an annual SCI review report to the Commission, and the requirement that its business continuity and disaster recovery planning be tested in coordination with other SCI entities on an industry-wide or sector-wide basis.²¹ Any requirement to perform reporting to the Commission regarding changes to systems would be exceedingly costly to perform and maintain, and, given that most of the systems-related changes are minor or having to do with the routine maintenance of the platform, unnecessary. This targeted application of Regulation SCI

¹⁸ Proposal at 15528.

¹⁹ *Id.* Furthermore, the Commission notes that “Regulation SCI is not designed to solely address systems issues that cause widespread systemic disruption, but also to address more limited systems malfunctions that can harm market participants.” *See* 79 Fed. Reg. at 72263.

²⁰ Proposal at 15529, n.396.

²¹ 17 C.F.R. §§ 242.1003(a)(1), 242.1003(b)(3), 242.1004(c).

to Government Securities ATSS meeting the threshold for Regulation SCI compliance would achieve the Commission's goal of mitigating risks, while also supporting the maintenance of fair and orderly markets and without imposing undue costs on platforms.²²

Although we have experience with Regulation SCI and the related regulatory, compliance and control requirements for one of our equities platforms, this re-proposal reframes the regulatory framework for fixed income such that even with this experience, it will be a comprehensive endeavor with potentially significant additional costs. As the application of this regulation to these markets is broad and untested, we think it is necessary (and would be more constructive and helpful long term) to have the regulatory regime in place first and then assess and scope the SCI framework under the new regime by eliciting additional feedback from participants on best practices for implementation.

- c. We support the proposal to require Government Securities ATSS to file Forms ATS-N, but disclosure of commercially sensitive information by Government Securities ATSS should be limited to subscribers, potential subscribers and the Commission.

As noted in our 2021 Comment Letter, we agree with the Commission that enhanced and consistent transparency across Government Securities ATSS is important, as it will serve to increase the resilience of ATSS that play a significant role in the Government Securities market. We therefore support requiring Government Securities ATSS to file Form ATS-N, subject to certain refinements to the Proposal.²³

The Proposal notes that the Commission believes that “the vast majority of responsive information to Form ATS-N would not be proprietary or commercially sensitive for ATSS to disclose.”²⁴ However, with respect to the additional types of platforms that would be subject to Form ATS-N, certain information required to be disclosed would in fact be commercially sensitive. In particular, a requirement to publish on a granular level the individual fees charged for every instrument and every conceivable trade type would allow competing platforms to easily consume the addition of new or innovative trade types and protocols, which would ultimately reduce the incentive for platforms to invest in proprietary technology or innovative protocols that ultimately benefit end users.

²² See Proposal at 15529 n.396.

²³ We further support the Commission's approach allowing a Government Securities ATS that currently trades Government Securities and other securities, such as corporate debt securities and municipal securities, to file a Form ATS-N to disclose its Government Securities activities that would supersede and replace the previously filed Form ATS. See Proposal at 15533. Requiring such a Government Securities ATS to file a new, separate Form ATS with respect to non-Government Securities in which it currently transacts would impose unnecessary burdens and costs on the ATS.

²⁴ Proposal at 15539.

It is also important to take into account the types of participants who are transacting on an ATS. The fixed income markets in question are comprised of institutional buyers and sellers, so any additional transparency should be designed to serve the needs of the specific institutional participant group. A granular breakdown on fee structures and the variables that impact them would be so extensive and complex given the broad suite of instruments and participants on our platforms that it would not serve any material benefit to a member of the public. We agree that subscribers and potential subscribers may find such information useful when choosing among Government Securities ATSS²⁵ and that the Commission may find such information useful for its oversight, but disclosure of such information can be limited to those entities, rather than being made generally available to the public, including competing platforms.

The Proposal states that requiring public disclosure rather than Government Securities ATSS responding to individual disclosure requests from subscribers or potential subscribers “will help to ensure uniformity and standardization of the information Government Securities ATSS make available.”²⁶ We agree that there is a benefit to standardized disclosure, but such benefits can be achieved through use of a common form. There is no reason why this form must be made public in order for it to be uniform and standardized.

Moreover, requiring that commercially sensitive information be made publicly available, including necessarily to competing platforms, would harm innovation and competition in the fixed income trading markets. As we noted in our 2021 Comment Letter, competitor access to this information is more significant in the U.S. Treasury and Agency securities market than in the equities market since business models and trading protocols are much more bespoke across trading platforms in the fixed income space. This diversity and drive to innovate is fundamental to the U.S. Treasury and Agency securities market and has led to lower trading costs, greater liquidity, better matching of participants and increased access to trading venues for market participants.²⁷ Competitor access to commercially sensitive information will harm these benefits, as Government Securities ATSS will be hesitant to develop new business models and systems if a competitor will be able to leverage that information immediately for its own use.²⁸ We therefore respectfully submit that the Commission can advance its goals, while preserving and enhancing the fixed income markets, by limiting the disclosure of proprietary and commercially sensitive information to the Commission and, upon reasonable request, subscribers and potential subscribers. We also find that any requirement to file the ATS-N via EDGAR

²⁵ See Proposal at 15538 (stating that public disclosures would “provide information that market participants can use to evaluate an ATS as a potential trading venue.”).

²⁶ Proposal at 15538.

²⁷ See, e.g., Bank for International Settlements, Markets Committee, *Electronic trading in fixed income markets* (Jan. 2016), available at <https://www.bis.org/publ/mktc07.htm>.

²⁸ If the Commission decides to make public such commercially sensitive information on Form ATS-N, such information should be more general and high-level (e.g., broad ranges of fees, not specific fee levels), with specific information made available by the ATS upon the request of a subscriber, potential subscriber, or the Commission.

would impose significant cost without providing any material benefit, particularly in light of the institutional nature of participants in fixed income markets.

IV. Conforming Changes Triggered by ATS Registration for Communication Protocol Systems

Registration as an ATS triggers, among other requirements, the need to register with the Commission as a broker-dealer and comply with additional rules promulgated by the Commission and the Financial Industry Regulatory Authority (“**FINRA**”), such as SEC Rule 15c3-5’s market access requirements, TRACE reporting, CAT reporting, and Regulation NMS’s prohibition on trade-throughs. These rules were originally drafted in light of the current scope of Regulation ATS. Because the Commission is proposing to expand the universe of platforms that would be required to register as ATSs, it and FINRA should revisit the application of these other rules and make the conforming changes described below to ensure that they do not impose unnecessary obligations on newly regulated platforms, which would be inconsistent with how these platforms operate.

- a. Fully disclosed RFQ platforms are not best positioned to address the risks targeted by Rule 15c3-5.

SEC Rule 15c3-5 generally requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or ATS, to establish, document and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks of that activity.²⁹ As noted in our 2021 Comment Letter, Rule 15c3-5 was adopted to address financial and regulatory risks that arise from persons that are not broker-dealers accessing ATSs and exchanges to trade in securities with little or no substantive intermediation by broker-dealers.³⁰ Customers, particularly sophisticated financial institutions, had begun to enter into arrangements with broker-dealers, whereby the customers used the broker-dealer’s market participant identifier or other mechanism used to identify a market participant to electronically access an exchange or ATS. We understand that the Commission was concerned with the quality of broker-dealer risk controls for overseeing such market access arrangements and wanted to limit the financial exposure and other regulatory risks to broker-dealers that could arise as a result of such arrangements.

We agree that Rule 15c3-5 is important to ensure appropriate risk management controls in cases of anonymous market access by non-broker-dealers where that access is not

²⁹ See 17 C.F.R. § 240.15c3-5.

³⁰ See Risk Management Controls for Brokers or Dealers with Market Access, 75 Fed. Reg. 69791, 69794 (Nov. 15, 2010) (Rule 15c3-5 is designed to “reduce the risks faced by broker-dealers, as well as the markets and the financial system as a whole, as a result of various market access arrangements, by requiring effective financial and regulatory risk management controls reasonably designed to limit financial exposure and ensure compliance with applicable regulatory requirements to be implemented on a market-wide basis.” (emphasis added)).

chaperoned or sponsored by a broker-dealer. In those situations, the broker-dealer operator of the exchange or ATS should be required to comply with Rule 15c3-5. However, Communication Protocol Systems do not uniformly provide for arrangements between broker-dealers and customers for automated and anonymous trading platform access. In particular, it would not be appropriate to apply Rule 15c3-5 to RFQ or other non-anonymous Communication Protocol Systems given that such platforms facilitate fully disclosed trading between buyers and sellers, including directly between broker-dealers and their customers without the platform intermediating that relationship in a manner that would prevent the dealer from managing its financial exposure to the customer or ensuring compliance with regulatory requirements. When utilizing these trading protocols, broker-dealer-subscribers are able, and better positioned than the platform to, address these matters. Requiring the trading platform operator to apply Rule 15c3-5 to address these matters as well would be outside the reasonable scope of the platform's authority and possibly counterproductive to the broker-dealer's own risk management—especially considering that the platform itself typically bears no financial exposure to the transactions as it is not a party to the transactions.

Moreover, expanding application of Rule 15c3-5 under the Proposal would impose substantial and duplicative compliance costs on ATSs. To the extent that an RFQ or other fully disclosed Communication Protocol System merely facilitates trading by a broker-dealer with its customers without being involved in the broker-dealer's ability to manage its financial exposure or ensure compliance with regulatory requirements with respect to those customers, as is typically the case, requirements to prevent disorderly or otherwise inappropriate or unduly risky trading should fall only on the broker-dealer. Requiring the ATS to also comply with Rule 15c3-5 would impose substantial compliance costs on the ATS, but would not result in any benefits to the markets with respect to risk management or otherwise. In fact, it is on the basis of evaluating such cost and arduous implementation relative to little if any perceived benefit of this issue amongst others outlined in this letter (*e.g.*, TRACE reporting) that Tradeweb's RFQ platform withdrew our ATS registration in 2014. Requiring fully disclosed Communication Protocol Systems to comply with Rule 15c3-5 in addition to the gatekeeper role already served by broker-dealer subscribers to such platforms would therefore be costly, redundant and potentially counterproductive given the platform's limited role in such situations.

- b. Transacting parties using fully disclosed Communication Protocol Systems are better positioned to comply with TRACE reporting requirements than the platform operator.

FINRA's TRACE rules generally require broker-dealer firms that are members of FINRA to report detailed information with respect to transactions in TRACE-eligible securities. FINRA then publicly disseminates data about these transactions.³¹ In particular, FINRA Rule 6730 requires each FINRA member firm that is a "party to a transaction" in a TRACE-eligible security to report the transaction to TRACE within the prescribed period of time (generally

³¹ See <https://www.finra.org/rules-guidance/rulebooks/finra-rules/6730>.

within 15 minutes).³² If an ATS were considered a party to a transaction, it must report both (i) the purchase of securities from one counterparty to the trade and (ii) the sale of the securities to the other counterparty to the trade.³³

TRACE reporting requirements should not apply uniformly to Communication Protocol Systems. For disclosed RFQ platforms and other disclosed Communication Protocol Systems, the platform operator is not the entity best positioned to fulfill the TRACE reporting requirements. In such cases, the executing firm is better situated to fulfill these requirements because it is a party to the transaction and has readily accessible the information required to be reported. Indeed, today the executing firm is the one that makes TRACE reports when transacting on such a platform. Accordingly, these participants can comply with TRACE reporting obligations without any material increase in cost or operational burden. In contrast, absent conforming changes to the TRACE rules, requiring these platforms to register as ATSS would subject them to TRACE reporting obligations they do not fulfill, and do not need to fulfill, today. This would result in a material operational and technological lift to an ATS operator, for which the time to implement and related expense should be considered.

Additionally, we note the purpose of the TRACE reporting requirements is to obtain reliable and consistent data on trading volumes and aggregate trends in the market. This purpose would still be accomplished without requiring Communication Protocol Systems to report, as the executing firm would report the information. Potentially receiving the same information from two different sources (*i.e.*, the executing firm and the platform operator) would not provide greater regulatory benefit and could instead result in confusing and duplicative reporting. It would also significantly increase the burden on the platform operator by requiring the platform operator to construct systems ensuring that it can capture all of the information required by TRACE trade reports for each trade executed on the platform. The parties to the trade can add a flag to their TRACE reporting indicating such trade was done on an ATS, which we believe is the most efficient and cost-effective way for the Commission and FINRA to achieve their reporting goals.

- c. If Communication Protocol Systems that limit their services to the pre-order exchange of information are required to register as ATSS, appropriate conforming changes should be made to the consolidated audit trail reporting requirements and trade-through rules.
 - i. *Application of CAT reporting rules should be carefully tailored with respect to Communication Protocol Systems that do not allow for trade execution.*

Regulation NMS requires national securities associations and national securities exchanges to jointly submit an NMS plan addressing how they would develop, implement and

³² See <https://www.finra.org/rules-guidance/notices/14-53>.

³³ *Id.*

maintain a CAT plan that would allow regulators to track all activity in U.S. equity and options markets.³⁴ Members of national securities exchanges or national securities associations are required to comply with order reporting obligations set forth in the CAT plan.³⁵ Entities subject to CAT reporting must submit information throughout the life cycle of an order, including (i) information identifying the customer, (ii) information identifying the broker-dealer who receives, originates, routes, or executes the order, (iii) the date and time of the order and (iv) the security symbol, price, size, order type, and other material terms of the order.³⁶ In particular, FINRA rules require ATSS to submit additional information on applicable CAT events.³⁷ For example, ATSS are required to report national best bid and offer information, ATS-specific order types, sequence numbers assigned by the ATS's matching engine and information regarding whether the order is displayed outside of the ATS to subscribers only or via publicly disseminated quotation data.³⁸

CAT reporting requirements should not apply uniformly to all Communication Protocol Systems. In particular, some Communication Protocol Systems merely facilitate the exchange of pre-order information among parties with trading interest, and do not provide functionality to execute those orders. While these Communication Protocol Systems may allow parties to solicit bids and offers, customers using these systems turn to other systems or means (such as bilateral communications) to formally place and execute any order. The CAT reporting requirements should be carefully tailored to ensure that the rule does not impose obligations on a Communication Protocol System to report information about parts of the trade lifecycle in which the Communication Protocol System is wholly uninvolved. Rather, trading venues or broker-dealers that receive, route, modify, execute or terminate orders are better positioned than a Communication Protocol System that merely facilitates pre-order communication between potential counterparties to comply with CAT reporting obligations because those venues or broker-dealers will have the requisite information about each order needed to comply with CAT reporting requirements, while the entities that merely facilitate pre-order communication will not.

³⁴ See 17 C.F.R. § 242.613. Certain self-regulatory organizations have developed such a CAT plan. See CAT NMS Plan, available at <https://www.catnmsplan.com/>.

³⁵ 17 C.F.R. § 242.613(g)(2). The CAT requirements apply to “(i) Any order received by a member of a national securities exchange or national securities association from any person; (ii) Any order originated by a member of a national securities exchange or national securities association; or (iii) Any bid or offer.” 17 C.F.R. § 242.613(j)(8). An “order” is defined as “any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order.” 17 C.F.R. § 242.300(e).

³⁶ 17 C.F.R. § 242.613(c)(7).

³⁷ See “CAT Reporting Technical Specifications for Industry Members” (February 28, 2020), accessible at <https://www.catnmsplan.com/sites/default/files/2020-02/CAT-Reporting-Technical-Specifications-for-Industry-Members-v3.1-CLEAN.pdf>

³⁸ *Id.* at 21-22.

Requiring such pre-order systems to comply with the full suite of CAT reporting requirements would either saddle these limited systems with prohibitive technological and compliance costs, or require them to expand their functionality and service offerings beyond what their business models call for. Moreover, requiring these limited Communication Protocol Systems to comply with CAT reporting for parts of a trade lifecycle that the system is uninvolved in increases the risk of inconsistent, incorrect or duplicative reporting, which would be detrimental to the purposes of CAT reporting. The Commission and FINRA should, therefore, carefully consider and tailor how CAT applies to these Communication Protocol Systems.

- ii. *The Commission's order protection rule prohibiting trade-throughs should not apply uniformly to all Communication Protocol Systems.*

Regulation NMS also requires trading centers (which includes ATSs)³⁹ to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed at other trading centers (“**trade-throughs**”), including by routing orders to other markets to execute against protected quotations where appropriate.⁴⁰ Application of this requirement to Communication Protocol Systems that do not allow for the execution of trades would not serve the purpose of the order protection rule because trades are not executed on these systems. The alternative venue where trades are executed (so long as it is a “trading center”) must comply with the order protection rule.⁴¹ Therefore, requiring a Communication Protocol System that does not permit execution to have its own written policies and procedures designed to prevent trade-throughs is burdensome and, ultimately, unnecessary. The Commission should ensure that any final rule does not apply its trade-through rules to Communication Protocol Systems that do not provide order execution functionality.

V. Comments on Expenses

One reason that it is essential that the Commission adopt the tailoring and conforming changes described above is because of the significant costs associated with new platforms coming into compliance with the ATS framework. In this regard, we estimate substantial compliance, operational, risk, technology and reporting expense, and believe that the up-front expenses to register and annual ongoing expenses to comply with Regulation ATS, Regulation SCI, filing of Form ATS-N and TRACE reporting to be significantly in excess of the estimates in the Proposal.

³⁹ “Trading center” is defined as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” 17 C.F.R. § 242.600(b)(95).

⁴⁰ 17 C.F.R. § 242.600; 242.611.

⁴¹ We note that there are exceptions to the order protection rule. *See* 242.611(b).

VI. Comments on Transition Periods

The Proposal represents a fundamental shift in the scope of ATS regulation, particularly with respect to fixed income markets and Government Securities ATSs. In particular, the Proposal would bring a wide variety of platforms and systems within the ATS regulatory regime, many of which have limited or no experience complying with the broad array of rules applicable to ATSs. We also note that the changes set forth in the Proposal are in addition to a number of other rules proposed by the Commission recently, which leads to additional complexity for market participants. While not all such changes would affect firms covered by the Proposal (at all or in the same way), the widespread changes occurring in the securities space will require time for firms to conduct careful analysis and planning.

Tradeweb therefore believes that the time periods provided for entities to comply with the Proposal are insufficient to permit an orderly and reasonable transition given the extent of the registration requirements, disclosure obligations and required compliance infrastructure to comply with the Proposal. If the recommendations set forth in this letter are ultimately adopted, the Proposal would be better tailored and less onerous, allowing for a shorter transition period of 18 months. However, if the Commission does not accept our recommendations, at least 24 months would be needed to properly comply with the Proposal, except for the application of Regulation SCI. At a minimum, the requirements of Regulation SCI are onerous and lengthy to comply with, and we would suggest a minimum of 36 months for any introduction of Regulation SCI.

As an alternative, and in order to realize the benefits of bringing new platforms and systems into the ATS registration framework sooner while the Commission considers further steps to tailor the ATS regime, the Commission could (i) adopt the Proposal with a shorter transition period of 15 months, (ii) following that initial period, engage in further rulemaking to consider whether and how the Fair Access Rule and Regulation SCI should apply (if at all) to newly in-scope platforms and systems and (iii) provide these systems and platforms an additional transition period to comply with the properly tailored Fair Access Rule and Regulation SCI. Deferring application of the Fair Access Rule and Regulation SCI would afford the Commission the benefit of observing how these platforms and systems operate and comply with Regulation ATS in practice before attempting to properly tailor and apply the Fair Access Rule and Regulation SCI. In addition, a sequential phase-in would mitigate the risk that an improper application of the Fair Access Rule or Regulation SCI could divert platforms' and systems' resources, time and attention away from complying with the rest of the Regulation ATS regime and also result in other unintended consequences to the markets and market participants.

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Ms. Vanessa Countryman

April 18, 2022

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Once again, we appreciate the opportunity to share our views on this important issue and would be pleased to discuss in further detail as and when appropriate. If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

Elisabeth Kirby, *Head of U.S. Market Structure*

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